

# STATE BAR RULES

*As Amended May 2018*

## PREAMBLE

These Rules are adopted in aid of the Court's inherent power to regulate the practice of law and nothing shall be construed as a modification or limitation thereof.

## ARTICLE I DEFINITIONS

The following words shall have the meaning set out below, unless a different meaning is apparent from the context:

1. **“State Bar”** means the State Bar of Texas.
2. **“Clerk”** means the clerk of the Supreme Court of Texas.
3. **“Board”** means the State Bar board of directors.
4. **“Act”** means the State Bar Act, Chapter 510, Acts of the 66th Legislature of Texas, Regular Session, 1979, being also Senate Bill No. 287 as passed by the 66th Legislature of Texas, Regular Session, 1979, and signed by the Governor on June 11, 1979, currently codified at Title 2, Subtitle G. Chapter 81 of the Texas Government Code and as it may be amended.
5. **“Metropolitan County”** includes any of the counties of Bexar, Dallas, Harris, Tarrant and Travis of the State of Texas, as well as any other county hereafter so designated by the board.
6. **“Member in good standing”** is a member of the State Bar who is not in default in payment of dues and who is not under suspension from practice.
7. **“Registered address”** means the mailing address designated by a member to appear to appear on the State Bar membership rolls and for receiving communications from the State Bar.
8. **“Preferred email address”** means the email address designated by a member for receiving electronic communications from the State Bar.
9. **“Electronic service address”** means the email address designated by a member for service of documents through the electronic filing manager established by the Office of Court Administration and for communications to a member from Texas courts. The State Bar will provide each member's electronic service address to the Office of Court Administration. A member's electronic service address may be different from the member's preferred email address.
10. **“Court”** is the Supreme Court of Texas.

11. **“Ex Officio”** means by virtue or because of an office. Unless otherwise provided, one serving as an ex officio member of a body is entitled to vote.

12. **“Rules”** means the State Bar Rules.

13. **“Member”** means a member of the State Bar of Texas.

## **ARTICLE II GENERAL PROVISIONS**

### **Section 1. Official Name**

The official name of the State Bar is “State Bar of Texas.”

### **Section 2. Purposes of the Organization**

The purposes of the State Bar are those as set out in the Act.

### **Section 3. Purposes of These Rules**

These Rules are adopted for the operation, maintenance and conduct of the State Bar and for the disciplining of its members.

### **Section 4. Seal**

The State Bar shall have a seal in the form of a five-pointed star, around the upper portion of which shall be written in capital letters, “STATE BAR OF TEXAS” and around the lower portion of which shall be written in capital letters, “CREATED IN 1939.” The seal may be used only for official business of the State Bar, its sections and committees.

### **Section 5. Principal Office of the State Bar**

The principal office of the State Bar shall be maintained in Austin, Travis County, Texas.

### **Section 6. Service of Process**

Service of citation or other process may be had upon the State Bar by serving either the executive director or the general counsel.

### **Section 7. Fiscal Year**

The fiscal year of the State Bar shall be as determined by the board.

### **Section 8. Organizational Year**

The organizational year of the State Bar shall be from time of adjournment of the annual meeting of the State Bar one year to the time of adjournment of the annual meeting of the State Bar of the next year.

### **Section 9. Oath of Office**

Officers and directors of the State Bar, before entering upon the duties of office, shall take the official oath or affirmation set out in Art. 16, Sec. 1 of the Constitution of the State of Texas.

**Section 10. Elections and Balloting**

Except as may otherwise be provided, elections shall be conducted under the supervision of the executive director.

**Section 11. Officers and Directors Holding Over**

Each officer and director shall continue to serve and perform the duties of his office until his successor has qualified.

**Section 12. Publication of New Rules and Amendments to Rules**

These Rules and any amendments thereto shall be published in a manner directed by the board.

**Section 13. Spokesman for the Bar**

The president of the State Bar or, in the absence of the president, the president-elect, shall be the public representative of the State Bar and shall enunciate the policies of the State Bar as promulgated by the board, except that the Board or the president may delegate such authority under such conditions as the board may prescribe. The board may authorize sections and committees, and those properly authorized by such sections and committees, to publicly represent the views of a section or committee.

**Section 14. Procedures for Meetings**

**A.** All proceedings at meetings of the State Bar, of the board, of the executive committee and all other committees and sections shall be governed by the most recent edition of Robert’s Rules of Order Newly Revised.

**B.** Voting by those entitled to vote at all such meetings shall be in person. Voting by proxy shall not be allowed.

**C.** The presence of a majority of those persons entitled to vote at all such meetings shall constitute a quorum, except that:

- 1. at any meeting of the State Bar, one hundred (100) members shall constitute a quorum for the transaction of business, and
- 2. at any meeting of a State Bar section or committee, a quorum may be less than a majority if the board has determined.

Action shall be taken only upon a majority vote of those entitled to vote, a quorum being present.

**ARTICLE III  
MEMBERSHIP**

**Section 1. Members**

The members of the State Bar are those persons designated in the Act.

## **Section 2. Enrollment in the State Bar**

Within ten days of being admitted to practice law in Texas, a member must file with the clerk the enrollment form prescribed by the State Bar and pay all required fees.

## **Section 3. Member Contact Information; Duty to Keep Updated**

**A.** Each member must provide to the State Bar and keep updated any contact information requested by the State Bar, including the member's:

- registered mailing address;
- preferred email address;
- electronic service address; and
- telephone number.

**B.** If a member fails to designate an electronic service address, the member's preferred email address will be deemed to be the member's electronic service address.

**C.** A member must update the member's registered mailing address, preferred email address, and electronic service address on the State Bar website within 30 days of a change to any address.

**D.** Service of any notice to a member by the State Bar is deemed to be effective if the notice is sent to the member's registered mailing address or preferred email address.

## **Section 4. Membership Fees**

All membership fees are payable at the time of enrollment as a member of the State Bar and annually on the first day of the State Bar's fiscal year.

## **Section 5. Membership Rolls and Membership Cards**

Upon enrollment, the clerk will enter that person's name on the membership rolls and issue the member a bar card.

## **Section 6. Default in Payment of Fees or Assessments**

If a member is in default of payment of membership fees or any assessment levied by the Court on the 30<sup>th</sup> day after the due date, the clerk will promptly notify the member of the default. If the fees and assessments are not paid within 60 days after the notice of default is mailed, the defaulting member will automatically be suspended from the practice of law. Practicing law while suspended is professional misconduct and grounds for discipline.

