

No. 20-50448

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

TONY K. MCDONALD; JOSHUA B. HAMMER; MARK S. PULLIAM,

Plaintiffs-Appellants

v.

JOE K. LONGLEY, Immediate Past President of the State Bar of Texas;
RANDALL O. SORRELS, President of the State Bar of Texas; LAURA GIBSON,
Member of the State Bar Board of Directors and Chair of the Board; JERRY C.
ALEXANDER, member of the State Bar Board of Directors; ALISON W.
COLVIN, member of the State Bar Board of Directors; ET AL,

Defendants-Appellees

On Appeal from the United States District Court for the Western District of Texas,
No. 1:19-cv-00219-LY, Lee Yeakel, District Judge

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Tab 1

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

TONY K. MCDONALD, JOSHUA B.
HAMMER, and MARK S. PULLIAM,

Plaintiffs,

v.

JOE K. LONGLEY, et al.,

Defendants.

Civil Action No. 1:19-cv-00219-LY

DECLARATION OF TREY APFFEL

Trey Apffel, pursuant to 28 U.S.C. § 1746, declares the following:

1. I am the Executive Director of the State Bar of Texas.
2. As Executive Director, I am an ex-officio member of the Executive Committee of the State Bar of Texas, and an ex officio, non-voting member of the State Bar’s Board of Directors.
3. As Executive Director, I am required to perform the duties usually required of a corporate secretary.
4. I am also required to act as the treasurer of the State Bar and receive State Bar funds from the clerk of the Texas Supreme Court as provided in the State Bar Act.
5. Before becoming the State Bar’s Executive Director in December 2017, I served as the State Bar’s president in 2014 to 2015. I have first-hand knowledge of the duties of the Board and the roles and responsibilities of the president and the Executive Director.

State Bar of Texas Governance

6. The State Bar is a public corporation and administrative agency of the judicial department of the Texas government. *See* Tex. Gov’t Code Ann. § 81.011(a).

7. The State Bar is subject to administrative control by the Texas Supreme Court. *See* Tex. Gov't Code Ann. § 81.011(c).

8. The Bar's purposes are set forth in § 81.012 of the Texas Government Code.

9. The State Bar has undergone review four times by the Texas Legislature pursuant to the Texas Sunset Act. The most recent sunset review was in 2017, when the Legislature voted to continue the Bar's existence until the next sunset review in 2029. *See* S.B. No. 302 (2017), <http://bit.ly/2Gbq46m>. In my capacities as the State Bar's president and immediate past president, I participated in Bar work related to the most recent sunset review.

10. The State Bar is governed by a Board of Directors that has 46 voting-member positions: the Bar's president, president-elect, and immediate past president; the president, president-elect, and immediate past president of the Texas Young Lawyers Association; 30 directors elected by the members of the State Bar by geographic district; 6 non-attorneys appointed by the Texas Supreme Court and confirmed by the Texas Senate; and 4 at-large directors appointed by the Bar's president and confirmed by the Board. *See* Tex. Gov't Code Ann. § 81.020(b).

11. The State Bar general membership elects 33 of the 46 voting members of the Board of Directors. *See id.*

12. The State Bar's officers and Board of Directors are subject to the provisions of the State Bar Act (Texas Government Code Chapter 81), rules promulgated by the Texas Supreme Court ("State Bar Rules"), and the rules and procedures set forth in the State Bar of Texas Board of Directors Policy Manual adopted by the Board of Directors ("Policy Manual").

13. The State Bar Rules were last amended in June 2018 and the Policy Manual was last amended in September 2018.

14. Bar Board of Directors meetings are subject to the open-meetings requirements of Chapter 551 of the Texas Government Code. *See* Tex. Gov't Code Ann. § 81.021(a). Members of the public wishing to address the Board, including State Bar members, may do so at the Board's meetings.

State Bar of Texas Membership and Membership Fees

15. All attorneys licensed to practice law in Texas must enroll in the State Bar by registering with the clerk of the Supreme Court no later than the 10th day after the person's admission to practice. *See* Tex. Gov't Code Ann. § 81.051(b).

16. On May 1, 2019, the Bar had 103,561 active and 17,949 inactive members.

17. Members of the State Bar must pay annual membership fees as set forth in the Policy Manual. The annual membership fees are currently \$68 for active members licensed less than 3 years; \$148 for active members licensed between 3 and 5 years; \$235 for active members licensed for at least 5 years; and \$50 for inactive members. Members 70 years of age and older are exempt from paying membership fees.

18. The Texas Supreme Court and the Bar's Board of Directors share responsibility for setting the membership-fee amount. The Board may increase membership fees by up to 10% once every six years. All other fee increases are subject to a referendum vote by the Bar's members. *See* Tex. Gov't Code Ann. §§ 81.022, 81.054.

19. Pursuant to § 81.054 of the Texas Government Code, all State Bar members must pay an annual \$65 legal services fee at the time they pay their membership fees, unless they are exempt under that provision.

20. The legal services fee does not fund any State Bar expenditures. *See* Tex. Gov't Code Ann. § 81.054(c)-(d). Section 81.054(c) of the Texas Government Code provides: "The

comptroller shall credit 50 percent of the remitted [legal services] fees to the credit of the judicial fund for programs approved by the supreme court that provide basic civil legal services to the indigent and shall credit the remaining 50 percent of the remitted fees to the fair defense account in the general revenue fund which is established under Section 79.031, to be used, subject to all requirements of Section 79.037, for demonstration or pilot projects that develop and promote best practices for the efficient delivery of quality representation to indigent defendants in criminal cases at trial, on appeal, and in postconviction proceedings.”

21. Article III, section 4 of the State Bar Rules provide that “[a]ll membership fees are payable at the time of enrollment as a member of the State Bar and annually on the first day of the State Bar’s fiscal year,” which is June 1.

22. Historically, the State Bar’s practice was to send members notice of their annual membership fees by mail. Starting this year, membership fees will be collected only online by electronic payment.

23. For the 2019-2020 membership fees, an email notice regarding the fees was sent to attorneys on a staggered basis from April 22, 2019 through May 1, 2019. A reminder letter was also mailed to attorneys by regular mail on May 1, 2019, instructing members to go online to make payments.

24. Members pay their 2019-2020 membership fees online by logging into their account on the State Bar’s website. Law firms may pay fees for multiple attorney employees via a firm billing page on the State Bar website, which has been accepting payments since March 4, 2019.

25. If a member is in default of payment of membership fees or any other assessments (such as the \$65 legal services fee) on the 30th day after the due date, the clerk of the Texas Supreme Court must notify the member of the default. *See* State Bar. R. art. III, § 6.

26. If a member does not pay the fees or assessment within 60 days after the notice of default is mailed to the member, the defaulting member is automatically suspended from the practice of law. Practicing law while suspended is professional misconduct and grounds for discipline. *See* State Bar. R. art. III, § 6.

