

# LOOKING BACK ON A YEAR OF IMPROVEMENTS



This month's *Texas Bar Journal* highlights major developments in the law in 2019. We asked a variety of attorneys to recap significant trends and court decisions from the past year that affected their practice areas. Their reports are informative for all Texas lawyers, and we are happy to publish them in our "Year in Review" starting on page 29.

The past year also brought a number of improvements at the State Bar of Texas to better serve our members and the public. I've summarized some of them below, but for a more comprehensive look at State Bar operations, I encourage you to read our 2018-2019 annual report at [texasbar.com/annualreport](https://texasbar.com/annualreport).

## Lawyer well-being

Lawyer wellness is a top priority for the State Bar, and we redoubled our efforts to promote well-being and suicide prevention in 2019. The Texas Lawyers' Assistance Program, or TLAP, released *It's Good to Get Help*, a video that aims to end the stigma lawyers may face when seeking help for substance use and other mental health issues. I encourage you to watch the video at [youtube.com/statebaroftexas](https://youtube.com/statebaroftexas) and help us share the message. TLAP also produced an excellent free ethics CLE webcast titled "What Lawyers Need to Know About Depression and Suicide," which is available at [texasbarcle.com](https://texasbarcle.com).

## GOVERNANCE INFORMATION

The State Bar of Texas Board of Directors will hold its quarterly meeting at 9 a.m. CST January 24, 2020, at the Four Seasons Hotel Houston, 1300 Lamar St. All are welcome to attend. The agenda and background materials will be available at [texasbar.com/board](https://texasbar.com/board) at least seven days before the meeting.

## Member benefits and services

The State Bar launched or enhanced a number of member benefits and services. Among other initiatives, the bar:

- added staff to the toll-free Ethics Helpline (800-532-3947) to help ensure members receive prompt answers to questions;
- launched TexasBarCLE's Flash CLE Silver program to help lawyers 70 and older meet their MCLE requirements at a discounted rate; and
- opened the Texas Opportunity & Justice Incubator ([txoji.com](https://txoji.com)) to attorneys across the state via online learning.

We also expanded our member discount program ([texasbar.com/benefits](https://texasbar.com/benefits)) with new vendors, including MetLife, Credible, Smith.ai, and four new practice management providers. Four complimentary benefits are now provided through the Texas Bar Private Insurance Exchange when obtaining health insurance, and the exchange's new Health Advocate benefit helps you with claims and with coordinating care.

## Fiscal responsibility

Under the leadership of President Randy Sorrels and Immediate Past President Joe K. Longley, the bar has continued its efforts to control spending while increasing its reserves in line with sound financial practices. Also, as featured in my October column, the bar shifted to 100% online membership fee payments, which resulted in cost savings, increased security, and other efficiencies. The bar's most recent financial audit opinion remains unmodified, or "clean," which is the best opinion available.

## Transparency

The State Bar continued its commitment to open government by working to implement 10 recommendations from an independent transparency review ([texasbar.com/weaverreport](https://texasbar.com/weaverreport)). When federal litigation was filed in March challenging the mandatory bar structure in Texas, we created a webpage ([texasbar.com/mcdonaldvsorrels](https://texasbar.com/mcdonaldvsorrels)) to keep our members and the public up to date on the case. Also, in June the State Bar launched an online portal to hundreds of archived documents and photos, making 80 years of bar history easily available to all. Go to [texasbar.com/digitalarchives](https://texasbar.com/digitalarchives) to browse these records.

## More to come

We're also working hard on initiatives you'll hear more about in 2020. A board work group on succession planning is developing recommendations for programs to help attorneys protect their businesses, families, and clients in the event of their death or inability to practice law.

Also, the State Bar Committee on Disciplinary Rules and Referenda continues to consider potential rule changes that could proceed to a vote by members in 2020. You can review the committee's work and provide comments at [texasbar.com/CDRR](https://texasbar.com/CDRR).

I look forward to updating you on these and other State Bar initiatives throughout the new year.

Sincerely,

## TREY APFFEL

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*Have a question for Trey? Email it to [trey.apffel@texasbar.com](mailto:trey.apffel@texasbar.com) and he may answer it in a future column.*



## A MISSION-FOCUSED BAR

Many people think of the State Bar of Texas as the group that handles MCLE and grievances. Granted, MCLE compliance and attorney discipline are two of the State Bar's major responsibilities, but they are not the whole story.