## **Section 7. Resignation from Membership Other Than in Face of Pending Disciplinary Action**

**A.** A member may resign from membership by delivering to the State Bar the following materials, addressed to the clerk:

- the resignation form provided by the State Bar;
- the member's bar card or, if the card has been lost, a written statement – either sworn to before a notary or made under penalty of perjury – that the card has been lost and will be returned to the State Bar if found; and
- a certificate by the chief disciplinary counsel affirming that no disciplinary action is pending against the member and that the member is not being investigated for professional misconduct.

**B.** The membership records will be amended to reflect the member's resignation when the State Bar receives and verifies the materials required by (A).

## **Section 8. Waiver of Membership Fees**

### **A. Waiver for Military Service in a Combat Zone**

1. The executive director will waive or refund the membership fees of a member of the United States Armed Forces for any year in which the member serves in a combat zone designated by an executive order of the President of the United States.
2. To request a waiver or refund under this subsection, a member must remit to the State Bar the form prescribed by the State Bar and all required documentation before the end of the dues year in which the member is deployed.

### **B. Waiver for Undue Hardship**

1. The legal services fee mandated by Section 81.054(j), Government Code, may not be waived under this subsection.
2. The executive director may waive some or all of the remaining membership fees of any member who demonstrates undue hardship.
3. Undue hardship exists when a member is unable to pay membership fees due to illness, disability, or other extraordinary circumstances beyond the member's control.
4. To request a waiver under this subsection, a member must, by August 31 of each year in which a waiver is requested, remit to the State Bar:
  - the form provided by the State Bar;
  - a written statement by the member – either sworn to before a notary or made under penalty of perjury – averring that the circumstances on which the request is based are beyond the member's control and the direct cause of the member's inability to pay membership fees.; and
  - any other documentation required by the State Bar.
5. Approval of a request for a waiver under this subsection is within the sole discretion of the

executive director.

C. Within 30 days after a waiver is granted under this section, the State Bar will report the waiver to the clerk.

### **Section 9. One-Time Expunction of an Administrative Suspension for Nonpayment of Membership Fees**

A. This section does not apply to a disciplinary suspension for professional misconduct.

B. A member who meets the following criteria may request a one-time expunction of an administrative suspension for nonpayment of membership fees:

1. the member has not previously obtained an expunction under this rule;
2. the suspension was for 90 days or less;
3. except for the suspension that is the subject of the expunction request, the member has not previously been suspended for nonpayment of membership fees;
4. the member is not currently the subject of a disciplinary proceeding or investigation; and
5. the member has no record of disciplinary suspension – whether active or probated – or of prior disbarment or resignation in lieu of discipline.

C. The member seeking the expunction must make a written request to the State Bar. After verifying that the member meets the criteria in (B), the State Bar will forward to the clerk the member's request and a recommendation that the member's record of suspension be expunged. The clerk will expunge the suspension from the member's record.

D. A suspension expunged under this rule is deemed never to have occurred. The record of an expunction is confidential and may not be disclosed by the clerk or the State Bar.

### **Section 10. Return to Former Status**

A. When a member who has been suspended for nonpayment of fees or assessments removes the default by payment of fees or assessments then owing plus an additional amount equivalent to one-half the delinquency, the suspension will automatically be lifted and the member restored to former status. Return to former status is retroactive to inception of suspension, but does not affect any proceeding for discipline of the member for professional misconduct.

B. A person who has voluntarily resigned from membership must apply to the Board of Law Examiners and comply with the rules of the Court pertaining to admission to the practice of law before resuming the practice of law.

C. An inactive member may return to active status upon written application to the clerk and payment of fees

for the current year.

## **ARTICLE IV ADMINISTRATION**

### **Section 1. Board of Directors; Duties**

- A.** The State Bar shall be governed by a board which shall enforce the Act and these Rules.
- B.** The term of office for each elected, public, and at-large director shall be three (3) years. The terms of elected and public directors shall be staggered with one-third (1/3) of such directors elected or appointed each year. The terms of at-large directors shall be staggered with as near to one-third (1/3) as possible appointed each year.
- C.** The regular term of office of an elected, public, or at-large director shall commence on adjournment of the annual meeting of the State Bar next following election or appointment and continue until the adjournment of the third annual meeting next following election or appointment.
- D.** The board shall take such action and adopt such regulations and policies, consistent with the Act or these Rules, as shall be necessary and proper for the administration and management of the affairs of the State Bar, for the protection of the property of the State Bar and for the preservation of good order.

### **Section 2. Meetings of the Board**

The board shall meet regularly at least four (4) times annually, and may meet specially, at such times and places as the board shall determine. All meetings, however, shall be held within the State of Texas.

### **Section 3. Composition of the Board**

The board shall be composed of the officers of the State Bar, the president, president-elect, and immediate past president of the Texas Young Lawyers Association, not more than thirty (30) members of the State Bar elected by the membership from their district as may be determined by the board, six (6) persons who are not licensed attorneys, known as public directors, who do not have, other than as consumers, a financial interest in the practice of law, and four (4) at-large directors appointed by the president and confirmed by the Board. The Board may, in its discretion, also include other members who shall be ex officio or non-voting board members.

### **Section 4. Chairperson of the Board**

The board shall elect annually from its membership, under such procedures as it shall prescribe, a chairperson to serve for the next succeeding organizational year. Such person shall be elected from the class of directors then serving the second year of their terms.

### **Section 5. Qualifications of Officers and Directors**

- A.** Qualifications for Serving as Director. The board is the judge of a candidate's qualifications.
  - 1.** *All directors.* A director must not be an officer, employee, or paid consultant of a Texas trade association or the spouse of one. Texas trade association is defined in Section 81.028, Government

Code.

**2. *Attorney directors.*** A director who is an attorney also:

- a. must be an active member in good standing;
- b. must never have been disbarred or resigned in lieu of discipline; and
- c. if ever suspended for professional misconduct, must have been reinstated at least ten years before the term as director begins.

**3. *Elected directors.*** An elected director also:

- a. must have their principal place of practice in the district from which the director is elected;
- b. must not have their principal place of practice in the same county as the last director from the district – but this requirement does not apply to a director from a Metropolitan County or El Paso County, and the board may disregard the requirement if necessary to rebalance the board membership under section 8;
- c. must not have served one and one-half years or more of the prior director's term; and
- d. must not be an elected official paid by the State of Texas.

