

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF LOUISIANA**

RANDY BOUDREAUX

CIVIL ACTION

VERSUS

No. 19-11962

LOUISIANA STATE BAR
ASSOCIATION, ET AL.

SECTION "I" (1)

Judge Lance M. Africk
Mag. Judge van Meerveld

**NOTICE OF ADOPTION OF LSBA RESOLUTIONS
IMPLEMENTING LOUISIANA SUPREME COURT RULE XVIII, § 6**

Defendants, the Louisiana State Bar Association ("LSBA") and, in their official capacities, the Justices of the Louisiana Supreme Court, through undersigned counsel, hereby submit this Notice of Adoption of LSBA Resolutions Implementing Louisiana Supreme Court Rule XVIII, § 6.

On September 14, 2021, the Louisiana Supreme Court amended Louisiana Supreme Court Rule XVIII by enacting Section 6. The LSBA House of Delegates met on January 22, 2022 to consider three proposed resolutions in response to the rule change:

1. A Resolution from the Bar Governance Committee to amend the Association's Bylaws to comport with Louisiana Supreme Court Rule XVIII, Section 6.
2. A Resolution from the Bar Governance Committee to rescind all legislative policies that do not comply with Louisiana Supreme Court Rule XVIII, Section 6.
3. A Resolution from the Bar Governance Committee to adopt general policy positions of the House of Delegates while complying with Louisiana Supreme Court Rule XVIII, Section 6 and existing caselaw.

All three resolutions passed by a vote of the House of Delegates in favor exceeding seventy-five percent (75%). The adopted resolutions were included in Defendants' Opposition to the Motion for Preliminary Injunction as "proposed" resolutions. *See* Doc. 69 at 16–17; Doc. 69-1 at 8–18.

For the Court's reference in connection with its decision on the pending Motion for Preliminary Injunction (Doc. 48), Defendants offer and file copies of the House of Delegates Resolutions passed on January 22, 2022 in response to the Louisiana Supreme Court's rule change, attached hereto as Exhibits 1–3.

Respectfully submitted,

/s/ Kathryn W. Munson

Richard C. Stanley, 8487

Eva J. Dossier, 35753

Kathryn W. Munson, 35933

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*Counsel for the Louisiana State Bar
Association and, in their official capacities,
the Justices of the Louisiana Supreme Court*

**LOUISIANA STATE BAR ASSOCIATION
BAR GOVERNANCE COMMITTEE
RESOLUTION PROPOSING AMENDMENTS TO THE BY-LAWS TO THE
HOUSE OF DELEGATES**

WHEREAS, the Bar Governance Committee conducted a comprehensive review of the Association's By-Laws in order to ensure they adequately reflected the Association's operating practices and procedures and did not contain outdated or obsolete provisions that are no longer effective; and

WHEREAS, the Bar Governance Committee has identified certain areas of these By-Laws which should be updated; and

WHEREAS, as a result of that review the Bar Governance Committee has approved the attached proposed revisions to the By-Laws;

NOW THEREFORE BE IT RESOLVED that the Bar Governance Committee proposes to the House of Delegates that the By-Laws be amended as indicated in the attached Exhibit A to more accurately reflect current operating practices and remove outdated and obsolete provisions that are no longer effective.

Respectfully submitted:
2021-2022 Bar Governance Committee



Robert A. Kutcher, Chair

Robert L. Bussey
Preston J. Castille, Jr.
Joseph L. Caverly
David L. Colvin
Renee Chabert Crasto
James J. Davidson III
S. Guy deLaup
Stephen I. Dwyer
Val P. Exnicios
Larry Feldman, Jr.
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C.A. "Hap" Martin III

Kevin R. Molloy
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Ronald J. Sholes
Ann S. Siddall
Lawrence P. Simon, Jr.
Patrick A. Talley, Jr.
Bradley J. Tate
Tavares A. Walker
Phillip A. Wittmann

APPROVED BY HOUSE OF DELEGATES
FOR 123 (92%)
AGAINST 10 (8%)
JANUARY 22, 2022
BATON ROUGE, LA

RATIFIED UNANIMOUSLY BY BOARD OF GOVERNORS
JANUARY 22, 2022
BATON ROUGE, LA

ATTEST:

A handwritten signature in black ink, appearing to read "C.A. Martin III", with a stylized flourish extending from the bottom.

