

PART I. BOARD OF DIRECTORS

1.01 General

1.01.01 Policy-Making Body. The Board is the policy-making body of the State Bar of Texas.

1.01.02 Board Districts.

(A) District 1 Counties: Bowie, Camp, Cass, Collin, Delta, Fannin, Franklin, Grayson, Harrison, Henderson, Hopkins, Hunt, Kaufman, Lamar, Marion, Morris, Panola, Rains, Red River, Rockwall, Titus, Upshur, Van Zandt, Wood

(B) District 2 Counties: Anderson, Angelina, Cherokee, Freestone, Gregg, Houston, Leon, Limestone, Madison, Nacogdoches, Navarro, Rusk, Sabine, San Augustine, Shelby, Smith, Trinity

(C) District 3 Counties: Chambers, Hardin, Jasper, Jefferson, Liberty, Montgomery, Newton, Orange, Polk, San Jacinto, Tyler, Walker

(D) District 4 Counties: Harris

(E) District 5 Counties: Austin, Brazoria, Colorado, Fayette, Fort Bend, Galveston, Grimes, Jackson, Lavaca, Matagorda, Waller, Wharton

(F) District 6 Counties: Dallas

(G) District 7 Counties: Ellis, Hill, Johnson, Tarrant

(H) District 8 Counties: Bastrop, Bell, Bosque, Brazos, Burleson, Caldwell, Coryell, Falls, Hamilton, Lee, Milam, McLennan, Robertson, Washington, Williamson

(I) District 9 Counties: Travis

(J) District 10 Counties: Bexar

(K) District 11 Counties: Aransas, Bee, Calhoun, De Witt, Goliad, Gonzales, Guadalupe, Jim Wells, Karnes, Kleberg, Live Oak, Nueces, Refugio, San Patricio, Victoria, Wilson

(L) District 12 Counties: Atascosa, Brooks, Cameron, Dimmit, Duval, Frio, Hidalgo, Jim Hogg, Kenedy, La Salle, Maverick, McMullen, Starr, Webb, Willacy, Zapata, Zavala

(M) District 13 Counties: Armstrong, Bailey, Briscoe,

Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Floyd, Foard, Gray, Hale, Hall, Hansford, Hardeman, Hartley, Hemphill, Hockley, Hutchinson, King, Knox, Lamb, Lipscomb, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler

(N) District 14 Counties: Archer, Baylor, Brown, Callahan, Clay, Coleman, Comanche, Cooke, Denton, Eastland, Erath, Haskell, Hood, Jack, Jones, Montague, Palo Pinto, Parker, Runnels, Shackelford, Somervell, Stephens, Taylor, Throckmorton, Wichita, Wilbarger, Wise, Young

(O) District 15 Counties: Bandera, Blanco, Burnet, Coke, Comal, Concho, Crane, Crockett, Ector, Edwards, Gillespie, Glasscock, Hays, Irion, Kendall, Kerr, Kimble, Kinney, Lampasas, Llano, Loving, Mason, McCulloch, Medina, Menard, Mills, Pecos, Reagan, Real, Reeves, San Saba, Schleicher, Sterling, Sutton, Terrell, Tom Green, Upton, Uvalde, Val Verde, Ward, Winkler

(P) District 16 Counties: Andrews, Borden, Dawson, Fisher, Gaines, Garza, Howard, Kent, Lubbock, Lynn, Martin, Midland, Mitchell, Nolan, Scurry, Stonewall, Terry, Yoakum

(Q) District 17 Counties: Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Presidio

1.02 Composition of the Board

The Board consists of the following members:

(A) the Voting Board Members; and

(B) the following non-voting members:

(1) the Texas Supreme Court liaison;

(2) the Federal District Court liaison;

(3) the Texas Court of Criminal Appeals liaison;

(4) the chair of the State Bar Judicial Section;

(5) the out-of-state liaison;

(6) the members of the Section Representatives to the Board Committee;

(7) the State Bar immediate past Chair as an ex-officio member;

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- (8) the Executive Director as an ex-officio member; and
- (9) the Chief Disciplinary Counsel as an ex-officio member.

1.03 Elected Directors

1.03.01 General. 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 the candidate. If no candidate receives a majority, a runoff between the two candidates receiving the greatest number of votes shall be held at a time the Board prescribes. The provisions of this Policy Manual concerning State Bar District Director Campaigns shall apply to the ~~campaign~~Campaign activities of the Director run-off candidates.

1.03.02 Term. Each person elected as a Director shall serve a three-year term.

1.03.03 Nominations. An active member's name may be placed in nomination for the office of Elected Director by a written petition in the form prescribed by the Board.

(A) The petition shall be 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 of such members.

(B) The petition must be received in the office of the Executive Director on or before March 1 of the year of election.

(C) A petition signature is invalid if the signer signed the petition earlier than the 180th day before the date the petition must be filed with the Executive Director under Subsection 1.03.03(B) above.

(CD) -The Executive Director shall promptly review the petition to verify the eligibility of the nominee.

(ED) -If from the petition it appears the nominee is eligible, the Executive Director shall certify such eligibility, and that nominee's name shall be listed on the ballot. If from the petition the Executive Director finds the nominee to be ineligible, that fact shall immediately be communicated to the nominee.

(FE) -Any nominee desiring to appeal the findings of the Executive Director shall ~~forthwith~~ promptly notify the

Executive Director, who shall ~~forthwith~~ promptly convene the Executive Committee to hear and determine the matter.

(GF) The Executive Committee shall have final authority to determine questions of the eligibility and certification of the nominee and the validity of the nominating petition and shall do so within ten days of the notice to the Executive Director.

(HG) The petitions may be in counterparts and signatures on counterparts are permissible.

(IH) If no valid petition nominating an eligible person in a district in the year in which such district is to elect a Director has been received by the Executive Director by March 1, or if all persons who have been nominated shall have died or become disqualified from serving at any time before the election ballot is printed, then the President, with the advice of the person then serving as Elected Director or Directors from that district, shall name a qualified person to stand for election as Director from that district.