The complete story becomes clearer when you read our mission statement, which appears below. Everything the State Bar of Texas does—every action taken or not taken—goes back to our mission, which is based on the bar's governing documents.<sup>1</sup> In short, the State Bar exists to protect the public, to serve Texas lawyers, and to help lawyers better serve their clients.

The State Bar of Texas is not an association or trade group—designed simply to benefit a profession—although serving lawyers is one of our core commitments. By statute, the bar is an administrative agency of the Texas Supreme Court with mandatory membership and seven defined purposes related to improving the administration of justice, advancing the quality of legal services to the public, maintaining high standards of conduct in the profession, and providing services to attorneys.<sup>2</sup>

Many people have a role in overseeing the State Bar—from the Supreme Court, which approves the bar budget and exercises administrative control; to the Legislature, which reviews bar operations under the Texas Sunset Act; to the 60-member State Bar of Texas Board of Directors, which develops and implements bar policy and hires an executive director to manage day-to-day operations.

State Bar board members volunteer their time. Other volunteers include the Commission for Lawyer Discipline, a 12-person standing committee (with an equal number of public and attorney members) that provides oversight to the chief disciplinary counsel, which administers the attorney discipline system with help from volunteer grievance panels located across the state.

More than 44,400 Texas lawyers belong to voluntary State Bar sections. Nearly 600 volunteers serve the State Bar through standing committees, where they work on a variety of issues affecting our profession. More than 260 lawyers from across the state volunteer through our SOLACE program to assist attorneys or their families when catastrophic events or health situations take place. And another 930 lawyers support peers in crisis as volunteers for the Texas Lawyers' Assistance Program.

The 26,311-member Texas Young Lawyers Association acts as the bar's public service arm, under the leadership of its 48-member, all-volunteer board of directors. And nearly 10,000 lawyers donated a total of \$1.4 million in voluntary access to justice contributions on their dues statements in fiscal year 2018-2019.

Have you noticed a key word here is "volunteer"?

Yes, the State Bar has a professional staff, and I am proud to work with them every day. But what makes attorneys unique among professionals in Texas is our system of self-governance, which gives all bar members the right to vote on the people who represent us, the rules that regulate us, and the dues we pay for the right and privilege to practice law. The State Bar of Texas is all of us, and this system doesn't work without volunteers.

If you are one of those volunteers, I extend a sincere thank you. If you're not, I encourage you to get involved.

Join a section of lawyers who practice in your specialty area. Volunteer for a standing committee or a pro bono program. Become a mentor to new lawyers. Seek election to the bar board or appointment to a local grievance panel. If you're not sure how to get involved, please reach out and I'll help you get connected.

There are 105,125 active members of the State Bar of Texas. My hope is that all of us can work together in pursuit of the State Bar's mission.

Sincerely,

### TREY APFFEL

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#### NOTES

1. Go to [texasbar.com/governingdocuments](http://texasbar.com/governingdocuments) to read the State Bar Act (Tex. Gov't Code § 81), State Bar Rules, State Bar Board Policy Manual, and other documents that guide bar operations.
2. Tex. Gov't Code § 81.012.

*The mission of the State Bar of Texas is to support the administration of the legal system, assure all citizens equal access to justice, foster high standards of ethical conduct for lawyers, enable its members to better serve their clients and the public, educate the public about the rule of law, and promote diversity in the administration of justice and the practice of law.*

—State Bar of Texas Mission Statement



# BY THE NUMBERS 2018-2019

*The State Bar of Texas collects the following information pursuant to section 81.0215 of the Texas Government Code chapter 81 (the State Bar Act), which requires the State Bar to adopt a strategic plan every two years that includes measureable goals and a system of performance measures. The State Bar Act further requires the bar to report to the Texas Supreme Court the outcomes of these strategic plan performance measures.*

*As the basis of its current strategic plan, the State Bar identified six broad strategic categories guiding its goals and performance measures: 1) Service to the Public; 2) Service to Members; 3) Protection of the Public; 4) Access to Justice; 5) Sound Administration and Resources; and 6) Financial Management. The following data reflect results and outcomes of State Bar core services for the 2018-2019 bar year.*