C.A. "Hap" Martin III
Secretary, Louisiana State Bar Association

EXHIBIT A

BY-LAWS OF THE LOUISIANA STATE BAR ASSOCIATION

ARTICLE IV. RULES AND PROCEDURES; AUTHORITY OF BOARD

Section 3. Authority of Board

As specified in Article VIII, Section 1 of the Articles of Incorporation, the Board of Governors shall have control of the fiscal affairs of the Association. This authority shall include the power to administer the daily affairs of the Association and to obligate the Association in any way necessary to carry out its objects and purposes. The fiscal power of the Board shall also include, but is not limited to, the power and authority: to enter into contracts; to adopt written policies for the investment and reinvestment of Association funds; to invest and reinvest funds belonging to the Association in accordance with the written investment policies of the Association; to institute suit and to respond to suit on behalf of the Association; to acquire, hold, use and dispose of property; to incur liability; to establish pension or other benefits plans for its employees; to procure and provide indemnity and/or insurance for its members, officers, agents, and/or employees; to make donations to public charities; to make loans in the name of the Association; to buy and sell assets of the Association or to hypothecate or mortgage assets of the Association; and generally to conduct all administrative and fiscal matters of the Association as may be reasonable and appropriate in accordance with and in furtherance of the policies of the Association.

(Added June 13, 1996; Amended June 10, 2021)

Also as specified in Article VIII, Section 1 of the Articles of Incorporation, between meetings of the House of Delegates the Board of Governors shall serve as an executive council and may act upon all emergency and other matters not theretofore determined by the House. Under this authority, the Board of Governors may vote to file amicus briefs on behalf of the Association if the timing prohibits bringing such matters before the House of Delegates and in accordance with the guidelines outlined below.

(1) In determining whether to approve the drafting and filing of an amicus brief, the Board will be governed by the following limitations and conditions; Any proposed brief *shall not* be in conflict with any of the rules, regulations, policies and procedures of the LSBA. Moreover, the proposed brief must be related to and relevant to the administration of justice. Specifically, amicus briefs may be authorized *only* when such briefs involve legal questions relating address issues involving practice and procedure, the judicial system, access to the regulation of the profession, improving the courts, the administration compensation of justice judges or lawyers, or the quality of legal services, but may not legal profession. Filing of amicus briefs shall not be authorized for matters that are ideological or political in nature.

(2) If the Board votes to approve the filing of an amicus brief pursuant to these provisions, the President may appoint a committee to review the proposed amicus brief before it is filed, to confirm that it complies with these limitations and such other restrictions that may be imposed by the Board.

ARTICLE IX. SECTIONS

Section 8. Legislative Activity and Lobbying

In accordance with Louisiana Supreme Court Rule XVIII, Section 6, the LSBA shall limit its legislative activities to issues involving practice and procedure, the judicial system, access to the courts, the compensation of judges or lawyers, or the legal profession, and responding to any requests for information received from the Legislature. Sections' legislative activities shall likewise be limited.

Any section of the Association that desires the Association to take a position on pending legislation consistent with the above limitations shall inform the ~~Legislation Committee~~ Board of Governors through ~~its staff liaison or~~ the Executive Director of the exact nature of the proposed legislation and the section's recommended position as soon as is practicable after the introduction of the legislation, ~~but not later than the final meeting of the Legislation Committee as set forth in the Association's legislative calendar.~~

~~Any section desiring to sponsor legislation shall inform the Legislation Committee through its staff liaison or the Executive Director of the exact nature of the proposed legislation no later than December 1 for consideration by the Legislation Committee. The section shall provide to the Legislation Committee: (a) the specific legislation or policy which is proposed; (b) a summary of existing law; (c) principal known proponents and opponents of the legislation or policy and, if possible, a brief statement of the reasons for opposition or support by the other legislation or policy; and (e) the position which the section recommends be adopted by the Association.~~

No section, or any member of a section in his or her capacity as such, shall express a position to the public or engage in legislative activity without prior ~~review by the Legislation Committee and~~ authorization from the Board of Governors.

