

***Agenda***  
**STATE BAR OF TEXAS**  
**BOARD OF DIRECTORS**  
**Georgetown Sheraton Hotel- San Gabriel Ballroom E**  
**1101 Woodlawn Ave.**  
**Georgetown TX 78628**  
**Friday, April 26, 2019 – 9:00am**

Individuals with disabilities are entitled to have access to and participate in this meeting. An individual requiring an accommodation for access to the meeting must notify the State Bar by informing Chielsey Barber at 1/800-204-2222 or 512/427-1463 (x1416) or RELAY Texas (1-800-735-2989), in writing 24 hours prior to the scheduled meeting of the necessity of an accommodation. Upon receipt of this request, the State Bar will furnish appropriate auxiliary aids and services when necessary to afford an individual with a disability an equal opportunity to participate in and enjoy the benefits of the board meeting as nondisabled individuals enjoy.

- |   |                        |               |
|---|------------------------|---------------|
| 1. <b>Call to Order</b>   | Laura Gibson           |               |
| 2. <b>Roll Call</b>   | Trey Appfel            |               |
| 3. <b>Invocation</b>  | Greg Sampson           |               |
| 4. <b>Pledge to the U.S. and Texas Flags</b>  | Curtis Pritchard       |               |
| 5. <b>Remarks from the General Public*</b><br><i>(Sign in sheet available for public comment)</i>   |                        |               |
| 6. <b>Presentation of Resolutions</b>   | Joe K. Longley         |               |
| 7. <b>Swearing in of new Public Member, Jeffrey Allison (Houston)</b>   | Justice Debra Lehrmann |               |
| 8. <b>Report from the Chair of the Board</b>  | Laura Gibson           | (Tab 1)       |
| <b>A. Discussion:</b> General Report  |                        |               |
| <b>B. Action:</b> Consider, discuss and approve Consent Agenda Items  |                        | (Consent Tab) |
| <b>C. Action:</b> Consider, discuss, and approve referral to Policy Manual Subcommittee for consideration and drafting of policies regarding: the spokesperson for the State Bar, director email accounts, recusal of directors, and international travel |                        |               |
| <b>D. Chair of the Board Election</b>   |                        |               |
| 1) <b>Action:</b> Election of Chair of the Board for 2019-20  |                        |               |
| <b>Candidates:</b>  |                        |               |

**SBOT MISSION**

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

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**Jerry Alexander (Dallas)**

**Alison Colvin (Brownsville)**

**Leslie Dippel (Austin)**

**Neil Kelly (Houston)**

2) Comments by Chair-Elect

9. **Report from the Executive Director** Trey Apffel (Tab 2)
  - A. **Discussion:** General Report
  - B. Update on Attorney General Opinion Request (RQ-0265-KP), *Fleck v. Wetch*, 585 U.S. \_\_\_\_ (2018), and *McDonald et al. v. Longley et al.*, 1:19-cv-00219, W.D. Tex. (2019)
10. **Report from the President** Joe K. Longley (Tab 3)
  - A. **Discussion:** General Report
  - B. **Action:** Appointment of at-large director to the Board of Directors, for three year terms, effective Annual Meeting 2019, and expiring Annual Meeting 2022  
  
**Andrés E. Almanzán (El Paso)**  
**Luis M. Cardenas (Edinburg)**
11. **Report from the President-Elect** Randy Sorrels (Tab 4)
  - A. **Discussion:** General Report
  - B. **Budget Committee**  
**Action:** Consider, discuss, and approve 2019-20 proposed State Bar budget for presentation to the Supreme Court of Texas
  - C. Courthouse Access Badge Task Force Update
  - D. SBOT Board of Directors Social Media Engagement Team Update
12. **Report from the Immediate Past President** Tom Vick  
**Discussion:** General Report
13. **Executive Committee**
  - A. **Nominations and Elections Subcommittee** Tom Vick/ Rehan Alimohammad (Tab 5)  
**Discussion:** Report on President-elect and District Director elections

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### **B. Policy Manual Subcommittee**

Estrella Escobar

**Discussion:** General Report

### 14. **Discipline & Client Attorney Assistance**

(Tab 6)

#### **A. DCAAP Subcommittee**

Curtis Pritchard

1) **Discussion:** General Report

2) **Action:** Consider and discuss approval of proposed amendments relating to Rules 1.05 (g) and 1.16 of the Texas Disciplinary Rules of Professional Conduct

3) **Action:** Consider and discuss approval of proposed amendments relating to Rule 1.05 (c) (9) of the Texas Disciplinary Rules of Professional Conduct

4) **Action:** Consider and discuss approval of timeline of submission of proposed disciplinary rules to the Supreme Court of Texas

#### **B. Client Security Fund Subcommittee**

Lisa Richardson

**Discussion:** General Report

### 15. **Audit and Finance Committee**

Jarrold Foerster

(Tab 7)

**A. Discussion:** Financial Reports and General Review of Financial Statements

**B. Action:** Consider, discuss, and approve a one-year extension of PFM Asset Management's contract for investment management services

**C. Action:** Consider, discuss and accept:

1) Quarterly Investment Report for the period ending February 28, 2019

2) Internal Audits for fiscal year ending May 31, 2018

Darlene Brown

### 16. **Public Services and Education Committee**

#### **A. Legislative Policy**

Jeff Chandler

1) **Discussion:** General Report

2) **Action:** Consider and discuss approval of additions or changes to the SBOT Legislative Program and recommendations of the Subcommittee, if any

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- |  |                            |          |
|--|----------------------------|----------|
| <b>B. Affordable Legal Services Subcommittee</b>   | Nicole Voyles              |          |
| <b>Discussion:</b> General Report  |                            |          |
| <br>   |                            |          |
| 17. <b>Member Services and Education Committee</b>   |                            | (Tab 8)  |
| <b>Insurance/Member Benefits Subcommittee</b>  | Greg Sampson               |          |
| 1) <b>Discussion:</b> General Report   |                            |          |
| 2) <b>Action:</b> Consider and discuss approval of<br>custodian attorney appointment form and<br>related documents                     |                            |          |
| <br>   |                            |          |
| 18. <b>Commission for Lawyer Discipline/Chief</b>  | Noelle Reed/ Seana Willing | (Tab 9)  |
| <b>Disciplinary Counsel Update</b>   |                            |          |
| <b>Discussion:</b> General Report  |                            |          |
| <br>   |                            |          |
| 19. <b>Administration Committee</b>  |                            |          |
| <b>A. Administration Committee</b>   | Christy Amuny              |          |
| <b>Discussion:</b> General Report  |                            |          |
| <br>   |                            |          |
| <b>B. Performance Measures and Strategic Planning</b>  | Fidel Rodriguez            |          |
| <b>Subcommittee</b>  |                            |          |
| <b>Discussion:</b> General Report  |                            |          |
| <br>   |                            |          |
| 20. <b>Member Services and Education Committee</b>   |                            | (Tab 10) |
| <b>A. Appeals-Grant Review Subcommittee</b>  | Chris Oddo                 |          |
| 1) <b>Discussion:</b> General Report on Grant<br>Authorization Request Received:<br>“What Lawyers Do” by Law Focused Education<br>Inc. |                            |          |
| <br>   |                            |          |
| <b>B. Professional Development Subcommittee</b>  | Sarah Keathley             |          |
| <b>Discussion:</b> General Report  |                            |          |
| <br>   |                            |          |
| <b>C. New Directors Orientation Subcommittee</b>   | Alison Colvin              |          |
| <b>Discussion:</b> General Report  |                            |          |
| <br>   |                            |          |
| 21. <b>Section Representatives to the Board Committee</b>  | Erich Birch                |          |
| <b>Discussion:</b> Sections Update   |                            |          |
| <br>   |                            |          |
| 22. <b>Report from the Texas Bar Foundation</b>  | Steve Benesh               |          |
| <b>Discussion:</b> General Report  |                            |          |
| <br>   |                            |          |
| 23. <b>Texas Young Lawyer Association</b>  | Sally Pretorius            |          |
| <b>Discussion:</b> General Report  |                            |          |
| <br>   |                            |          |
| 24. <b>Discussion:</b> Liaison Reports   |                            |          |

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A. Supreme Court Liaison

B. Court of Criminal Appeals Liaison

C. Federal Judicial Liaison

D. Judicial Section Liaison

E. Out-of-State Lawyer Liaison

Justice Debra Lehrmann

Judge Barbara Hervey

Judge Karen Gren Scholer

Judge Randy Clapp

Judge Linda Thomas

25. **Discussion:** Report from the General Counsel

Ross Fischer

26. **Discussion:** Report from the Legal Counsel

John Sirman

**A. Closed Session** as authorized by Texas Government Code Section 551.071 for the purpose of consulting with legal counsel, including regarding pending or contemplated litigation (*Patricia Baskette v. Prudential Insurance Company and State Bar of Texas Insurance Trust*, 5-18-cv-01150-OLG, W.D. Tex. (2018); *McDonald et al. v. Longley et al.*, 1:19-cv-00219, W.D. Tex. (2019); and *Rosalinda Solis v. Interra Sky 4801 Woodway, L.L.C* (No. 2019-18261 in the District Court of Harris County); and Section 551.074 to deliberate regarding personnel matter(s)

### **B. End of Closed Session/Return to Open Session**

**C. Action**, if needed, on items discussed in closed session

## 27. **Adjournment**

If, during the course of the meeting covered by this notice, the Board should determine that a closed session of the Board should be held or is required in relation to any item included in this notice, then such closed session as authorized by Texas Open Meetings Act (Tex. Govt. Code Ch. 551) will be held by the Board at that date, hour and place given in this notice or as soon after the commencement of the meeting covered by this notice as the Board may conveniently meet in such closed session concerning any and all subjects and for any and all purposes permitted by Sections 551.071 – 551.084, inclusive, of the Texas Open Meetings Act.

Items on the agenda will not necessarily be discussed or considered in the order they are printed on the agenda above. Comments from the public may be taken throughout the Board meeting.

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**COLVIN, SAENZ, RODRIGUEZ & KENNAMER, L.L.P.**

ATTORNEYS AT LAW

A REGISTERED LIMITED LIABILITY PARTNERSHIP

NORTON A. COLVIN, JR.  
MARJORY C. BATSELL  
JAIME A. SAENZ\*  
JOSEPH A. (TONY) RODRIGUEZ  
ALISON D. KENNAMER  
NORTON A. (TREY) COLVIN, III  
CARLA SAENZ MARTINEZ  
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TEXAS BOARD OF LEGAL SPECIALIZATION

OF COUNSEL:

TERI L. DANISH\*\*

\*\*BOARD CERTIFIED IN LABOR AND EMPLOYMENT LAW  
TEXAS BOARD OF LEGAL SPECIALIZATION

December 12, 2018

**Via E-Mail: [laura.gibson@dentons.com](mailto:laura.gibson@dentons.com)**

Ms. Laura Gibson

Dentons

1221 McKinney Street, Suite 1900

Houston, Texas 77057

***Re: Nomination for Chair of the Board of Directors***

Dear Ms. Gibson:

I am seeking the nomination for the position of Chair of the State Bar of Texas for the 2019-2020 term. Pursuant to Section 1.11.03 of the State Bar Board Policy Manual, I believe the following statement will be informative to the Board in its selection as Chair.

I am now in my fifth year of service to the State Bar, having served as a Section Representative from 2013-2016 and now as the Director for District 12. I was encouraged to run for Section Representative by my council members on the Women and the Law Section. At 8 months pregnant and one week after my mother passed away I was sworn into my first term at the Hilton Anatole in Dallas. I will never forget the feelings I had that weekend as I walked through the enormous halls of the hotel in honest sorrow over my mother but in excited anticipation of meeting my third child. And in addition, walking into my very first board meeting for the Texas State Bar was as if someone had just opened a curtain to a world unknown. I had no idea what I had gotten myself into, what was expected of me or what was even going on behind that curtain. But, I knew one thing-I was curious.

In my time on the Board I have seen many people come and go and many stay in some capacity. But with everyone I have encountered, I have seen a passion and a drive to make things better. I have been amazed with the time contributions, the array of gifts and talents of so many and it has challenged me to learn and do more. In many ways, the State Bar has become part of my family and I feel an obligation to grow it, protect it, and strengthen it. I recognize our Bar has weaknesses, but it also has many strengths. I have been consistently humbled by Texas attorneys and their willingness to help the public and each other. Never when I joined this Board did I understand the significant time so many Texas lawyers spend on educating the public, providing access to justice, and teaching other attorneys. My curiosity has turned into drive.

The mission of the State Bar of Texas as outlined in the Strategic Plan is to support the administration of the legal system, assure all citizens equal access to justice, foster high standards of ethical conduct for lawyers, enable its members to better serve their clients and the public, educate the public about the rule of law, and promote diversity in the administration of justice and the practice of law. I believe I can help Mr. Sorrels and the Bar foster these missions. Especially in the area I reside, assuring all citizens have equal access to justice is a large feat. We have so many needs with family issues, immigration problems and veteran affairs. I see this part of the strategic plan as one of the most important. Spreading the word to the public in the sometimes-forgotten areas shows the strength this Bar can have. Supporting the administration of the legal system I believe is also just as important. Our members need to know that no matter where they are, the State Bar is here and present. This is not a group of insiders but a group who wants to reach out to all. Supporting all members through CLE, substance abuse support and merely being seen across the State nullifies the “insider” stigma.


As a young attorney at Fulbright and Jaworski in Houston, I was involved in the TADC Young Lawyer’s Association as a council member and was active in the Houston Bar Association’s Marriage Pro Bono efforts. Once I moved to South Texas, I became an active member of the Cameron County Young Lawyer’s Association and was one of the very first Cameron County Lawyers to attend the Bar Leader’s Conference and actually seek a grant, (which was awarded!). I continued onto the Cameron County Bar as a Director and then became a council member on the Women and the Law Section and ultimately the Chair. I have a heart for service.

While I may have to study up on Robert’s Rules and look to Mr. Sorrels, Mr. Longley, Ms. Gibson and others for guidance in State Bar management and other areas, I believe that my zeal and passion for this Bar can bring life and enthusiasm to a place that has been under attack. I also believe that I can motivate law students, newly licensed young lawyers and lawyers from smaller communities to become more active in the Bar. Their involvement is something I believe we are lacking.

Moreover, with my experience practicing in South Texas sometimes our attorneys feel far away from the “Big Bar” and less inclined to be involved. I want to help Mr. Sorrels spread the word that the Bar is here for all of us and the public, whether in Raymondville or Houston. I want attorneys around the State to see what the Bar offers and that it doesn’t matter where you practice, you can have all the benefits there are to offer, and you can also lead if you choose to do so.

Actions express priorities. The Texas State Bar is my priority which is why I wanted to take this action and run for Chair. I ask that you please consider me for nomination as the State Bar Chair for the 2019-2020 term.

Sincerely,



Alison W. Colvin

# ALISON W. COLVIN

## EDUCATION

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### UNIVERSITY OF OKLAHOMA COLLEGE OF LAW, *Norman, OK*

*Juris Doctorate, May 2003*

*Licensed in the State of Texas, Nov. 2003*

#### Activities:

ABA Mock Trial Team  
National Mock Trial Team  
Pepperdine Entertainment Law Moot Court Team  
National Moot Court Team  
Organization for the Advancement of Women in the Law  
University of Oklahoma Dean's Council

**Honors:** Low Wentz Merit Scholar  
Dean's Scholar  
Order of the Barristers

### SYRACUSE UNIVERSITY, *Syracuse, NY*

*B.F.A. Theatre, May 1998*

**Activities:** Alpha Xi Delta-President

Alpha Xi Delta-Executive Officer  
Alpha Xi Delta-Pledge Class President  
Syracuse University Drama Club-President

**Honors:** Dean's Scholar

## EXPERIENCE

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Oct. 2009 – present	<b>COLVIN, SAENZ, RODRIGUEZ, &amp; KENNAMER L.L.P.</b> <i>Brownsville, TX</i> <i>Partner-</i> Personal Injury, Products Liability, Commercial Litigation
Oct. 2006 – March 2009	<b>RODRIGUEZ &amp; NICOLAS, L.L.P.</b> <i>Brownsville, TX</i> <i>Associate-</i> Personal Injury, Products Liability, Commercial Litigation
Sept. 2003 – Oct. 2006	<b>FULBRIGHT &amp; JAWORSKI, L.L.P.</b> <i>Houston, TX</i> <i>Associate-</i> Medical malpractice, products liability and general litigation

## POSITIONS AND RECOGNITIONS

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June 2017-present	DISTRICT 12 DIRECTOR STATE BAR TEXAS
June 2013-June 2016	SECTION REPRESENTATIVE OF THE STATE BAR TEXAS
June 2012-June 2013	CHAIR, WOMEN AND THE LAW SECTION
June 2008-June 2012	COUNCIL MEMBER, WOMEN AND THE LAW SECTION
2011-2012	DIRECTOR, CAMERON COUNTY BAR ASSOCIATION
2008-2011	COUNCIL, CAMERON COUNTY YOUNG LAWYER'S ASSOCIATION
2004-2008	COUNCIL, TADC YOUNG LAWYER'S COMMITTEE
***	
2012-2104	TEXAS RISING STARS

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www.passmanjones.com

December 11, 2018

Laura Gibson, Chair  
State Bar of Texas Board of Directors  
DENTONS US LLP  
1221 McKinney St., Suite 1900  
Houston, TX 77010-2006

RE: Nomination for Chair of Board of Directors of the State Bar of Texas

Dear Chair Gibson:

I am respectfully submitting a request that my name be placed in nomination for the position of Chair of the Board of Directors for the State Bar of Texas for the term 2019-20. I further respectfully submit my statement of beliefs and strategies which I consider to be of the greatest significance to the Board and our Bar in the context of our strategic plan for 2019-20.

#### **Role of the Board Chair**

I am ready to work diligently with the incoming President and any other Officers and the Staff in accomplishing whatever they think the Board needs to be doing, and fully understand that the role of the Board Chair is not a public one, but one that functions through interaction with the other Directors on the Board. The items outlined in this letter are things I would ask of Board Members. These things are really not a "project," but an invigoration of our existing duties as Board Members.

I have served on various boards of directors over the years and was Chair of the Board of Directors of the Dallas Bar Association, and am familiar with the conduct of board meetings. As general concepts, all board members who want to speak will be encouraged to do so and free exchanges of ideas would be welcome.

I would personally try to assure that each board packet also contained a meaningful executive summary of the consent Agenda items.

Additionally, I am well acquainted with the relative importance to the public and to the membership in general between the President and the Board Chair. I am respectful of that difference.

#### **BELIEFS FOR 2019-2020**

I believe lawyers are wonderful, generous people.

I believe the Board of Directors of the State Bar has done a great job in the past and continues to do so.

I believe the Staff of the State Bar and the present and past Executive Director and Officers are exemplary, hard-working people who do not need and certainly do not deserve to be criticized or investigated.

I believe the State Bar is and has been transparent and is not filled with or run by insiders. (I do not even know what "insider" means and I certainly do not know who any of them would be.)

I do not believe task forces are useful, but that Committees and Sections are.

I do not believe criticism is helpful, but that positive suggestions are.

I believe we are all volunteers and should always remember that and should trust each other and treat each other with respect and admiration.

I believe there is a perceived "disconnect" between the State Bar of Texas and its rank and file members.

I believe we all have more in common with each other than with any other group of individuals on earth.

I believe that working together we can accomplish anything we want to, including easing or erasing the "disconnect".

### **SUMMARY BELIEFS**

I believe the State Bar of Texas for 2019-20 should focus on addressing the concerns of the rank and file practicing attorney members of the State Bar of Texas.

### **HOW DO WE ACCOMPLISH THAT?**

By the State Bar of Texas Board of Directors personally contacting our constituents, without the interaction of electronic media, and listening to them.

### **Actions and Tactics to Accomplish That Focus in 2019-2020**

First, we have to remember and focus upon who the rank and file practicing attorney members of the State Bar of Texas are. The vast majority of them are lawyers who go to work every day and work hard to represent their clients and to support themselves and their families.

Most of them:

- Will never be involved in a grievance proceeding;
- Do not have a substance abuse problem;
- Do not suffer from mental illness;



- And especially do not care one bit about “internal investigations” or task forces investigating the State Bar of Texas.

The types of programs that recently have seemed to have been the focus of the State Bar are the “marquee programs” for specific subsets of the members of the State Bar of Texas.

I have found through years of bar experience on the local level that there are any number of good, energetic and generous attorneys who can be organized and easily mobilized to work on TLAP type programs or in providing legal services for the poor, and even in the grievance process. For example, I know from personal experience as a previous head of the Dallas Volunteer Attorney Program Campaign Fund, which now raises \$1,000,000 per year for legal services for the members of the public at or near the poverty line, that attorneys are extraordinarily generous, not just with their contributions, but also with their time for good causes.

I am **NOT** suggesting that the excellent programs and responsibilities that the State Bar of Texas has that have a public focus or focus on the members who suffer or encounter unfortunate personal situations should be diminished in any way. We must take care of each other. And I say that with all sincerity, since I am a beneficiary of a precursor of TLAP. Thirty-two years ago, some older practitioners and Judges convinced me that I was one of those lawyers who just should simply not drink. I am alive today and enjoying my service with the State Bar of Texas because, with their help, I have followed that advice every day for 32 years.

All of these types of marquee programs are important and help the lawyers who need it most.

The rank and file practicing attorney members of the State Bar of Texas also need and are entitled to our attention.

### **Easing/Erasing the “Disconnect”**

I believe part of the perceived “disconnect” between the State Bar and the general membership is that they do not hear enough about the programs that the State Bar already has to assist them in their everyday practice needs. More importantly, as a Board we have not asked them, in the appropriate way, to tell us what they think the State Bar of Texas could do to make their everyday practice better or easier for them.

Now that the Sunset Proceedings are concluded and an alternate way of electing Presidents has been absorbed and assimilated, and the task forces are winding down, the basic mission for 2019-2020 should not be a constant self-evaluation of the State Bar, its Staff and Officers. It should be an outward mission.

What we need is a “reaching out” approach to the constituents we are supposed to be serving.

Through the Board of Directors, in 2019-2020, the rank and file practicing attorney members of the State Bar of Texas could be contacted on a more personal basis and asked a simple question:

“How can we better serve you?”

This contact would be accomplished in two ways without burdening the Staff with additional work. Each Director could simply be tasked with going to their base constituencies to ask this single, simple question:

How can we better serve you?

The great benefit that the State Bar of Texas would receive during the "year of asking" is the exercise itself. Directors asking the members that elected them what they think the State Bar could be doing for them has not been the focus in so long, it would almost be "new." Probably in most instances, the interaction between the Director and the member would result in the member learning about a State Bar Program that already exists.

The most important thing would be that the conversation actually occurred.

The second way to ease the perceived "disconnect" is for the Directors to become active in gathering this same information by performing outreach to the Committees and Sections at the meetings the Directors are either interested in or assigned to and asking the Committee and Section members to participate in this personal dialogue with the members they know.

An electronic survey simply will not work. We as a Board need to talk to members, face to face, and let them know about the State Bar and ask the question. There are 22 work days in a month. If a Director talks to just one lawyer they see or call during the day each day, in 8 months they will have talked to 176 members. This means the Board as a whole could talk to about 8,500 members in eight months.