## SERVICE TO THE PUBLIC

*Distribution of information regarding legal issues of interest to the public: **34,992** pamphlets or printed materials*

*Distribution of multimedia information regarding legal issues and topics of particular relevance to the public: **45** news releases, media advisories, and op-eds*

*Visits to page on State Bar website relating to disaster relief resources for the public: **6,033** page views*

*Visits to page on State Bar website relating to disaster relief resources for attorneys: **1,574** page views*

*Visits to pages on State Bar-related websites containing legal information on issues of importance to the public: **33,838** pamphlets page hits, **1,629** media page hits, **20,550,473** total hits to the SBOT website, and **14,460,105** unique page views*

*Traffic to Texas Bar Blog on legal issues of importance to the public: **132,539** page views*

*Traffic to State Bar social media sites on legal issues of importance to the public: **151,283** engagements, **73,953** clicks, and **4,193,021** impressions*

*Courses provided to teachers by the Law-Related Education Department: **149** Law-Focused Education teacher training sessions and **5,553** participants trained by LRE*

*Degree of satisfaction: **99%** would recommend LRE training to other teachers*

*Students taught by LRE-trained teachers: **230,726** students impacted by teacher training sessions*

*Traffic to LRE/LFEI website and related sites and social media: **358,419** visits*

*Traffic to the After the Bar Exam online resource: **8,533** watched segments; **3,383** downloaded segments*

*Traffic to the TYLA Ten Minute Mentor online resource: **75,442** watched segments; **35,487** downloaded segments*

*Traffic to the TYLA Ten Minute Mentor Goes to Law School online resource: **5,935** watched segments; **2,304** downloaded segments*

*Number of TYLA presentations given at law schools: **7***

*Number of TYLA presentations by attorneys and judges in public schools: **11** presentations, including Vote America!, I Was the First. You Can Be a Lawyer Too!, and What Do Lawyers Do?*

*Distribution of TYLA resources and information regarding legal issues of interest to the public through community service and education: **1,917** project distributions*

*Number of those helped by Texas Lawyers for Texas Veterans:*  
Since 2010, over **11,000** volunteer attorneys, paralegals, and law students have assisted more than **32,000** veterans through local bar associations and other attorney volunteer organizations

*Number of veterans clinics provided by TLTV partners:*  
Approximately **298**

*Number of “Clinic in a Box” packages distributed to local clinics:* **24**

*Number of people who received a referral through the Lawyer Referral and Information Service:* **64,627** callers helped and **71,499** referrals made

## SERVICE TO MEMBERS

*Attendance for TexasBarCLE webcasts:*  
Offerings—**141**, Attendance—**6,768**

*Attendance for TexasBarCLE online CLE:*  
Offerings—**927**, Attendance—**84,813**

*Attendance for TexasBarCLE video courses:*  
Offerings—**59**, Attendance—**2,974**

*Attendance for TexasBarCLE live courses:*  
Offerings—**101**, Attendance—**16,134**

*Number of registrants for TexasBarCLE free 1/2-hour online classes:* **21,850**

*Number of low-cost offerings:* More than **60**

*Number of publications offered by TexasBarCLE:*  
**245** course book titles for sale

*Number of CLE scholarships given to members:* **501**

*Sales of books by TexasBarBooks:* **14,456** print, electronic, and DVD sales; **9,930** online subscription sales; **24,386** total sales

*Number of CLE ethics publications offered by TexasBarBooks:* **18** TexasBarBooks publications that include ethics topics; **12,555** Law Practice Management CLEs with an ethics component

*Diversity of SBOT membership:* **64%** male and **36%** female; **79%** White, **10%** Hispanic/Latino, **6%** Black/African-American, **4%** Asian/Pacific Islander, less than **1%** American Indian/Alaska Native, and **2%** all others (numbers may not sum to 100% due to rounding)

*Diversity of SBOT section membership:* **63%** male and **37%** female; **81%** White, **9%** Hispanic/Latino, **5%** Black/African-American, **3%** Asian/Pacific Islander, **0%** American Indian/Alaska Native, and **2%** all others (numbers may not sum to 100% due to rounding)

*Diversity of SBOT committee membership:* **55%** male and **45%** female; **73%** White, **12%** Hispanic/Latino, **8%** Black/African-American, **4%** Asian/Pacific Islander, **0%** American Indian/Alaska Native, and **3%** all others (numbers may not sum to 100% due to rounding)

The State Bar remains committed to offering its members unique access to resources, goods, and services to help them in their professional as well as personal lives. In the 2018-2019 bar year, a total of **43** contracted benefits were offered through the State Bar Member Benefits Program. Goods and services offered include lawyer-specific programs, financial services, travel discounts, car rentals, office supplies, health insurance through the Texas Bar Private Insurance Exchange, and professional liability insurance through TLIE.