Section 9. Filing of Amicus Briefs by Sections

The following policies and procedures will apply to the filing of amicus briefs by any and all sections of the Louisiana State Bar Association.

1. Each President of the LSBA will appoint a Committee of three (3) attorneys who practice law in the State of Louisiana. The President will also appoint two (2) alternate members of the Committee in the event that a committee member is unable to satisfy his or her duties at the appropriate time, *and/or must recuse him or herself*. The President shall act under his or her authority and discretion in appointing Committee members who he or she believes has the requisite legal expertise to participate in the determination of whether a Section should be allowed to file an amicus brief under these Rules. The Committee will have the sole responsibility for determining the propriety of an LSBA Section filing an amicus brief.
2. In determining whether a Section should be allowed to file a proposed amicus brief, the

Committee will be governed by the following limitations and conditions: Any proposed brief *shall not* be in conflict with any of the rules, regulations, policies and procedures of the LSBA, or any section of the LSBA. Moreover, the proposed brief must be related to and relevant to the administration of justice. Specifically, amicus briefs may be authorized *only* when such briefs involve legal questions relating address issues involving practice and procedure, the judicial system, access to the regulation of the profession, improving courts, the administration compensation of justice judges or lawyers, or the quality of legal services legal profession; ~~but may~~ Filing of amicus briefs shall not be authorized for matters that are ideological or political in nature.

ARTICLE X. STANDING COMMITTEES

Section 1. Creation

The following are the standing committees. The number of members of such committees, except as provided for hereinafter, shall be set by the President, subject to approval of the Board of Governors.

(5) Legislation - Vacated and repealed effective September 14, 2021. Replaced with Supreme Court Rule XVIII, Section 6

~~(5) Legislation—Consisting of twenty five (25) members in good standing of this Association: fifteen (15) elected by and from the House of Delegates and ten (10) members appointed by the President. All members shall serve three year terms and terms shall be staggered to ensure experience and continuity. The President shall appoint a chair from the membership of the committee, which chair shall serve a one year term.~~

~~Each President shall appoint one (1) member from Nominating Committee District 1; one (1) member from Nominating Committee District 2; and one (1) member from Nominating Committee District 3. Every third president shall also appoint one (1) member from the state at large.~~

~~The House of Delegates shall elect its committee members at its June meeting for terms that commence on July 1 immediately following the election. To ensure geographically diverse representation, there shall be no more than four (4) House of Delegates representatives from a judicial district at any given time.~~

~~(a)——The Legislation Committee shall have the following functions:~~

- ~~1. **Inform**—To inform the membership of legislation or proposed legislation of interest to the legal profession.~~
- ~~2. **Assist**—To assist the state legislature by providing information on substantive and procedural developments in the law, disseminating information to the membership, identifying resources available to the legislature, and providing other appropriate non partisan assistance.~~

3. ~~**Advocate**—To advocate for the legal profession and the public on issues affecting the profession, the administration of justice and the delivery of legal services in accordance with the policies and procedures set forth in Article X of these Bylaws.~~

~~(b)——Legislation Committee members, by running for their positions or accepting appointments, are committing to advance preparation, and to participation in committee meetings. If a member is unable to participate, voting by proxy shall be permitted but only as hereinafter provided:~~

- ~~1. The proxy must represent the same constituency as the member for whom he/she is serving as proxy;
 - ~~• a proxy for a member elected by and from the House of Delegates must be a member of the House of Delegates;~~
 - ~~• a proxy for a member representing a Nominating Committee district must have his/her preferred mailing address in that district.~~~~
- ~~2. No person may serve as a proxy for more than one member of the committee.~~
- ~~3. No member of the committee may serve as a proxy for another member of the committee.~~

~~(c)——Should a committee member fail to appoint a proxy by the established deadline, the President shall immediately appoint a proxy to represent that committee member for that meeting. The President shall use his/her best efforts to appoint a proxy that meets the qualifications of clauses 1, 2 and 3 of the preceding paragraph (b).~~