**4. *Public directors.*** A public director also:

- a. must not have a financial interest in the practice of law, other than as a consumer; and
- b. must be confirmed by the senate.

**5. *At-large directors.*** An at-large director also must not be an elected official paid by the State of Texas.

**6. *Ex officio directors.*** An ex officio director also must not be an elected official paid by the State of Texas.

**B. Other requirements.** A director must:

1. take the oath of office by the second regularly scheduled board meeting of the first year of the director's term; and
2. attend at least half of the regularly scheduled board meetings each calendar year – but a majority of the board may excuse a director's absence.

**C.** The board must provide a training program for board members that meets the requirements of Section 81.201, Government Code. An elected or appointed director cannot participate at a board meeting or vote before completing the training program.



## **Section 6. How Directors Shall Be Elected**

Elected directors shall be elected by a majority of the active and emeritus members of the State Bar voting who have their principal place of practice in the same Bar district as that of the candidate. If no candidate receives a majority, a run off shall be held at such time as the board shall prescribe between the two candidates receiving the greatest number of votes.

## **Section 7. Nominees for Office of Elected Director**

**A.** An active member's name may be placed in nomination for the office of elected director by a written petition in form prescribed by the board and signed by the lesser of five percent (5%) of the active members whose principal place of practice is within the district to be represented by the nominee if elected, or one hundred (100) of such members, which petition must be received in the office of the executive director on or before March 1 of the year of election. The executive director shall promptly review the petition to verify the eligibility of the nominee. If from the petition it appears the nominee is eligible, that person's name shall be listed upon the ballot. If from the petition the executive director finds the nominee to be ineligible, that fact shall immediately be communicated to the nominee. Any nominee desiring to appeal the findings of the executive director shall forthwith notify the executive director, who shall forthwith convene the executive committee to hear and determine the matter. The executive committee shall have final authority to determine questions of eligibility of the nominee and the validity of the nominating petition and shall do so within ten (10) days of the notice to the executive director.

**B.** The petitions may be in counterparts, and it shall be sufficient that the signatures on all the counterparts aggregate the required number of signatures.

**C.** If no valid petition nominating an eligible person shall have been received by the executive director by March 1 in respect to a district in the year in which such district is to elect a director, or if all persons who have been nominated in the foregoing manner shall have died or become disqualified from serving at any time prior to the printing of the ballot in such election, then the president of the State Bar with the advice of the person then serving as elected director from that district shall name a qualified person to stand for election as director from that district.

**D.** If an elected director fails to qualify, such position shall be deemed vacant.

## **Section 8. Director Vacancies and How Filled**

**A.** Death of a board member, judgment of incompetency, a board member's resignation or any failure to qualify shall create a vacancy. In case of a vacancy as to an elected director, the president, shall appoint a member whose principal place of practice is within the district within which the vacancy has occurred. Vacancies in ex officio directorships shall be filled by the person who succeeds to the office in the State Bar or in the Texas Young Lawyers Association to which such directorship is incident, except that the directorship incident to the office of immediate past president of the State Bar or Texas Young Lawyers Association or immediate past chairperson of the board of the State Bar shall be filled by the most recent holder of such offices respectively who is willing to serve. Vacancies in public and at-large directorships shall be filled in the same manner and by the same authority designated by statute to fill such positions.

**B.** Persons filling such vacancies shall meet the same requirements and shall qualify in the same manner as those assuming the office of director for the full term.

**C.** The board may adopt appropriate procedures for the purpose of equalizing the size of the classes of the board of directors. Once such equalization is accomplished, then those appointed to fill a vacancy shall serve the balance of the term of the particular position vacated.

**D.** The board of directors may remove a director from the board at any regular meeting by resolution declaring the director's position vacant, pursuant to § 81.027(a) of the State Bar Act or Article IV, § 5 of these Rules.

### **Section 9. Executive Committee**

**A.** The executive committee of the board shall consist of the president, president-elect, the chair of the board, the immediate past president of the State Bar, president of the Texas Young Lawyers Association and such other persons as the president may appoint. The president shall be chair, and the board chair shall be the vice-chair of the executive committee and shall preside in the chair's absence.

**B.** The general purpose of the executive committee shall be to perform between meetings of the board such functions, consistent with the Act or these Rules, as the board may assign to it from time to time.

**C.** The general counsel and the executive director of the State Bar shall be ex officio, non-voting members of the executive committee.

### **Section 10. Officers**

**A.** The officers of the State Bar shall be the president, the president-elect and the immediate past president.

**B.** Qualifications of Officers. An officer:

1. must be an active member in good standing;
2. must never have been suspended for professional misconduct, been disbarred, or resigned in lieu of discipline;
3. must not be an elected official paid by the State of Texas.

**C.** Other Requirements. An officer must also take the oath of office by the second regularly scheduled board meeting of the officer's term.

**D.** The president shall preside at all meetings of the State Bar, be the official representative and spokesperson for the State Bar in all public matters and have general responsibility for carrying out the policy of the State Bar.

**E.** The president-elect shall preside at meetings of the State Bar in the absence of the president and otherwise assist the president, as the president shall request, in carrying out the responsibilities of the office

of president.

## **Section 11. President-Elect, Nominations and Elections**

**A.** At its regular meeting next following the first day of each calendar year, the board of directors shall nominate two (2) or more members of the State Bar of Texas to stand for election to the office of president-elect for the ensuing bar year. Such nomination shall be by majority vote of the board.

**B.** Any other member of the State Bar of Texas shall also be privileged to stand for election to the office of president-elect when a written petition in form prescribed by the board of directors, signed by no fewer than five percent (5%) of the active members of the State Bar of Texas in good standing, is filed with the executive director or on before March 1 next preceding the election to be held for the office of president-elect for the ensuing year.

**C.** The names of all nominees for the office of president-elect shall be published in the *Texas Bar Journal* and otherwise publicized by such other practical means as the board shall determine.

**D.** In making nominations to the office of president-elect, both the board of directors and those persons who may be nominated by petition pursuant to Section 11(B) herein, shall be bound by the following geographical rotation:

1. nominees from metropolitan counties in the first year of rotation;
2. nominees from other than metropolitan counties in the second year of rotation;
3. nominees from any county during the third year of rotation.