*Statistics related to the aging lawyer population:* The median age of Texas attorneys increased from **48** to **49** between 2008 and 2018; during that same period, attorneys 65 and older went from making up **10%** of the attorney population to **17%**

*Visits to SBOT Member Benefits homepage:* **46,063** page views

*Visits to Texas Bar Private Insurance Exchange website:*  
**122,095** page views

*Number of members enrolled in one or more insurance products through the Texas Bar Private Insurance Exchange:*  
**18,316**

*Number of members enrolled in major medical insurance:* **11,378**

*Number of attorneys, law firms, and legal departments attending and participating in the Texas Minority Attorney Program:* **96**

*Number of attorneys, law firms, and legal departments attending and participating in the Texas Minority Counsel Program:*  
**580** attendees, **22** interviewing corporations, and **112** sponsoring firms/organizations

*Attendee satisfaction with the Texas Minority Counsel Program:* Through a conference evaluation survey, the overall course was given a positive rating of **98%**; all respondents stated they are likely to recommend the conference to others

*Attendee satisfaction with the Texas Minority Attorney Program:* Evaluation form results show an overall event rating of **3.7** out of **4**

The Texas Lawyers' Assistance Program handled a total of **652** consultations—**55%** were related to mental health, **42%** were related to substance use, and **3%** were related to cognitive issues. TLAP's website—tlaphelps.org—garnered **8,615** users and **16,427** page views. TLAP made **102** educational outreach presentations, including at law schools.

*Number of distributed publications:* **4** articles written by TLAP have been distributed

*Number of views of TLAP videos via the website:* **3,283** plays of *Courage, Hope, Help—TLAP Is There*, the four-minute excerpt of *Courage, Hope, Help—TLAP Is There*, the short TLAP promo, *Practicing From the Shadows*, and *Practicing Law and Wellness*

*Number of attorneys and volunteers/mentors participating in the Texas Opportunity & Justice Incubator, or TOJI:* **94** volunteers/mentors, including **56** lawyers and **13** law students

*Number of TOJI-created resources shared with the State Bar membership at large:* TOJI made **11** public presentations with supplemental materials

*Number of hours of training to TOJI participants:* **112**

*Number of users and page views to TOJI website:* **2,529** users and **6,603** page views

*Number of counties served by participants:* As a Central Texas-based program, TOJI has served clients in **48** of Texas' **254** counties

*Number of page views to the Law Practice Management Program webpage:* **34,390**

*Number of lawyers who attended live, video, webcast, or online CLE courses on law practice management topics:* **8,646**

*Number of phone calls and emails the Law Practice Management Program responded to:* **118** phone calls and **160** emails

*Number who voted in the 2019 SBOT elections:* **24,758** (**24%** of the **103,456** ballots sent)

*Visits to page on State Bar's website related to lawyer succession planning:* **912** page views

*Visits to pages on State Bar of Texas Law Practice Management Program's website related to lawyer succession planning:* **7,354** page views

## PROTECTION OF THE PUBLIC

*Contacts the Client-Attorney Assistance Program, or CAAP, received:* **22,626** via mail, email, and phone

*Dispute resolutions conducted by CAAP:* **1,126**, with productive communication successfully re-established in **87%** of the cases

*Number of referrals by the Office of Chief Disciplinary Counsel to the CAAP program:* **322**

*Number of submissions reviewed by the Advertising Review Committee:* more than **3,000**

ATTORNEY DISCIPLINE SYSTEM (CHIEF DISCIPLINARY COUNSEL)  
*Information regarding disciplinary trends:* The number of barratry-related grievances filed with CDC increased by more than **50%**

*Number of barratry-related complaints filed:* **49**  
(number includes grievances that were pending classification at the end of the bar year)