~~(d)——Committee members may be removed by the President for cause, with cause including but not limited to failure to properly prepare for or participate in committee meetings. (Amended June 10, 1988; June 27, 2002; January 24, 2004; June 10, 2004; January 21, 2006; January 12, 2008; June 12, 2008; June 12, 2009; June 7, 2012; January 16, 2016)~~

ARTICLE XI. LEGISLATIVE POSITIONS

1. Scope and Limitations

~~The Legislation Committee's activities with respect to recommending consideration or adoption of a legislative position by the Association may include matters involving issues affecting the profession, the regulation of attorneys and the practice of law, the administration of justice, the availability and delivery of legal services to society, the improvement of the courts and the legal profession, and such other matters consistent with the mission and purposes of the Association. The Committee shall not involve itself in legislation which is ideological in nature, unrelated to the practice of law, or which is unnecessarily divisive.~~

2. ~~Criteria for Determining Positions~~

~~To assist in the determination of the Association's involvement, priorities and implementation of legislative positions, the following factors should be considered:~~

- a. ~~Importance to the Bar, the legal profession, the administration of justice and to society as a whole.~~

In accordance with Louisiana Supreme Court Rule XVIII, Section 6, the LSBA shall limit its legislative activities to issues involving practice and procedure, the judicial system, access to the courts, the compensation of judges or lawyers, or the legal profession, and responding to any requests for information received from the Legislature. Under no circumstances shall the Association take positions on any other type of legislation.

- ~~2. b. Expectations of the public, legislators, and members of the profession regarding the Bar's role in the particular issue involved.~~
~~c. Level of support within the profession. Is it a matter of organization wide interest, or is it limited to a few interested parties?~~
~~d. Likelihood of success within the legislative process.~~
~~e. Expertise of lawyers as lawyers. Do lawyers have a unique province of understanding or unique role in the issue because of their training, knowledge and experience as lawyers?~~
~~f. Currency of issue. An appraisal of the currency or relevance of a matter. Would it likely capture attention of key decision makers in the reasonable foreseeable future?~~
~~g. Image of the profession. A judgment of how positively the general or the specific public will view the profession in light of a particular issue or position.~~
~~h. Importance to the practice of law. This deals with the "trade" issues which affect lawyers as lawyers regulating or influencing the basic practice of law.~~
~~i. Opportunity for impact. Will a Bar position or effort have an impact on actions of decision makers? Will it contribute to resolution of the issue?~~

~~(Added June 7, 2012)~~

2. ~~3.~~ Adoption of Legislative Positions

~~Recommendations from the Legislation Committee concerning consideration or adoption of a position~~ The Board of Governors shall adopt positions on pending or proposed legislation ~~shall be presented to the Board of Governors~~ in accordance with the following procedures:

- a. A super majority of seventy-five percent (75%) of the ~~Legislation Committee~~ Board of Governors in attendance at the meeting(s) called for that purpose must approve any ~~recommendation(s) to the Board of Governors~~ positions.
- b. ~~Recommendations from the Legislation Committee~~ Positions shall be accompanied by an explanation of the ~~proposed~~ position(s) and the reasons for adoption.
- c. ~~In the event that the Legislation Committee has recommendations for consideration by the Board of Governors, the~~ The Board of Governors ~~shall~~ may meet electronically, via conference call or in person as ~~called~~ determined by the President.
- d. ~~Recommendations from the Legislation Committee shall be submitted to the Board of Governors prior to deliberation.~~
- e. ~~A recommendation of a position on pending or proposed legislation that is presented by the Legislation Committee to the Board of Governors shall be the position of the Association on that legislation, unless the recommendation is disapproved by a vote of at least seventy five percent (75%) of the Board's members present and voting at a meeting at which the recommendation is considered. If the Legislation Committee's recommendation on legislation is disapproved by the requisite vote of the Board, the Association shall not take a position on that legislation, absent a further~~

~~recommendation on that legislation by the Legislation Committee that is not disapproved by the Board of Governors in the manner provided in this Section.~~
~~f. In the event a member of the Board of Governors desires Board consideration of a bill not presented to the Board by the Legislation Committee, the Board must first approve such consideration by a seventy five percent (75%) vote of the Board's members present and voting. Action on the bill is subject to the same seventy five percent (75%) vote of the Board's members present and voting as bills presented by the Legislation Committee.~~

(Amended January 12, 2008; June 12, 2009; June 7, 2012)

43. Changes to Legislation Where Louisiana State Bar Association Has Adopted Position

It is anticipated that bills may be materially amended after the Louisiana State Bar Association has expressed its support or opposition. In such instances, the following procedures shall be followed.