1.03.04 Candidate Certification Form. Candidates for Elected Director shall be required to sign a candidate certification form, which must be received in the office of the Executive Director at the same time as the petition. The certification form shall set forth the eligibility requirements and shall contain the following:

"As a candidate for the office of director, I, _____, certify that I understand the following criteria as contained in the State Bar Rules, Article IV, §5(A), relating to serving as a director of the State Bar of Texas, and that after reviewing the criteria, I am eligible to serve as a director. I further certify that I have read and agree to be bound by the provisions of the State Bar Board of Directors Policy Manual regarding the ~~rules~~ and ~~restrictions~~ guidelines relating to campaigns for the office of director and regarding the role of the Nominations and Elections Subcommittee in such campaigns.

Signature: _____
Date: _____

1.03.05 Eligibility Requirements. No person may serve as an Officer or member of the Board who:

- (A) has not taken the official oath by the second regular

Commented [LL1]: As noted later with respect to petitions for President-elect, this is consistent with the 180-days limit on the efficacy of signatures arising under the Elections Code.

Regardless of whether the Elections Code provision legally binds the SBOT, the N&E Subcommittee and A. Greenberg's Sub²committee felt it provided useful guidance and that J. Longley's suggested 364-day expiry period (1) placed the SBOT in a state of perpetual campaign and (2) allowed petition candidates to collect signatures all year, thus perpetuating their profound campaigning advantage versus Board-selected candidates.

Recognizing that this advantage was the primary reason none of the 31 potential nominees (other than Ms. Blue and Mr. Sorrels) contacted by the N&E Subcommittee was willing to be considered as a Board-nominated candidate, the vast majority of the N&E Subcommittee and of the Sub²committee favored enhancing fairness by correcting the asymmetry in campaign periods, and thus supported 180 days.

Commented [LL2]: The content of this document is more typically referred to as "guidelines," instead of "rules" or "restrictions." That change has been made throughout this draft.

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Board meeting following the commencement of the term for which he was elected or appointed;

(B) as to an elected or *ex officio* member of the Board or an Officer, is not an active member in good standing;

(C) as to an elected or *ex officio* member of the Board or an Officer, has ever been suspended or disbarred from the practice of law;

(D) as to an Elected Director, does not maintain in the district from which elected, his principal place of practice;

(E) as to an Elected Director, has his principal place of practice in the same county as the last preceding Elected Director from that district, except for an Elected Director in a metropolitan county or in El Paso County;

(F) as to an Elected Director, has previously served at least one and a half (1 1/2) years of the immediately preceding Director's term;

(G) is, or becomes, incapacitated from performing the duties of such office for all or a substantial portion of such term;

(H) as to a member of the Board, fails to attend without good cause, any two (2) consecutive regular meetings of the Board or any four (4) meetings of the Board;

(I) as to a public Director, has failed confirmation by the Senate of the State of Texas;

(J) is an elected official paid by the State of Texas, except that such prohibition shall not apply to public Directors or liaisons; or

(K) as to a director or a director's spouse, is an officer, employee, or paid consultant of a Texas Trade Association in the field of board interest as defined in State Bar Act §81.028.

1.03.06 Failure to Qualify. If an Elected Director fails to qualify, the Elected Director shall be deemed to have vacated the position.

1.03.07 Sample Petition Form

PETITION FOR ELECTION

We, the undersigned, being at least five percent of the members of the State Bar whose principal

place of practice is in the _____ bar district, or one hundred of such members, whichever is less, do hereby nominate _____ of _____ as a candidate for director of the State Bar of Texas from that district and request that his or her name be placed on the official ballot for (year), pursuant to Article IV, §7 of the State Bar Rules.

The proposed candidate meets the requirements for director as stipulated in Article IV – Administration, §5, Qualifications of Officers and Directors, parts (A), (1) through (11) of the State Bar Rules.

Signature: _____

Printed Name: _____

Bar Card Number: _____

Date: _____

1.03.08 State Bar District Director Campaign

(A) Definitions

(1) *Director Candidate.* Any person whose eligibility as a candidate has been certified by the Executive Director or the Executive Committee pursuant to ~~subsection~~Subsection 1.03.03 or who has been appointed by the President to stand for election pursuant to ~~subsection~~Subsection 1.03.03(H).

(2) *Campaign.* Any activities and communications in any form by or ~~on behalf at the direction~~ of a Director Candidate for the purpose of gaining votes for ~~the~~ election as Elected Director.

(3) *Social Media.* Websites and internet-based applications that enable users to create and share content and/or participate in social networking, including, but not limited to Facebook, LinkedIn, and ~~Google+~~Twitter.

(4) Subcommittee. The Nominations and Elections Subcommittee of the Executive Committee of the State Bar of Texas.

~~(B) Activities. Director Candidates must cease campaigning on the date the ballots are distributed.~~

Commented [LL3]: This needs to be amended once the State Bar Rules are revised by the Supreme Court.

Commented [LL4]: Again, the 180-days limit should apply to Directors, so this form needs a signature date.

Commented [LL5]: I think this provision and 2.01.02(E) should be consistent, and have attempted to do that.

Commented [LL6]: A. Tolchin suggested this reference be updated.

Commented [LL7]: Since the N&E Subcommittee is involved in the Director elections and not just the President-elect one, I believe a definition should be added here.

Commented [LL8]: An example of the kind of restriction that is being uniformly removed from the guidelines.

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~~(C) Conduct.~~ Director Candidates will are urged to conduct the Campaign in a professional and dignified manner. In communicating with State Bar members, whether by letter, card, fax, email or Social Media, telephone or online, Director Candidates shall are encouraged to concentrate on the merits of their candidacy and to refrain from irrelevant personal attacks against other Director Candidates. Director Candidates are expected to comport themselves in compliance with all applicable provisions of The Texas Lawyer's Creed, A Mandate for Professionalism, promulgated by The Supreme Court of Texas and the Court of Criminal Appeals.