*Number of grievances filed:* **8,015**

*Number of grievances classified as complaints:* **2,315**

*Number of grievances dismissed as inquiries:* **5,561**

*Number of investigatory hearings held by CDC:* **160**

### BAR YEAR 2018-2019

Total Complaints Resolved	<b>589</b>
Total Sanctions	<b>414</b>
Disbarments	<b>14</b>
Resignations	<b>17</b>
Suspensions	<b>152</b>
Public Reprimands	<b>32</b>
Private Reprimands	<b>124</b>
Grievance Referral Program	<b>75</b>

Eligible applications reviewed by the Client Security Fund: **178**

Eligible applications approved by the Client Security Fund: **115**

Total amount of grants approved by the Client Security Fund: **\$664,143.78**

Efforts to publicize the Client Security Fund to eligible recipients and to discourage theft of clients' funds by their attorneys: CDC continues to provide information on the Client Security Fund to complainants who have filed attorney grievances and to publicize the fund via the media

The ethics attorneys on the Ethics Helpline returned about **6,000** calls.

Number of continuing legal education ethics offerings: TexasBarCLE programs provided **6,063** total MCLE hours and of those hours, **1,440** hours (**24%**) were for ethics credit

Number of ethics publications by TexasBarBooks: **18** books

## ACCESS TO JUSTICE

Legal aid and pro bono attorneys using free legal research: **475** attorneys; **90** paralegals

Legal aid referrals made by the State Bar of Texas Legal Access Division staff to members of the public and to inmates: **5,378**

Legal aid and pro bono attorneys using free malpractice insurance offered through the State Bar of Texas Legal Access Division: **65**

Legal aid and pro bono attorneys who used the joint TexasBarCLE and Legal Access Division tuition waiver program: **113**

Legal aid and pro bono attorneys who participated in the Language Access Fund: **8,097** interpreted phone calls; **71** translated documents; **129** on-site interpreter reimbursements; served clients speaking **69** languages

For 2018-2019, the Texas Student Loan Repayment Assistance Program approved **211** legal aid lawyers for up to **\$4,800** a year in repayment support.

Attendees at Legal Access Division annual seminars: **460** attended the Poverty Law Conference; **76** attended the Pro Bono Coordinators Retreat pre-conference only

Number of Justice For All Calendars distributed: **56,358** in English; **27,840** in Spanish; **5,000** in Vietnamese

Number of those helped by Texas Lawyers for Texas Veterans: Since 2010, over **11,000** attorneys, paralegals, and law students have assisted more than **32,000** veterans through local bar associations and other attorney volunteer organizations

Number of sections that have pro bono initiatives: **24** sections have pro bono initiatives, which include grants, CLE scholarships for legal aid providers, internships, or other support programs

Number of lawyers and law students participating in pro bono initiatives (including grants, CLE scholarships, and internships): **824**

Total voluntary ATJ contributions through membership fee statements: **\$1,391,066** from **9,908** attorneys

Number of access to justice presentations made to attorneys and groups: **33**

Number of pro bono legal clinic resources, such as toolkits, provided by the Legal Access Division and the Texas Access to Justice Commission: **13** Limited Scope Representation Toolkits

Total amounts funded to legal assistance to the poor: Federal funding—**\$35.07 million** to the Legal Services Corporation. State funding—**\$20 million** in general revenue over the biennium in basic civil legal services funds; **\$6 million** in general revenue over the biennium to provide legal services to veterans and their immediate families; **\$10 million** in general revenue for the Legal Aid for Survivors of Sexual Assault (LASSA) Program; an increase in the cap of the Chief Justice Jack Pope Act from **\$50 million** over a biennium to **\$50 million** annually

Traffic to and usage of [probonotexas.org](http://probonotexas.org): **7,813** users; **19,655** page views

Utilization of Texas Legal Answers ([texas.freelegalanswers.org](http://texas.freelegalanswers.org)): **2,747** clients served

Participation in New Opportunities Volunteer Attorney (NOVA) Pro Bono Program: **47** participants

Types of services and number of hours of legal services provided to low-income and modest means persons by participants in the Texas Opportunity & Justice Incubator: TOJI lawyers represented **1,745** clients in **28** areas of law, including **158** pro bono clients and **654** modest-income clients, which equates to **6,052** modest-income hours and **1,901** pro bono hours (saving Texans **\$985,169** in legal fees)

Visits to page on State Bar website relating to disaster relief resources for the public: **6,033** page views