27. If a Bar member's fees are received after August 31, the suspended member must pay a 50% penalty to reinstate his or her license.

28. If a Bar member's fees are received after November 30, the suspended member must pay a 100% penalty to reinstate his or her license.

29. Plaintiffs in this case will face no negative repercussions from the Bar for failing to pay their 2019-2020 membership fees as long as those fees are paid by August 31, 2019.

30. The State Bar's 2019-2020 budget denotes that a significant portion of the Bar's total projected revenues (\$49,595,847) is projected to come from membership fees (\$20,783,246).

31. The State Bar has not raised annual membership fees since 1991.

32. The State Bar is entirely self-funded; it does not receive funds from the legislative appropriations process.

33. Texas law and State Bar policy require that all of the State Bar's expenditures further the state's interests in regulating the legal profession and improving the quality of legal services in Texas.

34. States like Texas that require all attorneys to enroll in and pay membership fees to a statewide bar are commonly said to have "mandatory," "integrated," or "unified" bars. To my

knowledge based on information provided by the American Bar Association, 31 states (including the District of Columbia) have integrated bars. Those states are Alabama, Alaska, Arizona, the District of Columbia, Florida, Georgia, Hawaii, Idaho, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

35. According to the American Bar Association's *2018 State & Local Bar Benchmarks* survey, only four of the 31 states (including the District of Columbia) with integrated bars have mandatory annual fees lower than Texas's. Those states are West Virginia (which reported total mandatory fees of \$250, compared with Texas's total of \$300—composed of the \$235 membership fee for active members licensed for at least 5 years plus the \$65 legal services fee); Virginia (total mandatory fees of \$260); Florida (total mandatory fees of \$265); and Oklahoma (total mandatory fees of \$275). Alaska has the highest reported mandatory fees among integrated bars—\$660 per year.

The State Bar's Budget Approval Process Provides State Bar Members with an Opportunity to Express Opinions on the Bar's Proposed Budgets

36. As Executive Director, I am required to confer with the clerk of the Texas Supreme Court regarding the State Bar's budget, supervise the administrative staff of the State Bar in preparation of the annual budget, and preside at the annual public hearing on the Bar's proposed budget.

37. In developing and approving the annual budget, the State Bar and the Supreme Court must consider the goals and performance measures identified in the strategic plan developed pursuant to § 81.0215 of the Texas Government Code, and identify additional goals and

performance measures as necessary. The Bar's strategic plan is issued every other year. The Bar's most recent strategic plan is available at <http://bit.ly/2Hs5Ffz>.

38. Once the annual budget is adopted by the State Bar Board of Directors, it must be submitted to the Supreme Court for final review and approval.

39. The annual budget is considered at a public hearing and at a separate Bar Board meeting that is also open to the public. Any member of the public, including State Bar members, may participate in the discussion of any item proposed to be included in the Bar's budget at the public hearing and the Board meeting during which the budget is adopted. *See* Tex. Gov't Code Ann. § 81.022(c).

40. The proposed 2019-2020 budget was considered at a public hearing on April 2, 2019, at the Texas Law Center, and at the State Bar Board meeting on April 26, 2019.

41. Notice of the April 2, 2019 public hearing to consider the Bar's proposed 2019-2020 budget was published in the March 2019 issue of the *Texas Bar Journal*, and an open meeting notice was published on the Texas Secretary of State's website. *See* 82 Tex. B.J. 176 (Mar. 2019). The proposed 2019-2020 budget itself was also published in the March issue of the *Texas Bar Journal*. *See id.* at 176-78.

42. Notice of the April 26, 2019 Board meeting to consider the Bar's proposed 2019-2020 budget was published in the April 2019 issue of the *Texas Bar Journal*. That notice included a comment that the meeting was open to the public, and stated that the agenda would be posted at texasbar.com/board at least seven days before the Board meeting. *See* 82 Tex. B.J. 214 (Apr. 2019).

43. To my knowledge, the notice published in the March 2019 issue of the *Texas Bar Journal* is substantially similar to prior notices of the public hearing on the Bar budget previously published in recent years in the *Texas Bar Journal*.

44. At the April 2, 2019 public hearing and the April 26, 2019 Board meeting, no members of the public and no State Bar members appeared to speak on the proposed 2019-2020 State Bar budget.

45. None of the Plaintiffs appeared at the April 2, 2019 public budget hearing or the April 26, 2019 Board meeting to speak on the proposed 2019-2020 State Bar budget.

46. To my knowledge, Plaintiffs have never appeared at a public budget hearing or a Bar Board meeting to speak on a proposed State Bar budget for any fiscal year.

Continuing Legal Education Programs

47. The State Bar sponsors continuing legal education (“CLE”) programs for its members that reflect a wide variety of subject matters and viewpoints.

48. Voluntary sections of the State Bar also sponsor CLE programs for State Bar members that reflect a wide variety of subject matters and viewpoints.

49. The State Bar’s CLE programs assist Bar members with satisfying their minimum CLE requirement under State Bar Rule Article XII, § 6.

50. The State Bar’s CLE programs also assist Bar members with fulfilling their professional duty under the Texas Disciplinary Rules of Professional Conduct, Rule 1.01, to maintain the requisite knowledge of a competent practitioner by engaging in continuing study and education.

51. In the 2017-2018 fiscal year, the State Bar offered 907 TexasBarCLE online CLE programs, with a total attendance of 92,188 individuals.

52. In the 2017-2018 fiscal year, the State Bar offered 100 TexasBarCLE live courses, with a total attendance of 15,887 individuals. At the 2018 State Bar of Texas Annual Meeting, attendees collectively received more than 8,000 CLE hours, including more than 2,000 hours of ethics credit.

53. The State Bar regularly publishes disclaimers that the views of CLE speakers do not necessarily reflect the opinions of the State Bar of Texas, its sections, or its committees. Such a disclaimer appears on the TexasBarCLE website (<http://www.texasbarcle.com/cle/site/helpfiles/OnlineClassDisclaimer.asp>). Attendance at TexasBarCLE courses is voluntary; attorneys may fulfill their minimum CLE requirements with courses by any accredited provider. TexasBarCLE speakers typically are volunteers who are not compensated for their presentations.

54. As the Bar's second largest source of revenue behind annual membership fees, the State Bar's CLE program fees generate significant non-dues revenue and help fund the Bar's operations.

55. For the 2019-2020 fiscal year, the State Bar expects to receive revenues of \$13,955,703 in TexasBarCLE charges.

56. Absent the revenue from these programs, the Bar would likely need to increase its membership fees.

Texas Bar Journal

57. The *Texas Bar Journal* is a monthly journal devoted to legal matters and the affairs of the State Bar and its members. It is the official publication of the State Bar of Texas.

58. The *Texas Bar Journal* is provided to every Texas attorney licensed to practice in the state without expense to the member (beyond the Bar's annual membership fees).