(DC) Online Campaign Activities.

~~(1) Director Candidates may Campaign online prior to the distribution of ballots by use of a personal campaign website and/or campaign Social Media. Campaign websites and campaign Social Media may include information about the Director Candidate's qualifications and professional background, as well as scheduled dates of appearances at meetings of local bar associations or other professional associations for the purpose of campaigning, and reports on and comments regarding such appearances.~~

~~(2) Prior to the distribution of ballots, a Director Candidate may respond to questions or comments posted on the Director Candidate's campaign websites and Social Media.~~

~~(3) Director Candidates are responsible for monitoring~~ encouraged to monitor all posts and comments on their campaign Campaign websites and campaign Campaign Social Media both prior to and following the distribution of ballots, with the objective of assuring civility and professionalism in the Campaign. Director Candidates should are urged to promptly remove content or comments that are offensive, contain vulgar language, or include irrelevant personal attacks of any kind, or which are repetitive or intrusive and might be considered spam.

~~(4) After the distribution of ballots has begun, a Director Candidate's campaign website and campaign Social Media may remain online; provided however, that the Director Candidate or anyone at his or her direction may not post any additional information on his or her campaign website or campaign Social Media.~~

~~(E) Campaign Supporters. Throughout the course of the Campaign, Director Candidates shall inform their supporters regarding these campaign guidelines and restrictions, and shall encourage their supporters to follow these guidelines and restrictions to the extent applicable in an effort to enhance and maintain the integrity of the Campaign and election process. Director Candidates may not request their supporters to undertake Campaign activities that the Director Candidates themselves are not permitted to undertake. In the event a Director Candidate learns that a supporter of his or her candidacy has undertaken any such Campaign activity, the Director Candidate shall notify the chair(s) of the Nominations and Elections Subcommittee as soon as possible.~~

~~(F) Oversight.~~ Director Candidates shall will consult with the chair(s) of the Nominations and Elections Subcommittee concerning the interpretation of these rules/guidelines, and the chair(s) (and other Subcommittee members, if consulted) shall will remain scrupulously impartial in rendering a decision concerning such matters or in selecting a remedy. If a Director Candidate wishes to appeal a decision of the Subcommittee chair(s), then the appeal must be submitted in writing to the Nominations and Elections Subcommittee within two business days of the Subcommittee chair(s)' decision. Except as otherwise provided in this Policy Manual, the Nominations and Elections Subcommittee shall supervise the guidelines, eligibility, nominations, campaign, election, and election results to ensure compliance and shall resolve all disputes and decide all penalties/remedies. Decisions and interpretations made by the Subcommittee hereunder shall will be final.

1.10 Endorsement of Candidates

~~Current~~ Any limitation on the ability of current Officers and members of the Board (including the chairs and members of the Subcommittee) shall not to endorse in their official capacity, endorse any candidate for any elective office, including but not limited to is inapplicable to their ability to endorse candidates for Elected Director, President-elect, or other State Bar of Texas offices.

Commented [LL9]: These changes are suggested to insulate the guidelines from Constitutional attack as constituting impermissible viewpoint-based regulation. Limiting permissible campaign speech to the candidate's own merits, as stated in the existing version, may unintentionally and impermissibly limit speakers from expressing the view that an opponent is unqualified. Still, we want the expectation of civility to remain in the guidelines to encourage candidates to comport themselves in a way that does not reflect poorly on the Bar. I've added "irrelevant" to the "personal attacks" prohibition to make it clear that the guidelines do not restrict criticizing the other candidate for being unqualified or on some other relevant basis.

I've also added "Social Media" because it appears in the corresponding provision applicable to the President-elect race.

Commented [LL10]: Sub²committee Chair Greenberg noted that we expect this compliance in a Texas lawyer's day-to-day behavior; wouldn't it be even more essential in these activities?

Commented [LL12]: See Section 2.01.16.

Commented [LL13]: "Remedies" is the term used elsewhere and seems more accurate.

Commented [LL14]: The N&E Subcommittee and the Sub²committee felt this "Oversight" feature needed to remain in the document; we are revising the guidelines, not discarding them. The N&E Subcommittee needs to oversee this process because the way we elect our leaders reflects on our Bar and our profession.

While the recommended changes to these guidelines are extensive, we are not saying "no holds barred" nor seeking to turn the process into a melee. Why would the N&E Subcommittee, the Sub²committee, and the Board bother improving these guidelines only to have them ignored?

Commented [LL11]: Same logic as above, but I also deleted the "of any kind" to emphasize that a candidate can speak to his/her opponent's credentials and deleted the "repetitive... intrusive... spam" trigger because it seems unnecessarily restrictive and could be used in a way that discriminates. We all already get so much repetitive stuff; people can just block.

Commented [LL15]: The N&E Subcommittee and the Sub²committee felt that the lifting of the endorsement prohibition must be accomplished explicitly so affected parties could act confidently. The parenthetical reference to the chairs and members of the N&E Subcommittee was A. Tolchin's clarification that the Subsection 2.01.16 insert requiring those people to remain "scrupulously impartial" in their decision-making does not override their ability to endorse.

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PART II. PRESIDENT OF THE STATE BAR OF TEXAS

2.01 Election of President-elect

2.01.01 General. The following guidelines are adopted pursuant to the State Bar Act and the rules promulgated thereunder. The relevant provisions of that act and those rules (Texas Government Code, Title 2, Subtitle G, Chapter 81; State Bar Rules, Art. IV, Sec. 11) are incorporated within these guidelines.

2.01.02 Definitions

(A) Subcommittee. The Nominations and Elections Subcommittee of the Executive Committee of the State Bar of Texas.