It does not cost anything. It just takes five minutes to talk and one minute to make a note of it. When is the last time over 8,000 members of this organization were personally contacted by a Board member? It has probably never happened before. Most importantly, this is exactly what we are supposed to do as Directors and exactly what will close any "disconnect" perceived or otherwise.

Hopefully, by early 2020, each Director could submit a one-page report on the most frequently given answer to "the Question": "How can we better serve you?" These reports could be compiled by the Chair, probably with the help of only a single Staff member. A report could then be given to the Board about what the members most frequently see as their needs from the State Bar of Texas.

### **Examples of Present "Rank and File" Issues**

I know from already having some of my constituents talk to me that presently there are three things they bring up the most. It will be interesting to see if this is the case state-wide.

The three issues that already seem to be extant are:

1. **Young people:** They want to know about jobs and about the future of the profession and their future in it. (I am asked about this more than anything else.)
2. **Aging and aged lawyers:** They want to know how to retire from the practice, how to close an office, if they can "sell" a practice, should they keep their license to practice, etc.
3. **General Member Issues.** Generally, the members seem interested in two things:

- a. They are absolutely enamored with the idea of there being a State Bar of Texas health care plan as an alternative to whatever their present health care situation is. (When it came to Dallas, the program about the State Bar providing health a plan as a benefit for attorneys was standing room only!)
- b. The members complain they get too many communications from what they consider to be the State Bar of Texas, but which are really blast e-mails from "supporters" of various people or causes.

As you can see, these particular strategic issues and points of focus are not the more attractive, idealistic, marquee causes, but they represent the kinds of things the rank and file are really asking about and wondering if the State Bar is focused on them. Hopefully we can find out what the major concerns are statewide and assure the members of our interest in them.

I hope we can give our members the attention they deserve in 2019-2020.

Attached is a listing of some of the things I have done over the years which I think would be useful were I to be fortunate enough to be elected Chair of the Board of Directors of the State Bar of Texas.

Thank you for considering this letter and the action requested in it.

Respectfully Submitted



Jerry C. Alexander

JCA/sdc

cc: President Joe E. Longley  
President-Elect Randall O. Sorrels  
Executive Director Trey Apffel

### ***Professional***

- AV Preeminent 5.0 out of 5
- Texas Super Lawyer 2007, 2009-2018
- Attorney at Passman & Jones, P.C. entire career

### ***Dallas Bar Association***

- President of the Dallas Bar Association (2016)<sup>1</sup>
- Chair of the Dallas Bar Association Board of Directors (2012)
- Member of the Dallas Bar Association Board of Directors (2009-2010, 2011-2012)
- Chair of the Vision 2020 Project for the Dallas Bar Association (2010) (Chair of Committee and Co-Drafter of ten-year plan for Dallas Bar Association)
- Chair of the Dallas Volunteer Attorney Program Campaign (2010) (raised over \$700,000 on legal services for the poor)
- Chairman of the Judicial Polls Study Subcommittee of the Dallas Bar Association (2007-2008) (revised and maintained the Dallas Bar Association Judicial Poll)
- Vice-Chair of the Judiciary Committee of the Dallas Bar Association (2007)
- Co-Chair of the Judiciary Committee of the Dallas Bar Association (1997 and 2008)
- Chairman of the Local Rules Subcommittee (1993-1996, 1998-1999) - Headed up the Dallas Bar Association drafting project for the Local Rules of Practice in the Civil District and County Courts at Law Courts for Dallas County, Texas, which are presently in use
- Member of the City Club Board of Directors, Dallas, Texas
- Member of the UNT Dallas College of Law Municipal Building Exhibit Advisory Committee (2017 – Present)
- Member of the Dallas Bar Foundation Board of Trustees (2018)
- Advisory Member of the Board of Directors of the Dallas Bar Association (2018)

### ***State Bar of Texas***

- State Bar of Texas (Member of the Law Focused Education Committee (2007, 2008 and 2009)
- Chair of the Facilities & Equipment Subcommittee -2018 (working on lease for Grievance Committee in Dallas)
- Recruited SMU Ethics Law Professor to serve on Grievance Committee

### ***Personal***

- Married 35 years to Sherri Alexander, partner in the Polsinelli Firm; two adult children, Matthew (29) and Mackenzie (25)
- Ordained Elder in the Presbyterian Church; Serve on the Church Session (Board)

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<sup>1</sup> President-Elect of the Dallas Bar Association (2015)  
First Vice-President of the Dallas Bar Association (2014)  
Second Vice-President of the Dallas Bar Association (2013)  
Vice-Chair of the Dallas Bar Association Board of Directors (2011)  
Secretary-Treasurer of the Dallas Bar Association (2008)

# Leslie W. Dippel

PO Box 1748  
Austin, TX 78767

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December 12, 2018

Ms. Laura Gibson  
Dentons US LLP  
1221 McKinney Street Suite 1900  
Houston, TX 77010

via email: [laura.gibson@dentons.com](mailto:laura.gibson@dentons.com)

Dear Chair Gibson,

With excitement, I write to seek a nomination to serve as Chair of the State Bar of Texas Board of Directors for 2019-2120. As Board policy 1.11.03 directs, this letter provides my thoughts on issues of importance to the Bar upon which I would focus in the upcoming year.

From my first meeting as a newly elected director, I knew this organization of principled leaders was my home base. Without exception, every person I have had the pleasure to meet has had one goal in mind—serving the lawyers of Texas well. That single focus clearly drives every decision I have had the privilege to participate in. Some call this idealism, I see it as knowing your core principle.

For me, service to the bar started in 1995 when I was a third-year law student at the University of Houston Law Center. I served the board of directors of the Houston Young Lawyers Association as their law student representative. Immediately upon moving home to Austin, I sought out the Austin Bar Association and began a career long dedication to public service. After serving many years on various committees, and accepting increasing roles of responsibility, I ran for an officer position and eventually served Austin lawyers as President.

It is important to me to see ideas evolve into action. One of the most meaningful accomplishments of working with the Austin Bar is a committee with which I am still heavily involved. Nine years ago, I worked alongside Judge Lora Livingston, Judge Eric Shepperd and our own Rudy Metayer to create the first in Austin Bar's history, Diversity Fellowship. Law firms fund a fellowship for first year minority law students who work five weeks with the District and County Judges and five weeks with their sponsoring firm. We have watched many fellows go on to fulfilling careers, some at the firm that first sponsored them. This encouragement and celebration of diversity at the entry level will permeate to the top levels and we could not be more pleased with the success of this fellowship program.

My year as President of the Austin Bar was one of the greatest privileges of my career. It was a time of discovering who I was as a leader and volunteer. It was a difficult year, when two well-respected local lawyers ran against each other for State Bar President. Many lawyers took sides and some feelings were hurt. It was my responsibility to help our association rise to the occasion called upon us. I did this in several ways. The first was to build trust. I visited the sections of our association. I attended their meetings to tell them publicly that their work mattered, and their service and opinions were noticed and valued. Second, I encouraged dialogue, and asked for input and discussion from all lawyers. I discovered myself that year. I discovered I value open discussion, mutual respect, and participation at all levels above almost all else.

When I was a young associate in private practice, Tom Watkins encouraged us to read the Lawyer's Creed every January. I have kept this habit and it has become a touchstone for how I conduct myself on a daily basis. Reflecting on my term as President, I am most proud of a series of articles I wrote for the Austin Lawyer titled, "Living the Lawyer's Creed." Each month, I focused on a part of the Lawyer's Creed that spoke to me and discussed its relation to a particular initiative of the bar. Inevitably, as I wrote each article a lawyer came to mind that exemplified each particular ideal. I highlighted that lawyer because I am a firm believer in good service deserving recognition. It was an interesting process to focus on the Creed and incorporate its precepts into my daily practice. I hope it encouraged others to do the same and reminded us that ours is a noble profession, and we must work to keep it that way.

This is such an engrained habit that in preparing this letter, I went straight to our Mission Statement as it should shape our approach to every issue. Our stated mission is "to support the administration of the legal system, assure citizens equal access to justice, foster high standards of ethical conduct for lawyers, enable [our members] to better serve their clients and the public, educate the public about the rule of law, and promote diversity in the administration of justice and the practice of law." We cannot accomplish that mission without opening our doors and encouraging the lawyers of Texas to walk through.

The theme of my term as President was "Plugging In." I wanted lawyers in Austin to know there was a place for them at the Austin Bar no matter their subject-matter interest, availability, or experience level. Perhaps like no other time in our organization's history, there is a contingent who believes the State Bar is not relevant to them. We have a unique opportunity to open the doors and let all lawyers know they too can "plug in." Indeed, they must. There is a place for everyone and it is through service, at any level, that we ensure lawyers receive the information they need to enhance their practice and through them educate the public.

There is a perception there are "bar people" and "non-bar people." With each of us "plugging in" and living the Lawyer's Creed we will demonstrate we are all bar people because we all belong to one bar. And that bar is phenomenal. I believe an effective leader is one who creates, cultivates, and values relationships. Thereby, we accomplish progress, commit to change where it is warranted, and re-commit to what is working well where it is not. This is one of my passions and I believe it is my greatest strength. I notice similar strengths in the State Bar's leadership, and it would be a distinct privilege to work alongside Randy Sorrels, Trey Apffel, and the members of this board as Chair in 2019-2020. I enclosed my professional profile for more information on my background. I have experience in service, leadership, and open government issues to be of tremendous support to us and I very humbly ask to be considered for Chair of the State Bar Board of Directors.

Sincerely,



Leslie W. Dippel

cc: Joe Longley, President [joe@joelonglev.com](mailto:joe@joelonglev.com)  
Randy Sorrels, President-Elect [rsorrels@abrahamwatkins.com](mailto:rsorrels@abrahamwatkins.com)  
Trey Apffel, Executive Director [trey.apffel@texasbar.com](mailto:trey.apffel@texasbar.com)

*Assistant County Attorney  
Director, Civil Litigation Division  
PO Box 1748  
Austin, TX 78767*

*ldippel@att.net*

**Professional Profile:**

Ms. Dippel is the Director of the Civil Litigation Division of the Travis County Attorney's Office. She litigates and oversees all cases filed against Travis County and its employees in state and federal court at both the trial and appellate court level. Leslie's practice has always emphasized employment law. Leslie has gained significant first chair trial experience, including jury trials, administrative hearings, and appeals including appellate oral argument. Leslie also provides legal counsel to the Commissioners Court and other County elected and appointed officials on general liability issues and areas related to open government, including the Public Information Act and Open Meetings Act.

**Education:**

**University of Houston Law Center, JD 1996**  
Member, Board of Directors Houston Young Lawyer's Association

**Southwest Texas State University, BA 1992 *cum laude***  
Most Outstanding Senior, 1992

**Employment History:**

**Travis County Attorney's Office, 2/05-present**  
*Director, Civil Litigation Division*

**Brown McCarroll, L.L.P. (now Husch Blackwell) 08/01- 2/05**  
*Attorney*  
Litigation and labor & employment law

**Judge Andrew W. Austin, Western District of Texas, Austin Division, 3/00-08/01**  
**Judge Stephen H. Capelle, Western District of Texas, Austin Division, 9/99-3/00**  
*Briefing Attorney*

**Travis County Attorney's Office, 02/99-09/99**  
*Assistant County Attorney*  
Federal civil litigation focusing on civil rights defense

**Office of the Attorney General, Law Enforcement Defense Division, 1997-1999**  
*Assistant Attorney General*  
Member of supervisory team over first year attorneys. Heavy state and federal trial docket of civil rights defense, employment, and tort litigation including appeals. Participated in 34 trials; 17 jury trials; 7 first chair

**Office of the Attorney General, General Litigation Division, 1996-1997**

*Law Clerk*

**Gustafson, Gordon, & Griffin, Houston, Texas, 1994-1996**

*Law Clerk*

**University of Houston Law Center, 1994-1996**

*Research Assistant, Richard Alderman, Assistant Dean of Academic Affairs*

Updated Dean Alderman's Deceptive Trade Practices Guide and answered public mail addressed to the People's Lawyer

**Judge Michael Schneider, 157<sup>th</sup> Civil District Court, Houston, Texas, summer 1994**

*Intern*

**Professional Accomplishments:**

1995, Board of Directors Houston Young Lawyer's Association

1999, Co-Chair ABA Membership Committee

2001-2003, Co-Chair ABA Bench Bar Committee

2001-2005, Robert W. Calvert American Inn of Court

2003, Most Outstanding Committee Chair ABA

2003-2008, Co-Chair Legal Education Outreach Committee

2005-2013, Board of Directors ABA

2006, Leadership Austin graduate

2006-2007, Vice-Chair ABA Labor and Employment Section

2007-2008, Chair ABA Labor and Employment Section

2008, Most Outstanding Committee Chair ABA

2008-present, Co-Chair ABA Diversity Committee

2009-2012, Board of Directors Leadership Austin

2010, Most Outstanding Director ABA

2013, Contribution to Minority Community Award Travis County Women Lawyers Association

2013-2017, Treasurer, Secretary, Vice-President, and President ABA

2017-present, Board of Directors State Bar of Texas

**Community Involvement:**

Mills Elementary School PTA Executive Board; Gorzycki Middle School PTA Executive Board, Bowie High School Executive PTA Board; Bowie High School Soccer and Lacrosse Booster Club Executive Board, First United Methodist Church Administrative Board, Oak Hill United Methodist Church Staff Parish Relations Committee, Mothers Against Drunk Driving Advisory Board.



December 12, 2018

**VIA EMAIL**

Laura Gibson  
Dentons US, LLP  
1221 McKinney, Suite 1900  
Houston, Texas 77010

Re: Letter for Intent to Run for 2019-2020 Chair of the Board of Directors of the  
State Bar of Texas

Dear Ms. Gibson:

I write to submit my letter of intention to run for Chair of the Board of Directors  
the State Bar of Texas for the 2019-2020 Bar year.

If I have the honor of being elected and serving as Chair, in addition to the  
efficient administration of the Board's responsibilities, my goals for the Board would be:

- (1) to broaden participation by our membership to seek better, more informed  
results based on objective data and practical observations;
- (2) to inform the membership how the SBOT works to advance the interests of  
the profession in the context of the statutory self-governance regime; and
- (3) to reinforce the Board's position as the governing body of the SBOT.

I would seek to accomplish these goals by:

- engaging the Board and SBOT membership through technology to obtain their  
input, comments, and viewpoints of actions and policies;
- structuring Board committees to encourage focused effort by Board members  
to perform the SBOT and Board's statutory requirements and to exceed the  
Board's strategic plan; and

December 12, 2018

Page 2

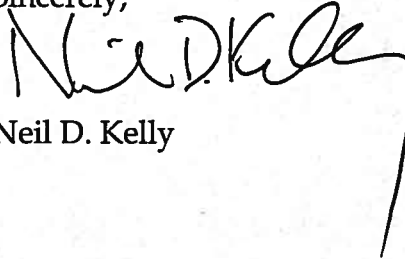
- working with Board members, the SBOT professionals, and SBOT officers to achieve coherent and consistent messaging about the SBOT, its policies, and its functions.

Texas lawyers enjoy a unique arrangement of self-governance that the Board must protect while pursuing policies that allow the SBOT to provide services and resources that enhance our profession. I would be humbled by the opportunity to serve as Chair if I am elected.

My firm resume is attached, with a short summary in the later part of the document of my several years of service to our profession.

Please let me know if you need any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Neil D. Kelly". The signature is stylized with a large, sweeping "N" and a long, vertical flourish extending downwards from the end of the name.

Neil D. Kelly

Enclosure

Neil D. Kelly  
Partner  
Hunton Andrews Kurth LLP

600 Travis  
Suite 4200  
Houston, TX 77002  
P: +1.713.220.4198  
F: +1.713.220.4285  
C: +1.713.503.6396

[neilkelly@huntonak.com](mailto:neilkelly@huntonak.com)

Neil is a trial lawyer whose practice focuses on complex civil disputes, corporate investigations, and pre-litigation dispute analysis and transaction and risk due diligence for clients active in oil and gas exploration and development, energy-related manufacturing and services, real estate, wood-products testing, and private equity investments.

Neil achieves results for clients through the early assessment of critical facts and controlling legal principles to develop a comprehensive strategy.

Specific experience includes disputes involving purchase and sale agreements, supply and service agreements, commercial building leases, mineral leases, joint operating agreements, areas of mutual interest, trade secret disputes, and non-compete and related employment agreements, as well as investigations by the Securities and Exchange Commission, Department of Justice, Fraud Division, and the Federal Trade Commission.

#### REPRESENTATIVE EXPERIENCE

Neil has served as lead trial counsel or the principal lawyer on numerous matters, including the following:

##### Energy; Oil and gas

##### A. Upstream - Service and products clients

- Represented plaintiff oil and gas drilling rig contractor against sellers/manufacturers of drilling rigs to assert claims for breaches of representations and express and implied warranties, fraud, and negligent misrepresentation.
- Represented plaintiff oil and gas drilling contractor to recover losses arising from defective and deficient diesel generators and insufficient service.
- Represented oil and gas drilling contractor in lawsuit with subcontractors and claims for payment brought by third parties; avoided liens on property.



#### INDUSTRIES

Electric  
Energy  
Energy Services  
Natural Gas  
Oil and Gas

#### PRACTICES

Commercial Litigation  
Corporate  
Corporate Compliance,  
Investigations and  
Defense  
Litigation and Dispute  
Resolution  
Oil and Gas Disputes  
Securities Litigation

#### EDUCATION

JD, 1992, *magna cum laude*, Tulane  
University Law School,  
Order of the Coif, Phi  
Delta Phi  
BSM, 1988, Tulane  
University

#### ADMISSIONS

Texas 1992  
US Court of Appeals for  
the Fifth Circuit  
US Court of Appeals for  
the Third Circuit  
US District Court for the  
Northern District of  
Texas  
US District Court for the  
Southern District of  
Texas  
US District Court for the  
Eastern District of  
Texas  
US District Court for the  
Western District of  
Texas

# Neil D. Kelly, Continued

## **B. Upstream - E&P Matters**

- Defended independent oil and gas exploration company in lawsuit alleging breach of joint operating agreement for improper charges of non-consent penalties; obtained trial court judgment that was sustained on appeal.
- Pursued claims and obtained recovery for independent oil and gas exploration company for breaches of area of mutual interest agreement in matter dealing with the statutes of fraud and limitations.
- Defended oil and gas exploration company in an arbitration brought by major seismic company to force payment of a substantial bonuses claimed due under seismic data agreement for exploration blocks in deep water Gulf of Mexico; obtained arbitration award that defeated all claims.

## **C. Midstream**

- Represented oil and petroleum products rail and barge terminal and storage facility in a variety of disputes related to industrial development bonds and a declaratory judgment action to dispose of threatened claims by former shareholders alleging fraud, mismanagement, and other theories of recovery.
- Represented gas storage facility and pipeline in lawsuit brought by directional drilling services provider against claims for payment of change orders, lost equipment, and alleged unforeseen obstructions.

## **D. Downstream**

- Represented major refinery pipeline and storage facility operator in connection with Federal Trade Commission Second Request.
- Represented as claimants bankrupt entities in pre-litigation analysis of gas, oil, wind, power, weather and ISDA contracts. Obtained in excess of \$40 million in settlements for bankruptcy estates.
- Represent fuel products trading company in efforts to restructure and pursue claims to recover misappropriated funds intended to establish line of credit for trading business.

## **General commercial litigation**

- Represented international investment concern against Houston-based portfolio manager in fraud, breach of contract, and conversion claims to recover investment funds.
- Represented scrap metal dealer against Mexican supplier in federal court; obtained denial of motions to dismiss, including for forum non conveniens, and ultimately prevailed on motion for summary judgment.



## Neil D. Kelly, Continued

- Represented minority shareholder in closely held corporation in multiple lawsuits against corporation's board and majority controlling person to obtain liquidity and enforce prior agreements.

### **Corporate investigations**

- Represented audit committee of publicly traded company in internal investigations arising from whistleblower ethics complaints.
- Resolved SEC investigation of fraudulent dealings by a client's former management, avoiding crippling fines and onerous injunctive restrictions.
- Represent client as a key third party witness in investigations by Department of Justice, Fraud Division, Securities and Exchange Commission, and Internal Revenue Service in ongoing matter.
- Represent oilfield services client in investigation arising from whistleblower complaints of apparently false inspections of trucks in over 15 states.
- Investigation into whistleblower allegations at Pennsylvania-based coal company of overstatement of earnings and management mis- mal- and non-feasance that later led to FCPA investigation.
- Represented accountant who was a third party witness in the Allen Stanford investigation.

### **Corporate transactions - energy**

- Frequent analysis of material terms of transactions and deal documents, including indemnifications, representations and warranties, dispute resolution provisions, choice of law, employment agreement provisions, non-compete provisions, and other matters.
- Multiple matters involving transaction analysis for master limited partnerships in disputes with investors regarding calculation of units, distributions, buyout provisions, and asset characterizations.
- Represent private equity client in Delaware law disputes over working capital true ups and indemnification claims arising from alleged breaches of representations and warranties in entity purchase and sale agreement and related asset sale agreement.

# Neil D. Kelly, Continued

## AFFILIATIONS AND COMMUNITY ACTIVITIES

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- **Texas Bar Foundation, Fellow**

Member, Houston Nominating Committee

- **State Bar of Texas**

**Director, Place 4, Place 2** - Term Expires 2020

Standing Committees - Advisor

Administration of Rule of Evidence - 2018-2019

Pattern Jury Charge - Oil and Gas - 2017-2018

Local Bar Services - 2017-2018

SBOT Section - Advisor

Oil, Gas & Energy Resources Law Section - 2018-2019

Computer & Technology - 2018-2019

Business Law Section - 2017-2018

LGBT Law Section - 2017-2018

SBOT Board Committees

Executive Committee - 2018-2019

Executive Committee, Policy Manual Subcommittee - 2018-2019

Discipline & Client Attorney Assistance Committee - 2017-2018

Executive Committee, Policy Manual Subcommittee - 2017-2018

Public Services & Education Committee, Affordable Legal Services Subcommittee - 2017-2018

- **Houston Bar Foundation, Sustaining Life Fellow  
Director**

- **Houston Bar Association**

**President** - 2016-2017

Led the HBA's 11,500 members, 32 committees, and 27 sections in its continuing effort to promote professionalism, access to justice, the rule of law, legal education for the profession and the public, service to the Houston community, and equality and inclusion in the legal profession.

The HBA received multiple awards for its work during the 2016-2017 bar year:

**Texas Access to Justice Commission Deborah G. Hankinson Award**

The HBA earned this honor for its efforts that include hosting an extensive array of monthly and bimonthly legal clinics customized to meet the needs of Harris County residents and for raising \$725,000 through its annual Harvest Celebration, a fundraiser for legal services provided through the HBA's Houston Volunteer Lawyers.

## Neil D. Kelly, Continued

### **Two State Bar of Texas Star of Achievement Awards**

Expansion of the Houston Volunteer Lawyers (HVL) Pro Se Assistance Clinic, located in the Harris County Law Library.

