

Aging Issues Arise as the Bar Grows Older



Ten years ago, the median age of all members of the State Bar of Texas was 48. Today it's 49.

In 2019, we have 103,342 lawyers making up total bar membership, with 26,555, or 26 percent, being TYLA members.¹ Ten years ago, TYLA members accounted for 28 percent of all members.²

What's going on?

Recent bar demographics tell the story.

Law school enrollments are down 16 percent over the past 10 years, while the median age and years of experience for the Texas attorney population is increasing.³

The aging of the profession raises a number of issues related to the practice of law. Some of these were addressed in 2013 when State Bar leaders created the Task Force on Aging Lawyer Issues, chaired by Past President Terry Tottenham.

The task force issued a report in March 2014 with recommendations to the State Bar Board of Directors—notably that continuing legal education be mandatory for attorneys that practice past age 70 to ensure they stay current in the law. Emeritus members—attorneys age 70 or older—were previously exempt from CLE requirements.⁴

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The board adopted the recommendation, and the Texas Supreme Court issued a 2015 order amending the State Bar Rules to make CLE mandatory for emeritus members, beginning with the compliance year that started June 1, 2016.⁵

The task force also recommended that the State Bar offer reduced-price CLE courses for attorneys age 70 and older. In addition to offering reduced-price CLE for emeritus members through the TexasBarCLE Flash CLE Silver Program, the State Bar offers scholarships to attorneys of all ages who need financial assistance to attend TexasBarCLE courses. The scholarships can be applied to attendance during one multiple-day live or video replay course or up to two one-day live/video replay courses as well as online classes and webcasts listed at TexasBarCLE.com.

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Another part of the task force report received less attention but bears mentioning. The task force recommended that the State Bar develop educational tools to help the profession deal with cognitive problems—which can turn into disciplinary cases—and the transition into retirement. A webpage resulted at texasbar.com/aginglawyerissues that offers videos, articles, and other resources.

The aging of our membership continues to raise questions in 2019.

By law, new lawyers enjoy a monetary break that all other active members under age 70 don't have. Members who are licensed less than five years pay less in bar dues than all other active lawyers under age 70.⁶

Conversely, due to their classification as emeritus members, lawyers age 70 and above pay no dues at all, although they still have full access to State Bar member benefits and services.⁷ Candidates in recent elections have campaigned on providing free CLE to emeritus members—raising a question of whether access to free or reduced-price CLE should be based on age or ability to pay.

I am currently exploring a “member benefits” initiative of using State Bar technology to disclose and notify all emeritus members of free CLE offered by all accredited CLE providers within this age group.

Finally, the bar must be careful to avoid any hint of age discrimination prohibited by the 26th Amendment to the U.S. Constitution.⁸ The denial of non-TYLA members the right to vote in TYLA statewide elections was addressed in my January column and is under review by your board of directors.

As always, I appreciate hearing from you and invite your questions, comments, and suggestions at the email address below.

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2018-2019
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NOTES

1. State Bar of Texas Department of Research and Analysis, *State Bar of Texas Membership: Attorney Statistical Profile (2018-19)*.
2. State Bar of Texas Department of Research and Analysis, *Texas Young Lawyers Association (TYLA) Members: Attorney Statistical Profile (2008-09)*, <https://www.texasbar.com/AM/Template.cfm?Section=Archives&Template=/CM/ContentDisplay.cfm&ContentID=8793>.
3. State Bar of Texas Department of Research and Analysis, *State Bar of Texas Membership: Attorney Statistical Profile (2018-19)*.
4. State Bar of Texas Task Force on Aging Lawyer Issues, *2014 State Bar of Texas Task Force on Aging Lawyer Issues Report 3-18-2014*, <https://www.texasbar.com/Content/NavigationMenu/ForLawyers/AgingLawyerIssues/AgingLawyerTaskForceReport.pdf>.
5. Supreme Court of Texas, *Order Approving Amendments to Article XII of the State Bar Rules*, Misc. Docket No. 15-9077 (Apr. 28, 2014).
6. Lawyers licensed more than five years pay dues of \$235 a year, compared with \$148 for lawyers licensed four to five years and \$68 for those licensed three years or less.
7. Emeritus members are active or inactive members in good standing who are at least 70 years old and have filed a written notice requesting enrollment as an emeritus member. Tex. Gov't Code § 81.052(e).
8. U.S. Const. amend. XXVI § 1.