Utilization of online disaster preparation and recovery resources on [texasbarcle.com](http://texasbarcle.com): **10,410**

## SOUND ADMINISTRATION AND RESOURCES

*Trainings provided to staff:* Mandatory EEO/harassment training for all new hires; all employees received mandatory EEO/harassment training; unconscious bias/harassment training for managers and staff; employees offered extensive online training through the Employees Assistance Program service; customer service training offered to employees responsible for providing direct phone customer service; tuition assistance offered to staff for professional development in current or future position at the State Bar; **3** full staff meetings were held

*Statistics regarding staff retention and attrition:* **9.9%** turnover rate

*Number of customer service complaints received via the "Contact Us" page on the SBOT website:* **21** and all resolved successfully

*Implementation of disaster preparedness plan to assure continuity of State Bar administration and services in the event of any disaster affecting the State Bar:* The State Bar makes every effort to stress test the approved Disaster Recovery and Communications plan

*Effectiveness of disaster preparedness plan:* The State Bar can be at normal operations in under **3** days at an off-site location

*Number of periodic tests conducted of disaster preparedness plan and results of such test:* Biannual tests prove all major systems can be operational in under **3** days

*Ethnic and gender diversity of SBOT staff:* **231 (76%)** female and **71 (24%)** male; **186 (62%)** White, **80 (26%)** Hispanic/Latino, **28 (9%)** Black/African-American, **5 (2%)** Asian/Pacific Islander, **1 (.3%)** American Indian/Alaska Native, and **2 (.7%)** Other

## FINANCIAL MANAGEMENT

*Financial audit:* The result of the most recent financial audit (FY2018) was an unmodified auditor's opinion, considered the highest and best opinion; the FY2019 financial audit began August 1, 2019

*Annual internal control audit:* The annual internal control audit issued **4** reports and examined Finance, Office of Chief Disciplinary Counsel, Minimum Continuing Legal Education, and Human Resources and found that control over operations was generally effective

*Amount SBOT has set aside in general fund reserves:* **\$11,059,004**, which represents **3** months of operating expenditures

*Success of cost-saving measures implemented by the State Bar:* The State Bar's submitted budgets for FY2020 contained **\$94,563** in budget reductions primarily from the transition of membership fees to an online process

### Expenditure Protest Policy

The purpose of the State Bar of Texas is to engage in those activities enumerated at § 81.012 of the State Bar Act. The expenditure of funds by the State Bar of Texas is limited both as set forth at § 81.034 of the State Bar Act and in *Keller v. State Bar of California*, 496 U.S. 1 (1990). If any member feels that any actual or proposed expenditure is not within such purposes of, or limitations on, the State Bar, then such member may object thereto and seek a refund of a pro rata portion of his or her dues expended, plus interest, by filing a written objection with the executive director. The objection must be made in writing, addressed to the executive director of the State Bar, P.O. Box 12487, Austin, TX 78711, and postmarked no later than 90 days after the conclusion of the challenged activity.

Upon receipt of a member's objection, the executive director shall promptly review such objection together with the allocation of dues monies spent on the challenged activity and, in consultation with the president, shall have the discretion to resolve the objection, including refunding a pro rata portion of the member's dues, plus interest. Refund of a pro rata share of the member's dues shall be for the convenience of the State Bar and shall not be construed as an admission that the challenged activity was or would not have been within the purposes of, or limitations on, the State Bar.