Programs on diversity, equality, and inclusion from the LGBTQ perspective.

### **Three State Bar of Texas Publication Awards**

*The Houston Lawyer* magazine was named best overall newsletter and the magazine also won two individual article awards.

Other HBA Leadership Positions:

**President-Elect** - 2015-2016

**Treasurer** - 2014-2015

**Board Member** - 2011 to Present

Houston Volunteer Lawyers, Inc.

- o Chair - 2014-2015
- o Chair-elect - 2013-2014
- o Treasurer - 2012-2013
- o Secretary - 2011-2012

Houston Lawyer Referral Service

- o Chair - 2015-2016
- o Chair-elect - 2014-2015
- o Treasurer - 2013-2014
- o Secretary - 2012-2013

Houston Bar Association, Litigation Section

- o Chair - 2006-2007
- o Chair-elect - 2005-2006
- o Vice Chair - 2004-2005
- o Secretary and Treasurer - 2003-2004

- **Cub Scout Pack 55, St. John's the Divine**

Son and Daughter are both Cub Scouts

Den 1 Leader

Cub Master



## ***McDonald et al v. Longley et al***

### **THE LAWSUIT**

- In March 2019, three Texas lawyers sued the State Bar of Texas claiming that under *Janus v. AFSCME* (2018), it is unconstitutional for an attorney to be required to join the State Bar of Texas in order to practice law. The plaintiffs also challenge Bar programs that they claim exceed the Bar's "core regulatory functions."
- The State Bar of Texas will vigorously defend its existing statutory structure, which was established by the Texas Legislature in aid of the Texas Supreme Court's inherent authority to regulate the practice of law.

### **THE FACTS**

- There are a number of similar lawsuits pending around the country. None has been successful.
- Mandatory membership in a state bar and payment of compulsory fees are constitutional. Under U.S. Supreme Court precedent, the state has an interest in regulating the legal profession and improving the quality of legal services.
- All State Bar of Texas programs further the state's interests in regulating the legal profession or improving the quality of legal services. Through these activities, the State Bar protects the public, serves its members, and supports the administration of the legal system.
- It is disappointing that the plaintiffs have targeted the State Bar's access to justice, legislative, and diversity efforts, which are specifically designed to improve the quality of legal services in the state.
- \* **Access to Justice:** The plaintiffs want to stop the Bar from supporting initiatives to ensure legal representation for Texans and indigent clients who need legal aid. More than 5.6 million Texans qualify for civil legal aid, but only 10% of their legal needs are being met because of inadequate funding. The State Bar helps fill this justice gap by supporting access to justice programs that provide legal help to veterans, active-duty military, and their families; people affected by natural disasters; victims of domestic violence and abuse; and many other Texans in need. Support for increased access to justice consistently draws strong bipartisan support.
- \* **Legislative Program:** The State Bar's legislative activities are constitutional and serve to improve the law in Texas. State Bar legislative proposals are generally crafted by the Bar's practice-area sections through the work of volunteer attorneys with extensive knowledge of needed improvements.
- \* **Diversity:** The State Bar's diversity programs, which are open to all Texas attorneys, help the legal profession better serve Texas' growing population. These programs are widely supported by the Texas legal and business communities because they improve the quality of legal services.

**To read the Bar's response and related filings in *McDonald v. Longley* visit  
[texasbar.com/mcdonaldvlongley](https://texasbar.com/mcdonaldvlongley)**



**From:** [Royal Furgeson](#)  
**To:** [Joe Longley](#); 552.1176 ; 552.1176 ; 552.1176 ; [trey.apfell@texasbar.com](mailto:trey.apfell@texasbar.com)  
**Subject:** US Supreme Court Ruling in Janus Case  
**Date:** Friday, December 14, 2018 5:52:53 PM

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Dear Friends:

I wasn't sure who to write, so I am writing all of you.

First, thanks for your work for the lawyers of Texas. It matters. I appreciate your stewardship and the stewardship of those who have come before you.

Second, I am a big believer in the unified, organized bar and have become concerned that our own Texas Bar may soon face a stiff challenge to our present structure, in light of the Janus case that was recently handed down by the US Supreme Court. Its ramifications are unclear, but it may foreshadow significant difficulties ahead for us as an organization. I urge you to analyze the case and our bar structure to determine if we need to get ahead of the curve, to be proactive in our planning, so that we are ready for whatever comes.

Third, and to that end, I respectfully recommend that you commission our General Counsel Ross Fischer to undertake all steps necessary to provide legal advice to you about how to get the State Bar ready for all eventualities that might flow from possible changes in the law in this area, to include (1) submitting amicus briefs to lower courts and (2) possibly re-structuring certain impacted portions of our organization.

I hope that you do not view my suggestion as presumptuous. You may already be ahead of me on this issue, and if so, I am grateful. You may have also decide to proceed in another way. Regardless, I see this as an important looming challenge for us and look forward to your response.

With best wishes,

Royal

Judge (Ret) Royal Furgeson  
552.1176



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 19, 2013

Ms. Michelle Hunter  
Executive Director  
State Bar of Texas  
Post Office Box 12487  
Austin, Texas 78711

Opinion No. GA-0995

Re: Whether State Bar of Texas president-elect candidates who are nominated by petition under subsection 81.019(c), Government Code, are nevertheless subject to State Bar of Texas election rules and policies (RQ-1088-GA)

Dear Ms. Hunter:

You ask whether State Bar of Texas (the "State Bar") president-elect candidates nominated by petition under subsection 81.019(c) of the Government Code are subject to State Bar election rules and policies.<sup>1</sup> The State Bar is defined by statutes as an administrative agency of the judicial department of government whose purpose is to aid the Texas Supreme Court in the Court's regulation of the practice of law in Texas. TEX. GOV'T CODE ANN. § 81.011(a)–(b) (West 2005). The Supreme Court exercises administrative control over the State Bar and promulgates the rules under which the State Bar is governed. *Id.* §§ 81.011(c), .024(a). The State Bar board of directors (the "Board") is the governing body within the State Bar. *Id.* § 81.020(a); Tex. State Bar R. art. IV, § 1(D), *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G app. A (West Supp. 2012) (entitled "State Bar Rules").

Section 81.019 of the Government Code pertains to the election of the State Bar officers, which are the president, president-elect, and immediate past president. TEX. GOV'T CODE ANN. § 81.019(a) (West 2005). Specifically, section 81.019 provides:

(b) *Except as provided by Subsection (c)*, the officers shall be elected in accordance with rules for the election of officers and directors prepared and proposed by the supreme court as provided by Section 81.024.

(c) *The election rules must permit* any member's name to be printed on the ballot as a candidate for president-elect if a written petition requesting that action and signed by at least five percent of

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<sup>1</sup>Letter from Ms. Michelle Hunter, Exec. Dir., State Bar of Tex., to Honorable Greg Abbott, Tex. Att'y Gen. at 1–2 (Oct. 2, 2012), <http://texasattorneygeneral.gov/opin> ("Request Letter").

the membership of the state bar is filed with the executive director at least 30 days before the election ballots are to be distributed to the membership.

*Id.* § 81.019(b)–(c) (emphasis added); *see id.* § 81.024 (directing the Supreme Court to promulgate the rules governing the State Bar).

You ask “whether president-elect candidates nominated by petition under section 81.019(c) are subject to State Bar election rules and policies.” Request Letter at 1–2. Subsection (c) is a limited exception to subsection (b). The phrase, “[e]xcept as provided by . . .,” in subsection (b) has led some to believe that subsection (c) allows an officer to be elected completely outside of the State Bar election rules promulgated by the Supreme Court. *See* Request Letter at 1. Subsection (c), however, is merely a specific legislative requirement as to what the “election rules must permit.” TEX. GOV’T CODE ANN. § 81.019(b)–(c) (West 2005). The phrase, “[e]xcept as provided by Subsection (c),” ensures that the substantive requirements of subsection (c) are in effect regardless of whether those requirements are reflected in the rules. It does not exempt candidates from those rules. *Id.* § 81.019(c). Therefore, subsection (c) does not exempt president-elect write-in candidates from the Supreme Court rules for State Bar elections or from valid Board policies.

We have received briefing suggesting that some portions of the Board’s policies are inconsistent with the Supreme Court’s rules for the State Bar and with statutes, particularly with regard to the policies and rules governing nomination by petition.<sup>2</sup> Board policy provides that “[a]ny other *qualified* member” may be nominated by petition. State Bar of Tex. Bd. of Dirs. Policy Manual § 2.01.05, at 18 (2012) (“Policy Manual”) (emphasis added). Under section 2.01.04 of the Policy Manual, titled “Qualifications,” “[a]ny member of the State Bar who meets the eligibility requirements for Officers set forth in the State Bar Act and the State Bar Rules is eligible for nomination for President-elect, *provided such member is not currently serving as a Board [of Directors] member.*” *Id.* § 2.01.04 (emphasis added). Thus, under State Bar policy, sitting members of the Board who otherwise meet all eligibility requirements of the State Bar rules nevertheless are precluded from being nominated for president-elect under Board policy.

By contrast, the applicable State Bar rule directly tracks the language of subsection 81.019(c) by permitting “[a]ny other member of the State Bar” to stand for election for president-elect by petition. Tex. State Bar R. art. IV, § 11(B) (emphasis added). By their plain language, neither section 11(B) nor subsection 81.019(c) prohibits sitting Board members from being nominated for president-elect by petition. Policy Manual sections 2.01.04 and 2.01.05 are therefore inconsistent with State Bar rule article IV, section 11(B).

The State Bar Rules provide that “[t]he board shall . . . adopt such regulations and policies, consistent with [chapter 81 of the Government Code] or these Rules . . .” *Id.* art. IV,

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<sup>2</sup>Brief from Mr. Steve Fischer, State Bar of Texas Dir. Dist. 11, to Office of the Tex. Att’y Gen., at 2–4 (Oct. 15, 2012) (on file with the Op. Comm.).

§ 1(D). Further, the Policy Manual acknowledges that no State Bar policy established by the Board “shall be inconsistent or conflict with [chapter 81] [or] the State Bar Rules . . . . If there is any such inconsistency or conflict, [chapter 81] [or] the State Bar Rules . . . shall take precedence over [the policy].” Policy Manual at 2. Board policy sections 2.01.04 and 2.01.05, relating to the eligibility of certain members of the State Bar to stand for election for president-elect, conflict with both subsection 81.019(c) of the Government Code and State Bar rule article IV, section 11(B). Therefore, those policies are unenforceable.

**S U M M A R Y**

State Bar of Texas president-elect candidates nominated by petition under subsection 81.019(c) of the Government Code are subject to all valid State Bar election rules and policies. Board policy sections 2.01.04 and 2.01.05, relating to the eligibility of certain members of the State Bar to stand for election for president-elect, conflict with both subsection 81.019(c) of the Government Code and State Bar rule article IV, section 11(B). Therefore, those policies are unenforceable.

Very truly yours,

  
GREG ABBOTT  
Attorney General of Texas

DANIEL T. HODGE  
First Assistant Attorney General

JAMES D. BLACKLOCK  
Deputy Attorney General for Legal Counsel

JASON BOATRIGHT  
Chairman, Opinion Committee

Stephen L. Tatum, Jr.  
Assistant Attorney General, Opinion Committee



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

**September 2018**

## 2.03 Authority

**2.03.01 General.** The President-elect, the President, and the Immediate Past President shall enjoy all of the authority, duties, rights and responsibilities afforded each of them by the State Bar Act, the State Bar Rules, this Policy Manual, and the Board.

**2.03.02 Official Spokesperson.** The President, along with the Executive Director, shall be the official spokesperson of the State Bar. Public statements pertaining to grievance and the disciplinary procedure shall be coordinated through the chair of the Commission for Lawyer Discipline.

## 2.04 Appointments by Officers

Notwithstanding any provision of this policy manual to the contrary, any appointment of any person by an Officer to any entity or committee, including special committees such as ad-hoc committees and task forces, must be submitted to a approved by the Executive Committee or the Board.

# PART III. FISCAL POLICIES, FACILITIES AND PROPERTY

## 3.01 Dues and Assessments

**3.01.01 Dues.** In order to maintain a license for authority to practice law in Texas, each attorney must pay all State Bar dues required of him or her by the State Bar Act in the time and manner directed by the State Bar. Dues charged to each member of the State Bar need not be equal. Categories pertaining to years of practice, residency and age may be established with respect to varying amounts of dues to be paid. Changes or modifications of the annual dues shall be made only after a resolution proposing such changes is adopted by the Board, the resolution is approved by the Supreme Court, and a majority of the members of the State Bar voting approve the changes in a referendum called for that purpose. Current bar dues are:

- (A) \$68 per annum for each active member licensed less than three years.
- (B) \$148 per annum for each active member licensed at least three years but less than five years.
- (C) \$235 per annum for each active member licensed at least five years.
- (D) \$50 for each inactive member.
- (E) Each member seventy years of age or older is exempt from the payment of annual membership dues.

**3.01.02 Assessments.** From time to time the members of the State Bar may be charged a special assessment in addition to dues. The charging of any such special assessment shall require the same approvals that are required for changes in dues.

## 3.02 Annual Budget

**3.02.01 Preparation.** The Executive Director, in consultation with the President-elect and other members of the Budget Committee of the Board, shall prepare a proposed budget for the next Fiscal Year of anticipated operating revenues and operating capital expenditures for the State Bar for submission to and approval by the Board at the regularly scheduled second quarterly meeting of the Board. The Executive Director shall submit the proposed budget to each Board Member not less than seven days prior to the second quarterly Board meeting.

**3.02.02 Publication.** Upon approval by the Board at its second quarterly meeting, the budget shall be published in the next issue of the *Texas Bar Journal* and notice shall be given of a public hearing on the budget to be held prior to the next meeting of the Board.

**3.02.03 Approval.** The budget, as revised, shall be submitted to the Board at its regularly scheduled third meeting. Upon approval by the Board, the budget shall immediately be submitted to the Supreme Court for approval. The annual budget for the TYLA shall be submitted to the Board and approved by a majority vote of the Board.



## 2.03 Authority

**2.03.01 General.** The President-elect, the President, and the Immediate Past President shall enjoy all of the authority, duties, rights and responsibilities afforded each of them by the State Bar Act, the State Bar Rules, this Policy Manual, and the Board.

**2.03.02 Official Spokesperson.** The President, ~~along with the Executive Director~~, shall be the official spokesperson of the State Bar. Public statements pertaining to grievance and the disciplinary procedure shall be coordinated through the chair of the Commission for Lawyer Discipline.

## 2.04 Appointments by Officers

Notwithstanding any provision of this policy manual to the contrary, any appointment of any person by an Officer to any entity or committee, including special committees such as ad-hoc committees and task forces, must be submitted to a approved by the Executive Committee or the Board.

# PART III. FISCAL POLICIES, FACILITIES AND PROPERTY

## 3.01 Dues and Assessments

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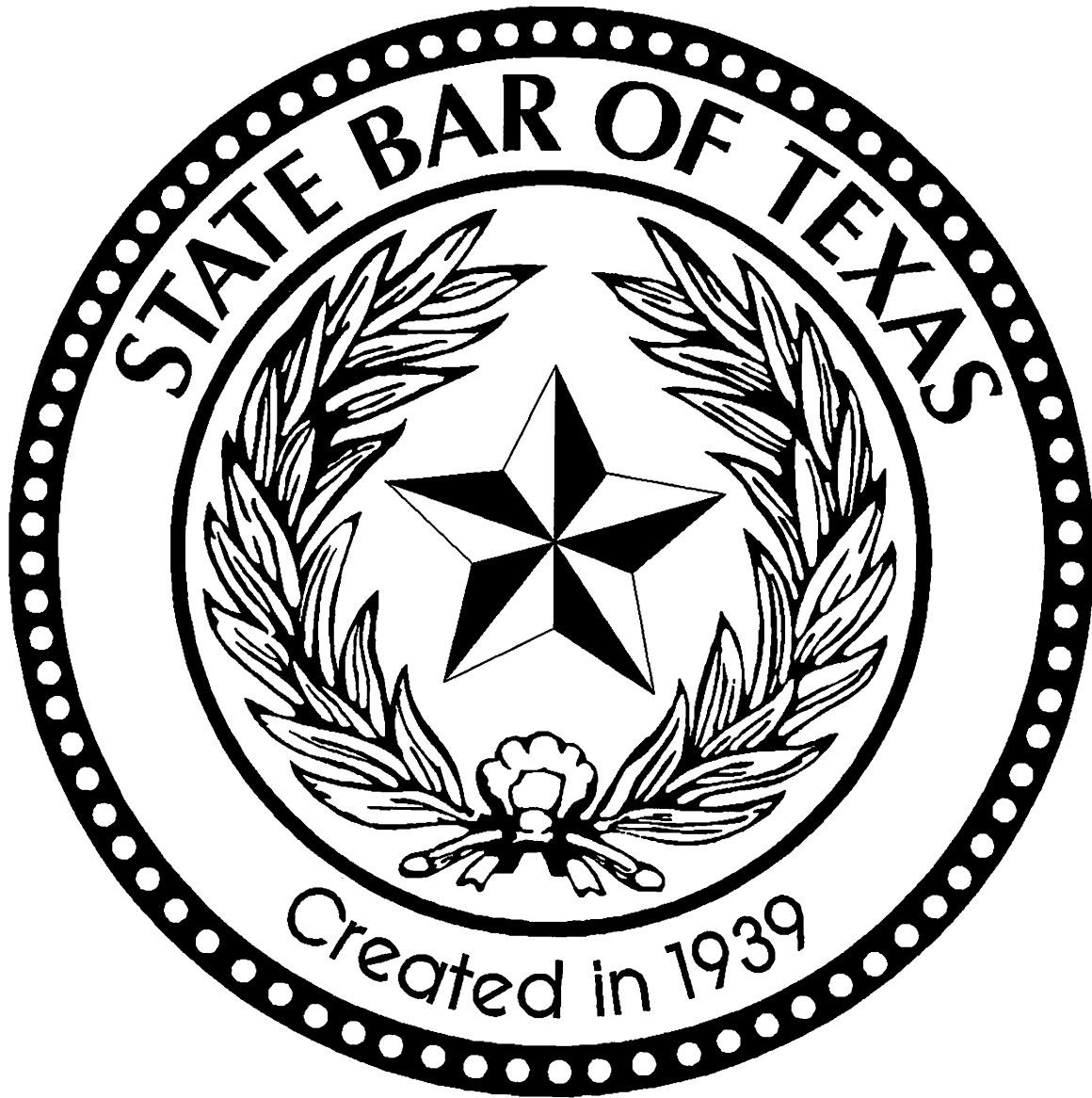
## 3.02 Annual Budget

**3.02.01 Preparation.** The Executive Director, in consultation with the President-elect and other members of the Budget Committee of the Board, shall prepare a proposed budget for the next Fiscal Year of anticipated operating revenues and operating capital expenditures for the State Bar for submission to and approval by the Board at the regularly scheduled second quarterly meeting of the Board. The Executive Director shall submit the proposed budget to each Board Member not less than seven days prior to the second quarterly Board meeting.

**3.02.02 Publication.** Upon approval by the Board at its second quarterly meeting, the budget shall be published in the next issue of the *Texas Bar Journal* and notice shall be given of a public hearing on the budget to be held prior to the next meeting of the Board.

**3.02.03 Approval.** The budget, as revised, shall be submitted to the Board at its regularly scheduled third meeting. Upon approval by the Board, the budget shall immediately be submitted to the Supreme Court for approval. The annual budget for the TYLA shall be submitted to the Board and approved by a majority vote of the Board.





**STATE BAR RULES**  
*As Amended June 2018*

11. **“Ex Officio”** means by virtue or because of an office. Unless otherwise provided, one serving as an ex officio member of a body is entitled to vote.

12. **“Rules”** means the State Bar Rules.

13. **“Member”** means a member of the State Bar of Texas.

## **ARTICLE II**

### **GENERAL PROVISIONS**

#### **Section 1. Official Name**

The official name of the State Bar is “State Bar of Texas.”

#### **Section 2. Purposes of the Organization**

The purposes of the State Bar are those as set out in the Act.

#### **Section 3. Purposes of These Rules**

These Rules are adopted for the operation, maintenance and conduct of the State Bar and for the disciplining of its members.

#### **Section 4. Seal**

The State Bar shall have a seal in the form of a five-pointed star, around the upper portion of which shall be written in capital letters, “STATE BAR OF TEXAS” and around the lower portion of which shall be written in capital letters, “CREATED IN 1939.” The seal may be used only for official business of the State Bar, its sections and committees.

#### **Section 5. Principal Office of the State Bar**

The principal office of the State Bar shall be maintained in Austin, Travis County, Texas.

#### **Section 6. Service of Process**

Service of citation or other process may be had upon the State Bar by serving either the executive director or the general counsel.

#### **Section 7. Fiscal Year**

The fiscal year of the State Bar shall be as determined by the board.

#### **Section 8. Organizational Year**

The organizational year of the State Bar shall be from time of adjournment of the annual meeting of the State Bar one year to the time of adjournment of the annual meeting of the State Bar of the next year.

#### **Section 9. Oath of Office**

Officers and directors of the State Bar, before entering upon the duties of office, shall take the official oath or affirmation set out in Art. 16, Sec. 1 of the Constitution of the State of Texas.

### **Section 10. Elections and Balloting**

Except as may otherwise be provided, elections shall be conducted under the supervision of the executive director.

### **Section 11. Officers and Directors Holding Over**

Each officer and director shall continue to serve and perform the duties of his office until his successor has qualified.

### **Section 12. Publication of New Rules and Amendments to Rules**

These Rules and any amendments thereto shall be published in a manner directed by the board.

### **Section 13. Spokesman for the Bar**

The president of the State Bar or, in the absence of the president, the president-elect, shall be the public representative of the State Bar and shall enunciate the policies of the State Bar as promulgated by the board, except that the Board or the president may delegate such authority under such conditions as the board may prescribe. The board may authorize sections and committees, and those properly authorized by such sections and committees, to publicly represent the views of a section or committee.

### **Section 14. Procedures for Meetings**

A. All proceedings at meetings of the State Bar, of the board, of the executive committee and all other committees and sections shall be governed by the most recent edition of Robert's Rules of Order Newly Revised.

B. Voting by those entitled to vote at all such meetings shall be in person. Voting by proxy shall not be allowed.

C. The presence of a majority of those persons entitled to vote at all such meetings shall constitute a quorum, except that:

1. at any meeting of the State Bar, one hundred (100) members shall constitute a quorum for the transaction of business, and
2. at any meeting of a State Bar section or committee, a quorum may be less than a majority if the board has determined.

Action shall be taken only upon a majority vote of those entitled to vote, a quorum being present.

## **ARTICLE III MEMBERSHIP**

### **Section 1. Members**

The members of the State Bar are those persons designated in the Act.



for the current year.

