



We're Still the Boss

Every Fourth of July, we traditionally celebrate what happened back in 1776 “when in the course of human events” it became necessary for us, as a people, to choose a method of self-governance separate and apart from the monarchy of King George III. We chose to adopt a democracy of elected leaders in a republican form of self-governance based upon the rule of law whereby “We the People” were boss, rather than the king. So far this has worked out pretty well.

One hundred and fifty-three years later, in 1929, without the need for a revolution, Texas lawyers began petitioning the Legislature to adopt a form of self-regulation within our legal profession.

Ten years later, on April 19, 1939, Gov. Wilbert Lee “Pappy” O’Daniel signed the State Bar Act into law, which created the “integrated” or “unified” bar. This simply meant that all Texas lawyers had to be licensed by the Texas Supreme Court as attorneys and counselors at law to legally practice the legal profession in this state.

The act “. . . created the State Bar, which is hereby constituted an administrative agency of the Judicial Department of the State . . .” Hence, “All persons . . . licensed to practice law . . . shall be subject to [the Act’s] provisions . . . and the rules adopted by the Supreme Court of Texas . . .”

Thus, the act provided the process under which members of our profession would be governed (and funded)—which was by referenda elections “in ballot form to each registered member of the State Bar for a vote thereon.”

This general format of self-governance of members of the State Bar has endured with little change to this very day.

What’s held us together as a “unified” bar has been our right to finally approve all proposed disciplinary rule changes, as well as dues increases, in a referenda election in which all active members of the bar have the right to vote.

The act still prohibits any disciplinary rule from being adopted without approval of a majority of State Bar members voting in a referendum election. *See* Sec. 81.08792(3), Tex. Gov’t Code.

No disciplinary rule change has been approved since 2004 although it should be noted that, in 2011, a referendum seeking approval of several new disciplinary rules was submitted to the membership but failed to gain approval by a 4-1 margin in one of the largest member turnouts in the history of the bar.

In 2017, a new process for initiating disciplinary rule changes was adopted by the Legislature through passage of SB 302 by Sen. Kirk Watson.¹ The State Bar Act was amended to establish a nine-member Committee on Disciplinary Rules and Referenda. This committee has now been fully appointed and has begun its duties under the newly enacted Sec. 81.0873, Tex. Gov’t Code.

I’m happy to report that on July 4, 2018, we’re still the boss!

JOE K. LONGLEY

President, State Bar of Texas

NOTES

1. It should further be noted that SB 302 gave the State Bar’s Chief Disciplinary Counsel, or CDC, power to issue a subpoena with the approval of the “presiding officer of the appropriate district grievance committee”—and further tasked the CDC with providing “a process for a respondent to object to a subpoena issued under this section.” On March 1, 2018, the Supreme Court approved amendments instituting the CDC “process” relating to such subpoenas to take effect on June 1, 2018, but then, by separate order, delayed the effective date “pending further order of the Court.” *See* Misc. Docket No. 18-9081 (May 31, 2018).