Any person nominated by either the board or by petition who does not meet the requirements of this rotation shall be ineligible to stand for election in the year nominated. For purposes of this rule, the first year of rotation shall be the election for president-elect for 1988.

**E.** The ballot shall be distributed to each member of the State Bar of Texas entitled to vote at the same time as ballots for the election of elected directors are distributed. A combined ballot for the office of president-elect and for the office of director may be used in those bar districts in which an election for director is to be conducted.

**F.** If no candidate for president-elect receives a majority of the votes, a run-off election shall be held at such time as the board shall prescribe between the two candidates receiving the greatest number of votes. The person receiving a majority of the votes in either the general election or the run-off election shall be declared to be elected to the office of president-elect.

**G.** The office of president shall be filled by the succession of the president-elect to such office at the expiration of the term for which such person was elected to serve as president-elect.

## **Section 12. Term of Office of Officers**

The regular term of office for officers of the State Bar shall be from adjournment of the annual meeting for

the year preceding the year of service and shall end with such adjournment the following year.

### **Section 13. Vacancy in an Office**

**A.** Death of an officer, judgment of incompetency, an officer's resignation or failure to qualify shall create a vacancy in the office.

**B.** If a vacancy occurs in the office of president, it shall be filled by the succession of the president-elect to the office of president, in which case a special election shall be called by the board to fill the office of president-elect at such times and under such procedures as are prescribed by the board.

**C.** If the vacancy occurs in the office of president-elect, a special election shall be held for the office of president-elect. In such event the procedures for a regular election shall be followed subject to such necessary changes as shall be required in order to meet the exigencies of the situation.

**D.** Should the president-elect succeed to the office of president and have less than six months to serve in the unexpired term, the president-elect will serve the next full term that follows the unexpired term.

**E.** In the event a simultaneous vacancy exists in the office of the president and president-elect, a special election shall be held for each office and in the meanwhile the chairperson of the board shall serve as interim president.

### **Section 14. Other Executive Positions**

The executive director and general counsel shall be elected by the board and shall perform such duties as the Board may prescribe.

## **ARTICLE V FISCAL**

### **Section 1. Budget Committee**

There shall be a budget committee, comprised of the president of the State Bar, the president-elect, the chairperson of the board, and two (2) or more members of the board of directors appointed by the president. The president or his designee shall be chairperson of this committee.

### **Section 2. Public Hearing on Budget**

A public hearing shall be held each year to consider the State Bar's proposed budget in accordance with the Act.

### **Section 3. Annual Budget**

**A.** The budget committee shall consult with the executive director and the general counsel with respect to the annual budget for the State Bar for the fiscal year next after the committee's appointment. The proposed budget shall be prepared and submitted to the board at its first quarterly meeting each calendar year, and shall be acted on by the board at such meeting. After adoption by the board, the budget shall be submitted to the Court for approval.

B. The budget may be amended by majority vote of the board at any regular or special meeting in order to meet any unforeseen contingency, subject to the Court's approval.

**Section 4. Expenses**

The board may provide for the payment of necessary expenses incurred by the officers, directors, committee members, and employees of the State Bar in the discharge of their duties.

**ARTICLE VI  
ADOPTING AND AMENDING THE STATE BAR RULES**

New rules for the governance of the State Bar, and amendments to these Rules shall be adopted and promulgated by the Court as provided in the Act.

**ARTICLE VII  
MEETINGS OF THE STATE BAR OF TEXAS**

**Section 1. Annual Meeting**

The annual meeting of the State Bar shall be held during the month of June or July of each year at a time and place to be determined by the board.

**Section 2. Special Meetings**

A. Special meetings of the State Bar shall be called by the president upon two thirds (2/3) vote of the directors, or upon written petition of at least five hundred (500) members of the State Bar.

B. The time and place of such meeting shall be in accordance with the call.

C. Prior to any special meeting, the executive director shall mail to each member in good standing a notice of the time and place of the meeting and purposes for which the meeting is to be held. The notices shall be mailed sufficiently in advance of such meeting date so as to afford reasonable notice of the meeting.

**Section 3. Procedure as to Proposed Resolutions**

The board shall adopt a procedure by which resolutions may be proposed for adoption by the State Bar and for their review as to form in advance of presentation to the general assembly at the annual meeting. A brief resume of this procedure shall be published in the *Texas Bar Journal* prior to the annual meeting.

**ARTICLE VIII  
COMMITTEES, SECTIONS AND DIVISIONS**

**Section 1. Creation, Membership, Officers; Vacancies**

A. The board may create or dissolve from time to time such State Bar and board committees, sections and divisions as it may deem advisable. Their organizational structure, purpose and bylaws shall be subject to approval of the board. Membership of committees shall be comprised of presidential appointees. Membership of sections shall be comprised of members of the State Bar who pay the section dues and are otherwise qualified under the bylaws of the section. Membership of divisions shall be determined by their respective

bylaws.

**B.** As soon as practicable after assuming office, and not later than the April board meeting of the calendar year in which the president-elect will assume the presidency, the president-elect shall prepare and present to the Board for its advice and consent a proposed roster of State Bar committees, committee chairpersons and committee members for the president-elect's term as president. The board at the April meeting shall approve the list of State Bar committees and the president-elect shall promptly notify the proposed chairpersons and members of their selection and obtain their consent to serve. Any necessary changes or additions in committee organization and personnel shall be reported by the president-elect to the retiring board at its June meeting and shall be finally approved by the incoming board at its first meeting of the new organizational year. Subsequent creation of special committees by the president and the appointment of the personnel thereof, shall be subject to approval by the executive committee or by the board at the earliest opportunity.

**C.** Officers of sections and divisions for the ensuing year shall be elected according to the respective bylaws at their annual meeting coinciding with the annual meeting of the Bar.

**D.** Vacancies occurring in membership of State Bar committees shall be filled by the president for the unexpired term and vacancies occurring in section committees shall be filled by the chairperson of the section, except that if a vacancy occurs in the position of chairperson and there is no vice-chairperson to assume the position of chairperson, it shall be filled by a majority vote of the section council. Vacancies in division committees shall be filled in accordance with the bylaws of the division.

## **Section 2. Reports**

The sections and divisions and State Bar committees shall deliver to the president and executive director at least sixty (60) days before the annual meeting of the State Bar, annual reports and recommendations. Such reports and recommendations may be printed and sent to members of the State Bar before the annual meeting, but any section, division, or committee may present at the annual meeting any additional report or recommendation. The president, president-elect, immediate past president and the board may also present reports and recommendations in the same manner.