## **ARTICLE IV**

### **ADMINISTRATION**

#### **Section 1. Board of Directors; Duties**

- A. The State Bar shall be governed by a board which shall enforce the Act and these Rules.
- B. The term of office for each elected, public, and at-large director shall be three (3) years. The terms of elected and public directors shall be staggered with one-third (1/3) of such directors elected or appointed each year. The terms of at-large directors shall be staggered with as near to one-third (1/3) as possible appointed each year.
- C. The regular term of office of an elected, public, or at-large director shall commence on adjournment of the annual meeting of the State Bar next following election or appointment and continue until the adjournment of the third annual meeting next following election or appointment.
- D. The board shall take such action and adopt such regulations and policies, consistent with the Act or these Rules, as shall be necessary and proper for the administration and management of the affairs of the State Bar, for the protection of the property of the State Bar and for the preservation of good order.

#### **Section 2. Meetings of the Board**

The board shall meet regularly at least four (4) times annually, and may meet specially, at such times and places as the board shall determine. All meetings, however, shall be held within the State of Texas.

#### **Section 3. Composition of the Board**

The board shall be composed of the officers of the State Bar, the president, president-elect, and immediate past president of the Texas Young Lawyers Association, not more than thirty (30) members of the State Bar elected by the membership from their district as may be determined by the board, six (6) persons who are not licensed attorneys, known as public directors, who do not have, other than as consumers, a financial interest in the practice of law, and four (4) at-large directors appointed by the president and confirmed by the Board. The Board may, in its discretion, also include other members who shall be ex officio or non-voting board members.

#### **Section 4. Chairperson of the Board**

The board shall elect annually from its membership, under such procedures as it shall prescribe, a chairperson to serve for the next succeeding organizational year. Such person shall be elected from the class of directors then serving the second year of their terms.

#### **Section 5. Qualifications of Officers and Directors**

- A. Qualifications for Serving as Director. The board is the judge of a candidate's qualifications.

1. *All directors.* A director must not be an officer, employee, or paid consultant of a Texas trade association or the spouse of one. Texas trade association is defined in Section 81.028, Government

same manner and by the same authority designated by statute to fill such positions.

**B.** Persons filling such vacancies shall meet the same requirements and shall qualify in the same manner as those assuming the office of director for the full term.

**C.** The board may adopt appropriate procedures for the purpose of equalizing the size of the classes of the board of directors. Once such equalization is accomplished, then those appointed to fill a vacancy shall serve the balance of the term of the particular position vacated.

**D.** The board of directors may remove a director from the board at any regular meeting by resolution declaring the director's position vacant, pursuant to § 81.027(a) of the State Bar Act or Article IV, § 5 of these Rules.

### **Section 9. Executive Committee**

**A.** The executive committee of the board shall consist of the president, president-elect, the chair of the board, the immediate past president of the State Bar, president of the Texas Young Lawyers Association and such other persons as the president may appoint. The president shall be chair, and the board chair shall be the vice-chair of the executive committee and shall preside in the chair's absence.

**B.** The general purpose of the executive committee shall be to perform between meetings of the board such functions, consistent with the Act or these Rules, as the board may assign to it from time to time.

**C.** The general counsel and the executive director of the State Bar shall be ex officio, non-voting members of the executive committee.

### **Section 10. Officers**

**A.** The officers of the State Bar shall be the president, the president-elect and the immediate past president.

**B. Qualifications of Officers.** An officer:

1. must be an active member in good standing;
2. must never have been suspended for professional misconduct, been disbarred, or resigned in lieu of discipline;
3. must not be an elected official paid by the State of Texas.

**C. Other Requirements.** An officer must also take the oath of office by the second regularly scheduled board meeting of the officer's term.

**D.** The president shall preside at all meetings of the State Bar, be the official representative and spokesperson for the State Bar in all public matters and have general responsibility for carrying out the policy of the State Bar.

**E.** The president-elect shall preside at meetings of the State Bar in the absence of the president and



# ANDRÉS EDUARDO ALMANZÁN

Attorney and Counselor at Law

## LEGAL EMPLOYMENT

September 1997 – Present (21 Years)

**Mounce, Green, Myers, Safi, Paxson & Galatzan**

**A Professional Corporation** ([www.mgmsg.com](http://www.mgmsg.com))

100 North Stanton, Suite 1000

P.O. Box 1977

El Paso, Texas 79999

(915) 532-2000; Fax: (915) 541-1548

E-Mail: 552.1176

**Shareholder/ Vice President/ Board Director.** Practice includes a variety of civil defense litigation matters in both Federal and State Courts, including: Professional Liability/ Malpractice Defense; Personal Injury/ Wrongful Death; Construction Litigation; Trucking/Transportation; Premises Liability; Products Liability; Insurance Defense; Employment Law; Probate/Estate Litigation; Environmental Remediation/Cost Recovery (per the Comprehensive Environmental Response, Compensation and Liability Act/ "CERCLA" or "Superfund"); Civil Rights (Section 1983 Claims against Law Enforcement) Defense; Governmental Entity Defense; Commercial/Contractual Disputes (occasionally involving Mexican Law); Education/School Law, Residential/Homebuilder Litigation and Real Estate Transactions; and Public Utility Law.

## CIVIL TRIAL EXPERIENCE

Has participated in over twenty civil action trials, inclusive of Jury Trials, Bench Trials, Administrative Law Hearings/Trials, either as the Solo, Lead Attorney of Record or as a Second-Chair Attorney in State District, County and Federal Courts and Administrative Agencies of the State of Texas, including the Texas Education Agency and the Railroad Commission of Texas.

## LITIGATION EXPERIENCE

Over the last twenty-one (21) years, has regularly and on a monthly, if not weekly basis, conducted legal research and drafted briefing for and presented oral argument at contested hearings; taken oral depositions of parties and witnesses, including expert witnesses; defended oral depositions of parties and witnesses, including expert witnesses; and/or handled/conducted mediations; prepared civil cases for trial.

## **EDUCATION**

**University of California at Los Angeles School of Law**,  
Juris Doctor, May 1997  
**Stanford University**, Bachelor of Arts, Economics  
(Quantitative Track), June 1994

## **PROFESSIONAL LICENSES**

(Admitted to Practice)

State Bar of Texas, 1997  
United States Supreme Court, 2006  
United States Court of Appeals for the Fifth Circuit,  
2006  
United States District Court for the Western District of  
Texas, 1998  
United States District Court for the District of New Mexico,  
2017  
State Bar of New Mexico (Sept. 2018 Application Pending)

## **BOARD MEMBERSHIPS AND OFFICES HELD**

Board of Advisors, **Harvard Law School Latino Law  
Review**, September 2004 - Present  
President/Board Director, **Mexican-American Bar  
Association (MABA) of El Paso**, Sept. 2000 - Present,  
(President 2002-03; Board Director, Member)  
Vice-President and Board Director, **El Paso Young  
Lawyers' Association**, (past Board Director 1999 -  
2002; Vice-President 2001-2002)  
Board Director, **Texas Community Building with  
Attorney Resources (Texas C-Bar)**, September 2003 -  
2009  
Board of Advisors, **Texas Rio Grande Legal Aid (TRLA)**,  
2004 - 2005  
Board Director, **El Paso Bar Association**, September 2002  
- 2005  
Board Director, **El Paso del Norte Stanford Alumni  
Association**, 2000 - 2004  
Board Member/Advisor, **Greater El Paso Chamber of  
Commerce - Government Relations Division**, January  
2002 - 2004  
Committee Member, **Texas Disciplinary Rules of  
Professional Conduct - Standing Committee**, The  
State Bar of Texas, July 2005 - 2006  
Committee Member, **Admissions Committee for the  
United States District Court for the Western District  
of Texas - El Paso Division**, 2006 - Present  
Subcommittee Member, **Unauthorized Practice of Law  
Committee**, The Supreme Court of Texas, 1999 - 2001  
Subcommittee Member, **Multidisciplinary Task Force  
Committee**, El Paso Bar Association, 2000 - 2002

## **AWARDS**

\*Recognized as a "Texas Super Lawyer" in 2014, 2015, 2016, 2017, 2018 – Personal Injury Trial Law - Defense, as published in *Texas Monthly* magazine (*Texas Super Lawyers* -only 5% of Texas Attorneys receive this recognition).

\*Recognized as a "Texas Rising Star" in 2004, 2006, 2007, 2008, 2009, 2010, 2011, and 2012 as published in *Texas Monthly* magazine (*Texas Super Lawyers - Rising Stars Edition*; only 2.5% of Texas Attorneys receive this recognition).

\*Recognized as an Eastwood High School "Honored Ex" for 2018-2019

\*Recipient of the 2000 "Silver Patrick Henry Medallion: For Patriotic Achievement" from The Military Order of the World Wars - El Paso Chapter.

## **PROFESSIONAL AFFILIATIONS**

Fellow – Texas Bar Foundation

Barrister – George A. McAlmon American Inn of Court –  
El Paso Chapter

Pro Bono Volunteer Asylum Counsel - Las Americas ·  
Immigrant Advocacy Center

Member, American Bar Association

Member, Defense Research Institute

Member, State Bar of Texas

Member, Texas Association of Defense Counsel

Member, Mexican-American Bar Association of El Paso

Member, El Paso Bar Association

Member, The Paso Del Norte Group (2004 - 2009)

Faculty Member/Seminar Speaker

- Lorman Education Services

## **LEGAL INTERNSHIPS**

Law Student Intern/Law Clerk for the Mexican American Legal Defense and Educational Fund (MALDEF) at its national headquarters in Los Angeles, CA, August 1995 - December 1995.

Judicial Extern for U.S. District Court Judge Harry L. Hupp, Central District of California, Los Angeles, CA, January 1996 - May 1996.



## SEMINAR PRESENTATIONS/PAPERS & SPEAKING ENGAGEMENTS

- Seminar: Panel Presenter: "*We Too: A Discussion of Gender Discrimination/Bias in the Courts and Legal Practice*" - a CLE Ethics Seminar about hurdles that women in the legal profession face and empirical studies on gender discrimination/bias, presented to The George A. McAlmon American Inn of Court at the El Paso County Courthouse in El Paso, Texas on November 29, 2018.
- Seminar: Panel Presenter: "*Ms. Kowalski, 60 Minutes is on the line...Now What?*" - a CLE Ethics Seminar about Ethical Considerations Regarding Trial Publicity/Case & Client Press Conferences, presented to The George A. McAlmon American Inn of Court at the United States Court House in El Paso, Texas on April 14, 2018.
- Seminar: Panel Presenter: Texas Construction Defect Case Law Update, 23rd Anniversary of West Coast Casualty's Construction Defect Seminar, May 12-13, 2016; The Disneyland Hotel, Anaheim, California, May 2016.
- Seminar: Panel Presenter: Self-Insured Retention (SIR) Conflicts and Issues Between Carriers and Insured, ALFA International Transportation Practice Group Seminar, "Handling the Highway to Hell," Coral Gables, Florida, April 2014.
- Seminar: Featured Speaker on Utilizing the Federal Administrative Procedures Act to Compel Depositions of Governmental Employees at the Kolcraft Children's Products Panel Counsel Meeting held at the Defense Research Institute's Product Liability Conference in Phoenix, Arizona, April 2014.
- Seminar: Presentation on an Update for Home Builders on the Texas Residential Construction Commission (TRCC) to the El Paso Hispanic Builders Alliance, 2007 & 2008
- Guest Lecturer: Personal Injury Trial Law at The University of Texas at El Paso (UTEP), for a Liberal Arts Department class, "Courts in Action." 2003 – 2010.
- Seminar: "Updated Caselaw on the New Discovery Rules in Texas," for The El Paso Association of Legal Assistants, March 2003.
- Seminar: "A Review of The Texas Public Information Act," for the El Paso Claims Association, May 2002.
- Seminar: "Unemployment Compensation in Texas," Lorman Education Services, El Paso, Texas, April 2001.
- Seminar: "El Paso Bar Association's Fifth Annual Civil Trial Law Seminar," Topic: New Discovery Rules in Texas: Case Law Update, El Paso Bar Association, El Paso, Texas, February 2, 2001.
- Seminar: "An Introduction to Employment and Labor Law in Texas," Topic: Effective Hiring Practices. Lorman Education Services, El Paso, Texas, June 30, 2000.
- Seminar: "Construction Contracting with Public Entities in Texas," Topic: Resolution of Construction Disputes, Lorman Education Services, El Paso, Texas, April 27, 2000.
- Seminar: "Chiropractic Care and Billings in Personal Injury Cases," for the El Paso Claims Association, September 1999.
- Seminar: "The New Discovery Rules in Texas," for Farmers Insurance and Fred Loya Insurance Company in February and May 1999.
- Author of "*Ethical Considerations Regarding Client Conflicts of Interest*." Published in the El Paso Bar Association Newsletter, December 1997.

## PERSONAL

Born and raised in El Paso, Texas (Eastwood High School)

Third-generation native El Pasoan

Fluent in Spanish

President of *Delta Tau Delta* Fraternity at Stanford University, 1993-1994  
(& Vice-President 1992-1993).

Served as a Student Judge on the Stanford Judicial Council, 1992-1994.

Member of St. Raphael's Catholic Parish A.C.T.S.

Married with two children.

Advanced Open Water Diver.

Former Board Member/Director &

Current Little League Baseball Head Coach (12U Select)

– South West Baseball League (El Paso, Texas), 2014 - Present

**LUIS M. CARDENAS**  
**ESCOBEDO & CARDENAS, LLP**

1602 Dulcinea

Edinburg, Texas 78539

Telephone: (956) 630-2222

Fax: (956)630-2223

552.1176

Website: [www.escobedocardenas.com](http://www.escobedocardenas.com)

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**PROFESSIONAL**

Partner – Escobedo & Cardenas, L.L.P.

Areas of Practice

Commercial, corporate and fiduciary litigation, Tort litigation, Real Estate litigation, Eminent Domain litigation

Certifications and Ratings

AV-Rated Martindale Hubbell

Board Certified by Texas Board of Legal Specialization in Personal Injury Trial Law

Committees and Memberships

State Bar of Texas Pattern Jury Charge Committee: Malpractice, Premises and Products

State Bar of Texas Pattern Jury Charge Committee: Business, Consumer, Insurance and Employment

American Board of Trial Advocates (ABOTA) – President Elect

Hidalgo County Bar Association – President

The National Association of Minority and Women Owned Law Firms (NAMWOLF)

Admitted

Supreme Court of Texas

U.S. Court of Appeals, Fifth Circuit

United States District Court Southern District of Texas

United States District Court Northern District of Texas

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**EDUCATION**

University of Houston Law Center, J.D., 1997

University of Texas at Austin, B.A., 1993

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**AREAS OF PRACTICE**

Represent businesses and shareholders in corporate and fiduciary litigation

Represent insurance companies in third-party defense matters

Represent bank clients in depositor, debtor and trust client matters

Represent corporate clients in first-party tort defense litigation

Represent Hidalgo County Regional Mobility Authority and municipalities in Eminent Domain litigation

Represent municipalities in annexation disputes, including conducting annexation litigation against other municipalities and advise on future annexation growth strategies.

## **PUBLICATIONS/PRESENTATIONS**

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*Eminent Domain Damages*, State Bar of Texas, Damages in Civil Litigation – Dallas 2016

*Law of Eminent Domain*, Hidalgo County Bar Association, Civil Trial Law Course – McAllen 2016

*Product Liability Update* – Hidalgo County Civil Trial Law Course 2014

*Premises Liability*, Hidalgo County Bar Association 2014

*Supreme Court Update*, Hidalgo County Young Lawyers Association 2013

*Paid or Incurred*, State Bar of Texas CLE 2013

*Supreme Court Update*, 5<sup>th</sup> Administrative Judicial Region Judicial Conference 2012

## **REPRESENTATIVE CLIENTS**

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AT&T, Cricket Wireless, JPMorgan Chase, BBVA Compass, Texas Regional Bank, Carfax, American Millennium Insurance Company, Hidalgo County Regional Mobility Authority, City of Edinburg, City of La Joya, Republic Waste Services, ServPro Restoration Services

## **OTHER**

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Bilingual – Spanish

# STATE BAR *of* TEXAS

## 2019-2020 PROPOSED COMBINED BUDGET

The **State Bar proposed budgets** for the 2019-2020 fiscal year are included here for your information. If you would like a copy of the budget summary, contact the State Bar finance division director at (800) 204-2222, ext. 1481. All interested persons are invited to a public hearing on the proposed budgets scheduled for 9 a.m. Tuesday, April 2, 2019, at the Texas Law Center Room 101. The General Fund is the operating fund for the State Bar of Texas. The Law Practice Resources Fund is considered an Enterprise Fund, which is defined as a proprietary fund that is used to account for goods/services provided to the general public on a user-charge basis. The Special Revenue Funds are independent funds and most do not use any membership dues or revenues from the General Fund for operations. Capital Project Funds are used to account for the acquisition and construction of the State Bar's major capital facilities and other capital expenditures.

	GENERAL FUND	LAW PRACTICE RESOURCES FUND	SPECIAL REVENUE & CAPITAL PROJECTS FUNDS	TOTAL COMBINED PROPOSED BUDGET
<b>REVENUES &amp; RECEIPTS</b>				
MEMBERSHIP DUES	\$20,783,246	\$0	\$0	\$20,783,246
FEES	17,376,300	18,000	1,895,126	19,289,426
ADVERTISING	784,000	0	0	784,000
SALES	1,040,574	2,481,336	26,300	3,548,210
INVESTMENTS	350,000	9,000	30,150	389,150
GRANTS	0	0	312,825	312,825
CONTRIBUTIONS	685,074	0	371,070	1,056,144
ADMINISTRATIVE FEES	608,800	0	0	608,800
RENT	172,673	0	0	172,673
OTHER REVENUE	1,308,547	1,327,826	15,000	2,651,373
<b>TOTAL REVENUES</b>	<b>\$43,109,214</b>	<b>\$3,836,162</b>	<b>\$2,650,471</b>	<b>\$49,595,847</b>
RECEIPTS FROM RESERVES	844,500	0	371,000	1,215,500
<b>TOTAL REVENUES &amp; RECEIPTS</b>	<b>\$43,953,714</b>	<b>\$3,836,162</b>	<b>\$3,021,471</b>	<b>\$50,811,347</b>
<b>EXPENDITURES</b>				
SALARIES	\$17,977,143	\$1,336,761	\$547,483	\$19,861,387
BENEFITS	6,404,285	451,306	204,083	7,059,674
TRAVEL	2,094,740	46,450	203,460	2,344,650
MEETINGS & CONFERENCES	4,471,254	1,800	618,667	5,091,721
PROFESSIONAL SERVICES	2,944,847	74,926	258,825	3,278,598
COURT FEES	107,900	0	0	107,900
PUBLICITY/ADVERTISING	725,793	59,000	176,515	961,308
DUES/SUBSCRIPTIONS/LICENSES	685,847	53,576	22,102	761,525
EDUCATION/TRAINING	195,134	13,430	3,000	211,564
SUPPLIES/AWARDS/GIFTS/SPEC. ITEMS	604,005	23,001	93,516	720,522
RENTALS—OFFICE, EQUIPMENT, STORAGE	1,136,603	167,988	159,250	1,463,841
MAINTENANCE/REPAIR	614,339	32,100	0	646,439
UTILITIES	248,960	0	0	248,960
POSTAGE & FREIGHT	747,296	170,330	45,900	963,526
TELEPHONE	371,314	5,500	27,000	403,814
INSURANCE	462,766	6,000	0	468,766
ADMINISTRATIVE	333,712	756,053	873,600	1,963,365
FIXED ASSETS	40,000	9,800	1,128,500	1,178,300
PRINTING & COPYING	1,304,476	505,548	99,570	1,909,594
RESERVE FOR CONTINGENCIES	150,000	0	0	150,000
<b>TOTAL EXPENDITURES</b>	<b>\$41,620,414</b>	<b>\$3,713,569</b>	<b>\$4,461,471</b>	<b>\$49,795,454</b>
BOARD COMMITMENTS (IN)/OUT	844,500	0	(250,000)	594,500
TRANSFERS (IN)/OUT	1,488,800	0	(1,488,800)	0
<b>TOTAL EXPENDITURES, BOARD COMMITMENTS &amp; TRANSFERS</b>	<b>\$43,953,714</b>	<b>\$3,713,569</b>	<b>\$2,722,671</b>	<b>\$50,389,954</b>
<b>NET REVENUES &amp; RECEIPTS OVER EXPENDITURES, BOARD COMMITMENTS &amp; TRANSFERS</b>	<b>\$0</b>	<b>\$122,593</b>	<b>\$298,800</b>	<b>\$421,393</b>
<b>TOTAL BUDGETED FULL-TIME EQUIVALENTS</b>	<b>260.88</b>	<b>20.25</b>	<b>7.88</b>	<b>289.01</b>

# STATE BAR of TEXAS

## 2019-2020 PROPOSED GENERAL FUND BUDGET

### REVENUES & RECEIPTS

Attorney Membership Dues	\$20,783,246
Accounting/Management Fees	650,351
Bar Journal Revenue	629,878
MCLE Fees	3,257,183
TexasBarCLE Revenue	13,955,703
Website	405,000
CDC Disciplinary Fees	553,240
Advertising Review Fees	380,000
Member Benefit Fees	844,909
Other Revenue	1,649,704
<b>TOTAL REVENUES</b>	<b>\$43,109,214</b>
Receipts from Reserves	844,500
<b>TOTAL REVENUES &amp; RECEIPTS</b>	<b>\$43,953,714</b>

### EXPENDITURES, BOARD COMMITMENTS & TRANSFERS

EXECUTIVE DIVISION	BUDGET	FTEs
Executive	\$670,896	2.88
Associate Executive Director/Legal Counsel	661,868	3
Deputy Executive Director	226,500	1
Deputy Executive Director/External Affairs	261,955	1
Special Financial Adviser	193,491	0.75
Officers & Directors	850,117	—
Human Resources	294,760	2
Training/Tuition	71,133	—
<b>MEMBER &amp; PUBLIC SERVICES DIVISION</b>		
Center for Legal History	\$154,037	2
Law-Related Education	512,851	3
Government Relations	173,238	1
Texas Young Lawyers Association	1,010,999	3
LeadershipSBOT	98,672	—
Sections	335,660	4
Local Bars	455,312	4
Special Events	73,604	—
Law Student Division	20,266	—
Volunteer Committees	280,510	1
<b>LEGAL &amp; ATTORNEY SERVICES DIVISION</b>		
Legal & Attorney Services	\$229,745	1
Texas Lawyers' Assistance Program	401,146	4
Legal Access Division	1,521,608	7.5
<b>ACCESS TO JUSTICE COMMISSION</b>	<b>\$840,127</b>	<b>4</b>
<b>PROFESSIONAL DEVELOPMENT DIVISION</b>		
TexasBarCLE	\$9,950,513	41
Minority Affairs	498,601	3