(B) Potential Nominee. Any person whose name is submitted, pursuant to the provisions of Subsection ~~2.01.07~~2.01.08 below, for consideration by the Subcommittee as a Nominee to stand for election to the office of President-elect for the following year, ~~and any person seeking Executive Director certification under Subsection 2.01.05.~~

(C) Nominee. Any person selected by the Nominations and Elections Subcommittee to be voted on by the Board, ~~and anyone who has obtained Executive Director certification pursuant to the provisions of Subsection 2.01.05 below.~~

(D) Candidate. Any person ~~approved~~selected by the Board as a candidate, and anyone who has obtained Executive Director certification pursuant to the provisions of Subsection 2.01.05 below.

(E) Campaign. Any activities and communications in any form by or on behalf of a Potential Nominee, Nominee, potential Candidate, or Candidate for the purpose of gaining votes for ~~the~~ election as President-elect.

(F) Campaign Period. ~~The period beginning when Candidates are approved by the Board and ending on the date the ballots are distributed.~~

~~**(G) Professional Acquaintance.** A member of the State Bar, including those on inactive status, who a soliciting attorney or Potential Nominee, Nominee, or Candidate knows personally, has met personally during the Campaign Period, or who are in the same~~

~~Professional Affiliation. An attorney who individually and directly contacts a Candidate requesting information about the Candidate's campaign or position will be considered a Professional Acquaintance of the Candidate. Mere knowledge of the attorney by name or reputation or membership in the same professional, social or alumni organization, specialty bar, section and similar organization does not qualify as a Professional Acquaintance.~~

~~**(H) Professional Affiliation.** The firm, company, or employer of the person.~~

~~**(I) Endorsement.** A statement (oral or in writing) and/or any electronic communication, by a member of the State Bar of Texas stating or publishing support for a Potential Nominee, Nominee, or Candidate. Endorsement does not include a member of the State Bar of Texas identifying the person for whom he or she will vote if asked by another.~~

~~**(J) Social Media.** Websites and internet-based applications that enable users to create and share content and/or to participate in social networking, including, but not limited to Facebook, LinkedIn, and Google+ Twitter.~~

2.01.03 Election. The President-elect shall be elected by vote of a majority of those members of the State Bar who voted in such election. Such election shall be held in April or May of each year. The person so elected shall assume the office of President-elect at the next annual meeting following the succession of the then President-elect to the office of President.

2.01.04 Qualifications. Any member of the State Bar who meets the eligibility requirements for Officers set forth in the State Bar Act and the State Bar Rules is eligible for nomination for President-elect, ~~provided such member is not currently serving as a Board Member.~~

2.01.05 Nominations. At its regularly scheduled ~~second~~first quarterly meeting each year, the Board, on recommendation by the Subcommittee, shall nominate by a majority vote two or more members of the State Bar to be Candidates and to stand for election to the office of President-elect for the next Organizational Year. Any other qualified member shall also be privileged to stand for election to that office as a Candidate when a written petition, in a form prescribed by the Board and signed by no less than five percent of the active members of the

Commented [LL16]: These definitions may be alphabetized in the later, final version.

Commented [LL17]: SBOT staff suggested that the definitions of "Nominee" and "Potential Nominee" be amended to refer solely to the individuals being vetted through the N&E Subcommittee and the Board. I think there's merit to that change because it increases clarity.

Commented [LL18]: "Selected" seems more consistent with the actual process than "approved."

Commented [LL19]: The guidelines need to reflect the fact that conduct in advance of being selected or certified as a "Candidate" is every bit as much "campaigning" as conduct afterward.

Commented [LL21]: The Texas Attorney General issued an opinion several years ago questioning the enforceability of this requirement, thus it's deleted.

Commented [LL20]: This matches the corresponding provision for Directors.

Commented [LL22]: Again, the timing for the selection of Nominees is being advanced to level the playing field by aligning the campaign periods for petition and Board-selected Candidates. Due to that unfair advantage provided under the current guidelines, all Potential Nominee candidates contacted by the N&E Subcommittee declined to be considered, except for Ms. Blue and Mr. Sorrels who'd already commenced petition campaigns.

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State Bar who are in good standing, is filed by or on behalf of such member with the Executive Director on or before March 1 preceding the election for the ensuing Organizational Year and such petition is certified by the Executive Director. The Executive Director shall either certify or reject such petition within five (5) business days following receipt of the petition by the Executive Director. Any disputes arising from the Executive Director's decision shall be resolved by the Executive Committee ~~Nominations and Elections Subcommittee~~ in accordance with Subsection 2.01.17 and the State Bar Rules. By either accepting the nomination of the Board or soliciting petition signatures, all potential Candidates and Candidates (including Director Candidates) certify that they have read and agree to be bound by the provisions of these guidelines relating to Campaigns for the office of President-elect or Director, respectively, and regarding the role of the Subcommittee.

2.01.06 President-elect Petition Signatures. A President-elect petition signature is invalid if the signer signed the petition earlier than the 180th day before the date the petition must be filed with the Executive Director under Subsection 2.01.05. To be valid, a signature must include the date it was affixed to the petition.

2.01.07 Candidate Pools. The Potential Nominees All potential Candidates for President-elect, whether selected by the Board or by petition as described in Subsection 2.01.05, shall be selected from three different and bound by, and eligible for election only in compliance with, the following Candidate pools that rotate on a the following three-year cycle. In the first year of that cycle, the Potential Nominees shall be selected from State Bar members whose principal office is in:

(A) potential Candidates whose principal places of practice are in the five metropolitan counties of Bexar, Dallas, Harris, Tarrant, and Travis counties. In the second year of the cycle, the Potential Nominees shall be selected from State Bar members or Travis in the first year of rotation;

(B) potential Candidates whose principal places of practice are in counties other than the five metropolitan counties in the second year of rotation; and

(C) potential Candidates whose principal office is outside places of practice are in either (1) the five metropolitan counties cited above. In or (2) counties other than the five metropolitan counties in the third or "open" year of the cycle rotation, and the Potential Nominees

~~shall be selected from the Candidate pool of all State Bar members, without regard for the county of their principal office. In any year of any three-year cycle the Board may nominate two or more Nominees from the same county. Subcommittee shall designate on or before July 31 of that third year whether the Candidate pool will be drawn exclusively from either the clause (1) or (2) counties above.~~

2.01.07-2.01.08 Selection of Candidates. The Board shall select President-elect Candidates as follows:

(A) In August/June preceding the Second first quarterly meeting at which the Board selects Candidates, the Subcommittee chair(s) shall notify Texas bar associations representing the State Bar's diverse membership and State Bar sections, divisions, and committees that the Nominee selection process has begun. The chair(s) of the Subcommittee shall request from those groups the names and background information of Potential Nominees, explaining the criteria for selection described in Subsection (C).