## **ARTICLE IX TEXAS BAR JOURNAL**

A publication, under the name *Texas Bar Journal*, and devoted to legal matters and the affairs of the State Bar and its members may be published and circulated under the direction of the board.

## **ARTICLE X DISCIPLINE AND SUSPENSION OF MEMBERS *Repealed eff. May 1, 1992***

## **ARTICLE XI INTEREST EARNED ON CLIENT FUNDS HELD BY ATTORNEYS**

### **Section 1. Short Title**

This Article may be referred to as the Texas Equal Access to Justice Program.

## **Section 2. Findings; Purpose**

The Supreme Court of Texas finds that:

- A.** On certain client funds held by attorneys, interest income cannot reasonably be earned to benefit individual clients for whom the funds are held;
- B.** Income can be earned on those client funds pursuant to the program provided for in this Article and that income should be used to provide additional legal services to the indigent in civil matters;
- C.** This Court is the proper and appropriate body, through the adoption of rules as set forth in this Article, to create and administer, or cause to be created and administered, a program to carry out the purposes of this Article; and
- D.** This Article is adopted in furtherance of the inherent powers of this Court to regulate the practice of law in the State of Texas.

## **Section 3. Rules**

This Court shall hereafter promulgate rules, consistent with the provisions of this Article, that are necessary and appropriate to carry out the purposes of this Article and conform the program created as provided by this Article to applicable statutes, regulations, and rulings. The rules, which may be amended or revoked by this Court from time to time as it deems necessary to carry out this Article, shall provide for:

- A.** The formation of a corporation, incorporated without members under the Texas Non-Profit Corporation Act (TEX.REV.CIV.STAT.ANN. art. 1396-1.01 *et seq.*), to be the recipient of and disbursing agent for interest earned on client funds as provided by this Article;
- B.** The operation of the nonprofit corporation and the program created as provided by this Article, including the provisions to be contained in the articles of incorporation and bylaws of the corporation;
- C.** The designation of persons to serve as directors of the corporation and their terms of office;
- D.** Definitions of the client funds subject to Section 5 of this Article;
- E.** Exemptions from Section 5 of this Article when deemed by the Court to be appropriate;
- F.** Provisions specifying the types of financial institutions eligible for the deposit of the funds, the types of organizations and programs eligible to receive funds from the nonprofit corporation, and the persons and types of matters and cases eligible to receive legal services funded by grants from the nonprofit corporation; and
- G.** Provisions relating to recordkeeping, reporting, and audits of the nonprofit corporation and the organizations and programs receiving funds from the nonprofit corporation.

## **Section 4. Provisions Relating to the Nonprofit Corporation**

- A.** The nonprofit corporation provided for in this Article shall be organized in such a manner as to be

exempt from federal income taxation under the Internal Revenue Code of 19541 or any subsequent United States internal revenue law.

**B.** The exclusive purpose of the nonprofit corporation provided for in this Article shall be to grant funds received by it, as provided in this Article, to organizations that will use the funds exclusively to provide legal services to the indigent in civil matters.

**C.** The nonprofit corporation provided for in this Article shall be governed by a board of directors consisting of a chairman and twelve members. The chairman and six directors shall be persons appointed by this Court and the other six directors shall be persons appointed by the president of the State Bar of Texas, with the approval of the board of directors of the State Bar of Texas. At least two of each group of appointees to the board of directors, other than the chairman, shall not be attorneys, and shall not have, other than as consumers, a financial interest in the practice of law.

**D.** Funds granted by the nonprofit corporation provided for in this Article to organizations to provide legal services to the indigent in civil matters may not be used for any case or matter that, if undertaken on behalf of an indigent person by an attorney in private practice, might reasonably be expected to result in payment of a fee for legal services from an award to a client, from public funds, or from the opposing party. This subsection does not apply if it is determined, pursuant to rules adopted by this Court, that adequate legal services would otherwise be unavailable to the indigent person in the case or matter.

**E.** Neither the nonprofit corporation provided for in this Article nor any organization or program to which it grants funds may take an action or require an attorney to take an action in violation of the Code of Professional Responsibility (Article X, Section 9, State Bar Rules) or in violation of any other code of professional responsibility adopted by this state for attorneys.

**F.** No funds shall be granted by the nonprofit corporation to directly or indirectly fund class action suits, lawsuits against governmental entities, or lobbying for or against any candidate or issue. Provided, however, that funds may be granted to finance suits against governmental entities on behalf of individuals in order to secure entitlement to benefits such as, but not limited to, Social Security, Aid to Families with Dependent Children, and the like.

**G.** The nonprofit corporation provided for in this Article shall require, as a condition to the granting of funds to any organization or program, that adequate provision be made, in accordance with rules adopted by this Court, for reports as to the actual use of funds and for audit of the reports. The violation of any prohibition contained in Subsection 4(F) of this Article shall render the offending organization or program ineligible to receive funds from the nonprofit corporation.

**H.** The records of the nonprofit corporation provided for in this Article, including applications for funds, whether or not granted, shall be open for public inspection, in accordance with rules this Court may promulgate.

**I.** The nonprofit corporation provided for in this Article may expend funds for administrative costs of the program, including any costs incurred after the adoption of this Article, and may provide a reasonable reserve for administrative costs.



## **Section 5. Deposit of Certain Client Funds**

**A.** An attorney, law firm, or professional corporation engaged in the practice of law, receiving in the course of the practice of law in this state, client funds that are nominal in amount or are reasonably anticipated to be held for a short period of time, shall establish and maintain a separate interest-bearing demand account at a financial institution and shall deposit in the account all those client funds. All the client funds may be deposited in a single unsegregated account. The interest earned on the account shall be paid in accordance with and used for the purposes set forth in this Article and the rules adopted by this Court. Funds to be deposited under this article do not include those funds evidenced by a financial institution instrument, such as a draft, until the instrument is fully credited to the financial institution in which the account is maintained.

**B.** This Article does not prohibit an attorney, law firm, or professional corporation engaged in the practice of law from establishing one or more interest-bearing accounts or other investments permitted by the Texas Code of Professional Responsibility (Article X, Section 9, State Bar Rules) with the interest or dividends earned on the accounts or investments payable as directed by clients for whom funds are not deposited in accordance with Subsection (A) of this section.