59. A recent survey indicates that 96% of Texas attorneys read the *Texas Bar Journal*.

60. The *Texas Bar Journal* fulfills publication requirements under Texas law by publishing the following: all rules of evidence, rules of post-trial, appellate, and review procedure for criminal cases as promulgated by the Court of Criminal Appeals, and rules issued or amended by the Supreme Court of Texas; any public statements, sanctions, and orders of additional education issued by the State Commission on Judicial Conduct; a report of annual performance measures, which are tied to the State Bar Strategic Plan; independently audited financial statements; statistics regarding participation in State Bar elections; final disposition of all attorney disciplinary proceedings and disciplinary actions; CLE regulations, forms, modifications, or amendments; proposed disciplinary rules; abstracts of disciplinary appeals issued by the Board of Disciplinary Appeals; internal operating rules and procedures of the Commission for Lawyer Discipline; proposed State Bar Annual Meeting resolutions; the proposed State Bar budget; and names of State Bar president-elect nominees.

61. The *Texas Bar Journal* publishes a disclaimer that the publication of any article or statement in the *Journal* is not to be deemed an endorsement of the views expressed therein.

62. Subscriptions to the *Texas Bar Journal* and sales for advertising in the *Texas Bar Journal* is a source of revenue for the State Bar. In the 2017-2018 fiscal year, the State Bar earned \$530,322 in revenue from the *Texas Bar Journal*, which offsets the cost of printing and disseminating the journal to the membership by about two-thirds.

63. The 2019-2020 budget for the *Texas Bar Journal* is \$1,512,147, which is 3% of the Bar's \$50.4 million total proposed combined budget.

The State Bar's Office of Minority Affairs

64. The Office of Minority Affairs supports the State Bar's commitment toward creating a fair and equal legal profession for *all* attorneys, including racial or ethnic minority, women, and LGBT attorneys.

65. The Office of Minority Affairs is focused on developing and supporting initiatives focused on enhancing and increasing diversity, equity, and inclusion in the legal profession, and fostering allies of historically underrepresented groups.

66. The three primary objectives of the Office of Minority Affairs are (1) to serve minority and women attorneys and legal organizations in Texas, (2) to enhance employment and economic opportunities for minority and women attorneys, and (3) to increase involvement by minorities and women in the State Bar. All State Bar members are welcome to participate in its programs.

67. The Office of Minority Affairs has several ongoing forums, projects, programs, and publications dedicated to the State Bar's diversity efforts.

68. All Texas attorneys interested in furthering diversity, equity, and inclusion in the legal profession are welcome and encouraged to participate in the Office's programs, regardless of their race, sex, or sexual orientation.

69. The work of the Office of Minority Affairs helps to build and maintain the public's trust in the legal profession and the judicial process.

70. Through sponsorships and registration fees, the Office of Minority Affairs generates annual revenues of about \$350,000, which offset budgeted expenditures.

71. The 2019-2020 budget for the Office of Minority Affairs is \$498,601, which is approximately 1% of the Bar's \$50.4 million total proposed combined budget.

Other Expenditures

72. The State Bar's 2019-2020 budget includes \$173,238 for the Governmental Relations Department, which is 0.34% of the State Bar's total proposed combined budget.

73. The State Bar's 2019-2020 budget includes \$840,127 for the Access to Justice Commission, which is 1.7% of the State Bar's total proposed combined budget.

74. The State Bar's 2019-2020 budget includes \$1,521,608 for the Legal Access Division, which is 3% of the State Bar's total proposed combined budget.

75. State Bar Special Revenue Fund 5 is a self-contained fund specifically designated for Annual Meeting revenues and expenditures.

The State Bar's Protest Procedure Provides Members with an Opportunity to Object to State Bar Expenditures

76. Section 3.14 of the Policy Manual sets forth a procedure under which State Bar members may object to State Bar expenditures that they believe are not within the purposes or limitations of the State Bar Act and Policy Manual, and seek a refund of a *pro rata* portion of their membership fees, plus interest.

77. A State Bar member may object to a proposed or actual expenditure of the Bar by filing a written objection with the Executive Director. Upon receipt of the member's objection, the Executive Director must promptly review the objection and has the discretion to resolve the objection, including by refunding a *pro rata* portion of the member's fees.

78. Refunds under § 3.14 are not an admission by the Bar that the activity at issue was not within the purposes or limitations of the State Bar Act and Policy Manual.

79. The protest procedure set forth in the Policy Manual was adopted in 2005.

80. Notice of the protest procedure is published on the Bar's website and in conjunction with the Bar's annual budget.

81. The State Bar has no record of any person—including Plaintiffs—raising an objection under the protest procedure from the time of its adoption in 2005 until the filing of Plaintiffs’ complaint.

82. Since the filing of this lawsuit, a State Bar member not involved in the lawsuit has filed a protest pursuant to the procedures set forth in Policy Manual § 3.14, citing the allegations in Plaintiffs’ complaint.

Plaintiffs Have Been Members of the State Bar for Years but Have Never Notified the State Bar of Any Objection to a State Bar Expenditure

83. To my knowledge, Plaintiff Mark S. Pulliam has been a member of the Bar since 2010.

84. To my knowledge, Plaintiff Tony K. McDonald has been a member of the Bar since November 2012.

85. To my knowledge, Plaintiff Joshua B. Hammer has been a member of the Bar since November 2016.

86. To my knowledge, all of the Plaintiffs have previously timely paid their annual membership fees, and none of the Plaintiffs’ licenses have ever been suspended for failure to timely pay their membership fees.

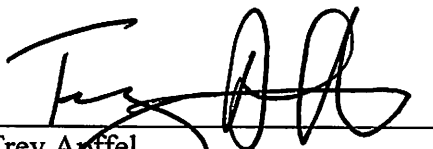
87. To my knowledge, none of the Plaintiffs have ever attempted to invoke the State Bar’s protest procedure under § 3.14 of the Policy Manual.

88. To my knowledge, none of the Plaintiffs have ever participated in the State Bar’s annual public hearing on the Bar’s proposed budget.

89. To my knowledge, before the filing of this lawsuit, none of the Plaintiffs ever participated in any Legislative Policy Subcommittee meeting or otherwise filed an objection to proposed legislation to be included in the State Bar’s Legislative Program.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 13th, 2019.



Trey Appfel

Tab 2

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TONY K. MCDONALD, JOSHUA B.
HAMMER, and MARK S. PULLIAM,

Plaintiffs,

v.

JOE K. LONGLEY, et al.,

Defendants.

Civil Action No. 1:19-cv-00219-LY

DECLARATION OF KALYN LANEY

KaLyn Laney, pursuant to 28 U.S.C. § 1746, declares the following:

1. I am a Deputy Executive Director of the State Bar of Texas. I oversee the State Bar's Governmental Relations Department (the "Department").

The State Bar's Governmental Relations Department

2. The State Bar has maintained a governmental relations function since at least the 1970s.

3. The Department serves as the State Bar's liaison to the Texas Legislature and other state and federal governmental entities.