(B) The Subcommittee shall state its intent to solicit Potential Nominees by distributing notice on the State Bar website and by publishing notice in the September issues/July issue of the Texas Bar Journal, the Texas Lawyers' Civil Digest, and the Texas Lawyers' Criminal Digest. The publication shall contain the criteria for Nominee selection described in Subsections 2.01.04, 2.01.07~~6~~ and 2.01.08~~7~~(C). Anyone submitting a name for consideration should first obtain that person's written consent to have his or her name submitted.

(C) Subject to Subsections 2.01.04 and 2.01.07~~6~~, any member in good standing with the State Bar is eligible for nomination, provided such member is not currently serving as a Board Member. The Subcommittee shall select qualified Nominees, and choose its Nominees with the objective of ensuring that, over a period of years, the office of the President includes men and women, ethnic and racial diversity, lawyers from large, medium and small firms and solo practitioners, and members from urban and rural and metropolitan and non-metropolitan areas of the State. In doing so, the Subcommittee shall consider a potential Candidate's involvement as a member of the Board or in State Bar committee work, knowledge of State Bar operations, participation in local and specialty bar associations, and other activities demonstrating leadership ability, and sincere interest and competence in dealing with issues concerning the State Bar of Texas. Although prior membership on the Board is not a prerequisite to

Commented [LL30]: In fairness to petition Candidates, there must be a deadline for the N&E Subcommittee to decide metro/non-metro; Ann Greenberg suggests July 31 to enable a meeting at Bar Leaders Conf.

Commented [LL31]: Existing language isn't clear that ALL Candidates in third year must be EITHER big county OR small. Absent more clarity, a metro county petition candidate could choose to run against two non-metro Board candidates in third year—e.g., a Houston versus Gilmer race—unfair, and thwarts Board diversity efforts for rural leaders.

Commented [LL23]: This is incorrect. Section 7.A. of Article IV of the Rules appears to vest this decision with the Executive Committee, and not the Subcommittee.

Commented [LL32]: To better ensure fairness, the timing for the selection of the Nominees by the Board is being advanced to better align with the period of time that petition Candidates are gathering signatures and campaigning.

Commented [LL24]: This echoes the confirmation that a Candidate for Elected Director must provide in writing (Sec. 1.03.04).

Commented [LL25]: Again, the N&E Subcommittee and the Sub²committee felt that the 180-day limit was consistent with the law applicable to other governmental petition candidates and with sound policy. To leave it unchanged or substitute 364 days as J. Longley urged perpetuates the unfair advantage that petition candidates have versus Board-selected ones. We should support fairness.

Commented [LL26]: This is language to address J. Longley's concern about determining when signatures were placed on a petition.

Commented [LL27]: "Potential Nominee" has now been changed to mean ONLY the Board-selected Candidates. Thus, I suggest "potential Candidates" be used. I don't think it needs to be defined.

Commented [LL33]: These two publications no longer exist, so the reference is updated.

Commented [LL28]: Note current use of "principal office" in the guidelines.

Commented [LL29]: The existing provision uses "principal office" instead of "place of practice." But "place of practice" is used in the Rules, however only with respect to Director candidates. Even though I prefer "principal office," I've deleted it and substituted "principal places of practice" to match the Rules.

Commented [LL34]: Again, AG Opinion.

Commented [LL35]: It's likely better drafting practice to use the same "metropolitan" term used in the Candidate pool rotation provision.

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~~nomination, it should be considered in determining whether a lawyer is a qualified Potential Nominee.~~

(D) The Subcommittee may also solicit Potential Nominees whose names have not been submitted through the process described in Subsections ~~2.01.07~~2.01.08(A) and (B). Persons solicited as Potential Nominees must meet the criteria described in Subsection ~~2.01.07~~2.01.08(C).

(E) As part of the selection process, each Potential Nominee should be asked to submit a resume and a brief statement indicating the reasons for his or her interest in serving as President. The Subcommittee may interview Potential Nominees. The travel expenses incurred by a Potential Nominee in attending such interview will be reimbursed by the State Bar.

~~(F) Potential Nominees are urged to discuss their prospective candidacies with their families, any applicable partners or management in their offices, as well as other relevant parties to ensure that all Potential Nominees will agree to be Nominees, if approved by the Subcommittee, and that all Nominees will agree to be Candidates, if selected by the Board.~~

~~(G) The Subcommittee shall submit to the Board the names of two or more qualified nominees~~Nominees for President-~~Elect~~select.

2.01.08~~2.01.09~~ **Notification of Nomination.**

(A) Insofar as it is possible, the Nominees recommended by the Subcommittee should be notified ~~at the same time~~contemporaneously.

(B) The Candidates ~~nominated~~selected by the Board, should be notified ~~at the same time~~contemporaneously.

2.01.09~~2.01.10~~ **Announcement of Nominations**Candidates. As soon as reasonably practicable after ~~the~~all Candidates for President-elect are selected by the Board, ~~the~~or certified through the petition process described in Subsection 2.01.05, the names of ~~the~~all Candidates, the counties of their principal ~~offices~~places of practice, and their biographical information, ~~together with the procedure for additional nominations by petition under the State Bar Rules,~~ shall be published at the same time on the State Bar website and in the *Texas Bar Journal*.