**C.** An attorney, law firm, or professional corporation engaged in the practice of law which maintains accounts provided for in this Section 5 must so advise the nonprofit corporation in writing within thirty (30) days of the establishment of such account or accounts.

## **Section 6. Depositories**

**A.** The interest-bearing demand account required by Section 5 of this Article shall be established with any financial institution meeting the requirements set forth in the rules adopted by this Court.

**B.** The attorney, law firm, or professional corporation establishing the interest-bearing demand account shall attempt in good faith to obtain a rate of interest payable on the account not less than the rate paid by the depository institution to other depositors with accounts of similar size. A higher rate offered by the institution on deposits meeting certain time requirements or minimum amounts, such as those offered in the form of certificates of deposit, may be obtained if there is no impairment of the right to withdraw or transfer principal immediately, other than the statutory notification requirements generally applicable to those accounts, even though interest may be lost because of the withdrawal or transfer.

**C.** The depository institution shall be directed by the attorney, law firm, or professional corporation establishing the account:

1. To remit, at least quarterly, interest earned on the average daily balance in the account, less reasonable service charges, to the nonprofit corporation provided for in this Article;
2. To transmit to the nonprofit corporation provided for in this Article with each remittance a statement showing the name of the attorney, law firm, or professional corporation with respect to which the remittance is sent, the rate or rates of interest applied, and the amount of service charges deducted, if any; and
3. To transmit to the depositing attorney, law firm, or professional corporation at the same time a

report is sent to the nonprofit corporation provided for in this Article, a report showing the amount paid to the nonprofit corporation for that period, the rate or rates of interest applied, the amount of service charges deducted, if any, and the average daily account balance for each month of the period for which the report is made.

### **Section 7. Attorney Liability**

Nothing in this Article affects the obligations of attorneys, law firms, or professional corporations engaged in the practice of law with respect to client funds other than client funds reasonably determined to be “nominal in amount” or reasonably anticipated to be held for a “short period of time,” as those terms are defined by the rules adopted by this Court. An attorney, law firm, or professional corporation is not liable in determining which funds are nominal in amount or on deposit for a short period of time if the determination is made in good faith in accordance with the rules.

### **Section 8. Liability of Nonprofit Corporation**

If client funds that are neither nominal in amount nor on deposit for a short period of time are deposited under Section 5(A) of this Article, the liability of the nonprofit corporation provided in this Article may not exceed the amount of interest attributable to client funds actually paid by the depository to the nonprofit corporation.

### **Section 9. Initial Distribution of Fund**

The initial distribution of funds under this Article shall be made at a time when, in the determination of the board of directors of the nonprofit corporation provided for in this Article, there are sufficient funds to provide an adequate distribution.

## **ARTICLE XII MINIMUM CONTINUING LEGAL EDUCATION**

### **Section 1. Purpose**

The purpose of minimum continuing legal education requirements is to ensure that every active member of the State Bar of Texas pursues a plan of continuing legal education throughout his or her career in order to remain current on the law in our rapidly changing society.

### **Section 2. Definitions**

- A. “MCLE” means Minimum Continuing Legal Education.
- B. “Committee” means the Committee on Minimum Continuing Legal Education.
- C. “Committee member” is a member of the Committee on Minimum Continuing Legal Education.
- D. “MCLE Department” means the departmental staff of the State Bar of Texas with the responsibility of administering all aspects of the MCLE program as determined by this Article and any regulations established pursuant hereto.
- E. “The Director” means the Director of the MCLE Department of the State Bar of Texas.

**F.** “Continuing legal education activity” means any organized legal educational activity accredited by the Committee.

**G.** “CLE Credit Hours” means the actual amount of instruction time for an accredited continuing legal education activity expressed in terms of hours rounded to the nearest one-quarter hour. The number of CLE credit hours shall be based on sixty (60) minutes of instruction per hour, unless otherwise specified herein.

**H.** “Self-study” includes individual viewing or listening to audio, video, or digital media, reading written material, or attending organized in-office educational programs, or such other activities as may be approved by the Committee.

**I.** “Accredited sponsor” means any provider who receives presumptive approval of the Committee to conduct continuing legal education activities that satisfy the requirements of this Article.

**J.** “Accredited CLE Activity” means any CLE activity that receives MCLE accreditation under the MCLE Rules, Regulations, and accreditation criteria adopted by the MCLE Committee.

**K.** “MCLE compliance record” means the official record of a member’s CLE credit hours earned during any MCLE compliance year that shall be maintained by the MCLE Department and used to verify a member’s compliance with the MCLE requirements. It shall be the responsibility of each member to ensure that his/her MCLE compliance record is accurate and complete.

**L.** “MCLE compliance year” means the twelve (12) month period that begins each year on the first day of an attorney’s birth month and ends on the last day of the month that immediately precedes the attorney’s birth month in the following year.

**M.** “MCLE reporting month” means the birth month during which the attorney is required to show completion of CLE requirements. If an extension has been granted in accordance with this Article (Section 9), the reporting month shall mean the month immediately following the last date of the extension and shall replace the birth month for that current compliance year.

**N.** “MCLE Annual Verification Report” means the written report containing a listing of all CLE credit hours recorded in a member’s MCLE compliance record for an MCLE compliance year. This report shall be furnished to each member annually by the MCLE Department.

### **Section 3. Committee on Minimum Continuing Legal Education**

**A.** There is hereby established the Committee which shall be composed of twelve (12) members. Nine (9) of the members shall be residents of this State who are active members of the State Bar, at least two (2) of whom shall be under the age of thirty-six (36) years as of June 1 of the year being appointed. Of the nine (9) attorney members, not more than two (2) shall be judges. The remaining three (3) members of the Committee shall be residents of this State who are not attorneys. The President-Elect, with the approval of the Board, shall appoint any Committee members whose terms will begin at the beginning of the bar year during which he or she will be President. Should a vacancy on the Committee occur during the bar year, the President, with the approval of the Board, shall appoint a successor to fill the unexpired term. Each member

of the Committee shall continue to serve until his or her successor is appointed and qualified. The President-Elect shall designate one (1) of the attorney members of the Committee to serve as chairperson during his or her term as President. The Board may remove a member of the Committee for good cause. No Committee member shall be appointed for more than two (2) terms. Committee members shall serve without compensation, but shall be reimbursed for reasonable and necessary expenses incurred in the performance of their official duties.