4. The Department's 2019-2020 budget is \$173,238, which is 0.34% of the Bar's \$50.4 million total proposed combined budget.

5. The Department's budget includes salary for one full-time employee, which does not include myself.

6. The State Bar of Texas is subject to the Texas Sunset Act, which requires state agencies to undergo periodic reviews by the Sunset Advisory Commission and the Texas Legislature to determine whether a public need exists for the agencies' continued existence.

7. As Deputy Executive Director, I am responsible for working with the Department to oversee the preparation of the State Bar's Self-Evaluation Report, which is required under the Texas Sunset Act, and for coordinating the State Bar's response during the sunset-review process.

8. The State Bar does not endorse political candidates, either through the Department's activities, or otherwise.

The Department Provides Important Information to State Legislators and Agencies

9. A principal focus of the Department during the Texas legislative session is responding to requests from legislators and state agencies for information related to the legal profession.

10. For example, during 86th Texas Legislature, the Department has responded to legislative and agency inquiries regarding:

- The number of lawyers who took the Guardian Ad Litem continuing legal education course during certain time periods.
- The number of lawyers who used the Guardian Ad Litem course to become certified as a Guardian Ad Litem.
- The number of attorneys whose licenses were administratively suspended for non-payment of student loans.
- Information on the grievance system.
- Lawyer referrals for individual constituents.
- Helping a constituent locate a particular attorney.
- How to get a new bar card.
- How to participate in the State Bar's New Opportunities Volunteer Attorney (NOVA) *pro bono* program.

- Information on the availability of *pro bono* legal services in the state.
- The status of the Bar’s implementation of various provisions adopted during the Bar’s last sunset review.
- Requests for referrals to lawyers who could assist with evaluating the impact of proposed legislation.

11. Without the Governmental Relations Department, it would be substantially more difficult for the State Bar to timely and sufficiently respond to requests for information and assistance by Texas legislators, legislative staff, and agencies.

12. When the Texas Legislature is in session, the Department reviews thousands of bills for their potential impact on the State Bar and the legal profession.

13. As part of the Department’s efforts to keep State Bar members informed of legislation that may be of interest to the legal profession, the Department publishes a weekly report called the “Friday Update,” which provides objective information on, and links to, proposed state legislation.

14. To my knowledge, many other Texas agencies have governmental relations departments that serve functions substantially similar to those of the State Bar’s Governmental Relations Department. For example, the Texas Education Agency, established by Tex. Educ. Code Ann. § 7.002, has a governmental relations team that, according to its website, “manages the agency’s communications and interactions with the Texas Legislature, . . . handles all legislative inquiries, monitors legislative hearings . . . [and] tracks and analyses [sic] all education related legislation from bill introduction through implementation.” Texas Education Agency, Governmental Relations, <http://bit.ly/2vqcWWd> (last visited May 7, 2019).

The State Bar Has a Strict Policy Governing All Legislative Activity of the State Bar and Voluntary Sections

15. Under Tex. Gov't Code Ann. § 81.034, the State Bar may not use any funds “for influencing the passage or defeat of any legislative measure unless the measure relates to the regulation of the legal profession, improving the quality of legal services, or the administration of justice and the amount of the expenditure is reasonable and necessary.”

16. The State Bar’s legislative policy is set forth in Part VIII of the Board of Directors Policy Manual.

17. Any legislative action to be undertaken by the Bar or its voluntary sections must conform to the procedures set forth in the Policy Manual, as well as applicable law, including *Keller v. State Bar of California*, 496 U.S. 1 (1990).

18. The State Bar may not take any action to support or oppose any proposed legislation before the Texas Legislature or U.S. Congress unless the action has been approved by a majority vote of the State Bar Board of Directors, the Executive Committee, or (in the limited circumstances set forth in Board Policy Manual § 8.01.07(c)) an Ad-hoc Emergency Legislative Response Committee. In turn, the Bar Board may not support or oppose any proposed legislation unless it first has been reviewed by the Legislative Policy Subcommittee.

19. The Bar’s Legislative Policy Subcommittee is comprised of nine members of the Bar Board, at least three of whom must be non-lawyers.

20. The Legislative Policy Subcommittee is responsible for developing recommendations to the Board regarding legislative action in accordance with the Bar’s legislative policy.

21. Before taking any legislative action, the State Bar Board, the Executive Committee, and the Legislative Policy Subcommittee must determine that the proposed legislation or

legislative action conforms in all material respects to seven enumerated criteria set forth at Board Policy Manual § 8.01.03:

- The proposed legislation or legislative action must fall within the purposes, expressed or implied, of the State Bar as provided in the State Bar Act;
- Adequate notice and opportunity has been afforded for the presentation of opposing opinions and views;
- The proposed legislation or legislative action does not carry the potential of deep philosophical or emotional division among a substantial segment of the membership of the bar;
- The proposed legislation or legislative action is in the public interest;
- The primary purpose of the proposed legislation or legislative action is not to provide economic benefit to the members of the State Bar;
- The proposed legislation or legislative action is not designed to promote or impede the political candidacy of any person or party or to promote a partisan political purpose;
- The proposed legislation cannot be construed to advocate political or ideological positions. See, e.g. *Keller v. The State Bar of California*, 496 U.S. 1 (1990).

Policy Manual § 8.01.03 provides: “Nothing herein shall prohibit the State Bar’s support of or opposition to legislation relating to the selection, tenure, compensation, staffing, equipping, and housing of the federal or state judiciary.”

The State Bar’s Voluntary Sections are Primarily Responsible for Drafting and Supporting Proposed Legislation To Be Included in the State Bar’s Legislative Program

22. Although the Legislative Policy Subcommittee has authority to draft and submit proposed legislation to the Bar Board, the majority of legislative proposals included in the State

Bar's legislative programs for each Texas legislative session are drafted and supported by voluntary subject-matter sections of the State Bar.

23. Legislative proposals may be submitted only by voluntary sections of the State Bar, not by Bar committees established under Part IV of the Board Policy Manual.

24. Voluntary sections are responsible for drafting legislative proposals that are within the scope of their respective purposes, and are required to submit proposed legislation in conformity with the Policy Manual.

25. In their submissions to the Board, sections must include verification that the legislative proposal has been sent to all other sections and committees of the State Bar for comment, and sections must provide the Board with a copy of the comments received.

26. No voluntary section may assert a position regarding legislative, judicial, or executive action unless it has first obtained permission pursuant to detailed procedures as set forth in the Policy Manual.

27. When a section has obtained Board approval to take independent legislative action, the section must publish a disclaimer that the position is that of the *section only*, and not that of the State Bar Board, the Executive Committee, or the General Membership of the Bar. *See* Policy Manual § 8.01.10(A)(3).