- a. The Lobbyist or staff liaison shall consult with the Executive Committee on the bill(s) in question and they shall formulate recommendations based on the bill(s) in question.
- b. The LSBA will electronically transmit this information to members of the Board of Governors ~~and Legislation Committee~~, along with a recommended position the Executive Committee believes is most consistent with the Board of Governors' original vote, along with a timeline for submitting comments.
- c. Following the comment period, the Executive Committee shall meet to consider the comments of the Board of Governors ~~and Legislation Committee~~ and determine whether to change the Association's position on the bill.

(Added January 22, 2005; Amended January 12, 2008; June 7, 2012)

54. Publication of Legislative Positions

The Louisiana State Bar Association shall timely publish notice of adoption of legislative positions in at least one of its regular communications vehicles and shall send electronic notice of adoption of legislative positions to Association members.

(Amended January 12, 2008)

ARTICLE XII. LEGISLATIVE POSITIONS AND PUBLIC POLICY

1. Objection to Use of Bar Dues

A. Submission of Objections

A member of the Louisiana State Bar Association who objects to the use of any portion of the member's bar dues for activities he or she considers promotes or opposes political or ideological causes, including activities that are not constitutionally germane to the LSBA's purpose, may request the Board to review the member's concerns to determine if the Board agrees with the member's objections. Member objections must be filed as follows:

- a. Any objection must be filed within forty-five (45) days of the date of the Bar's publication of notice of the activity to which the member is objecting.
- b. Member objections must be in writing and must be filed with the Executive Director of

the Association.

- c. Failure to object within the time period and in the manner set forth above shall constitute a waiver of any right to object.

After a written objection has been received, the Executive Director shall promptly determine the pro rata amount of the objecting member's membership dues at issue, and such amount shall be placed in escrow pending determination of the merits of the objection.

Upon the deadline for receipt of written objections, the Board of Governors shall have sixty (60) days in which to decide whether to give a pro rata refund to the objecting member(s) or to refer the action to arbitration.

(Added June 7, 2012)

ARTICLE XIV. SCOPE AND LIMITATIONS OF HOUSE POLICY

[Vacated and repealed effective September 14, 2021. Replaced with Supreme Court Rule XVIII, Section 6.] In accordance with these By-Laws, any and all policy positions adopted by the LSBA House of Delegates must adhere to and agree with Article XI, §1, of the By-Laws of the Louisiana State Bar Association: namely, be limited to matters involving issues affecting the profession, the regulation of attorneys and the practice of law, the administration of justice, the availability and delivery of legal services to society, the improvement of the courts and the legal profession and such other matters consistent with the mission and purposes of the Association; but further limiting such positions to legislation which is not ideological in nature, not unrelated to the practice of law, or which is not unnecessarily divisive.

(Added January 18, 2020)

Revised June 10, 2021

**LOUISIANA STATE BAR ASSOCIATION
BAR GOVERNANCE COMMITTEE
RESOLUTION
PROPOSING TO RESCIND LEGISLATIVE POLICY POSITIONS**

WHEREAS, the Bar Governance Committee recognizes that the Louisiana State Bar Association is bound by Louisiana Supreme Court Rule XVIII, Section 6, as amended September 14, 2021; and

WHEREAS, the Bar Governance Committee recognizes that Rule XVIII, Section 6, renders obsolete and no longer effective the legislative policy positions that were previously adopted by the House of Delegates; and

WHEREAS, the Bar Governance Committee proposes that the House of Delegates rescind any legislative policy positions given that Rule XVIII, Section 6, now renders those positions obsolete and no longer effective;

NOW THEREFORE BE IT RESOLVED that the Bar Governance Committee proposes to the House of Delegates that existing legislative policy positions be rescinded to more accurately reflect current procedures and remove obsolete policies that are no longer effective.