**B.** The State Bar shall employ such staff as may be necessary to perform the record keeping, auditing, reporting, accreditation, and other functions required by these rules.

**C.** The Committee, subject to these rules and such regulations as it may propose and may be adopted by the Board, shall administer the program of minimum continuing legal education established by this Article. It may propose regulations and prepare forms not inconsistent with this Article pertaining to its function and modify or amend the same from time to time. All such regulations, forms, modifications or amendments shall be submitted to the Board for approval, and upon such approval, shall be published in the *Texas Bar Journal*.

#### **Section 4. Accreditation**

**A.** The Committee shall develop criteria for the accreditation of continuing legal education activities and shall designate the number of hours to be earned by participation in such activities, as approved by the Committee. In order for an activity to be accredited, the subject matter must directly relate to legal subjects and the legal profession, including professional responsibility, legal ethics, or law practice management. The Committee may, in appropriate cases, extend accreditation to qualified activities that have already occurred. The Committee shall not extend credit to activities completed in the ordinary course of the practice of law, in the performance of regular employment, as a volunteer service to clients or the general public, as a volunteer service to government entities, or in a member's regular duties on a committee, section or division of any bar related organization. The Committee may extend accredited status, subject to periodic review, to a qualified sponsor for its overall continuing legal education curriculum. No examinations shall be required.

**B.** Self-study credit may be given for individual viewing or listening to audio, video, or digital media; reading written material; attending organized in-office educational programs; or other activities approved by the Committee. No more than three hours of credit may be given during a compliance year for self-study activities. Time spent viewing or listening to audio, video, or digital media as part of an organized CLE activity approved by the Committee counts as conventional continuing legal education and is not subject to the self-study limitation.

**C.** Credit may be earned through teaching or participating in an accredited CLE activity. Credit shall be granted for preparation time and presentation time, including preparation credit for repeated presentations.

**D.** Credit may be earned through legal research-based writing upon application to the Committee provided the activity (1) produced material published or to be published in the form of an article, chapter, or book written, in whole or in part, by the applicant; (2) contributed substantially to the continuing legal education of the applicant and other attorneys; and (3) is not done in the ordinary course of the practice of law, the performance of regular employment, or as a service to clients.

**E.** The Committee may, in appropriate cases, charge a reasonable fee to the sponsor for accrediting CLE activities.

**F.** A member who holds a full-time faculty position in any law school which is approved by the American Bar Association may be credited as fulfilling the requirements of this article, except as to the minimum requirements for CLE in legal ethics and professional responsibility. A member who holds a part-time faculty position in any such law school may claim participatory credit for the actual hours of class instruction time not to exceed 12 hours per compliance year, except as to the minimum requirements for CLE in legal ethics and professional responsibility.

**G.** Credit to meet the minimum educational requirement will be extended to attorneys who are members of the United States Congress or the Texas Legislature for each year in which they serve.

**H.** No credit shall be given for activities directed primarily to persons preparing for admission to practice law.

**I.** Credit, not to exceed 30 hours in any compliance year, may be earned for attending a law school class after admission to practice in Texas provided (1) that the member officially registered for the class with the law school; and (2) that the member completed the course as required by the terms of registration. Credit for approved attendance at law school classes shall be for the actual number of hours of class instruction time the member is in attendance at the law school course.

## **Section 5. Compliance Year**

**A.** Each member's compliance year shall begin on the first day of the month in which his or her birthday occurs.

**B.** The initial compliance year for each member shall be the 24-month period that begins on the first birth month following the date of admission.

## **Section 6. Minimum Educational Requirements**

**A.** Every member must complete 15 hours of continuing legal education during each compliance year as provided by this article. No more than three credit hours may be given for completion of self-study activities during any compliance year.

**B.** At least three of the 15 hours must be devoted to legal ethics/professional responsibility subjects. One of the three legal ethics/professional responsibility hours may be completed through self-study.

**C.** A person who has elected inactive status, been suspended or disbarred, or resigned, and who desires to return to active status, must comply with the requirements of (A) and (B). The MCLE regulations may authorize the MCLE Department to automatically defer these requirements for a member who elects inactive status during a compliance year.

**D.** Accredited continuing legal education and self-study completed within a 12-month period immediately preceding a member's initial compliance year may be used to meet the educational requirement for the initial

compliance year. Credit for the Justice James A Baker Guide to Ethics and Professionalism in Texas sponsored by the Texas Center for Legal Ethics, may count toward the MCLE requirements for a member's initial compliance year if the course is completed during the member's third year of law school or the 12-month period preceding the member's initial compliance year.

**E.** Accredited continuing legal education and self-study completed during any compliance year in excess of the minimum 15 hour requirement for such period will be applied to the following compliance year's requirement. This carryover provision applies to one year only.

## **Section 7. Credit Computation**

**A.** Credit for attending accredited continuing legal education activities shall be based on net actual instruction time, which may include organized lecture, panel discussion, audio, video, and digital media presentations and organized question-and-answer periods. Sponsors are encouraged to calculate the number of hours of credit that should be given for any activity offered, using the above guide, and indicate the number on the activity brochure. Fractional hours should be stated as decimals.

**B.** Credit for viewing or listening to audio, video, or digital media shall be based on the running time of the recording.

**C.** Credit for reading approved material or attending in-office educational programs shall be based on actual time spent.

## **Section 8. Compliance**

**A.** Two months before the end of a member's MCLE compliance year, the Director must send the member an MCLE Annual Verification Report. Members must review the report for accuracy. If the report is accurate and shows that the member has completed all MCLE requirements for the MCLE compliance year or that the member is exempt from MCLE, then no additional action is required by the member. If the report is inaccurate, the member must correct his or her MCLE compliance record by following the instructions on the report. To avoid a fine or suspension, all CLE credit hours must be completed, and all corrections to a member's MCLE compliance record must be received by the Director, before the end of the member's MCLE compliance year.

**B.** On or about the first day of the birth month, the Director shall make available to the member, a report of amendments that have been made to the MCLE record for the compliance year that ended immediately prior to said birth month. The Director shall also notify any member who has not completed MCLE requirements for the compliance year that ended immediately prior to said birth month. A member, who has not completed his or her CLE requirements by the first day of the birth month, will receive an automatic grace period through the last day of the birth month to complete and report any remaining CLE credits. Members shall not be fined or penalized for completing and reporting CLE credits by the last day of the birth month (grace period).