All of the Proposed Legislation in the Bar's 2019 Legislative Program Is Supported by the Bar's Voluntary Sections

28. All of the legislative proposals included in the Bar's 2019 Legislative Program were drafted under the supervision of, and are supported by, the voluntary sections of the Bar. The voluntary sections were responsible for any expenses associated with those drafting activities.

29. State Bar employees have not previously lobbied, and are not currently lobbying, on behalf of any legislative proposal in the 2019 Legislative Program. Instead, members of the

Bar's voluntary subject-matter sections are coordinating any lobbying activities with respect to those legislative proposals.

30. The State Bar is not compensating members of the Bar's voluntary subject-matter sections for their work in coordinating lobbying activities for the proposed legislation in the 2019 Legislative Program. The voluntary sections are responsible for any expenses associated with those lobbying activities.

Plaintiffs Never Submitted an Objection to Any Legislative Proposal in the State Bar's 2019 Legislative Program, Even Though the Bar Provided Members Multiple Notices of, and Opportunities to Object to, the Legislative Program

31. Pursuant to the Bar's legislative policy, the Bar publishes a legislative timetable for each Texas legislative session. On January 26, 2018, the Board of Directors voted on a legislative timetable for the 86th Texas Legislature, which began on January 8, 2019.

32. In the April 2018 issue of the *Texas Bar Journal*, the Bar published the legislative timetable approved at the January 2018 Board meeting. As published, the timetable provided notice to all members that the deadline for filing a written objection to any legislative proposal to be considered by the Legislative Policy Subcommittee was August 6, 2018.

33. In the July 2018 issue of the *Texas Bar Journal*, the Bar published a second notice of the scheduled August 2018 Legislative Policy Subcommittee meeting to consider proposed legislation for inclusion in the Bar's 2019 Legislative Program.

34. In July 2018, the State Bar published the proposed legislation to be considered at the August 2018 Subcommittee meeting on the Bar's website.

35. To my knowledge, none of the Plaintiffs submitted an objection regarding any legislative proposal to the State Bar or the Legislative Policy Subcommittee.

36. On August 16-17, 2018, the Legislative Policy Subcommittee met to discuss proposed legislation that was properly submitted to it by the sections, and to decide whether it should recommend the proposed legislation to be included in the State Bar's Legislative Program.

37. The Subcommittee meeting was open to the public in that any person who wished to comment on any legislative proposal or requested to attend had an opportunity to appear in support or opposition before the Subcommittee at the meeting.

38. To my knowledge, none of the Plaintiffs requested to appear before the Legislative Policy Subcommittee by filing an objection or otherwise expressing their opinions on any proposed legislation to the State Bar.

39. On September 28, 2018, the Board of Directors considered recommendations of the Legislative Policy Subcommittee and conditionally adopted the State Bar's 2019 Legislative Program.

40. On October 16, 2018, the Subcommittee met again to hear additional comments on the legislative proposals to be included in the 2019 Legislative Program.

41. On October 3, 2018, the State Bar's Executive Director emailed members to inform them of the October 16, 2018 Subcommittee meeting and invite them to submit additional questions and comments on the proposed 2019 Legislative Program.

42. To my knowledge, none of the Plaintiffs submitted any questions or comments regarding any proposed legislation in response to the Executive Director's October 2018 email.

43. Ultimately, of the 25 bills submitted for consideration, the Legislative Policy Subcommittee recommended, and State Bar Board approved, 20 bills to be included in the Bar's 2019 Legislative Program.

44. The Bar's final 2019 Legislative Program for the current legislative session is published on its website, along with notice of the Bar's expenditure protest policy under § 3.14 of the Board of Directors Policy Manual.

45. To my knowledge, none of the Plaintiffs filed an objection to any proposed legislation included in the State Bar's 2019 Legislative Program before the filing of this lawsuit.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 13, 2019.



KaLyn Laney

Tab 3

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TONY K. MCDONALD, JOSHUA B.
HAMMER, and MARK S. PULLIAM,

Plaintiffs,

v.

JOE K. LONGLEY, et al.,

Defendants.

Civil Action No. 1:19-cv-00219-LY

DECLARATION OF TRISH MCALLISTER

Trish McAllister, pursuant to 28 U.S.C. § 1746, declares the following:

1. I am the Director of the Legal Access Division (“LAD”), a department of the State Bar of Texas.

2. I am also the Executive Director of the Texas Access to Justice Commission (the “Commission”).

The Need for Legal Services in Texas

3. There is a great need for free and reduced-fee legal services in Texas.

4. The need for free and reduced-fee legal services in Texas arises in a variety of legal contexts, including those involving family law, housing law, estates and probate law, and veterans law, among others.

5. The Texas Judicial Council recently recognized that more than 5.6 million Texans qualify for legal aid. *See* Resolution of the Texas Judicial Council: Supporting Funding for Civil Legal Aid in Texas (Approved Sept. 14, 2018), <http://bit.ly/2UQZhl2>. To qualify for legal aid federally funded through the Legal Services Corporation, a person must have an annual income at or below 125% of the federal poverty guidelines unless they meet an approved exception and their income does not exceed 200% of the federal poverty guidelines.

6. The Texas Judicial Council's resolution also recognized that Texas ranks 47th in access to legal aid lawyers, with approximately one legal aid lawyer for every 8,000 Texans who qualify.

7. During the 85th Texas Legislature, general revenue appropriations to support civil legal aid in the state totaled over \$16 million, which was almost half the amount allocated from general revenue appropriations during the previous legislative session.

The Legal Access Division

8. In 1982, Texas Lawyers Care (today known as the Legal Access Division) was created as a joint project between the eleven federally funded legal services programs in Texas and the State Bar to provide *pro bono* legal assistance to low-income people in Texas.

9. In 1995, Congress decreased federal funding for legal aid services in the state, and in 1996, the State Bar assumed total financial responsibility for Texas Lawyers Care.

10. In 2011, Texas Lawyers Care became the Legal Services Support Division, and in 2013, it was again renamed the Legal Access Division ("LAD").

11. LAD is comprised of 8.5 total employees: a director (myself), two staff attorneys, an office manager, 3 program directors, and 1.5 program coordinators. All of these employees also provide support to the Texas Access to Justice Commission.

12. LAD's principal operations are funded by the State Bar's general fund.

13. The State Bar's 2019-2020 budget for LAD is \$1,521,608, which is 3% of the State Bar's \$50.4 million total proposed combined budget.

14. The overall mission of LAD has not materially changed since its inception in 1982: to support and implement State Bar policies and initiatives designed to enhance the quality and quantity of legal services available to low-income Texans.

15. LAD's two primary functions are (1) to support legal aid organizations that provide free and reduced-fee legal services to low-income Texans, and (2) to support *pro bono* programs and attorney volunteers in assisting low-income people across Texas.

The Legal Access Division Provides Support Services to Legal Services Organizations and Pro Bono Volunteers

16. LAD provides centralized support for the day-to-day needs of legal-aid and *pro bono* providers in Texas, including training, publications, resource materials, and more.