### EXPENDITURES, BOARD COMMITMENTS & TRANSFERS CONTINUED

ATTORNEY COMPLIANCE DIVISION	BUDGET	FTEs
Attorney Compliance	\$181,703	1
Advertising Review	183,126	2
Client Attorney Assistance Program	545,835	8
Lawyer Referral	361,847	4
MCLE	603,280	7
<b>OPERATIONS/SECURITY DIVISION</b>		
Purchasing & Facilities	\$1,258,803	5.75
<b>RESEARCH &amp; ANALYSIS</b>	<b>\$179,700</b>	<b>1</b>
<b>MEMBER BENEFITS</b>	<b>\$203,463</b>	<b>—</b>
<b>FINANCE DIVISION</b>		
Accounting	\$946,709	11
Membership	706,016	7
Other Administrative	1,836,698	—
<b>IT DIVISION</b>		
Information Technology	\$1,317,699	8
Customer Service	376,826	3
<b>COMMUNICATIONS DIVISION</b>		
Communications	\$254,629	2
Bar Journal	1,512,147	8
Public Information	155,636	1.5
Website	412,484	2
<b>PUBLIC PROTECTION DIVISION</b>		
Chief Disciplinary Counsel	\$9,858,740	95.5
Statewide Committees	230,800	—
Ombudsman	84,018	1
Board of Disciplinary Appeals	622,646	3
<b>BOARD COMMITMENTS</b>	<b>\$844,500</b>	<b>1</b>
<b>TRANSFERS TO SPECIAL REVENUE &amp; CAPITAL PROJECTS FUNDS</b>		
Texas Law Center Fund	\$288,800	
Technology Fund	500,000	
Client Security Fund	700,000	
<b>TOTAL EXPENDITURES, BOARD COMMITMENTS &amp; TRANSFERS</b>	<b>\$43,953,714</b>	
<b>TOTAL REVENUES &amp; RECEIPTS OVER EXPENDITURES, BOARD COMMITMENTS &amp; TRANSFERS</b>	<b>\$0</b>	
<b>TOTAL BUDGETED GENERAL FUND FTEs</b>	<b>260.88</b>	

(FTE—Full-Time Equivalent)

# STATE BAR of TEXAS

## 2019-2020 PROPOSED BUDGETS FOR SPECIAL REVENUE & CAPITAL PROJECTS FUNDS

	LAW FOCUSED GRANTS	TEXAS BOARD OF LEGAL SPECIALIZATION	TEXAS BAR COLLEGE	CONVENTION FUND	TEXAS LAW CENTER	TECHNOLOGY FUND	CLIENT SECURITY FUND	TOTAL
<b>REVENUES</b>								
FEES	\$0	\$1,347,126	\$248,000	\$300,000	\$0	\$0	\$0	\$1,895,126
SALES	0	0	1,300	25,000	0	0	0	26,300
INVESTMENTS	0	0	150	0	10,000	0	20,000	30,150
GRANTS	312,825	0	0	0	0	0	0	312,825
CONTRIBUTIONS	0	0	11,070	360,000	0	0	0	371,070
RESTITUTION	0	0	0	0	0	0	15,000	15,000
<b>TOTAL REVENUES</b>	<b>\$312,825</b>	<b>\$1,347,126</b>	<b>\$260,520</b>	<b>\$685,000</b>	<b>\$10,000</b>	<b>\$0</b>	<b>\$35,000</b>	<b>\$2,650,471</b>
RECEIPTS FROM RESERVES	0	0	0	0	0	371,000	0	371,000
<b>TOTAL REVENUES &amp; RECEIPTS</b>	<b>\$312,825</b>	<b>\$1,347,126</b>	<b>\$260,520</b>	<b>\$685,000</b>	<b>\$10,000</b>	<b>\$371,000</b>	<b>\$35,000</b>	<b>\$3,021,471</b>
<b>EXPENDITURES</b>								
SALARIES	\$0	\$480,983	\$66,500	\$0	\$0	\$0	\$0	\$547,483
BENEFITS	0	178,745	25,338	0	0	0	0	204,083
TRAVEL	111,160	45,000	37,000	10,300	0	0	0	203,460
MEETINGS & CONFERENCES	37,150	49,657	27,000	504,860	0	0	0	618,667
PROFESSIONAL SERVICES	90,700	144,125	15,000	9,000	0	0	0	258,825
PUBLICITY/ADVERTISING	0	135,015	5,000	36,500	0	0	0	176,515
DUES/SUBSCRIPTIONS/LICENSES	0	20,000	1,682	420	0	0	0	22,102
EDUCATION/TRAINING	0	1,000	2,000	0	0	0	0	3,000
SUPPLIES/AWARDS/GIFTS/SPEC. ITEMS	50,515	10,001	16,000	17,000	0	0	0	93,516
RENTALS—OFFICE, EQUIPMENT, STORAGE	4,500	150,000	2,000	2,750	0	0	0	159,250
POSTAGE & FREIGHT	6,900	4,000	12,000	23,000	0	0	0	45,900
TELEPHONE	0	25,000	2,000	0	0	0	0	27,000
ADMINISTRATIVE	6,600	86,600	37,000	8,400	0	0	735,000	873,600
FIXED ASSETS	0	7,500	0	0	100,000	1,021,000	0	1,128,500
PRINTING & COPYING	5,300	9,500	12,000	72,770	0	0	0	99,570
<b>TOTAL EXPENDITURES</b>	<b>\$312,825</b>	<b>\$1,347,126</b>	<b>\$260,520</b>	<b>\$685,000</b>	<b>\$100,000</b>	<b>\$1,021,000</b>	<b>\$735,000</b>	<b>\$4,461,471</b>
BOARD COMMITMENTS - TRANSFERS IN	0	0	0	0	(100,000)	(150,000)	0	(250,000)
TRANSFERS (IN)/OUT	0	0	0	0	(288,800)	(500,000)	(700,000)	(1,488,800)
<b>TOTAL EXPENDITURES, BOARD COMMITMENTS &amp; TRANSFERS</b>	<b>\$312,825</b>	<b>\$1,347,126</b>	<b>\$260,520</b>	<b>\$685,000</b>	<b>(288,800)</b>	<b>\$371,000</b>	<b>\$35,000</b>	<b>\$2,722,671</b>
<b>EXCESS (DEFICIT) OF REVENUES OVER EXPENDITURES, BOARD COMMITMENTS &amp; TRANSFERS</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$298,800</b>	<b>\$0</b>	<b>\$0</b>	<b>\$298,800</b>
<b>FULL-TIME EQUIVALENTS</b>	<b>0</b>	<b>6.88</b>	<b>1.00</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>7.88</b>

The purpose of the State Bar of Texas is to engage in those activities enumerated in section 81.012 of the State Bar Act. The expenditure of funds by the State Bar of Texas is limited as set forth in both section 81.034 of the State Bar Act and in *Keller v. State Bar of California*, 496 U.S. 1 (1990). If any member thinks 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 an 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 not later than 90 days after the conclusion of the challenged activity.

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

STATE BAR OF TEXAS – BOARD OF DIRECTORS DISTRICTS FOR ELECTIONS – 2019			
BAR DISTRICTS	PRESENT DIRECTORS	CERTIFIED CANDIDATES	COUNTIES INCLUDED IN THE DISTRICT #
<b><u>District 2</u></b>	<b>Sarah Keathley</b> (Corsicana)	<b>Christina M. Davis</b> (Tyler)  <b>Alan J. Robertson</b> (Longview)	Anderson, Angelina, Cherokee, Freestone, Gregg, Houston, Leon, Limestone, Madison, Nacogdoches, ( <b>Navarro</b> ), Rusk, Sabine, San Augustine, Shelby, Smith and Trinity Counties
<b><u>District 3</u></b>	<b>Christy Amuny</b> (Beaumont)	<b>Kate Bihm</b> (Conroe)	Chambers, Hardin, Jasper, ( <b>Jefferson</b> ), Liberty, Montgomery, Newton, Orange, Polk, San Jacinto, Tyler and Walker Counties
<b><u>District 4</u></b> <i>Place 1:</i>	<b>1. Laura Gibson</b> (Houston)	<b>1: Warren W. Harris</b> (Houston)  <b>1: Diane St. Yves</b> , (Houston)	Harris
<b><u>District 6</u></b> <i>Place 1:</i>  <i>Place 5</i>	<b>1: Bradley C. Weber</b> (Dallas)  <b>5: Gregory W. Sampson</b> (Dallas)	<b>1. Michael K. Hurst</b> (Dallas)  <b>5: Rebekah Steely Brooker</b> (Dallas)	Dallas
<b><u>District 7</u></b> <i>Place 2:</i>	<b>2: Curtis Pritchard</b> (Cleburne)	<b>2: Kellye Hughes</b> (Pantego)  <b>2: Jason Smith</b> (Fort Worth)	Ellis, Hill, ( <b>Johnson</b> ), and Tarrant Counties
<b><u>District 8</u></b>	<b>Lisa Richardson</b> (Round Rock)	<b>Amanda Carter</b> (Elgin)  <b>Yolanda Cortes Mares</b> (Temple)	Bastrop, Bell, Bosque, Brazos, Burleson, Caldwell, Coryell, Falls, Hamilton, Lee, Milam, McLennan, Robertson, Washington and ( <b>Williamson</b> ) Counties
<b><u>District 9</u></b> <i>Place 2:</i>	<b>2: Chris Oddo</b> (Austin)	<b>2: Adam Schramek</b> (Austin)	Travis
<b><u>District 10</u></b> <i>Place 2</i>	<b>2: Fidel Rodriguez, Jr.</b> (San Antonio)	<b>Santos Vargas</b> (San Antonio)	Bexar
<b><u>District 15</u></b>	<b>Jeff Chandler</b> (San Angelo)	<b>David Sergi</b> (San Marcos)	Bandera, Blanco, Burnet, Coke, Comal, Concho, Crane, Crockett, Ector, Edwards, Gillespie, Glasscock, Hays, Irion, Kendall, Kerr, Kimble, Kinney, Lampasas, Llano, Loving, Mason, McCulloch, Medina, Menard, Mills, Pecos, Reagan, Real, Reeves, San Saba, Schleicher, Sterling, Sutton, Terrell, ( <b>Tom Green</b> ), Upton, Uvalde, Val Verde, Ward, and Winkler Counties

# - Counties in bold print are ineligible for campaign during the 2019 elections. See State Bar Rules Article IV, Section 5(3)(b), which addresses the issue of succession, and Article I (5), which defines metropolitan areas.





To: Laura Gibson, Board Chair

From: Lewis Kinard, Committee Chair

Date: January 10, 2019

RE: Submission by Committee on Disciplinary Rules and Referenda of Proposed Rules

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Dear Ms. Gibson:

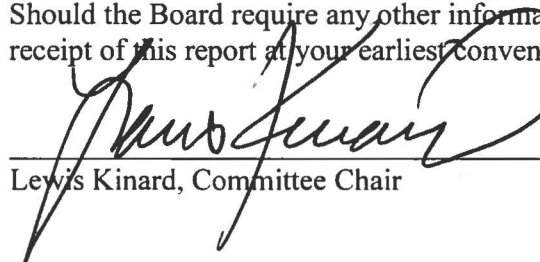
Pursuant to Government Code section 81.0876, the Committee on Disciplinary Rules and Referenda (CDRR) initiated three rule change proposals that were published in the Texas Bar Journal and the Texas Register. The CDRR held a public hearing and solicited and considered public comments on each. Subsequently, at its November 2019 meeting, the CDRR voted to send all three to the Board:

- Rule 1.02 Scope and Objectives of Representation
- Rule 1.05 Confidentiality of Information
- Rule 1.16 Clients with Diminished Capacity

Please find attached the proposed rule changes and recommended comments related to those changes. Per Government Code section 81.0877, the Board of Directors is to vote on each proposed disciplinary rule recommended by the committee not later than the 120th day after the date the rule is received from the CDRR. The Board can vote for or against each rule, or return a rule to the CDRR for additional consideration.

As a reminder, if a majority of the Board of Directors approves a rule, the Board then petitions the Supreme Court to order a referendum on the rule(s) as provided by Section 81.0878.

Should the Board require any other information, please do not hesitate to contact me. Please confirm receipt of this report at your earliest convenience.

  
\_\_\_\_\_  
Lewis Kinard, Committee Chair

cc: Joe K. Longley  
Trey Apffel  
Randy Sorrels  
Tom Vick

# Committee on Disciplinary Rules and Referenda

## Proposed Rule Changes

Provided here is the rationale for proposed rule changes being considered by the Committee on Disciplinary Rules and Referenda (CDRR). A Committee poll was conducted in May 2018 to select initial rules for the Committee to review. The Committee submits the following summary to provide context for the proposed rule changes:

- Committee Deliberation – A review of rules began in April 2018. Members were assigned rules to review and present to the Committee for its May 2018 meeting.
- Committee Vote to Initiate – Proposed rules were discussed and initiated on June 11, 2018.
- Publication – Proposed rules were published in the September 1, 2018, issue of the Texas Bar Journal and the August 31, 2018, issue of the Texas Register.
- Comments – The Committee extended the 30 day comment period to 60 days. Comments were collected from September 1, 2018, through November 1, 2018. A total of 16 individuals provided 20 comments. Of those, 60% (12 comments) were related to Rule 1.16, 25% (5 comments) for Rule 1.02, and 15% (3 comments) for Rule 1.05.
- Public Hearing – A public hearing on the proposed rules was held on October 10, 2018, at 10:00 a.m. at the Texas Law Center.

### **Rule 1.02(g) Scope and Objectives of Representation and Rule 1.16 Clients with Diminished Capacity**

The Committee voted to recommend deletion of TDRPC Rule 1.02(g), dealing a lawyer's duties to a client who may lack competency. The Committee voted to recommend that this Rule be replaced with a new Rule 1.16, dealing with a lawyer's duties to a client with diminished capacity. Proposed Rule 1.16 is designed to give more guidance to lawyers than current Rule 1.02(g), and to be more detailed in what actions a lawyer is permitted to take when a client's mental capacity is significantly diminished.

The committee received a variety of comments relating to the proposed changes. Among the comments pertaining to proposed Rule 1.16 (and current Rule 1.02(g)) included concerns that the term "diminished capacity" needed to be defined, concerns about the disclosure of confidential client information, concerns about the use of the permissive term "may" in proposed Rule 1.16(b) and (c), concerns about the differing standards for and of action between current Rule 1.02(g) and proposed Rule 1.16, concerns that proposed Rule 1.16(b) should include additional actions a lawyer may take when applicable, concerns that changes should generally follow the ABA Model Rules insofar as possible, and concerns that more explanation of proposed rule changes should be provided.

### **Rule 1.05 Confidentiality of Information**

The Committee voted to recommend amending TDRPC Rule 1.05 by adding an additional exception for when a lawyer may divulge client confidential information. To be added as Rule 1.05(c)(9), the exception permits a lawyer to reveal confidential client information to secure legal advice about the lawyer's compliance with the rules of professional conduct.

The committee received comments pertaining to proposed Rule 1.05(c)(9). One comment submitted by five lawyers was generally supportive of the proposed amendment, which is substantially the same as a corresponding provision of the ABA Model Rules. A different person commenting expressed concerns about the duty of confidentiality for the lawyer providing advice under the proposed rule.

Detailed rationale for the proposed changes is provided below, as well as the public comments received by the Committee.

## **Rule 1.02(g) Scope and Objectives of Representation and Rule 1.16 Diminished Capacity**

### **March 11, 2016 Report**

A report issued on March 11, 2016 by the former State Bar of Texas Disciplinary Rules of Professional Conduct Committee makes a strong case for why the current disciplinary rules create confusion about the representation of clients with diminished capacity. That report is attached to this document and should be consulted directly (*see* Attachment A).

### **2011 Referendum**

The March 11, 2016 Report states that “[the 2011] Referendum proposed replacing [Texas Disciplinary Rules of Professional Conduct (TDRPC)] Rule 1.02(g) with . . . [a] Rule and Comments, which generally follow[ed] ABA Model Rule 1.14,” although the Committee recommended some deviation from Model Rule 1.14.

### **Proposed Texas Rule 1.16**

The CDRR recommends deletion of current Texas Disciplinary Rule 1.02(g) and the adoption of a new rule, Rule 1.16, which would read as follows:

#### **Rule 1.16 Clients with Diminished Capacity**

(a) When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or for another reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken, and cannot adequately act in the client’s own interest, the lawyer may take reasonably necessary protective action. Such action may include, but is not limited to, consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, attorney ad litem, amicus attorney, or conservator, or submitting an information letter to a court with jurisdiction to initiate guardianship proceedings for the client.

(c) When taking protective action pursuant to (b), the lawyer may disclose the client’s confidential information to the extent the lawyer reasonably believes is necessary to protect the client’s interests.

## Proposed Comment

Paragraphs 1 to 8 generally correspond to the first eight paragraphs of the Comment for Model Rules of Professional Conduct Rule 1.14,<sup>1</sup> although the order is somewhat different. Paragraphs 9 and 10 are quoted from the Comments 9 and 10 to the current version of Model Rules of Professional Conduct R. 1.14.

If Proposed Rule 1.16 is adopted, the CDRR recommends the following as Comments to the rule:

1. The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. However, maintaining the ordinary client-lawyer relationship may not be possible when the client suffers from a mental impairment, is a minor, or for some other reason has a diminished capacity to make adequately considered decisions regarding representation. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often can understand, deliberate on, and reach conclusions about matters affecting the client's own well-being. For example, some people of advanced age are capable of handling routine financial matters but need special legal protection concerning major transactions. Also, some children are regarded as having opinions entitled to weight in legal proceedings concerning their custody.

2. In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as the client's ability to articulate reasoning leading to a decision, variability of state of mind, and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the lawyer's knowledge of the client's long-term commitments and values.

3. The fact that a client suffers from diminished capacity does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the client has a guardian or other legal representative, the lawyer should, as far as possible, accord the client the normal status of a client, particularly in maintaining communication. If a guardian or other legal representative has been appointed for the client, however, the law may require the client's lawyer to look to the representative for decisions on the client's behalf. If the lawyer represents the guardian as distinct from the ward and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct.

4. The client may wish to have family members or other persons participate in discussions with the lawyer; however, paragraph (a) requires the lawyer to keep the client's interests foremost and, except when taking protective action authorized by paragraph (b), to look to the client, not the family members or other persons, to make decisions on the client's behalf. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor.

### Taking Protective Action

5. Paragraph (b) contains a non-exhaustive list of actions a lawyer may take in certain circumstances to protect a client who does not have a guardian or other legal representative. Such actions could include consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision-making tools such as existing durable powers of attorney, or consulting with support groups, professional services, adult-protective agencies, or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the client's wishes and values to the extent known, the client's best interests, and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities, and respecting the client's family and social connections.

6. A client with diminished capacity also may cause or threaten physical, financial, or other harm to third parties. In such situations, the client's lawyer should consult applicable law to determine the appropriate response.

7. When a legal representative has not been appointed, the lawyer should consider whether an appointment is reasonably necessary to protect the client's interests. Thus, for example, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a legal representative. In addition, applicable law provides for the appointment of legal representatives in certain circumstances. For example, the Texas Family Code prescribes when a guardian ad litem, attorney ad litem, or amicus attorney should be appointed in a suit affecting the parent-child relationship, and the Texas Probate Code prescribes when a guardian should be appointed for an incapacitated person. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the lawyer's professional judgment. In considering alternatives, the lawyer should be aware of any law that requires the lawyer to advocate on the client's behalf for the action that imposes the least restriction.

#### Disclosure of the Client's Condition

8. Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. As with any client-lawyer relationship, information relating to the representation of a client is confidential under Rule 1.05. However, when the lawyer is taking protective action, paragraph (b) of this Rule permits the lawyer to make necessary disclosures. Given the risks to the client of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or in seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted will act adversely to the client's interests before discussing matters related to the client.

#### Emergency Legal Assistance

[9] In an emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.

[10] A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

<sup>1</sup> The Comment to Model Rules of Professional Conduct R. 1.14 (2018) is shown below:

#### Comment

[1] The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

[2] The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

[3] The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the presence of such persons generally does not affect the applicability of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must look to the client, and not family members, to make decisions on the client's behalf.

[4] If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See Rule 1.2(d).

#### Taking Protective Action

[5] If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal client-lawyer relationship cannot be maintained as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then paragraph (b) permits the lawyer to take protective measures deemed necessary. Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision-making tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decisionmaking autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

[6] In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.

[7] If a legal representative has not been appointed, the lawyer should consider whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's interests. Thus, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that minors or persons with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the client.

#### Disclosure of the Client's Condition

[8] Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by Rule 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The lawyer's position in such cases is an unavoidably difficult one.

[9] In an emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.

[10] A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

## ATTACHMENT A: MARCH 11, 2016 REPORT

### Rule 1.02(g)—“Diminished Capacity”

#### State Bar Texas Disciplinary Rules of Professional Conduct Committee

March 11, 2016

#### I. Current Rule Concerning Clients with Diminished Capacity and Related Comments

Comment 5 to Texas Disciplinary Rule of Professional Conduct 1.03 suggests that a lawyer representing a disabled client attempt to maintain a normal attorney-client relationship.<sup>2</sup> However, Rule 1.02(g) requires that, in some instances, a lawyer profoundly alter this relationship by, among other things, seeking a guardianship for a client the lawyer believes is disabled. Rule 1.02(g) reads as follows (with emphasis added):

(g) A lawyer **shall** take reasonable action to secure the **appointment of a guardian** or other legal representative for, or **seek other protective orders** with respect to, a client whenever the lawyer reasonably believes that the client lacks legal competence and that such action should be taken to protect the client.

Comments 12 and 13 to the Rule, which are quoted below, elaborate on this requirement.

12. The usual attorney-client relationship is established and maintained by consenting adults who possess the legal capacity to agree to the relationship. Sometimes the relationship can be established only by a legally effective appointment of the lawyer to represent a person. Unless the lawyer is legally authorized to act for a person under a disability, an attorney-client relationship does not exist for purposes of the rule.

<sup>2</sup> See Texas Disciplinary Rule of Professional Conduct [hereinafter Rule] 1.03, Comment 5 (“In addition to communicating with any legal representative, a lawyer should seek to maintain reasonable communication with a client under a disability, insofar as possible. When a lawyer reasonably believes a client suffers a mental disability or is not legally competent, it may not be possible to maintain the usual attorney-client relationship. Nevertheless, the client may have the ability to understand, deliberate upon, and reach conclusions about some matters affecting the client’s own well-being. Furthermore, to an increasing extent the law recognizes intermediate degrees of competence... The fact that a client suffers a disability does not diminish the desirability of treating the client with attention and respect.”).



13. If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. If a legal representative has not been appointed, paragraph (g) requires a lawyer in some situations to take protective steps, such as initiating the appointment of a guardian. The lawyer should see to such appointment or take other protective steps when it reasonably appears advisable to do so in order to serve the client's best interests. See Rule 1.05(c)(4), d(1) and (d)(2)(i) in regard to the lawyer's right to reveal to the court the facts reasonably necessary to secure the guardianship or other protective order.<sup>3</sup>

## II. Issues Raised by the Current Rule

### 1. Rule 1.02(g) is often disregarded.

Initiating a usually public proceeding to appoint a guardian or to obtain a protective order is a drastic action potentially more damaging to the client than the disability the lawyer is trying to address, even if the action is in the client's best interests. For this reason, we believe Rule 1.02(g) is often ignored, replaced by an informal and tacit system of work-arounds. Unfortunately, these work-arounds leave the lawyer potentially exposed to discipline, because the requirements of Rule 1.02(g) are not being followed.