**C.** On or about the 12th day of the month immediately following a member's birth month, the Director will notify in writing a member who is in non-compliance for the MCLE compliance year just ended of the member's non-compliance status.

**D.** On or about the first day of the third month immediately following a member's birth month, the Director will send a final notice to any member who has not cured the member's noncompliance status.

**E.** If by the last business day of the fourth month following the birth month (or reporting month if the member has been granted an extension in accordance with this article for completion of CLE requirements) the member has still not cured his or her noncompliance, the member shall be automatically suspended from the practice of law in Texas as directed by Order of the Supreme Court dated December 23, 2002.

**F.** Upon the execution of suspension, the Director will send a written notice to each member who is suspended from practice by the order.

### **Section 9. Review and Appeal**

**A.** For good cause, a member may request an exemption from, or extension of time to complete, any requirement of this Article. The request will be determined by the MCLE Department under regulations promulgated by the Committee.

**B.** "Good cause" shall exist when a member is unable to comply with this Article because of illness, medical disability, or other extraordinary hardship or extenuating circumstances that were not willful on the part of the member and were beyond his or her control.

**C.** A member may ask the Committee to review a decision of the MCLE Department by written request within thirty days of the MCLE Department's decision. The Chair of the Committee may appoint a subcommittee to review the decision of the MCLE Department and make a recommendation to the Committee.

**D.** A member may ask the Board to review the Committee's decision by written request to the Executive Director within thirty days of the Committee's decision. The Chair of the Board may appoint a subcommittee to review the decision of the Committee and make a recommendation to the Board.

**E.** A member may challenge the Board's decision by filing suit against the State Bar in Travis County district court. The suit must be filed within thirty days of the Board's decision, or the Board's decision will be final. Trial will be de novo and to the bench. The member has the burden to prove good cause by a preponderance of the evidence. Either the member or the State Bar may appeal the trial court's judgment.

**F.** Any suspension of a member under this Article shall be vacated during the administrative review process and while any suit filed is pending.

### **Section 10. Return to Former Status**

Any member whose license to practice law has been suspended under the terms of this Article who after the date of suspension files an activity report with the MCLE Director showing compliance and who has paid all applicable fees associated with non-compliance and suspension, shall be entitled to have such suspension promptly terminated and be returned to former status. Return to former status shall be retroactive to the inception of suspension, but shall not affect any proceeding for discipline of the member for professional misconduct. The MCLE Director shall promptly notify the Clerk that a member formerly suspended under

this Article has now complied with this Article.

### **Section 11. Exemption of Certain Judges**

Judges subject to Supreme Court Order for Judicial Education dated August 21, 1985, Supreme Court Order for Judicial Education for Retired or Former District Judges dated July 2, 1986, and federal judicial officers, shall be exempt from these requirements.

### **Section 12. Confidentiality**

A member who reports attendance credits individually to the MCLE Director, without the sponsoring organization's knowledge, automatically consents to release of his or her name to the sponsoring organization for the sole purpose of reconciling attendance records. Otherwise, the files, records and proceedings of the Committee, as they relate to the compliance or noncompliance of any member with the requirements of this Article, shall be confidential and shall not be disclosed except upon consent of the member affected or as directed in the course of judicial proceeding by a court of competent jurisdiction.

## **ARTICLE XIII**

### **NEW OPPORTUNITIES VOLUNTEER ATTORNEY PRO BONO PROGRAM**

#### **Section 1. Definitions**

**A.** "Program" is the New Opportunities Volunteer Attorney Pro Bono Program established by this article.

**B.** A "New Opportunities Volunteer Attorney" or "NOVA" is a person of any age who:

1. is an inactive or emeritus member of the State Bar or is licensed to practice law in another U.S. jurisdiction, even if inactive or retired; and

2. meets the following conditions:

- is in good standing with the State Bar or the entity that governs the practice of law in the jurisdiction where the attorney is licensed;
- is in good standing with all courts and jurisdictions in which the attorney is admitted to practice;
- agrees to abide by the Texas Disciplinary Rules of Professional Conduct and to submit to the disciplinary jurisdiction of the Supreme Court of Texas and the State Bar;
- provides legal services under the supervision of an approved legal service organization;
- is not compensated for legal services rendered under the Program; and
- complies with the policies and procedures of the Program.

**C.** An "approved legal assistance organization" must:



1. provide free legal services;
2. maintain malpractice insurance for its NOVAs; and
3. be either:
  - a. a nonprofit that:
    - is funded in part by the Texas Access to Justice Foundation;
    - is funded in part by the Legal Services Corporation;
    - is a current participant in the State Bar of Texas Malpractice Insurance Network Exchange; or
    - provides at least 50% of its legal services at no cost to Texans living at or below 200% of the federal poverty guidelines published annually by the U.S. Department of Health and Human Services;
  - b. a clinic or pro bono program of a Texas law school; or
  - c. a pro bono project or program of the State Bar or of a local or specialty bar association within Texas.

## **Section 2. Scope of Authority**

A NOVA may engage in any activity necessary to resolve a legal matter for a client, including giving legal advice, preparing pleadings or other documents, and appearing before a court or tribunal. A NOVA need not be admitted pro hac vice to appear before a court while providing legal services under the Program. A NOVA may not represent himself or herself to be an active member of the State Bar.

## **Section 3. Compensation and Fees**

**A.** A NOVA may not receive compensation for providing legal services under the Program, but an approved legal serviced organization may reimburse a NOVA for actual expenses incurred by the attorney.

**B.** A NOVA is exempt from paying the legal services fee mandated by Section 81.054(j), Government Code.

**C.** An approved legal service organization may charge the client for services provided by a NOVA and collect attorneys' or other fees awarded by a court or tribunal or as a part of a settlement.

## **Section 4. Administration**

The State Bar may develop policies and procedures for the Program and is responsible for its administration.

**Section 5. Discipline**

A NOVA may be sanctioned or disciplined by a court or the State Bar in the same manner as an active member of the State Bar.

**Section 6. MCLE Requirement**

A NOVA must complete at least three hours of CLE annually.

**Section 7. Authority of Approved Legal Service Organizations**

An approved legal service organization is not required to:

- A. accept any particular NOVA;
- B. refer any case, a particular type of case, or a particular number of cases to any NOVA; or
- C. take any action inconsistent with the rules, laws, regulations, policies, or procedures governing the organization's pro bono programs.