17. On its own, the legal aid sector would have great difficulty in providing the training, referral, and support services that LAD provides because such services would be cost-prohibitive, duplicative, and unnecessarily expensive for the sector as a whole.

18. Since 1996, LAD has administered the State Bar Malpractice Insurance Network, which pays partial and full premiums for professional liability insurance to cover staff attorneys and *pro bono* volunteers for cases taken through approved legal aid and *pro bono* service programs.

19. In the 2017-2018 fiscal year, the Malpractice Insurance Network covered more than 65 legal aid and *pro bono* service programs in Texas.

20. Since 2013, LAD has administered the Language Access Fund, which provides funding for telephonic, on-site, and video remote foreign-language interpretation, and document translation, for *pro bono* cases taken through approved legal aid and *pro bono* service programs.

21. Before the Language Access Fund's establishment, the needs of many eligible limited English proficiency low-income clients with meritorious cases were not being met, because *pro bono* providers could not find attorneys conversant in the clients' languages, and the cost of interpretation and translation services was often prohibitive.

22. During the State Bar's 2017-2018 fiscal year, LAD provided language access services to more than 42 legal aid and *pro bono* organizations in Texas, serving clients speaking

more than 65 languages, including through interpretation services for more than 6,531 phone calls, the translation of approximately 55 documents, and the provision of 147 on-site interpreters.

23. Since at least 2004, LAD has maintained a contract for subscriptions and licenses for legal research to provide legal services providers and *pro bono* volunteers with free access to legal research services. The most recent contract is with Westlaw.

24. Pursuant to its contract with Westlaw, the State Bar offers legal aid and *pro bono* providers access to “Westlaw Doc & Form Builder,” an online legal document assembly tool that helps lawyers draft case-specific pleadings and other documents by providing access to thousands of up-to-date and accurate model forms.

25. In the 2017-2018 fiscal year, the State Bar provided free legal research tools to 475 attorneys and 90 paralegals.

26. LAD administers several other programs in support of legal services providers and *pro bono* volunteers, such as:

- The Communication Access Fund, a program that reimburses members of the State Bar for the cost of auxiliary aids and services, such as sign-language interpreters, needed to communicate effectively with clients who have disabilities.
- Hosting the annual Poverty Law Conference for legal aid and *pro bono* lawyers to provide continuing legal education in practice areas common to poverty law, and the annual *Pro Bono* Coordinators Retreat for *pro bono* professionals to provide training in best practices in a variety of areas, including the recruitment, training, and retention of *pro bono* volunteers.

- Continuing legal education scholarships to national or advance practice conferences for legal aid attorneys to ensure that they receive top-rate continuing education in areas related to poverty law.
- Free membership in the *Pro Bono* College of the State Bar for attorneys who contribute a minimum of 75 hours, which includes a one-year free subscription to the TexasBarCLE Online Library.

The Legal Access Division Connects State Bar Members Willing to Serve as *Pro Bono* Volunteers with Legal Services Organizations in Need of Assistance

27. LAD connects State Bar members willing to provide *pro bono* services with legal-services organizations in need of assistance.

28. In the 2017-2018 fiscal year, the State Bar made 6,786 legal aid referrals for members of the public and inmates.

29. Since June 2016, the State Bar has maintained ProBonoTexas.org, a website that allows members to search for hundreds of *pro bono* opportunities in a wide variety of practice areas, including criminal law, tax law, and veterans law, among others.

30. ProBonoTexas.org also provides members with access to a library of tools and resources, such as model forms, free continuing legal education programs, and opportunities to connect with mentors to help guide them on their *pro bono* cases.

31. In June 2017, the State Bar launched Texas Legal Answers, an online legal clinic that connects low-income people who have legal questions to *pro bono* attorneys who can answer them. Over 2,567 questions were answered during fiscal year end 2018.

32. LAD serves as a clearinghouse for disaster response resources for the public and attorneys. In response to natural disasters and human crises, LAD assists the State Bar in creating an information hub for affected individuals, such as by creating a website with information on

relief efforts, and helps to recruit and connect lawyer volunteers with the appropriate legal aid provider in their area.

33. LAD aims to provide information and other services in response to a wide range of natural disasters and human crises in Texas, regardless of the geographic region, population, or policy issues that the disaster or crisis might involve.

34. For example, in the immediate aftermath of Hurricane Harvey, the State Bar activated the Disaster Relief Hotline, which directed callers to the appropriate legal aid office where attorneys could help with a variety of legal issues, including housing law, Federal Emergency Management Agency and other public benefits, lost documents, family issues, and educational rights.

35. Through an online State Bar form, LAD collected information from more than 2,000 attorneys who volunteered their services in the aftermath of Hurricane Harvey, and matched those volunteers with needs reported by the various legal aid agencies.

36. Following Harvey, the State Bar also established a website (https://www.texasbar.com/Content/NavigationMenu/ForThePublic/DisasterReliefResources1/Hurricane_Harvey_Rec.htm) that provided the public with information and links to a variety of resources regarding:

- How to apply for federal assistance through FEMA.
- Filing insurance claims for damage related to the hurricane.
- Understanding and asserting rights in landlord-tenant matters regarding real property damaged or destroyed by the hurricane.
- Immigration issues.
- Unemployment assistance.

- Tax assistance from the IRS.
- Tips from the Texas Attorney General's Consumer Protection Division on how to avoid contractor fraud during the clean-up and rebuilding process.
- Reporting barratry and improper solicitation by attorneys.

37. The State Bar has also taken a lead role in coordinating the preparation and periodic updating of *Resource Materials for Responding to Legal Questions From Those Affected by Disasters*, a resource manual for attorneys assisting survivors of natural disasters. That manual is available on the State Bar's website at https://texasbar.com/AM/Template.cfm?Section=Disaster_Resources_for_Attorneys&Template=/CM/ContentDisplay.cfm&ContentID=37846. Other state bar associations have used the manual as a model in developing similar manuals for their states.

38. In response to the recent family separations border crisis, the State Bar received numerous inquiries from State Bar members interested in providing *pro bono* legal services to migrant families at the border.

39. In response to the humanitarian crisis at the border, the State Bar opened a toll-free disaster hotline routing all calls to Texas RioGrande Legal Aid, the legal aid provider serving the affected area, and published a list of training, volunteer, and donation opportunities for attorneys interested in assisting with migrant asylum and family separation cases.

40. In addition to providing the public with information and resources in response to natural disasters and human crises, LAD maintains a permanent webpage on the State Bar's website with links to legal resources for the public (https://www.texasbar.com/AM/Template.cfm?Section=Legal_Access_Division&Template=/CM/HTMLDisplay.cfm&ContentID=42307).

41. The Legal Access Division's permanent State Bar webpage currently provides links to a Referral Directory, the State Bar's Lawyer Referral Information Services, TexasLawHelp.org (which provides free information on family law matters, protective orders, and other self-help resources), a Legal Aid Area Directory, Texas Lawyers for Texas Veterans (a State Bar program that has assisted more than 32,000 veterans since 2010), and the Client Attorney Assistance Program (which helps individuals resolve disputes with their attorneys).