2.01.10 **Campaign Activities.**

~~(A) Potential Nominees may discuss the prospective candidacy with any partners or management in their law firm, as needed, to be sure that the Potential Nominees will agree to be a Candidate, if approved by the Board.~~

~~(B) Potential Nominees or Nominees recommended by the Subcommittee may not Campaign before their official nominations by the Board.~~

~~(C) Potential Nominees or Nominees may confirm to others that they are Potential Nominees or Nominees prior to actual nomination by the Board.~~

~~(D) The Nominees may not Campaign until they have met with the Subcommittee as required in Subsection 2.01.11 or immediately following the adjournment of the Board meeting at which they are nominated, whichever is the latest, and must cease Campaigning on the date the ballots are distributed (the "Campaign Period"). Once the Campaign Period ends, candidates may not continue to contact State Bar members, or solicit or encourage others to do so.~~

~~(E) Candidates may not Campaign outside their offices before March 1 or after the ballots are distributed, except for meetings held outside of their offices but within the counties of their principal offices for the purposes of planning future campaign activities.~~

~~(F) Candidates may confirm to others that they are Candidates at any time prior to the out-of-office Campaign period when the Candidate is out of the office conducting normal and customary business.~~

~~(G) Candidates may not solicit, approve, or condone communications by local bars, specialty bars, law school alumni associations, bar association sections or committees, or other bar-related groups seeking support and/or endorsement.~~

~~(H) No Candidate, or anyone acting on the Candidate's behalf, may solicit votes by mailings, faxes, or emails to selected groups within the Bar, or by mailings, faxes, or emails to local or specialty~~

Commented [LL36]: Rather than stating that Board experience is "not a prerequisite," is has been moved into the list of relevant factors.

Commented [LL43]: As noted, an expanded version of this provision is moved to 2.01.08(F).

Commented [LL37]: A revised version of this appeared as now-deleted Subsection 2.01.10(A). I think it should be kept and expanded to underscore that when a Potential Nominee is called by the Subcommittee to be a Nominee, the answer can only be "yes" and not "I'll check with my spouse/law partners and get back to you." Same when Board selects the Candidates. I also added "families," again to underscore that the answer can only be "yes."

Commented [LL38]: Use the defined term here, especially as now revised to refer to only the potential Board-selected candidates.

Commented [LL39]: Not literally at the same time. Same change is made below.

Commented [LL40]: See previous discussion.

Commented [LL41]: The language is being revised to ensure that petition candidates who are certified just prior to the March 1 deadline are included in all the same publications and sites as the Board-selected Candidates.

Commented [LL42]: Deletions are to ensure that the remaining guidelines are sound from First Amendment and practical standpoints.

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~~bars, unless every member of such selected group within the Bar and/or such local or specialty bars is a Professional Acquaintance of the person making the contact.~~

~~(I) Candidates may not solicit, approve, or condone communications in any publications other than the State Bar website and the Texas Bar Journal. When Candidates are aware that non-State Bar publications have covered or plan to cover the election, in the interest of fairness the Candidates should ask the publication to provide equal time to both candidates.~~

~~(J) Paid solicitations through the use of telephone, email or other methods of communication are prohibited.~~

~~(K) Candidates may not solicit or publicize endorsements from local or specialty bar groups, Board members, employees of the State Bar, or any public official.~~

~~(L) Members of the Board, in their official capacity, and State Bar staff may not endorse nor express support for a Candidate for President elect.~~

~~(M) Nothing herein shall prohibit a Potential Nominee, Nominee, or Candidate from establishing a steering committee or group consisting of Professional Acquaintances of the Potential Nominee, Nominee, or Candidate for the purpose of assisting the Potential Nominee, Nominee, or Candidate in the Campaign prior to the commencement of, or during, the Campaign period. Prior to the time an individual has been designated by the Board as a Candidate, steering committees shall be limited to no more than 50 Professional Acquaintances of the Potential Nominee or Nominee.~~

~~(N) One-to-one, individualized telephone calls, letters, facsimiles, or emails expressing support for a Candidate to Professional Acquaintances of the individual caller or sender are permitted during the Campaign Period. Telephone calls made by a Candidate to any individual attorneys are permitted during the Campaign Period. Email lists and group emails are not allowed unless every person on the~~

~~email list or email group is a Professional Acquaintance of the sender.~~

~~(O) Any Board Member may answer questions posed to the Board Member about a Candidate's qualifications.~~

~~(P) Attendance by Nominees at the TYLA Board of Directors meeting, local and/or specialty bar association meetings, or other events is allowed, if all Nominees are invited and if approved by the Subcommittee chair(s).~~

~~(Q) In exceptional circumstances, such as invitations to speak made by the TYLA Board of Directors, local and/or specialty bar associations, or other events, the Candidates may jointly apply to the Subcommittee chair(s) for a dispensation to undertake campaigning for that specific purpose outside the office before March 1.~~

~~(R) During the Campaign Period, the Candidates may establish Social Media pages or accounts for campaigning purposes. Prior to using such Social Media to campaign, each Candidate must send to the chair(s) of the Subcommittee written notice of the intent to use Social Media, including the URL of each Social Media page or account the Candidate has established for Campaign use.~~

~~(S) After the end of the Campaign Period, if a person contacts a Candidate seeking information concerning the Candidate, his or her position, or Campaign, the Candidate may only refer the person to the Texas Bar Journal article, the State Bar website, the Candidate's brochure, or the Candidate's campaign website or campaign Social Media.~~

~~2.01.11 Meeting with the Subcommittee Chair(s). The Candidates shall meet jointly with the Subcommittee chair(s) to discuss election rules and procedures before the beginning of the Campaign Period. Travel and lodging expenses for the Candidate and his or her spouse to attend this meeting will be reimbursed by the State Bar independently of campaign expenditures described in Subsection 2.01.14.~~

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2.01.12

2.01.11 Distribution of Ballots. A combined ballot for the office of President-elect and for the office of Director may be used in bar districts in which an election for Director is to be conducted. On April 1, or on the first working day following April 1 if April 1 falls on a weekend, an official ballot listing the names of all Candidates for President-Elect and candidates for Director shall be distributed to each member of the State Bar who is ~~entitled~~ eligible to vote.