### 2. Rule 1.02(g) is too vague.

When the Rule is not ignored, lawyers often do not know what "other protective orders" should be sought to discharge their professional responsibilities. Moreover, the "protective orders" language appears to limit the lawyer to taking only formal legal action, when informal action may provide adequate protection.

<sup>3</sup> Rule 1.05(c)(4) provides: "A lawyer may reveal confidential information:[w]hen the lawyer has reason to believe it is necessary to do so in order to comply with a court order, a Texas Disciplinary Rule of Professional Conduct, or other law." 1.05(d) states as follows: "A lawyer may also reveal unprivileged client information: (1) When impliedly authorized to do so in order to carry out the representation. (2) When the lawyer has reason to believe it is necessary to do so in order to: (i) carry out the representation effectively." Comment 17 to Rule 1.05 states as follows: "In some situations, Rule 1.02(g) requires a lawyer representing a client under a disability to seek the appointment of a legal representative for the client or to seek other orders for the protection of the client. The client may or may not, in a particular matter, effectively consent to the lawyer's revealing to the court confidential information and facts reasonably necessary to secure the desired appointment or order. Nevertheless, the lawyer is authorized by paragraph (c)(4) to reveal such information in order to comply with Rule 1.02(g). See also paragraph 5, Comment to Rule 1.03, which states as follows: "In addition to communicating with any legal representative, a lawyer should seek to maintain reasonable communication with a client under a disability, insofar as possible. When a lawyer reasonably believes a client suffers a mental disability or is not legally competent, it may not be possible to maintain the usual attorney-client relationship. Nevertheless, the client may have the ability to understand, deliberate upon, and reach conclusions about some matters affecting the client's own well-being. Furthermore, to an increasing extent the law recognizes intermediate degrees of competence... The fact that a client suffers a disability does not diminish the desirability of treating the client with attention and respect."

3. The concerns addressed by Rule 1.02(g) may be better addressed by consultation prohibited by Rule 1.05.

A lawyer often will be able to address concerns about a client's capacity less obtrusively by consulting with friends or family members about the client's behavior and mental acuity, but such consultation may violate Rule 1.05, which generally prohibits lawyers' revelation of confidential information. The comments to Rules 1.02 and 1.05 appear to limit the lawyer to consulting with the client, the client's "legal representative," and a court. See footnote 2.

4. Compliance with Rule 1.02(g) requires lawyers to parse several Rules and Comments.

A lawyer who consults the Rules for guidance on the lawyer's responsibilities regarding a client who may have diminished capacity faces a challenge. The relevant information must be gathered from Rule 1.02(g) and comments to Rules 1.02, 1.03, and 1.05. One or more of these requirements or guidelines therefore may be missed in the search. All of the ethical guidance should be in one distinct rule.

5. Rule 1.02(g) Can Be Used as a Threat of Grievance

Rule 1.02(g) can be used to threaten the lawyer by a person who is not interested in the well-being of the client.

III. Proposed Replacement for Rule 1.02(g)

The Texas Supreme Court in the last Referendum proposed replacing Rule 1.02(g) with the following Rule and Comments, which generally follow ABA Model Rule 1.14<sup>4</sup>:

**Rule 1.\*\* Clients with Diminished Capacity**

- (a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or for another reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.
- (b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken, and cannot adequately act in the client's own

<sup>4</sup>The Committee had referred to this as Rule 1.14, and this was the number the Court assigned it for the February 2011 Referendum, with other Rules having been renumbered accordingly.

interest, the lawyer may take reasonably necessary protective action. Such action may include, but is not limited to, consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, attorney ad litem, amicus attorney, or conservator, or submitting an information letter to a court with jurisdiction to initiate guardianship proceedings for the client.

- (c) When taking protective action pursuant to (b), the lawyer may disclose the client's confidential information to the extent the lawyer reasonably believes is necessary to protect the client's interests, unless otherwise prohibited by law.

**Comment:**

1. The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. But maintaining the ordinary client-lawyer relationship may not be possible when the client suffers from a mental impairment, is a minor, or has a diminished capacity for some other reason to make adequately considered decisions regarding representation. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often can understand, deliberate on, and reach conclusions about matters affecting the client's own well-being. For example, some people of advanced age are capable of handling routine financial matters but need special legal protection concerning major transactions. Also, some children are regarded as having opinions entitled to weight in legal proceedings concerning their custody.
2. In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as the client's ability to articulate reasoning leading to a decision, variability of state of mind, and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the lawyer's knowledge of the client's long-term commitments and values.
3. The fact that a client suffers from diminished capacity does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the client has a guardian or other legal representative, the lawyer should, as far as possible, accord the client the normal status of a client, particularly in maintaining communication. If a guardian or other legal representative has been appointed for the client, however, the law may require the client's lawyer to look to the representative for decisions on the client's behalf. If the lawyer represents the guardian as distinct from the ward and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct.
4. The client may wish to have family members or other persons participate in discussions with the lawyer; however, paragraph (a) requires the lawyer to keep the client's interests foremost and, except when taking protective action authorized by paragraph (b), to look to the client, not the family members or other persons, to make decisions on the client's behalf. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor.

## **Taking Protective Action**

5. Paragraph (b) contains a non-exhaustive list of actions a lawyer may take in certain circumstances to protect a client who does not have a guardian or other legal representative. Such actions could include consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision-making tools such as existing durable powers of attorney, or consulting with support groups, professional services, adult-protective agencies, or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the client's wishes and values to the extent known, the client's best interests, and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities, and respecting the client's family and social connections.
6. A client with diminished capacity also may cause or threaten physical, financial, or other harm to third parties. In such situations, the client's lawyer should consult applicable law to determine the appropriate response.
7. When a legal representative has not been appointed, the lawyer should consider whether an appointment is reasonably necessary to protect the client's interests. Thus, for example, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a legal representative. In addition, applicable law provides for the appointment of certain legal representatives in certain circumstances. For example, the Texas Family Code prescribes when a guardian ad litem, attorney ad litem, or amicus attorney should be appointed in a suit affecting the parent-child relationship, and the Texas Estates Code prescribes when a guardian should be appointed for an incapacitated person. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the lawyer's professional judgment; but, in considering alternatives, the lawyer should be aware of any law that requires the lawyer to advocate on the client's behalf for the action that imposes the least restriction.

## **Disclosure of the Client's Condition**

8. Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. As with any client-lawyer relationship, information relating to the representation of a client is confidential under Rule 1.05. But when the lawyer is taking protective action, paragraph (b) of this Rule permits the lawyer to make necessary disclosures. Given the risks to the client of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or in seeking the appointment of a legal representative. At the very least, the

lawyer should determine whether it is likely that the person or entity consulted will act adversely to the client's interests before discussing matters related to the client.

Notably, paragraph (b) permits a lawyer to take legally restrictive action (like getting a guardian or conservator for the client) or to utilize less intrusive means (like talking to family members) to address a client's disability. Additionally, paragraph (c) provides an exception to the confidentiality Rule if the lawyer takes any action – legally restrictive or less intrusive – limiting the disclosure of such information to that reasonably necessary to protect the client's interests. As paragraph (b) authorizes legally restrictive measures to the same extent it does less intrusive methods, then the lawyer could disclose whatever information is necessary to achieve the method the lawyer selects. We believe that this proposed Rule adequately addresses the issues noted above and therefore endorse its promulgation.<sup>5</sup>

<sup>5</sup> The Committee recommended further deviation from ABA Rule 1.14 (see attached comparison table).

## Rule 1.05 Confidentiality of Information

### Model Rules

“In 2002, a new exception—Rule 1.6(b)(4)—was added [to the ABA Model Rules], permitting disclosure [of confidential information] ‘to secure legal advice about the lawyer’s compliance with these Rules.’ (This provision was originally numbered 1.6(b)(2), but renumbered when other paragraphs of Rule 1.6 were added in 2003.)”<sup>1</sup> Model Rule 1.6 now provides:

#### RULE 1.6: CONFIDENTIALITY OF INFORMATION

. . . (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary: . . . (4) to secure legal advice about the lawyer’s compliance with these Rules; . . .

Comment 9 to ABA Model Rule 1.6 states:

A lawyer’s confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer’s personal responsibility to comply with these Rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, paragraph (b)(4) permits such disclosure because of the importance of a lawyer’s compliance with the Rules of Professional Conduct.

### Proposed Texas Rule

Texas Disciplinary Rule 1.05(c) should be amended to add a ninth subsection (shown below with underscoring and bold):

(c) A lawyer may reveal confidential information:

(1) When the lawyer has been expressly authorized to do so in order to carry out the representation.

(2) When the client consents after consultation.

(3) To the client, the client’s representatives, or the members, associates, and employees of the lawyer’s firm, except when otherwise instructed by the client.

(4) When the lawyer has reason to believe it is necessary to do so in order to comply with a court order, a Texas Disciplinary Rules of Professional Conduct, or other law.

(5) To the extent reasonably necessary to enforce a claim or establish a defense on behalf of the lawyer in a controversy between the lawyer and the client.

(6) To establish a defense to a criminal charge, civil claim or disciplinary complaint against the lawyer or the lawyer’s associates based upon conduct involving the client or the representation of the client.

(7) When the lawyer has reason to believe it is necessary to do so in order to prevent the client from committing a criminal or fraudulent act.

(8) To the extent revelation reasonably appears necessary to rectify the consequences of a client’s criminal or fraudulent act in the commission of which the lawyer’s services had been used.

<sup>1</sup> *Confidentiality of Information*, Ann. Mod. Rules Prof. Cond. § 1.6 (8<sup>th</sup> ed., Westlaw 2018).

**(9) To secure legal advice about the lawyer's compliance with these Rules.**

**Discussion**

The proposed amendment should be adopted because “[a]llowing disclosure under such circumstances will not harm clients, as the lawyer to whom the disclosure is made will be under the same duty of confidentiality as the lawyer making the disclosure.”<sup>2</sup> Permitting a “lawyer to share confidential information to obtain legal advice from another lawyer about compliance with the ethics rules expressly confirms what has long been understood informally as permissible, and is a welcome addition that encourages lawyers to seek counsel from colleagues about ethical obligations.”<sup>3</sup> The amendment is desirable because “in many cases . . . the consulting lawyer may have a professional responsibility to seek the advice of an ethics expert under the Rule 1.1 competency requirement.”<sup>4</sup>

**2011 Ethics Referendum**

Had the 2011 Texas Referendum been successful, it would have added language to the Texas Rules similar to this proposal (“when the lawyer seeks legal advice about the lawyer's compliance with these Rules”).<sup>5</sup>

**Proposed Comment Change**

If the proposed change is enacted, the Comment to TDRPC 1.05 should be revised by adding after Comment 22 (currently the final Comment to Rule 1.05) the following heading and numbered paragraph:

Permitted Disclosure or Use When the Lawyer Seeks Legal Advice

23. A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's responsibility to comply with these Rules. In most situations, disclosing or using confidential information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure or use is not impliedly authorized, subparagraph (c)(9) allows such disclosure or use because of the importance of a lawyer's compliance with these Rules.

The proposed Comment is substantially identical to Model Rules of Professional Conduct Rule 1.6 cmt. 9 (2018).

<sup>2</sup> Professor John M. Burman, *The Disclosure of Confidential Information Under the New Wyoming Rules of Professional Conduct*, 29 WYO. LAW. 42, 44 (December 2006).

<sup>3</sup> Gregory C. Sisk, *Change and Continuity in Attorney-Client Confidentiality: The New Iowa Rules of Professional Conduct*, 55 DRAKE L. REV. 347, 355 (2007).

<sup>4</sup> M.H. Hoeflich & Bill Skepnek, *Reflections of an Ethics Expert and A Lawyer Who Retains Him*, 44 HOFSTRA L. REV. 353, 357 (2015).

<sup>5</sup> 2011 Texas Referendum, proposed language for Disciplinary Rule 1.5(c)(4).



## Proposed Rule 1.02(g) and Rule 1.16 Redlined

### Rule 1.02 Scope and Objectives of Representation

(a) Subject to paragraphs (b), (c), (d), ~~and (e), and (f), and (g),~~ a lawyer shall abide by a client's decisions:

- (1) concerning the objectives and general methods of representation;
- (2) whether to accept an offer of settlement of a matter, except as otherwise authorized by law;
- (3) In a criminal case, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.

(b) A lawyer may limit the scope, objectives and general methods of the representation if the client consents after consultation.

(c) A lawyer shall not assist or counsel a client to engage in conduct that the lawyer knows is criminal or fraudulent. A lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel and represent a client in connection with the making of a good faith effort to determine the validity, scope, meaning or application of the law.

(d) When a lawyer has confidential information clearly establishing that a client is likely to commit a criminal or fraudulent act that is likely to result in substantial injury to the financial interests or property of another, the lawyer shall promptly make reasonable efforts under the circumstances to dissuade the client from committing the crime or fraud.

(e) When a lawyer has confidential information clearly establishing that the lawyer's client has committed a criminal or fraudulent act in the commission of which the lawyer's services have been used, the lawyer shall make reasonable efforts under the circumstances to persuade the client to take corrective action.

(f) When a lawyer knows that a client expects representation not permitted by the rules of professional conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

~~(g) A lawyer shall take reasonable action to secure the appointment of a guardian or other legal representative for, or seek other protective orders with respect to, a client whenever the lawyer reasonably believes that the client lacks legal competence and that such action should be taken to protect the client.~~

Comment:

### Client Under a Disability

12. Paragraph (a) assumes that the lawyer is legally authorized to represent the client. The usual attorney-client relationship is established and maintained by consenting adults who possess the legal capacity to agree to the relationship. Sometimes the relationship can be established only by a legally

effective appointment of the lawyer to represent a person. Unless the lawyer is legally authorized to act for a person under a disability, an attorney-client relationship does not exist for the purpose of this rule.

13. If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. If a legal representative has not been appointed, paragraph (g) requires a lawyer in some situations to take protective steps, such as initiating the appointment of a guardian. The lawyer should see to such appointment or take other protective steps when it reasonably appears advisable to do so in order to serve the client's best interests. See Rule 1.05(c)(4), d(1) and (d)(2)(i) in regard to the lawyer's right to reveal to the court the facts reasonably necessary to secure the guardianship or other protective order.

### **Rule 1.16 Clients with Diminished Capacity**

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or for another reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken, and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action. Such action may include, but is not limited to, consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, attorney ad litem, amicus attorney, or conservator, or submitting an information letter to a court with jurisdiction to initiate guardianship proceedings for the client.

(c) When taking protective action pursuant to (b), the lawyer may disclose the client's confidential information to the extent the lawyer reasonably believes is necessary to protect the client's interests.

#### **Comment:**

1. The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. However, maintaining the ordinary client-lawyer relationship may not be possible when the client suffers from a mental impairment, is a minor, or for some other reason has a diminished capacity to make adequately considered decisions regarding representation. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often can understand, deliberate on, and reach conclusions about matters affecting the client's own well-being. For example, some people of advanced age are capable of handling routine financial matters but need special legal protection concerning major transactions. Also, some children are regarded as having opinions entitled to weight in legal proceedings concerning their custody.

2. In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as the client's ability to articulate reasoning leading to a decision, variability of state of mind, and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the lawyer's knowledge of the client's long-term commitments and values.

3. The fact that a client suffers from diminished capacity does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the client has a guardian or other legal representative, the lawyer should, as far as possible, accord the client the normal status of a client, particularly in maintaining communication. If a guardian or other legal representative has been appointed for the client, however, the law may require the client's lawyer to look to the representative for decisions on the client's behalf. If the lawyer represents the guardian as distinct from the ward and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct.

4. The client may wish to have family members or other persons participate in discussions with the lawyer; however, paragraph (a) requires the lawyer to keep the client's interests foremost and, except when taking protective action authorized by paragraph (b), to look to the client, not the family members or other persons, to make decisions on the client's behalf. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor.

### **Taking Protective Action**

5. Paragraph (b) contains a non-exhaustive list of actions a lawyer may take in certain circumstances to protect a client who does not have a guardian or other legal representative. Such actions could include consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision-making tools such as existing durable powers of attorney, or consulting with support groups, professional services, adult-protective agencies, or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the client's wishes and values to the extent known, the client's best interests, and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities, and respecting the client's family and social connections.

6. A client with diminished capacity also may cause or threaten physical, financial, or other harm to third parties. In such situations, the client's lawyer should consult applicable law to determine the appropriate response.

7. When a legal representative has not been appointed, the lawyer should consider whether an appointment is reasonably necessary to protect the client's interests. Thus, for example, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a legal representative. In addition, applicable law provides for the appointment of legal representatives in certain circumstances. For example, the Texas Family Code prescribes when a guardian ad litem, attorney ad litem, or amicus attorney should be appointed in a suit affecting the parent-child relationship, and the Texas Probate Code prescribes when a guardian should be appointed for an incapacitated person. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the lawyer's professional judgment. In considering alternatives, the lawyer should be aware of any law that requires the lawyer to advocate on the client's behalf for the action that imposes the least restriction.

### **Disclosure of the Client's Condition**

8. Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. As with any client-lawyer relationship, information relating to the representation of a client is confidential under Rule 1.05. However, when the lawyer is taking protective action, paragraph (b) of this Rule permits the lawyer to make necessary disclosures. Given the risks to the client of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or in seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted will act adversely to the client's interests before discussing matters related to the client.

## **Emergency Legal Assistance**

[9] In an emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.

[10] A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

## Proposed Rule 1.05(c)(9) Redlined

### Rule 1.05. Confidentiality of Information

(a) “Confidential information” includes both “privileged information” and “unprivileged client information.” “Privileged information” refers to the information of a client protected by the lawyer-client privilege of Rule 503 of the Texas Rules of Evidence or of Rule 503 of the Texas Rules of Criminal Evidence or by the principles of attorney-client privilege governed by Rule 501 of the Federal Rules of Evidence for United States Courts and Magistrates. “Unprivileged client information” means all information relating to a client or furnished by the client, other than privileged information, acquired by the lawyer during the course of or by reason of the representation of the client.

(b) Except as permitted by paragraphs (c) and (d), or as required by paragraphs (e) and (f), a lawyer shall not knowingly:

- (1) Reveal confidential information of a client or a former client to:
  - (i) a person that the client has instructed is not to receive the information; or
  - (ii) anyone else, other than the client, the client's representatives, or the members, associates, or employees of the lawyer's law firm.
- (2) Use confidential information of a client to the disadvantage of the client unless the client consents after consultation.
- (3) Use confidential information of a former client to the disadvantage of the former client after the representation is concluded unless the former client consents after consultation or the confidential information has become generally known.
- (4) Use privileged information of a client for the advantage of the lawyer or of a third person, unless the client consents after consultation.

(c) A lawyer may reveal confidential information:

- (1) When the lawyer has been expressly authorized to do so in order to carry out the representation.
- (2) When the client consents after consultation.
- (3) To the client, the client's representatives, or the members, associates, and employees of the lawyer's firm, except when otherwise instructed by the client.
- (4) When the lawyer has reason to believe it is necessary to do so in order to comply with a court order, a Texas Disciplinary Rules of Professional Conduct, or other law.
- (5) To the extent reasonably necessary to enforce a claim or establish a defense on behalf of the lawyer in a controversy between the lawyer and the client.
- (6) To establish a defense to a criminal charge, civil claim or disciplinary complaint against the lawyer or the lawyer's associates based upon conduct involving the client or the representation of the client.
- (7) When the lawyer has reason to believe it is necessary to do so in order to prevent the client from committing a criminal or fraudulent act.
- (8) To the extent revelation reasonably appears necessary to rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services had been used.
- (9) To secure legal advice about the lawyer's compliance with these Rules.

(d) A lawyer also may reveal unprivileged client information:

- (1) When impliedly authorized to do so in order to carry out the representation.
- (2) When the lawyer has reason to believe it is necessary to do so in order to:
  - (i) carry out the representation effectively;
  - (ii) defend the lawyer or the lawyer's employees or associates against a claim of wrongful conduct;
  - (iii) respond to allegations in any proceeding concerning the lawyer's representation of the client; or
  - (iv) prove the services rendered to a client, or the reasonable value thereof, or both, in an action against another person or organization responsible for the payment of the fee for services rendered to the client.

(e) When a lawyer has confidential information clearly establishing that a client is likely to commit a criminal or fraudulent act that is likely to result in death or substantial bodily harm to a person, the lawyer shall reveal confidential information to the extent revelation reasonably appears necessary to prevent the client from committing the criminal or fraudulent act.

(f) A lawyer shall reveal confidential information when required to do so by Rule 3.03(a)(2), 3.03(b), or by Rule 4.01(b).

Comment:

**Permitted Disclosure or Use When the Lawyer Seeks Legal Advice**

23. A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's responsibility to comply with these Rules. In most situations, disclosing or using confidential information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure or use is not impliedly authorized, subparagraph (c)(9) allows such disclosure or use because of the importance of a lawyer's compliance with these Rules.



# Committee on Disciplinary Rules and Referenda

Rule 1.02. Scope and Objectives of Representation

Rule 1.05 Confidentiality of Information

Rule 1.16 Clients with Diminished Capacity

## Electronic Comments

*The Committee on Disciplinary Rules and Referenda (CDRR) was created by Government Code section 81.0872 and is responsible for overseeing the initial process for proposing a disciplinary rule. The following comments were collected electronically through November 1, 2018 at [texasbar.com/CDRR](http://texasbar.com/CDRR).*

First Name	Last Name	Rule	Comments
Robert	Schuwert	1.02 and 1.16	The referenced proposed amendments raise several problems. The first is that the protections afforded clients by deleted paragraph (g) are not carried forward in new Rule 1.16. The second is that only the first paragraph of new Rule 1.16 is a rule. Paragraphs (b) and (c) of that proposed Rule would be better included as comments. The third is that removing whatever protections are to be extended to clients under some form of disability from Rule 1.02 is somewhat questionable, as many other such protections for all clients are included there. I would recommend (i) restoring paragraph 1.02(g); (ii) adding proposed Rule 1.16(a) to Rule 1.02 as a new paragraph (h); and (iii) retaining proposed new Rules 1.16(b) and (c) as comments to amended Rule 1.02.
Brooke	Allen	1.02, 1.05, and 1.16	Committee, I am a probate judge in Tarrant County. I deal with parties where diminished capacity is at issue probably more than any other type of court. I believe deleting (g) of 1.02 and adding 1.16 is an absolutely necessary change. This provides due process for those people who may or may NOT be incapacitated instead of forcing the exact person they are trusting to "turn" on them and break the attorney-client privilege. However, it still allows attorneys to make the decision if they believe their client needs additional protection (while only allowing necessary client information to be disclosed). It is my hope this passes. All people deserve due process and effective representation and these changes are much more in line with such fundamental rights. Should you have questions for me, my cell is [REDACTED] and the Court number is 817.884.1415. Thank you, Brooke Allen
Sanjay	Chadha	1.16	I support the deletion of 1.02(g) as it eliminates the threat to the basis tenants of attorney client relation ship, "confidentiality" and "attorney client privilege". It also relieves the lawyers from assuming a health professional role. Lawyers are not qualified to make those assessments, but much more import. For same reason, I am concerned about some of the language in proposed addition of Rule 1.16. Particularly, 1.16(b) should add an "and" instead of comma in the first sentence, as we don't need lawyers taking actions that other people cannot undo without significant cost and penalty occurring to client, based simply on a belief of diminished capacity and no imminent threat of harm. It also needs some qualifier on requiring disclosure of such action to client before taking the action.