## Timeline of *McDonald* Litigation

• March 6, 2019	Plaintiffs filed complaint
• March 25	Plaintiffs filed motion for preliminary injunction and motion for partial summary judgment on liability
• April 25 – July 22	<p>Amicus briefs filed in support of Plaintiffs:</p> <ul style="list-style-type: none"> <li>• Texas Attorney General Ken Paxton</li> <li>• Goldwater Institute</li> </ul> <p>Amicus briefs filed in support of the State Bar:</p> <ul style="list-style-type: none"> <li>• Texas Legal Ethics Counsel</li> <li>• Former Presidents of the State Bar of Texas, Former Chairs of the Texas Bar College, and Former Chairs of the State Bar of Texas Council of Chairs</li> <li>• Texas Access to Justice Commission</li> <li>• Concerned Lawyers of Color</li> </ul>
• May 13	State Bar filed responsive briefs, cross-motion for summary judgment, and motion to dismiss for lack of subject-matter jurisdiction
• May 23	Status conference held; Court scheduled summary-judgment merits hearing for August 1. Plaintiffs agreed to pay their 2019-2020 State Bar dues.
• May 31	Plaintiffs filed responses and replies. Plaintiffs amended the complaint in response to the State Bar’s motion to dismiss, and added the Chief Disciplinary Counsel of the State Bar and the members of the State Bar Commission for Lawyer Discipline as defendants to the case
• June 4	Court dismissed without prejudice the State Bar’s motion to dismiss
• June 18	State Bar filed reply in support of cross-motion for summary judgment
• July 15	Plaintiffs and Defendants filed a joint stipulation regarding the defendants in the action
• August 1	Summary-judgment merits hearing held; motion for preliminary injunction dismissed
• August 30 & September 4	State Bar filed notice of supplemental authority informing the Court of the Eighth Circuit’s favorable decision in <i>Fleck v. Wetch</i> , and Plaintiffs filed response

## State Bar Arguments on Cross-Motion for Summary Judgment

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### Count I

The State Bar argues that Plaintiffs' facial challenge to membership in the State Bar is clearly foreclosed by binding Supreme Court precedent in *Keller* and *Lathrop*.

### Count II

The State Bar argues that Plaintiffs' challenge to specific State Bar expenditures fails because all of the State Bar's expenditures are consistent with *Keller* as they relate to regulating the legal profession and improving the quality of legal services.

### Count III

The State Bar argues that Plaintiffs' challenge to the State Bar's procedures for providing members with a refund for expenditures with which they disagree fails because all of the State Bar's expenditures are germane under *Keller*.

## Related Lawsuits Against State Bars

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### **Eighth Circuit**

*Fleck v. Wetch*  
(North Dakota Bar)

- **April 2019** – Amicus briefs filed in support of the State Bar of North Dakota:
  - Chuck Herring for Texas Legal Ethics Counsel; State Bar of California; joint brief of several integrated state bars (Alaska, Michigan, etc.); Missouri Bar
- **August 30** – Eighth Circuit issued decision again affirming the district court’s grant of summary judgment for the defendants on remand from the Supreme Court
- **November 21** – Fleck filed a petition for writ of certiorari with the U.S. Supreme Court
- **December 2019** – Four amicus briefs filed in support of Fleck: Liberty Justice Center; Pacific Legal Foundation; joint brief of National Right to Work Legal Defense Foundation, Inc. and Reason Foundation; 1889 Institute
- **February 3, 2020** – North Dakota Bar’s response to Fleck’s cert. petition due

### **Oregon**

*Gruber v. Oregon State Bar*  
*Crowe v. Oregon State Bar*

- **April 1 and May 24, 2019** – Magistrate judge issued findings and recommendation. Magistrate judge recommended dismissal of the suits and rejected many of the same claims and legal arguments that the *McDonald* Plaintiffs assert. The district court adopted the magistrate judge’s findings and dismissed both cases
- **May 29-30** – Plaintiffs in both cases filed a notice of appeal to the Ninth Circuit. *Crowe* lawsuit sponsored by Goldwater Institute, the same organization that is sponsoring *Fleck*
- **September – November 2019** – Appellate briefs filed in both cases. Amicus briefs in support of Oregon Bar filed by Arizona Bar, California Bar, and the State of Oregon

### **Oklahoma**

*Schell v. Gurich*  
(Oklahoma Bar)

- **March 26, 2019** – Complaint filed; lawsuit sponsored by Goldwater Institute

- **April 24** – Defendant filed motion to dismiss under 12(b)(1) and 12(b)(6)
- **May 15** – Plaintiff amended the complaint to add justices of the Oklahoma Supreme Court and members of the Bar Board of Governors
- **May 21** – Judge Friot recused himself and Judge Heaton is now presiding over the case
- **June 21** – Board of Governors, Executive Director, individual Board of Governors defendant, and OK Supreme Court justices filed separate motions to dismiss
- **September 18** – Defendants’ motions to dismiss granted in part and denied in part; only plaintiff’s third claim (Bar procedures) remains
- **October 2** – Defendants filed answers to complaint
- **January 8, 2020** – Scheduling conference held; tentative trial set for July 2020