2.01.13 2.01.12 Campaign Brochures. Each Candidate is responsible for the design and content of a single Campaign brochure, ~~which shall be used as the Candidate's sole handout or electronic attachment for the Campaign. (A one-page resume may be used for appearances permitted under these guidelines if the campaign brochure is not available.) The that the~~ State Bar will print the brochures in a four-color process, using the same size and quality of paper for each Candidate's brochure.

~~(A) In designing the brochures Candidates should:~~

- ~~(1) seek to be as informative as possible;~~
- ~~(2) limit photographs to pictures of the Candidate and his or her family; and~~
- ~~(3) neither refer to nor cite endorsements of the Candidate by groups or individuals.~~

~~(B) The Subcommittee chair(s) will approve all brochures before printing to ensure compliance with the guidelines.~~

~~(C) Brochures used in the election for President-elect shall will be distributed on the State Bar website and with electronic ballots. Paper copies will be mailed at State Bar expense, along with any official paper ballots.~~

~~(D) The State Bar of Texas shall pay, in addition to the printing expense of the brochures included with the paper ballots, the cost of printing such reasonable amount of such extra brochures as the Subcommittee may determine is appropriate.~~

~~(E) Candidates may purchase additional copies of the brochures for their own use at cost.~~

2.01.14 2.01.13 Campaign Expenditures. ~~To the greatest extent permitted by law, e~~ Each Candidate for the office of President-Elect ~~shall not elect is urged to~~ expend ~~no~~ more than ~~\$20,000~~ **\$25,000** in Campaign expenses, including expenses for transportation and lodging during the Campaign. ~~The Candidates may agree on a different amount not to exceed \$25,000.~~ The State Bar shall reimburse each Candidate up to \$15,000 for actual out-of-pocket Campaign expenditures, which may include transportation and lodging costs for the Candidate and his or her spouse. This reimbursement is in addition to, and not in lieu of, Campaign expenses paid directly by the State Bar, ~~provided, however, that if in any year there are more than two Candidates, the aggregate amount of reimbursements by the State Bar shall not exceed a total of \$30,000 for all Candidates, and no one Candidate will be entitled to a reimbursement exceeding a per capita share.~~ Candidates **seeking reimbursement** shall submit verified reports of all Campaign expenditures, including expenses for transportation and lodging, within 45 days after the Campaign ends.

2.01.15 2.01.14 Online Campaign Activities. ~~Any potential Candidate or Candidates may Campaign online during the Campaign Period by use of a personal campaign website and/or campaign Social Media.~~

~~(A) The Candidate's campaign website and/or campaign Social Media may include information and pictures published in the Candidate's pre-approved Campaign brochures as described above; information regarding scheduled appearance dates at State Bar of Texas, local bar association or private meetings and reports on or comments regarding such appearances; any Campaign information that is distributed on the State Bar website or printed in the Texas Bar Journal regarding the Candidate; or any other information pertaining to the Candidate's background. During the Campaign Period, a Candidate may respond to questions or comments posted on the Candidate's campaign Social Media pages or accounts, subject to subsection (D) below.~~

~~(B) All information to be published on a campaign website or campaign Social Media pages or accounts must be submitted to the chair(s) of the Subcommittee for approval before publication.~~

Commented [LL46]: A phrase suggested by J. Longley to emphasize we are not impermissibly constraining Campaign expenditures.

Commented [LL47]: I have not fully researched the enforceability of expenditure limitations, but know they raise concerns. Accordingly, I've softened the language. Plus, petition candidates have already demonstrated that they will blow through the existing limit.

Even if there's not an enforceable cap, the guidelines should set an aspirational limit to prevent (1) the impression that the office of President-elect is "for sale" and (2) to ensure fairness for Candidates—e.g., certain solos and government or legal-aid lawyers—that may not have access to large pools of campaign funds.

Also, to simplify the provision, the limit is raised to \$25,000, which is the higher cap conditioned upon the Candidates' approval. In my experience, they always typically reach that agreement.

Commented [LL44]: "Entitled" is confusing. "Eligible" is typically used elsewhere.

Commented [LL45]: A frequent criticism of the guidelines is the 4-week voting period. But the N&E Subcommittee and the Sub²committee left it at 4 weeks simply because (1) shortening it will give some people a basis to complain, (2) in some cases, the delivery of mail from the out-of-state mailing site takes long enough to warrant 4 weeks, and (3) the length of the voting period is no longer very relevant because of other changes we've made. With regard to (3), much of the frustration with the 4-week period was that the Candidates had to cease campaigning. But since we're eliminating the campaign restrictions currently applicable to the voting period, those 4 weeks will be like any other in the campaign.

Commented [LL48]: The existing provision in the guidelines lowers the per-Candidate reimbursement amount if there are more Candidates, which seems counterintuitive. More Candidates likely necessitates **greater** expenditure, not less.

Commented [LL49]: While I have not fully researched the matter, I question whether the SBOT can require these "verified reports" except when the Candidate is seeking reimbursement.