First Name	Last Name	Rule	Comments
Erin	Hartung	1.02 and 1.16	I am concerned with the proposed rule change to alter the requirement for an attorney to obtain a GAL for clients of diminished capacity to a permissive ability of the attorney to obtain the GAL. I am concerned because if the client's attorney is not required to secure a GAL when one is needed, then who will? Who will know that the client needs a GAL and how to secure one? It certainly is not right to expect a client of diminished legal capacity to make that analysis and determination. And, placing that burden on other individuals within the client's circle does not guarantee that all clients who need a GAL will receive one. The attorney is in the best position to know when a client is in need of a GAL. If an attorney wishes to engage a client who has diminished legal capacity, the attorney should be required as part of their ethical duties to ensure that the client is equipped with full legal representation, including representation of a GAL. This onus should be placed on no one but the attorney, and the onus will, as a practical matter, be placed elsewhere unless the duty remains on attorneys representing clients of diminished capacity. For this reason, I object to the proposed changes to Rules 1.02 and 1.16.
Frederick	Moss	1.16	As a former member of the State Bar's Committee on the Rules of Ethics, I was pleased to see that the new Committee on Disciplinary Rules and Referenda proposes Rule changes to clarify a lawyer's ethical duties relative to clients with diminished capacity. The proposed rule was drafted by the Rules Committee I was on. I feel that the Texas Bar has undermined the chances that the proposal will pass in a referendum. Texas lawyers do not have access to the rationale for the changes. They need to know why the current rules are (woefully) inadequate and the reasons for the particular proposed language. An open meeting in Austin is simply not sufficient. The Bar, the CDRR, or the TBJ should publish links to both the former Rules Committee's report supporting the changes and the proposed comments to Rule 1.16. Without this information, Texas lawyers are likely to vote against change when they don't understand the need for it. All Texas lawyers who represent individual clients need these changes to be adopted.
Steve	Waldman	1.16	The proposed rule is not sufficiently tailored to protect both the lawyer and the client from a determination of diminished capacity made on the basis of insufficient evidence. Unless a lawyer has professional training to make an assessment of diminished capacity, s/he is unable to make the judgment set out in (a), "When a client's capacity to make adequately considered decisions...is diminished...because of...mental impairment..." or to formulate the "reasonable believes" determination required in (b), "...that the client has diminished capacity..." Imposing such requirement upon a lawyer may lead a lawyer to exceed the scope of his professional training and unduly infringe upon the rights of his client. This may also lead to liability for the lawyer, for either the exercise or non-exercise of the obligation inherently created by this new rule. The absence of any guiding standard in (a), and the use of the "reasonably believes" standard in (b) are inappropriately vague and impermissibly untethered to a objective criteria and competent, professional guidance. Further, the phrase "as far as reasonably possible" in (a) is vague, and thus impossible to satisfy. Paragraph (a) should be rewritten to state as follows: (a) When a lawyer has objective evidence that a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or for another reason, the lawyer shall take reasonable steps to act in the best interests of the client. In making a determination that a client's capacity is diminished due to mental impairment, a lawyer shall rely on professionals who are competent to assess mental impairment. (b) When the lawyer has competent evidence that the client has diminished capacity...(remainder the same) (c) When acting in furtherance of (a) or (b), the lawyer may disclose...(remainder the same)
Julie	Balovich	1.16	Rule 1.16(b) is overbroad. It could be ok with more limiting language. It does not define diminished capacity. If diminished capacity is intended to be defined by 1.16(a), it allows anything to be a factor in diminished capacity. Rule 1.16(b) does not require the lawyer to consider the client's wishes in assessing the client's interests. The rule a written does not appear to require the attorney to heed any particular caution with respect to a client's protected health information.

First Name	Last Name	Rule	Comments
Richard	LaVallo	1.16	<p>Dear Members of the Committee on Disciplinary Rules and Referenda (CDRR): On behalf of Disability Rights Texas, the protection and advocacy system for Texans with disabilities, I am submitting comments concerning Proposed Rule 1.16. Proposed Rule 1.16 is an improvement over current Rule 1.02(g) because it proposes taking action other than the appointment of a guardian or a legal representative for a client when an attorney believes that a client lacks legal competence. It is our recommendation that the CDRR incorporate the new alternatives to guardianship in subsection (b) of the Proposed Rule 1.16. In 2015, the Texas Legislature reformed the Estates Code by requiring probate courts to consider alternatives to guardianship and supports and services before creating a guardianship. In Tex. Est. Code §§ 1002.0015 and 1357.001 et seq., the Legislature not only identified the alternatives to guardianship, but also created supported decision making agreements as a new alternative to guardianship. Since guardianship is a drastic remedy that removes an individual's right to make decisions on his or her own behalf, alternatives to guardianship including supported decision making are now mandated to avoid the necessity of creating a guardianship and maximizing the self-reliance and independence of the person at risk of being placed under a guardianship. Tex. Est. Code § 1001.001(b). Alternatives to guardianship and supported decision making can also be utilized to minimize the risk of physical, financial or other harm that a client may be exposed to. We would propose that the following alternatives to guardianship be specifically included in the list of action that could be taken to protect a client: medical power of attorney, durable power of attorney, representative payee, management trust, special needs trust and supported decision making agreement. Subsection (b) also states that an attorney could submit a letter to the court to initiate a guardianship. The Estate Code clearly states that a court may only appoint either a guardian with either full or limited authority over an person "only as necessary to promote and protect the well-being" of the person. Tex. Est. Code § 1001.001(a). If the probate court finds that a person lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or to manage his or her property with or without supports and services, the court may create a limited guardianship. An attorney's concerns about his or her client's diminished capacity would typically arise in the context of representing a client in a particular matter. Therefore, even if a guardianship is required, the attorney should submit an information letter to initiate a limited guardianship that is specifically focused on the matters germane to the attorney's representation, rather than requesting a full guardianship that could potentially remove all of the client's rights. Finally, subsection (b) should be revised to include "next friends". Under Tex. R. Civ. P. 44, a minor or an adult with diminished capacity who does not have a legal guardian may be represented by a "next friend." If an attorney does not believe that his or her client has the capacity to make decisions that are necessary to initiate or proceed with litigation, the client could be represented by a "next friend." This would enable an attorney to continue to represent a client with diminished capacity without the necessity of seeking a guardianship or taking any other protective measure. We appreciate the opportunity to provide comment to this important Rule. Richard LaVallo Legal Director Disability Rights Texas 2222 W. Braker Ln. Austin, TX 78758 [REDACTED] d 512.454.4816 p 512.454.3999 f [REDACTED] This message and any attachments may contain information that is confidential, an attorney-client communication, and/or attorney work product. If you are not identified as a recipient on this message or otherwise believe you have received this message and any attachments in error, please immediately notify the sender and delete all copies of these materials. Thank you.</p>

# Public Comments - Written Comments

Presented here are the written comments submitted through a comment form on the CDRR webpage. These comments are related to the following proposed rule changes:

- Rule 1.02 Scope and Objectives of Representation
- Rule 1.05 Confidentiality of Information
- Rule 1.16 Clients with Diminished Capacity

The following comments were collected from September 1, 2018, through November 1, 2018.

## HILARY SHEARD

Attorney-at-Law  
7421 Burnet Road # 300-512  
Austin, TX 78757  
Phone: (512) 524 1371 • Fax: (512) 646 7067

October 23, 2018

State Bar of Texas  
Committee on Disciplinary Rules and Referrals  
1414 Colorado Street, Suite 500  
Austin, TX 78701

Dear Committee Members:

I am writing with some comments concerning proposed rule changes, particularly those concerning Texas Disciplinary Rule of Professional Conduct 1.16, concerning clients with “diminished capacity.” I am an attorney whose practice is devoted entirely to criminal appeals and habeas corpus work, primarily in death penalty cases. Death penalty cases almost always involve some exploration of the client’s mental health, and issues of competency, sanity and the use of mental health problems as mitigating evidence at sentencing are common in the work I do. In addition to my legal practice, I am also a board member and treasurer of “Capacity for Justice,” <http://www.capacityforjustice.org/>, a non-profit that provides cross-training for lawyers and for mental health experts who wish to conduct competency and sanity evaluations in criminal proceedings.

Generally, I am glad to see some attempt to improve this rule - the existing guidance is so vague that it is of little practical help. So, thank you all for your efforts in this area.

### No Definition of “Diminished Capacity”

The term “diminished capacity” is not defined. A definition would be helpful, not least because of the existing use of the term “diminished capacity” for the purpose of Texas criminal law. *See Jackson v. State*, 160 S.W.3d 568 (Tex. Crim. App. 2005) and *Ruffin v. State*, 270 S.W.3d 586, 596-97 (Tex. Crim. App. 2008). Clarification of what individuals the rule is intended to protect seems to be necessary.

## **Disclosure of Otherwise Confidential Information**

It is good to see subsection (c), allowing for the disclosure of otherwise confidential information in appropriate circumstances. As the Supreme Court of the United States has acknowledged, in *Medina v. California*, 505 U.S. 437, 451 (1992) “defense counsel will often have the best-informed view of the defendant's ability to participate in his defense,” but at the moment, there is frequent debate among defense attorneys about what it is permissible to disclose, and in what circumstances, when representing an impaired client. It will be helpful if there is now a safe harbor for counsel who feel it is in their client’s interest to disclose otherwise privileged communications, especially given the strict privilege rule binding on criminal counsel under TEX. R. EVID. 505(b)(2).

## **Protective Action**

It would be helpful if the rule – or a comment to the rule–clarified that “protective action” can include conducting proceedings *ex parte* and/or in chambers, with any transcripts, pleadings or orders being placed under seal. Also, if there was a suggestion that counsel could seek a protective order to limit the disclosure of otherwise privileged material, to ensure that it is not used against the client at a later date for some other purpose. Bluntly, I know from discussion with other attorneys, and from cases that I have worked on, that many criminal practitioners do not think to request such measures, or do not even know that a protective order can be requested. Some “prompting” about specific appropriate actions would help to ensure that clients’ interests are in fact protected. For this reason, it seems that Rule 1.02 (g), with its suggestion that appointment of a guardian might be requested could usefully be retained rather than eliminated, or the guardianship language incorporated into Rule 1.16.

## **Mentally-ill Clients Seeking to Discharge Counsel**

What happens when a mentally-ill client seeks to dismiss counsel? This is an area where I think there is a real need for some ethical guidance, especially for appointed counsel in criminal cases.

In *Indiana v. Edwards*, 554 U.S. 164, 177-8 (2008), the United States Supreme Court addressed the question whether the federal Constitution requires a state trial judge to allow a mentally ill defendant, upon request, to proceed *pro se* at trial.

*Edwards* held that the Constitution does not forbid States from insisting upon representation by counsel for those competent enough to stand trial but who suffer from “severe mental illness” to the point where they are not competent to conduct trial proceedings by themselves. *Id.* The *Edwards* court concluded “that the Constitution permits judges to take realistic account of the particular defendant’s mental capacities by asking whether a defendant who seeks to conduct his own defense at trial is mentally competent to do so,” and therefore “the Constitution permits States to insist upon representation by counsel for those competent enough to stand trial under [the *Dusky v. United States*, 362 U.S. 402, 402 (1960) standard] but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves.” *Edwards*, 554 U.S. at 177-178.

In criminal cases a mentally competent client can generally discharge appointed counsel and represent him or herself, since that is a right guaranteed by the Sixth Amendment to the United States Constitution. *Faretta v. California*, 422 U.S. 806 (1975). Since *Edwards*, however, it is clear that when clients are sufficiently mentally ill, they may have counsel forced upon them, rather than being permitted to represent themselves.

It is a sad fact that appointed counsel sometimes resist being discharged by their clients -- the financial incentives for counsel to stay on a case are obvious, and indigent defendants have to seek the cooperation of the courts if they want to have substitute counsel appointed. Many judges suspect clients facing criminal charges of “gaming the system” and are reluctant to permit substitution. And many counsel do not believe they have an obligation to have the question of discharge and alternative representation decided by the judge. The client's wishes and their (sometimes meritorious) reasons for wanting to discharge counsel may therefore go unheard.

Even when the issue of dissatisfaction with counsel is aired, many clients are inhibited about talking about their case and counsel in a public courtroom, and few judges think to move the proceedings into chambers, or to assure the client by proving other protective measures. Not to mention that some clients may have genuine concerns about their attorneys, but lack the vocabulary or legal knowledge to define why their lack of confidence in counsel is justified. I have frequently seen situations where clients sought to have counsel removed from their case, but where the courts have not been responsive or understanding of the client’s limitations. For example, I once watched a judge asking a defendant for some concrete examples of why the

client thought the lawyer's performance was deficient. The defendant simply did not understand the word "concrete" other than in reference to building materials, and it took some time—and much embarrassment—for the defendant to admit he did not understand the question.

There are also, sadly, some scenarios where counsel cling on to a case despite the client's repeated protests, and the client and attorney end up in an almost adversarial relationship. For example, I have seen a case where counsel and their unquestionably mentally ill client were in constant—and often public—conflict with each other throughout the proceedings. Counsel claimed the client was competent to stand trial, but staunchly opposed their client being permitted to discharge "his" attorneys, claiming he lacked capacity to do so under *Edwards*. The client tried to represent his own interests at a hearing to determine whether he should be permitted to represent himself, where his attorneys were stating on the record that they thought he was not fit to represent himself, and were opposing his wishes. Thus, the hearing became one at which the client received no actual assistance in litigating the question of whether he was competent to stand trial *per se*, and his request to represent himself was thwarted by those wishing to continue to represent him. He was ultimately forced to go to trial with counsel with whom he largely refused to communicate. The continuing conflict between counsel and their mentally ill, vocal, and very unhappy client tainted the subsequent trial in various ways.

I have also represented a client who had previously had appointed counsel who literally refused to remove himself from the case, and actually wrote the client a letter stating "you cannot fire me inasmuch as you did not hire me. I am your counsel of record until I am relieved of that responsibility by the court. I will let you know when that occurs." The attorney in question never asked the court in question for a hearing, or attempted to be relieved from the client's representation. The same attorney advised the judge in question that the client's letters to the judge should be disregarded because they infringed the rule against hybrid representation.

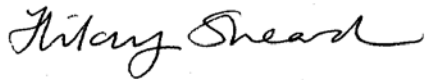
Particularly in the context of the mentally-ill client, it seems to me that it would be desirable if the rules (or comments thereto) could address the situation where appointed counsel—who may or may not be guided by what s/he believes to be the client's best interests—opposes the client's request to discharge them. For example, the discharge of counsel rule, Rule 1.15(a)(3), could be toughened up, by imposing a clear requirement that counsel must inform the court of the situation and ask for a hearing, and perhaps by mandating that currently appointed counsel request the



appointment of separate counsel appointed to independently advise the client—especially a mentally-ill client—and to represent the client’s wishes, and/or to act as quasi-amicus counsel whose role is to ensure that the court is apprized of all available information in making its decision. Since Texas criminal law places the burden on the client to ask for a hearing and to demonstrate why a request for substitution of new counsel is justified, *Hill v. State*, 686 S.W.2d 184, 185-87 (Tex. Crim. App. 1985), it seems harsh not to provide the client, especially the mentally-ill client, with some support in making that showing.

I trust that these observations are of some use to the committee, and would be glad to provide any further information or input if requested.

With all good wishes,  
Sincerely,

A handwritten signature in cursive script that reads "Hilary Sheard". The signature is written in black ink and is positioned above the printed name.

Hilary Sheard.

**Comments on Proposed Disciplinary Rule Amendments:**  
**Rules 1.02(g), 1.05, 1.16**

Submitted by:

Amon Burton  
Charles Herring, Jr.  
James C. McCormack  
Jason Panzer  
Gaines West

We respectfully submit these comments to the State Bar's Committee on Disciplinary Rules and Referenda (CDRR). Below we offer some initial general comments and then specific comments on the current proposals concerning amendments to Rules 1.02 and 1.05 and proposed new Rule 1.16.<sup>1</sup>

**I. General Comments**

We offer the following general comments and suggestions concerning the Committee's work.

1. Because this Committee's work likely will result in a referendum election on the proposed rules and rule amendments, we encourage the Committee to study closely the last rules referendum, in 2011. Bar members overwhelmingly voted against the proposals, generally by an 80% margin. Unfortunately, this Committee begins with that inherited legacy of dismal failure. Therefore, we encourage the Committee to examine how that effort went "off the tracks" so badly.

A few of the problems that became evident during that process were: (1) failing to reach out to and receive input from the major stakeholder groups who would be most directly affected by specific rule changes; (2) forcing a vote too quickly after publication of the proposals and comments, despite many requests for a postponement (including from the Bar President at the time); (3) creating unnecessary differences between the Texas rules and the ABA Model Rules, thus causing problems and increased expense for multi-state firms, especially large law firms; (4) failing to allow opponents of the proposed rules to participate equally in Bar forums; (5) failing to

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<sup>1</sup> Each of the individuals submitting these comments has substantial experience working with the Texas Disciplinary Rules of Professional Conduct, including representing complainants and respondents in disciplinary matters; handling lawyer-liability lawsuits; testifying as expert witnesses; serving on professional committees dealing with rules issues; and writing and lecturing on various subjects involving the rules. Resumes for each of us are attached to these comments.

conduct or provide a costs-benefits analysis on the proposals; (6) failing to consider whether each proposal would increase, decrease, or leave unchanged the level of protection of the public.

2. If it ain't broke, don't fix it. We encourage the Committee to propose only rules and amendments to existing rules that are necessary to address demonstrated, existing problems in legal practice.

The Texas Disciplinary Rules of Professional Conduct were adopted in 1990, after the American Bar Association (ABA) had adopted the Model Rules of Professional Conduct in 1983. Since 1983, the ABA has adopted over 100 sets of amendments to the Model Rules. Texas has conducted only the one failed referendum in 2011. Yet Texas lawyers continue to practice effectively, and the rules have not exactly been static.

Court decisions continuously apply and interpret the rules, as have opinions of the Professional Ethics Committee. When necessary, as happened recently, the Texas Supreme Court has issued clarifying comments.<sup>2</sup> Most recently, the Court amended Rule 8.03 in accordance with the self-reporting requirement adopted by the Legislature's instruction in the last Session.<sup>3</sup>

Many observers believe that the ABA too often amends the Model Rules, sometimes to make very minor changes.

Every rule change creates systemic costs. Lawyers (at least those who choose to vote) have to study the proposed changes before the referendum vote. When changes are adopted, lawyers have to study the changes approved, and if the changes are significant, lawyers have to make corresponding changes in their practices and procedures and forms. Law firm manuals and procedures have to be changed. Multi-state law firms and practitioners have to evaluate any differences from the Model

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<sup>2</sup> For example, in March 2016, the Texas Supreme Court added a new comment to Rule 1.06 for the purpose of overturning the result stated PEC Opinion 644—after law school deans across Texas had complained about Opinion 644. In July 2016, the PEC revised the previous version of Opinion 644 to track the new Comment 19 to Rule 1.06. *See* Tex. Disciplinary Rules Prof'l Conduct R. 1.06 cmt. 19 (making clear that a law firm is not prohibited from representing a client merely because a lawyer in the firm has a conflict arising from work the lawyer did as a law clerk before being licensed if the law firm screens the lawyer from the matter); 2014 WL 4960462 (the first version of Op. 644) *with* 2016 WL 4015410 (the revised version of Op. 644).

<sup>3</sup> *See* Tex. Gov't Code § 81.081 (requiring the chief disciplinary counsel to develop guidelines for lawyers to self-report misconduct); Texas Supreme Court Order Adopting Amendments to Texas Disciplinary Rule of Professional Conduct 8.03, Misc. Docket No. 18-9030 (March 1, 2018); Tex. Disciplinary Rules Prof'l Conduct R 8.03(e)-(f).

Rules and from other states' rules, and determine how to reconcile or otherwise accommodate any inconsistencies. Professional-liability insurers have to assess the significance of the changes. And on and on.

Accordingly, our first suggestion is that the Committee exercise restraint, and not adopt changes for the sake of change unless the Committee concludes that those changes are truly necessary for Texas lawyers.

3. Consistency with the Model Rules. When the Committee decides to propose a new rule or an amendment to an existing rule, we encourage the Committee, whenever possible, to use the language from the counterpart Model Rule, without any changes, except when different language is necessary either because of some difference in substantive Texas law or because of some important, articulable reason.

Law practice, like our economy, is increasingly national and even international. Multi-state law firms are common. In Texas, even some small law firms now have offices in other states. In personal-injury practice, many Texas lawyers have become licensed in California, New York, or other states that have laws perceived as more protective of victims' rights. Mass torts increasingly end up in multi-district-litigation (MDL) forums.

Those practice changes complicate rules issues for lawyers. Lawyers may be subject to different rules—even inconsistent rules—addressing the same issue in different states.

A major advantage of tracking the Model Rules as closely as possible is that those rules are the forms that the most states use and follow. Additionally, many of the Model Rules have remained unchanged, or substantially unchanged, since the original adoption of the Model Rules in 1983. Thus, lawyers and law firms have 35 years of interpretive court opinions, ethics opinions, and commentary to use in interpreting new Texas rules or rule amendments that track the Model Rules.

Every deviation from the Model Rule requires practitioners—and particularly multi-state practitioners—to ask Why? and to have to figure out (or speculate) on the reasons for each difference. And again, multi-state practitioners and multi-state professional-liability insurance carriers must rewrite firm manuals and practitioner guidance to analyze and explain each difference.

In the rule-making leading up to the referendum in 2011, too often we saw changes in wording that apparently resulted from some member of the task force or the Bar's committee simply deciding "I like a different word better." The Committee should avoid that, unless there's a good reason.

Changes to the Texas Disciplinary Rules that differ from the language in the Model Rules create an additional systemic cost—for lawyers, law firms, and ultimately for clients. We encourage the Committee to strive for consistency with the Model Rules whenever possible to avoid this problem.

4. Lawyer and public participation. We encourage the Committee to invite and vigorously encourage participation in the rule-making process from all segments of the Bar and the public.

Texas Government Code § 81.08786(a)(4) requires that this Committee “make all reasonable efforts to solicit comments from different geographic regions in this state, nonattorney members of the public, and members of the state bar.”<sup>4</sup>

Yet we heard from public-interest groups just before and after the Committee’s public hearing on October 10, 2018, that they had not been contacted and that as far as they knew, no one had attempted to “solicit [their] comments.” Indeed, the Committee acknowledged during its October 10, 2018 public hearing that it had not communicated with public-interest groups regarding the Committee’s most recent proposed rule changes.

Non-compliance with the statute governing this Committee’s operations may or may not raise an issue concerning the legality of the Committee’s procedures and any resulting referendum proposal. But in terms of creating (and, in fact, restoring) the confidence and trust that are critically important to conducting any successful referendum election, we submit that diligent and ongoing outreach to all interest groups should be a key focus for the Committee.