**Wisconsin**

*Jarchow v. State Bar of Wisconsin*

- **April 8, 2019** – Complaint filed
- **May 21** – Defendants filed a motion to dismiss under 12(b)(1) and 12(b)(6), and a motion to stay the proceedings pending a resolution in *Fleck v. Wetch* (as an alternative to dismissal)
- **June** – All motion to dismiss briefing completed
- **December 2019** – District court granted 12(b)(6) motion to dismiss and plaintiffs appealed the decision to the Seventh Circuit. The plaintiffs moved for summary affirmance of the district court’s decision.
- **December 23** – Seventh Circuit affirmed district court’s dismissal of the case under *Keller*
- **December 31** – Plaintiffs filed a petition for writ of certiorari with the U.S. Supreme Court
- **February 3, 2020** – Wisconsin Bar’s response to plaintiffs’ cert. petition due

*File v. Kastner et al.*

- **July 25, 2019** – Complaint filed against State Bar officers, Wisconsin Supreme Court justices
- **November 2019** – Defendants filed motions to dismiss and a motion to stay the case pending resolution of the motions to dismiss
- **December 2019** – Briefing on defendants’ motions to dismiss and stay complete

**Louisiana**

*Boudreaux v.  
Louisiana State Bar  
Ass’n et al.*

- **August 1, 2019** – Complaint filed against Louisiana Bar, the Louisiana Supreme Court and justices; lawsuit sponsored by Goldwater Institute
- **September 30** – Defendants filed motions to dismiss under 12(b)(6) and 12(b)(1)
- **November 2019** – Briefing on defendants’ motions to dismiss complete
- **January 13, 2020** – District court granted defendants’ 12(b)(2) and 12(b)(6) motions to dismiss, dismissing all three of plaintiff’s claims against all defendants

**Michigan**

*Taylor v. State Bar of  
Michigan et al.*

- **August 22, 2019** – Complaint filed against the State Bar of Michigan, and President and other officers of the State Bar of Michigan Board of Commissioners
- **September 19** – Defendants filed answer to complaint
- **February 28, 2020** – Plaintiffs’ opening brief in support of cross-motion for summary judgment due (pursuant to a case management order entered November 2019)

**Client Security Fund**  
**10-Year History of Revenues and Expenditures**

	Fiscal Year 2008-2009	Fiscal Year 2009-2010	Fiscal Year 2010-2011	Fiscal Year 2012-2013	Fiscal Year 2013-2014	Fiscal Year 2014-2015	Fiscal Year 2015-2016	Fiscal Year 2016-2017	Fiscal Year 2017-2018	Fiscal Year 2018-2019
Beginning Fund Balance	\$ 3,045,532	\$ 3,000,000	\$ 3,715,787	\$ 3,358,507	\$ 3,009,204	\$ 2,488,216	\$ 3,397,366	\$ 3,195,121	\$ 2,583,689	\$ 2,029,906
<b>Revenues/Transfers:</b>										
Transfers from General Fund	309,430	1,290,570	300,000	300,000	800,000	1,504,305	500,000	300,000	300,000	1,100,000
Investments	75,271	19,919	22,312	14,011	8,583	9,773	15,400	21,352	31,200	66,701
Restitutions Received	27,891	17,446	54,372	12,769	13,983	18,153	81,654	10,476	2,874	72,153
Total Revenues/Transfers	412,592	1,327,935	376,684	326,780	822,566	1,532,231	597,054	331,828	334,074	1,238,854
<b>Expenditures &amp; Other Debits:</b>										
Claims Paid	458,124	612,148	740,329	576,450	1,346,389	622,878	797,014	934,585	894,456	660,980
Bank Fees					30	175	140	230	343	180
Unrealized Net (Gain)/Loss on Investments			(6,365)	4,658	(2,865)	28	2,145	8,445	(6,942)	(946)
Total Expenditures	458,124	612,148	733,964	581,108	1,343,554	623,081	799,299	943,260	887,857	660,214
Increase (Decrease) in Fund Balance	(45,532)	715,787	(357,280)	(254,328)	(520,988)	909,150	(202,245)	(611,432)	(553,783)	578,640
Ending Fund Balance	3,000,000	3,715,787	3,358,507	3,104,179	2,488,216	3,397,366	3,195,121	2,583,689	2,029,906	2,608,546