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~~(C) A Candidate who has maintained a firm or individual website or online presence for professional purposes prior to becoming a Potential Nominee may continue to maintain that website or online presence for conducting normal and customary business, but not for the purpose of campaigning during the Campaign Period.~~

~~(D) A candidateCandidate who chooses to maintain a campaignCampaign Social Media presence is responsible for monitoringencouraged to monitor all posts and comments on his or her campaignCampaign Social Media, both during and after the Campaign Period, with the objective of assuring civility and professionalism in the campaignCampaign, and shouldis urged to promptly remove content or comments that are offensive, contain vulgar language, or include irrelevant personal attacks-of any kind, or which are repetitive or intrusive and might be considered spam.~~

~~(E) After the end of the Campaign Period, a Candidate's campaign website and/or campaign Social Media page may remain online; provided, however, that a Candidate or anyone at the Candidate's direction may not post any additional information on the campaign website or campaign Social Media after the end of the Campaign Period.~~

2.01.162.01.15 Campaign Conduct. The potential Candidates, Candidates, and their supporters shall make a reasonable effortare urged to conduct the Campaign in a professional and dignified manner. In communicating with State Bar members, whether by letter, card, fax, email, Social Media, or telephone, or online. Candidates and their supporters shallare encouraged to concentrate on the merits of theirthe candidacy and to refrain from irrelevant personal attacks against other potential Candidates or Candidates, Potential Candidates and Candidates are expected to comport themselves in compliance with all applicable provisions of The Texas Lawyer's Creed, A Mandate for Professionalism, promulgated by The Supreme Court of Texas and the Court of Criminal Appeals.

2.01.172.01.16 Campaign Oversight. Potential Candidates and Candidates shall consult with the chair(s) of the Subcommittee concerning the interpretation of these rulesguidelines, and the chair(s) (and other Subcommittee members, if consulted) shall-will remain

scrupulously impartial in rendering a decision concerning such matters or in selecting any remedy. If a potential Candidate or Candidate wishes to appeal a decision of the Subcommittee chair(s), such appeal must be made to the Nominations and Elections Subcommittee in writing within two business days of the Subcommittee chair(s)' decision. Except as otherwise provided in this Policy Manual, the Nominations and Elections Subcommittee shall supervise the guidelines, eligibility, nominations, campaign, election, and election results to ensure compliance with the se rulesguidelines and shall resolve all such disputes and decide all penaltiesremedies. Decisions and interpretations made by the Subcommittee hereunder shall be final.

~~(A) In the event of any violation of the rules by or on behalf of a Potential Nominee, Nominee, and/or Candidatethese guidelines, the Subcommittee shallwill determine if the violation is minor or major.~~

~~(B) In the event of a minor violation, the Subcommittee may allowthe remedy, including allowing the other Candidates to engage in like activity.~~

~~(C) In the event of a major violation, the Subcommittee may publicly censure the Candidate committing the violation through a communication on the State Bar website. Such public censure may also be written by the Subcommittee and distributed with any ballot to the members of the State Bar in whatever manner and up to public censure in such form and disseminated in such manner as the Subcommittee deems appropriate. Additionally, regardless of the existence of any violation of these guidelines, the Subcommittee may request that the Executive Director offer all Candidates the opportunity to distribute one or more of their Campaign messages via the State Bar's membership email list if the Subcommittee determines that will advance fairness in the election.~~

2.01.182.01.17 Run-Off Election for President-Elect.

~~(A) If no candidate for President-elect receives a majority vote, a run-off election shall be held at such time as the Board prescribes between the two candidates receiving the greatest number of votes. The Board shall also prescribe the date the run-off ballots are to be distributed to the members eligible to vote and the date and time that voting in the run-off election shall cease.~~

Commented [LL55]: J. Longley suggested this insert. As noted earlier, the previous change to Subsection 1.10 specifically references Subcommittee chairs and members to ensure this impartiality insert is not misinterpreted as depriving them of the ability to endorse candidates.

Commented [LL56]: The N&E Subcommittee and the Sub²committee retained a modified "Oversight" role for the N&E Subcommittee. Again, we are loosening the guidelines, not disposing of them. We need an enforcement method if the revised guidelines are flouted. Again, we are not seeking an election process that resembles professional wrestling.

Also, I have added a provision explicitly giving Candidates access to the State Bar's membership email list if necessary to level the playing field—a change that fully advances fairness and transparency and a practice permissible under the existing guidelines. Elections should not be decided based on which Candidate has access to the most email addresses. Again, we are either committed to advancing fairness or we aren't.

Commented [LL57]: Again, "remedies" is a more accurate term.

Commented [LL50]: As in other cases, the provision is revised to be more aspirational than mandatory. I believe that the Board and most Texas lawyers do not want these campaigns to devolve into successive competing smears.

Commented [LL51]: Revised as per corresponding provision applicable to Director races.

Commented [LL52]: I've added "potential Candidates" because it seems to us that this aspirational behavior should apply when an individual is campaigning and not just after he or she is selected by the Board or has a petition certified by the Executive Director.

Commented [LL53]: I've attempted to make the "Conduct" provisions for Director and President-elect mirror one another.

Commented [LL54]: Referencing the Lawyer's Creed—as previously discussed in connection with Director Candidates.

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(B) As soon as practicable after it is determined that a run-off election is necessary and the run-off candidates ~~candidates~~Candidates have been determined, the State Bar shall publish on its website a notice to its members that a run-off election for President-elect will be held. Such notice shall include the identity of the run-off candidates ~~candidates~~Candidates, the date the run-off ballots will be distributed to the members, and the date and time that voting in the run-off election will cease.

~~(C) Run-off candidates may Campaign beginning on the day the run-off notice is published on the State Bar's website. Run-off candidates must cease all Campaign activities no later than 11:59 p.m., CDT, on the day immediately preceding the day the run-off ballots are to be distributed as prescribed by the Board. The period from the first to the last day of the campaign shall be referred to as the Run-Off Campaign Period.~~

~~(D) The following provisions of this Policy Manual governing Campaign Activities, On-line Campaign Activities, Campaign Conduct, and Campaign Oversight shall apply to the Campaign activities of President-elect run-off candidates: subsections 2.01.10(G-L), (N), (O), and (S); section 2.01.15; section 2.01.16; and section 2.01.17. Run-off candidates will receive neither additional candidate brochures nor any additional campaign funds.~~

(E) The State Bar may use, but is not required to use, a combined ballot for the run-off election for the office of President-elect and for the office of Director in those districts in which a run-off election is also required for the office of Director.

(F) ~~D~~The run-off candidate ~~candidate~~Candidate receiving a majority of the votes cast in the run-off election shall be declared elected to the office of President-elect.