The Legal Access Division's Efforts Succeed in Helping Attorneys Meet Their Professional Ethical Duty of Providing Free Legal Services to the Poor

42. The preamble to the Texas Disciplinary Rules of Professional Conduct instructs that the "provision of free legal services to those unable to pay reasonable fees is a moral obligation of each lawyer as well as the profession generally."

43. In 1992, the State Bar of Texas Board of Directors adopted a *Pro Bono* Policy that establishes an aspirational goal for all Texas attorneys to provide at least 50 hours of *pro bono* legal services to the poor each year.

44. According to the 2017 *Pro Bono* Survey administered by the State Bar of Texas, 45.2% of active, in-state Texas attorneys provided some form of *pro bono* services in 2017.

45. In 2017, Texas attorneys provided approximately 2.82 million hours of free legal services and 2.13 million hours of reduced-fee legal services to the poor.

46. In 2017, Texas attorneys contributed approximately \$13.2 million in out-of-pocket expenses and direct contributions to support *pro bono* or legal aid services to the poor.

47. In the 2017-2018 fiscal year, the State Bar's annual Justice for All Campaign raised \$1.48 million in voluntary contributions from approximately 10,000 licensed Texas attorneys to be distributed by the Texas Access to Justice Foundation and the Texas Bar Foundation to support legal services projects.

48. The State Bar of Texas has also been recognized nationally for its access to justice initiatives. For example, the State Bar is the 2018 recipient of the American Bar Association Harrison Tweed Award for its “extraordinary contributions” to *pro bono* services and support for the state’s civil legal aid providers, and its “exemplary work in carrying out its mission-statement commitment to ‘assure all citizens equal access to justice.’” The ABA specifically recognized the Legal Access Division as “one of the most comprehensive state bar divisions for support of *pro bono* volunteerism.”

The Texas Access to Justice Commission

49. On April 26, 2001, the Supreme Court of Texas created the Commission by judicial order to serve as the umbrella organization for all efforts to expand access to, and enhance the quality of, justice in civil matters for low-income Texas residents.

50. Under the Texas Supreme Court’s order, the Commission is charged with, among other things: (1) identifying and assessing current and future needs for access to justice in civil matters by low-income Texans, (2) developing and publishing a strategic plan for statewide delivery of civil legal services to low-income Texans, (3) developing and implementing initiatives designed to expand civil access to justice, (4) increasing resources and funding for access to justice in civil matters, and (5) working to reduce barriers to the justice system by addressing existing and proposed court rules, procedures, and policies that negatively affect access to justice for low-income Texans.

51. The Commission works to achieve its goals in three primary areas: capacity building, policy initiatives, and fund development and access to justice awareness.

52. The Commission is a separate entity from the Bar. Pursuant to Texas Supreme Court order, the State Bar provides staff and financial support for the Commission. The Bar is the

exclusive source of funding for the Commission, and the Commission's proposed budgets must be submitted to the State Bar, and are subject to the Bar's annual budgetary process. The Commission is also required to comply with the fiscal policies of the State Bar of Texas.

53. The Commission's governing body consists of 18 members, plus Chair Emeritus James B. Sales, a Texas Supreme Court liaison, and three ex-officio members appointed by the Governor, Lieutenant Governor, and Speaker of the House. The State Bar of Texas appoints seven members of the Commission, a minority of the governing body.

54. The Commission is required to file a status report on the progress of the Commission's duties annually with the Texas Supreme Court and provide a copy to the State Bar. The Commission's last two such reports are titled "A Report to the Supreme Court of Texas on the Activities of the Texas Access to Justice Commission December 1, 2017, to November 30, 2018," and "A Report to the Supreme Court of Texas on the Activities of the Texas Access to Justice Commission December 1, 2016, Through November 30, 2017."

55. By order of the Texas Supreme Court, the Texas Access to Justice Commission is subject to § 81.034 of the Texas Government Code, which prohibits it from using funds received by the State Bar for influencing the passage or defeat of any legislative measure unless the measure relates to the regulation of the legal profession, improving the quality of legal services, or the administration of justice and the amount of the expenditures is reasonable and necessary.

The Commission's Work Expands Texans' Access to Justice

56. The Commission works with the Texas legislature and the Texas judiciary to formulate solutions to the problems Texans face when they cannot afford an attorney.

57. The Commission's Legislative Committee assists the Commission in developing and advocating for a legislative agenda to ensure successful funding for legal aid organizations and legislative reforms that increase access to justice. For example:

- The Commission hosts an ATJ Day at the Texas Legislature during which a team of volunteers visits legislators and leaders to discuss the critical access to justice issues affecting their constituents, which helps solidify legislative support for legal aid and ensures that access to justice is a priority for state lawmakers.
- During the 86th Texas Legislature, the Commission is supporting the Texas Supreme Court's baseline budget of \$20 million for basic civil legal services over the biennium.
- For the 86th Texas Legislature, the Commission worked with ex-officio Commissioner, Senator Judith Zaffirini in developing Senate Bill 41, which would amend the current rotation process that Texas courts must follow for appointing *pro bono ad litem* attorneys, and allow courts to appoint *pro bono* attorneys in more cases.
- At the invitation of the U.S. House Commerce, Justice, Science, and Related Agencies Subcommittee (which funds the Legal Services Corporation), the Commission prepared and submitted written testimony regarding funding for the Legal Services Corporation for the fiscal year 2019 budget.
- During the 85th Texas Legislature, the Commission supported an amendment to the State Bar Act that authorized the Texas Supreme Court to promulgate rules permitting inactive Bar members to provide *pro bono* legal services.

- During the 84th Texas Legislature, the Commission supported an amendment to Texas law to allow “transfer on death deeds,” which permit a person to transfer real property to someone else upon death without the need to go through probate court, where individuals cannot represent themselves, except in two narrow circumstances. The Commission subsequently created a do-it-yourself Transfer on Death Deed Kit that includes forms and instructions for completing a transfer-on-death deed, as well as a revocation form.

58. All of the Commission’s legislative and policymaking efforts are in furtherance of its mission to expand access to, and improve the quality of, justice in civil matters for low-income Texans.

59. The Commission also engages in many non-legislative efforts to expand Texans’ access to the justice system.

60. The Commission makes recommendations to the Supreme Court of Texas on how to make courts more assessable and navigable to low-income people. For example:

- On May 6, 2013, the Commission recommended a revision to Texas Rule of Civil Procedure 145, which governs the waiver of court costs and fees for those who cannot afford them, to address various problems with the way the rule was applied throughout the state. On August 31, 2016, the Court made significant changes to the rule, clarifying its proper use.
- In Summer 2016, the Commission collaborated with the Supreme Court of Texas’s Supreme Court Advisory Committee on revising Texas Rule of Civil Procedure 183, which governs the appointment of interpreters. On September 14, 2016, the Commission submitted a report with its recommendations. The Court subsequently

asked the Commission to create a language access plan template that could be customized by each Texas court to meet their needs. The Commission is currently in the process of doing so.