Respectfully submitted:
2021-2022 Bar Governance Committee



Robert A. Kutcher, Chair

Robert L. Bussey
Preston J. Castille, Jr.
Joseph L. Caverly
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Patrick A. Talley, Jr.
Bradley J. Tate
Tavares A. Walker
Phillip A. Wittmann

APPROVED BY HOUSE OF DELEGATES
FOR 120 (88%)
AGAINST 17 (12%)
JANUARY 22, 2022
BATON ROUGE, LA

RATIFIED UNANIMOUSLY BY BOARD OF GOVERNORS
JANUARY 22, 2022
BATON ROUGE, LA

ATTEST:

A handwritten signature in black ink, appearing to read "C.A. Martin III", with a stylized flourish extending from the bottom.

C.A. "Hap" Martin III
Secretary, Louisiana State Bar Association

**LOUISIANA STATE BAR ASSOCIATION
BAR GOVERNANCE COMMITTEE
RESOLUTION PROPOSING ADOPTION OF GERMANE POLICIES TO
THE HOUSE OF DELEGATES**

WHEREAS, the Bar Governance Committee recognizes that the Louisiana State Bar Association is bound by Louisiana Supreme Court Rule XVIII, Section 6, as amended September 14, 2021; and

WHEREAS, the House of Delegates is the policy-making body of the Association pursuant to its Articles of Incorporation, article VIII Section 1; and

WHEREAS, the House of Delegates may enact general policies of the Association that are constitutionally germane to its legitimate purposes, consistent with Louisiana Supreme Court Rule XVIII, Section 6; and

WHEREAS, the Association further intends to comply with all binding U.S. Supreme Court and U.S. Fifth Circuit precedent including *Lathrop v. Donohue*, 367 U.S. 820 (1961), *Keller v. State Bar of California*, 496 U.S. 1 (1990), *McDonald v. Longley*, 4 F.4th 229 (5th Cir. July 2, 2021), and *Boudreaux v. Louisiana State Bar Ass'n*, 3 F.4th 748 (5th Cir. July 2, 2021) and limit its activities to those that are constitutionally germane to its legitimate purposes; and

WHEREAS, no policy of the House of Delegates shall be interpreted to exceed the limits set forth in Louisiana Supreme Court Rule XVIII, Section 6 and existing precedent or subsequent precedent, and that any policy found to exceed such limits shall be considered null and without effect;

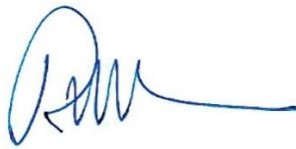
NOW THEREFORE BE IT RESOLVED that the Bar Governance Committee proposes to the House of Delegates the following policies to be general policies of the Association in accordance with its Articles of Incorporation, article VIII Section 1; consistent with Louisiana Supreme Court Rule XVIII, Section 6, these are not to be considered policies related to any legislation that may or may not be proposed, said function now delegated exclusively to the Board of Governors:

1. The Association supports the protection of the attorney-client privilege and work product doctrine as critical to an effective attorney-client relationship and as necessary to facilitate open communication with clients as set forth in the Rules of Professional Conduct.
2. The Association opposes any effort to tax legal services in Louisiana as placing a burden on client access to legal services and potentially invasive of the attorney-client privilege.
3. The Association supports initiatives to assist low-income Louisianians with access to justice, including programs offering legal aid and pro bono services to Louisianians who cannot afford those services.

4. The Association supports fair and adequate compensation for members of the state judiciary.
5. The Association opposes the unauthorized practice of law by unlicensed persons.
6. The Association supports diversity within the legal profession;

NOW THEREFORE BE IT RESOLVED that the Bar Governance Committee proposes to the House of Delegates that the aforementioned general policies be adopted.

Respectfully submitted:
2021-2022 Bar Governance Committee



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FOR 112 (82%)
AGAINST 25 (18%)
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C.A. "Hap" Martin III
Secretary, Louisiana State Bar Association