- On July 24, 2018, the Commission, working with the Supreme Court of Texas's Supreme Court Advisory Committee, recommended clarifying what can and cannot be done by judges, clerks and court personnel to assist self-represented litigants by revising Canon 3.B(8) of the Code of Judicial Conduct and creating two court policies for clerks and court personnel. The Court is currently reviewing those recommendations.

61. The Commission is also responsible for ensuring that the Supreme Court of Texas Forms Task Forces create *pro se* forms and toolkits that help low-income Texans address various legal issues, such as eviction, probate, protective orders, and divorce.

62. Additionally, the Commission's Law School Advisory Committee, created in 2004, creates and promotes programs to ensure the next generation of attorneys are familiar with civil access to justice issues, including *Pro Bono Spring Break*, a program that matches law students willing to volunteer their time over spring break with legal aid organizations.

63. The Commission also works closely with the Texas Access to Justice Foundation, an independent 501(c)(3) nonprofit organization created by the Supreme Court of Texas in 1984, and engages in fundraising efforts for the Foundation.

64. In 2017, legal aid organizations that received funding from the Texas Access to Justice Foundation closed more than 158,000 cases, benefiting the lives of approximately 300,000 individuals, including more than 33,000 victims of domestic violence, more than 32,000 homeless persons, and approximately 28,000 persons with disabilities.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 13, 2019.


Trish McAllister

Tab 4



**STATE BAR OF TEXAS
BOARD OF DIRECTORS POLICY MANUAL**

September 2018

connected with employment, retirement or judicial appointments may be held in the meeting rooms.

(K) No meeting shall be scheduled to extend past the regular business hours of the Texas Law Center without prior written authorization from the Director of Purchasing and Facilities. Regular business hours are 8:00a.m. – 5:00p.m. Monday through Friday and 8:00 a.m. – 12:00 noon Saturdays.

(L) All meeting rooms are smoke-free areas. All weapons and firearms are prohibited on the premises of the Texas Law Center.

3.11.05 Parking. The Executive Director may designate reserved parking spaces at the Texas Law Center for the State Bar President, the Executive Director, the Chief Disciplinary Counsel, employees, tenants, and others that he or she deems appropriate. Parking in the Texas Law Center underground garage is reserved for State Bar staff and others with gate-entry badges. The exterior parking lot is reserved for individuals having drop-in business.

(A) Large Groups. Parking capacity in the building is limited. Parking for meetings involving volunteer members on Bar-related business will be arranged by the meeting planner. Non-Bar-related groups booking an event shall make arrangements for parking off premises. A list of alternate parking areas is available from the receptionist.

(B) Motor Vehicle Restrictions. Any motor vehicle parked in unauthorized areas or in violation of this policy is subject to removal and towing at the motor vehicle owner and/or operator's sole expense and liability. Long-term storage of vehicles at the Texas Law Center is strictly forbidden. Vehicles parked overnight require the prior written approval of the Director of Purchasing and Facilities. Unattended vehicles are subject to be towed at the motor vehicle owner's and/or operator's sole expense and liability.

(C) Additional Restrictions. All weapons and firearms are prohibited in all parking areas. Smoking is not permitted in the parking facility.

3.11.06 Portraits. Portraits of the President and past Presidents shall be permanently displayed in a prominent place within the Texas Law Center. The cost of these portraits shall be borne by the State Bar.

3.12 Alcoholic Beverages

3.12.01 Fund Restrictions. None of the funds of the State Bar collected from mandatory dues may be used for the purchase of alcoholic beverages.

3.12.02 Application. This policy does not apply to functions sponsored by individual sections based on their use of separate dues or to State Bar projects such as continuing legal education or other meetings for which a separate and specified fee is charged for the purchase and use of alcoholic beverages.

3.12.03 Premises. The storage of alcoholic beverages on premises owned or leased by the State Bar is prohibited.

3.13 Contingent Disposition of Property

If the State Bar ceases to exist as a legal entity for any reason, all property of the State Bar shall be transferred to the Supreme Court to be held in trust for the attorneys of this state.

3.14 Notice and Objection to Certain Expenditures

3.14.01 Statement of 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, it is the policy of the State Bar to provide a means by which the member may register his or her objection thereto with the Executive Director of the State Bar for resolution as described below.

3.14.02 Members May Object. A member may object to a proposed or actual expenditure of the State Bar as not within the purposes or limitations set out at Subsection 3.14.01, above, and seek 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 NINETY (90) days after the conclusion of the challenged activity.

3.14.03 Executive Director's Duty upon Receipt of Objection. 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 activity or action 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.

3.14.04 Payment to Objecting Member. Refund of a *pro rata* share of the member's dues shall be for the convenience of the Bar, and shall not be construed as an admission that the activity or action to which the member objected was or would not have been within the purposes or limitations stated at Subsection 3.15.01, above.

3.14.05 Notice of Policy and Protest Procedure. The following notice shall be published in conjunction with any publication or description of the State Bar's budget, legislative program, performance measures, amicus briefs, and any other similar policy positions adopted by the State Bar:

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 NINETY (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 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.

PART IV. STATE BAR COMMITTEES

4.01 Standing State Bar Committees

4.01.01 General. Except as noted otherwise, Standing Committees are established by the Board upon recommendation of the incoming President, and will conduct themselves within the policies adopted by the Board, the provisions of the State Bar Act, and the State Bar Rules.

4.01.02 Appointment of Members.

(A) At the third quarterly Board meeting, the President-elect will submit to the Board for approval a list of Standing and Special Committees for the upcoming Organizational Year, a list of proposed chairs and, where pertinent, co-chairs or vice-chairs of such committees, and a roster of proposed members of such committees.

(B) At the fourth quarterly Board meeting, the President-elect will submit to the Board any proposed changes to the list of Standing and Special Committees, a list of chairs, co-chairs and vice-chairs of such committees, including any necessary changes or additions to the earlier submitted list, and a roster of members of such committees, including any necessary changes or additions to the earlier submitted list.

(C) At its first meeting of the new Organizational Year and/or its first quarterly meeting, the Board will approve any proposed changes to the list of Standing and Special Committees, the list of chairs, co-chairs and vice-chairs of such committees, and the roster of members of such committees.

(D) The President-elect will determine the number of regular members of the State Bar Standing Committees,

Tab 5

CERTIFICATE OF SERVICE

The undersigned certifies that on July 30, 2020, I electronically filed the foregoing Record Excerpts of Defendants-Appellees with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system.

All counsel of record in this case are registered CM/ECF users and will be served by the appellate CM/ECF system.

Dated: July 30, 2020

Respectfully submitted,

/s/ Thomas S. Leatherbury

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