We encourage the Committee to distribute as broadly as possible all communications concerning its work—including its website, hearing notices, published rule proposals, etc. We also encourage Committee members to follow up with personal phone calls to Bar section chairs, legal service organizations, professional organizations (e.g., Texas Trial Lawyers Association, Texas Association of Defense Counsel, Texas District and County Attorneys Association, Texas Criminal Defense Lawyers Association, etc.), public interest organizations, etc., to explain the Committee’s basic functions and request their participation in the rule-making process.

This Committee already has access to lists and contact information for many groups and stakeholders—through the State Bar, Texas Lawyers Care, the Office of Chief Disciplinary Counsel, the Texas Access to Justice Commission, etc. We encourage to Committee to develop a comprehensive outreach list through all of those resources and to reach out as broadly as possible.

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<sup>4</sup> Tex. Gov’t Code § 81.08786(a)(4).

Attached hereto as Exhibit 1 is a list of some of the groups that the Committee should invite to participate in this process.

5. Explaining proposed changes. As indicated by our specific comments below, some of the comments are in the form of questions concerning why the Committee has proposed the particular changes that it has published. We suggest that for each change that the Committee proposes, the Committee provide, at least on its website, a summary of the reason for the changes. That would both aid understanding and save time for lawyers and the public.

Explaining the rationale for the Committee's actions also would likely assist in avoiding unnecessary opposition during the rule-making process and during the referendum election. Because § 81.078(d) requires that Bar members vote on each proposed rule separately, providing an explanation of all proposed changes to each rule at the outset should help voters understand the proposals, as well as save this Committee time in answering questions and responding to comments. Additionally, under the new statutory scheme adopted through SB 302, opposition can surface at several junctures: now, during the present comment period; at the Board level, as the Board considers the Committee's proposals under Government Code § 81.0877; during the referendum campaign, under § 81.0878(c); and then during the Texas Supreme Court's consideration under § 81.0879. Clarifying and explaining the Committee's reasoning would also help avoid unwanted opposition throughout the rule-making process.

## **II. Comments on specific proposed changes.**

We understand that at present, the Committee has requested comments on possible changes to three Disciplinary Rules: Rule 1.02(g) (proposed deletion); Rule 1.05(c)(9) (proposed new provision); and Rule 1.16 (proposed new rule). Our specific comments follow:

### ***A. Proposed deletion of Rule 1.02(g) and addition of Rule 1.16***

These two changes are related. The Committee proposes to eliminate Rule 1.02(g) and replace it with new Rule 1.16—concerning clients with diminished capacity.

Proposed new Rule 1.16 would generally track ABA Model Rule 1.14, but with some significant differences.

Unfortunately, Proposed Rule 1.16 is identical to the proposed version overwhelmingly rejected by Texas lawyers in the 2011 referendum. By itself, that fact

doesn't make the rule ill-advised. As discussed above, the "packaging" of the referendum into a few ballot propositions with many rules lumped into each proposition was a serious design defect. Government Code § 81.078(d) now requires a separate vote on each proposed rule. Nonetheless, the Committee is starting with a proposal that Texas lawyers previously rejected overwhelmingly, a point that any opponents will likely point out during any referendum election.

Comments:

1. Whether this proposed change is truly necessary for Texas lawyers and the public (see Introduction, Comment 2, above) may be questionable, but without arguing that point and assuming that it is, we generally commend the Committee for generally following the ABA Model Rule 1.14 on the issue (see Introduction, Comment 3, above).

2. However, the proposed rule does significantly deviate from the ABA Model Rule 1.14 in certain respects, and some of those deviations seem dubious—and calculated to generate opposition during a referendum election. While paragraph (a) of proposed Rule 1.16 is identical to Model Rule 1.14(a), paragraphs (b) and (c) are significantly different.

Proposed Rule 1.16(b) and (c) read:

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken, and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action. Such action may include, but is not limited to, consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, attorney ad litem, amicus attorney, or conservator, or submitting an information letter to a court with jurisdiction to initiate guardianship proceedings for the client.

(c) When taking protective action pursuant to (b), the lawyer may disclose the client's confidential information to the extent the lawyer reasonably believes is necessary to protect the client's interests.

ABA Model Rule 1.14(b) and (c) read:

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting



with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

3. Professor Robert Schuwerk and Charles Herring, Jr. both testified at the Committee's public hearing on October 10, 2018, concerning how proposed Rule 1.16(b) represents a major departure from the existing structure of the Texas Disciplinary Rules of Professional Conduct. Proposed Rule 1.16(b) speaks in terms of what actions a lawyer "may" take; it does not direct what a lawyer "shall" do. Current Rule 1.02(g), which it would replace, uses "shall."

That change is very different from the current structure of the Disciplinary Rules. Paragraph 10 of the Preamble to the current Disciplinary Rules defines the current disciplinary structure of the rules:

The Texas Disciplinary Rules of Professional Conduct define proper conduct *for purposes of professional discipline. They are imperatives*, cast in the terms *shall or shall not*. *The Comments* are cast often in the terms of *may or should* and are permissive, defining areas in which the lawyer has professional discretion. When a lawyer exercises such discretion, whether by acting or not acting, no disciplinary action may be taken.

(Emphasis added.)

The Committee should consider carefully the significance of that change. At a minimum, that structural change would require amending the Preamble. More importantly, that change will mean that the "rules" are no longer black-letter guidelines that lawyers may look to determine what conduct will or will not result in discipline.

On the other hand, the Model Rules take a different approach from the Texas Disciplinary Rules. The Model Rules use "may." Indeed, Model Rule 1.14(b) does exactly that. Paragraph 14 of the Model Rules Preamble reads:

Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the

Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role. Many of the Comments use the term “should.” Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.

Thus, this Committee could decide to change the structure of the Texas Disciplinary Rules to track the Model Rule structure—having both imperative rules and permissive rules. We take no position on which approach the Committee should take. We simply suggest that the Committee carefully consider the significant structural issue embedded in that change in proposed Rule 1.16(b). If the Committee opts for the imperative-and-permissive-rules approach, the Committee should recommend that the Texas Supreme Court make corresponding changes in the Preamble. Further, explanatory materials distributed before any subsequent referendum vote also should describe the structural change.

4. Proposed Rule 1.16(b) departs from Model Rule 1.14(g) in sentence structure—breaking the rule into two sentences, instead of one sentence. That is non-substantive, and perhaps better grammatically, given the longer list of possible actions set out in the Proposed Rule. But again, each change comes with systemic costs, albeit small in this instance.

5. More importantly, Proposed Rule 1.16(b) modifies the Model Rule 1.14(b) listing of actions that a lawyer may take when the lawyer forms the required “reasonable belief” concerning the client’s diminished capacity.

Model Rule 1.14(b): “. . . seeking the appointment of a *guardian ad litem, conservator or guardian.*”

Proposed Rule 1.16(b): “. . . seeking the appointment of a *guardian ad litem, attorney ad litem, amicus attorney, or conservator, or submitting an information letter to a court with jurisdiction to initiate guardianship proceedings for the client.*”

Thus, Proposed Rule 1.16(b) adds three options and deletes one. It adds seeking appointment of (1) an attorney ad litem, (2) amicus attorney, and (3) submitting an information letter to a court to initiate guardianship proceedings. It deletes seeking appointment of a guardian (other than by submitting the letter).

We generally understand that the Committee has added the three specific options because of particular procedures involved in Texas practice. Again, assuming that's correct, and because the listing in the proposed rule is not exclusive ("may include, but is not limited to"), our general preference would be to track the Model Rules language, when possible, and add or specify options unique to Texas in the comments to the rules.

More important, and more unclear, is the reason for deleting the option of seeking appointment of a guardian. While we are not guardianship or estate lawyers, those we have spoken with have explained that while the "information letter" procedure set out in the proposed rule is allowed by the Texas Estates Code,<sup>5</sup> the Code does not prohibit a lawyer from seeking a guardianship when necessary.<sup>6</sup>

Omission of the option to seek a guardian may generate otherwise avoidable opposition to the proposal during the referendum election. Lawyers may view the change as unnecessarily "tying their hands" or appearing to do so. Although the rule is clear that the listed options are not exclusive, omitting the guardian option suggests that that is a disfavored option. Public-interest groups may view the deletion of the guardian option as reducing the options and duties for lawyers to protect senior citizens and other clients who may have diminished capacity.

If the point of deleting the guardian option is that current practice or procedure favors the "information letter," that point could be made in a comment to the rule.

In any event, providing clear explanations for the Committee's changes and choices will help prevent the inadvertent creation of red-flag issues for the referendum election.

6. Proposed Rule 1.16(c) also deviates from Model Rule 1.14(c), as indicated in the italicized passages below:

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<sup>5</sup> See generally Tex. Estates Code § 1102.003.

<sup>6</sup> See Tex. Estates Code §§ 1251.001, et seq. (appointment of temporary guardianship); § 1101.001 et seq. (appointment of permanent guardianship); ABA Formal Ethics Op. 96-404 (1996) (interpreting Model Rule 1.14 to allow for the appointment of a guardian, "While there may be circumstances in which the appointment of a general guardian to assume control over every aspect of the client's life is the only reasonable course, in some, if not many, circumstances it may be sufficient for the client's protection to arrange for a guardian to manage the client's financial affairs, allowing the client to continue managing his personal affairs."); Restatement (Third) of the Law Governing Lawyers, § 24(4) ("A lawyer representing a client with diminished capacity . . . may seek appointment of a guardian or take other protective action within the scope of the representation when doing so is practical . . .").

Model Rule 1.14(c): “*Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client’s interests.*”

Proposed Rule 1.16(c): “When taking protective action pursuant to (b), the lawyer may disclose the client’s confidential information *to the extent the lawyer reasonably believes* is necessary to protect the client’s interests.”

The two changes, without more explanation, appear likely to attract opposition from public-interest groups.

First, Proposed Rule 1.16(c) omits the first sentence of Model Rule 1.14(c), which, but its terms, emphasizes the protection of client confidentiality. The Committee may have concluded that existing Texas Rule 1.05 adequately addresses the confidentiality issue. But if that’s the point of the change, it seems unnecessary and an unhelpful deviation from the Model Rule template.

Second, Proposed Rule 1.16(c) selects a different standard for the extent of disclosure authorized when a lawyer decides to take protective action for a client with diminished capacity. Does the Committee intend a substantive difference in allowing disclosure “to the extent *the lawyer reasonably believes* is necessary,” rather than the Model Rule standard allowing disclosure “*only to the extent reasonably necessary*”? If the Committee does not intend a substantive difference, then again we suggest following the Model Rule standard. If the Committee does intend a substantive difference, we suggest that the Committee should explain the difference, in line with Comment I.5, above.<sup>7</sup>

## **B. Proposed addition of Rule 1.05(c)(9)**

The Committee proposes to add a new subparagraph to Texas Disciplinary Rule 1.05(c):

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<sup>7</sup> Current, somewhat convoluted Texas Rule 1.05 uses multiple standards in the permissive-disclosure settings addressed in Rule 1.05(c): “When the lawyer has *reason to believe it is necessary* to do so in order to comply with a court order, ...” (1.05(c)(4)), “To the extent *reasonably necessary* to enforce a claim ...” (1.05(c)(5)), “When the lawyer has *reason to believe* it is necessary ... to prevent the client from committing a criminal or fraudulent act ...” (1.05(c)(7)), “To the extent revelation *reasonably appears necessary* to rectify the consequences of a client’s criminal or fraudulent act ...” (1.05(c)(8)).

“(c) A lawyer may reveal confidential information: . . . (9) To secure legal advice about the lawyer’s compliance with these Rules.”

That permissive-disclosure exception is identical to Model Rule 1.6(b)(4), and we support this change.<sup>8</sup>

We have also heard from one professional-liability insurance carrier who requests clarification in the comment to the rule that that confidentiality exception also applies to disclosures to in-house ethics counsel at law firms, in accordance with ABA Formal Op. 08-453 (2008).

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<sup>8</sup> We note that the same language appeared in proposed Rule 1.5(c)(4) in the defeated 2011 referendum.

## Exhibit 1 -- Organization Contact List

MALDEF – San Antonio

[www.maldef.org](http://www.maldef.org)

American Gateways – Austin

[www.americangateways.org](http://www.americangateways.org)

Grassroots Leadership – Austin

[www.grassrootsleadership.org](http://www.grassrootsleadership.org)

NAACP – Austin (Nelson Linder)

[www.naacpaustin.com](http://www.naacpaustin.com)

SWAFE – Austin (formerly Safe Place)

[www.safeaustin.org](http://www.safeaustin.org)

RAICES – Austin

[www.raicetexas.org](http://www.raicetexas.org)

Texas Legal Services Center

Texas Public Interest Research Group

Common Cause

Common Ground for Texans

Texans for Public Justice

Community not Commodity

Clean Elections Texas

Moveon.org

Center for Public Policy Priorities



Dallas Peace and Justice Center





# Public Comments - Public Hearing

Presented here are the comment excerpts from the October 10, 2018 public hearing. The public hearing was related to the following proposed rule changes:

- Rule 1.02 Scope and Objectives of Representation
- Rule 1.05 Confidentiality of Information
- Rule 1.16 Clients with Diminished Capacity

Provided below are comment excerpts from the public hearing held on October 10, 2018 at 10:00 a.m. at the Texas Law Center.

First Name	Last Name	Comments
Bob	Schuwerk	<p>Um, my question is, really about the 102 and 116 change. Um, the- the rule 1.16 as I read it, uh, it requires nothing of lawyers.</p> <p>I mean, it- it vests complete discretion to do or not to do, in various things. And, so I- I kinda wonder why it isn't a comment. Uh, rather than a rule. I didn't- for years we more or less, with very rare exceptions, follow the- the idea that, if we weren't willing to tell lawyers they had to do something or they could not do something, it did- it wasn't a rule, but rather it was a comment.</p> <p>Um, course, if you eliminate paragraph G, it would- there's nothing for it to be a comment too. Because there's nothing left anywhere in the rules that talks about the particular issues that are addressed in rule 1.16. So I was just curious as to whether this a one and done, that was seen as a special need to give lawyers more guidance in this area, so we're gonna break the general rule of, the rules actually imposing obligations, or, on lawyers, or whether this is a more general change in philosophy in rule drafting.</p> <p>Yeah, so, it looks- maybe I read it too hastily-</p> <p>But as I read rule 1.16 It offers lawyers suggestions on how they might wish to proceed. Gives them the freedom to proceed. Um, but does not tell them to do anything. Uh, and- and my concern with things like that is that, if nothing forbade a lawyer to do those things, until now, rule 1.16 is not necessary as a disciplinary rule.</p> <p>I- I have no quarrel by the way, with the substance of rule 1.16, I mean, I- I'm not saying that those suggestions to lawyers are misguided or inappropriate at all, it's just that they don't seem to me to be rule material.</p>

First Name	Last Name	Comments
Holly	Taylor	<p>Hi, my names Holly Taylor, I'm the rules attorney for the court of criminal appeals. And I mainly just have a few questions.</p> <p>So, my first question is, are there any people who are criminal law practitioners on your committee?</p> <p>Okay. And is the term diminished capacity defined in the rules anywhere?</p> <p>That- That's something that has some concern to us. There are very specific, uh, criminal law statutes. I haven't had that much time to look at it to be honest, I saw this posting yesterday, so [laughter]. Um. I- There are very specific criminal law statutes having to do with what a, uh, criminal defense attorney needs to do, when they have, and what a judge needs to do when they have concerns about the capacity of- of the attorney's client. And so, I- I just, I'm just wondering whether the committee has considered, uh, the interaction between those code of criminal procedures statutes and this rule, the new rule proposed.</p> <p>Sure. I guess- The thing that caught our eye was 1.16, sub-section C</p> <p>Which, uh, when taking protective action pursuant to subsection B, the lawyer may disclose the client's confidential information to the extent the lawyer reasonably believes is necessary to protect the client's interest. We just had some concerns 'cause it seems like some pretty broad language, especially given that the term "diminish capacity" is not defined. Uh ...</p> <p>W- well, but, um, under the comments th- I- I- it makes it ... Again, as professor [Schuwerk 00:24:32] were saying, there's lost of comments say, "No, your, your duty is to, a- as little as possible to accomplish that task and protect the client." You don't go back 20 years, you don't say that, you know ... You have to judge the minimal information that would allow you to comply with this, so I'm sorry that all the rules aren't, uh, all- aren't available. All the comments aren't.</p>

First Name	Last Name	Comments
Charles	Herring	<p>And uh ... Yeah, we, we do all the lawyering. I've got six lawyers and that's about all we do is law and order. Uh, legal malpractice, professional responsibility issues, representing lawyers and clients and grievance hearings and lawsuits and all of that. And helping lawyers and clients avoid problems when we can. But we work with these rules every day and, uh, some of it's in the firm. We're, um, involved heavily in the 2011, uh, referendum, uh, loss. All these ... Uh, the propose rules then ... And I, I would make two observations, if I may offer general observations based on what we learned through that. One is, um ... Because I have a lot of clients who are large law firms, multi jurisdictional law firms and actually small law firms now that are more multi jurisdictional [inaudible 00:26:16] that, uh, have moved into California and New York as well, where there's law they can actually practice, um, in some instances. Um, but, the big ... One of the big objections in 2011 that I heard from my client base, the multi jurisdictional firms, is please stick to the model rules-</p> <p>-as closely as possibly because every time we do a firm manual, every time we're trying to have our national ethics conferences for our own firm and deal with our carriers, we have to talk about the, the variations. Now, it's a little bit noble to have variations because Bob [Schuwerk 00:26:51] and I get hired, as you do, to explain-the variations sometimes, but, but seriously for the-</p> <p>-and the clients as well who ultimately bear their transactional cost, I would strongly recommend that the committee adhere whenever possible to the model rule language and if you need to amplify or explain a Texas twist, do that in a proposed comment whenever possible. It just makes life a whole lot-</p> <p>-easier and it reduces the costs of the rules. I would also, uh, echo mister, uh, Leon's, uh, comment. Um, I heard earlier this week that, uh ... From public citizen who I've represented at times that they were not, had not been contacted, um, uh, by the committee. And I know you have the statutory obligation that mister Leon mentioned and, um, when I was on the Supreme Court's grievance oversight committee we worked with CDC, um, to develop a list of local organizations throughout the state that the bar could educate the public through concerning the grievance procedure, the [inaudible 00:27:55] procedure, the fact that you can file a grievance.</p> <p>Um, and they had a pretty good list at the time and I would recommend that [crosstalk 00:28:01] this committee acquire that list and, by email or otherwise, just communicate because the public interest groups, particularly public citizen, was active in 2011. I'm sure they will be now. And the sooner you get them in the loop and the sooner they get buy in or you have an opportunity to get their comments, the better to avoid later, later opposition.</p> <p>Um, I'm not gonna comment. I- I'll, I'll submit written comments on the, on the, uh, specific rules. On professor, uh, [Schuwerks's 00:28:30] comment I would amplify ... I think I looked at the rule. There is a ... In 1.16a you do have a mandatory. You do have a "shall" in there, but that's maintaining relationship. The 1.02g that you've pulled into 1.16 [crosstalk 00:28:47] new rule, um, you do have ... A lawyer may do this, may do that. Um, and, and as I think the professor mentioned, we see that in the ABA model rules. The preamble to the Texas Rules, however, says, " The rules ... A rule's a reason, the rules define proper conduct, they are imperatives cast in terms of 'shall' or 'shall not'."</p> <p>Well, that rule, the way it's proposed now, the departs from that, um, and I think that's an important philosophical issue for your committee to address whether you wanna have suggestions in the rules, as opposed to the comments or ... Which is how we traditionally done that in Texas. I ... Whether you wanna leave the rules as rules of discipline, in terms of "shall", uh, and imperatives.</p> <p>I, I've talked over my two minutes or three minutes. I'll, I'll stop there, but [crosstalk 00:29:39] will submit some, some detail comments, um, after this before your November, uh, w-, uh, your, uh ... November one deadline I think for written comments [crosstalk 00:29:48]</p>

First Name	Last Name	Comments
Carlos	Leon	<p>First and foremost, for letting me speak at this public hearing. I'm a member of the public speaking for myself. For proposed Rule 1.05C9, "Published comments to specify to whom the lawyer may reveal confidential information to secure legal advice about the lawyer's compliance with these rules to close a potential loophole before it opens by intentionally limiting who is eligible to provide that legal advice to the inquiring lawyer. To minimize potential confidential information leakage, to maximally protect the lawyer, client and client's interests."</p> <p>That legal advice provider should be required to not reveal to anyone else the confidential information revealed to him or her by the inquiring lawyer, amplifying consideration five from opinion number 673, issued by the Professional Ethics Committee for the State Bar of Texas, August 2018 in front of you now on record, handed out here at this meeting by me. In fact, not only do considerations one through four also appear applicable, but considerations two and three are critical when confidential information is electronically revealed and or discussed.</p> <p>Because the electronic communication can be seen, heard, and or altered, and or shared by others like the NSA, which electronically vacuums it all up all the time. Should Rule 1.05C9 be adopted? Published comments explicating all this upfront to avoid creating negative outcomes for lawyers and their clients. In Jesus name I pray, Amen. Thank you, Lord. God bless Texas, the United States of America constitutional law and truth, and above all, God's word.</p>

# Public Comments - Public Hearing

Presented here is the complete transcript from the October 10, 2018 public hearing. The public hearing was related to the following proposed rule changes:

- Rule 1.02 Scope and Objectives of Representation
- Rule 1.05 Confidentiality of Information
- Rule 1.16 Clients with Diminished Capacity

The following is a transcript of the public hearing held on October 10, 2018 at 10:00 a.m. at the Texas Law Center.

Claude Ducloux: [00:03](#) All right, uh, welcome whoever is on the line with us today. I would ask that if you are on the line try to mute yourself so we don't hear, uh, your background noise or your, you know, your legal assistant coming in to talk to you. Good morning, everyone. I'm Claude Ducloux and seated next to me is Amy Bresnan. We are the members of here, uh, for the committee for Disciplinary Rules and Referenda, which we nicknamed CDRR. Our chair, Lewis Kinard, and-and other CDRR members are participating by teleconference.

Claude Ducloux: [00:33](#) Now and, uh, you might know, and for those of you who don't know, our committee was created by a new government code Section 81.072 to improve the disciplinary rule process. The committee is responsible for receiving, and analyzing, and recommending any disciplinary rule changes. Uh, today we are seeking your comments specific to our first batch of, uh, proposed rule changes and those are to the following. It's Rule 102, uh, the Scope and Objectives of Representation. There's a minor change to that.

Claude Ducloux: [01:06](#) Rule 105 on, uh, confidential, Confidentiality of Information. I know, uh, if you're here commenting you probably are aware of that. That's the rule that basically outlines those, uh, particular situations where a lawyer is allowed to divulge otherwise confidential information. And we have a spe-specific proposal that allows a lawyer now to seek ethics advice from another lawyer and to divulge information for that purpose. And Rule 116 and that deals ... 1.16 and that deals with clients with diminished capacity.

Claude Ducloux: [01:40](#) Now as part of this new process we have a fairly open and precise path to-to a process to follow, which allows lawyers and the public to comment. So in following that new procedure the committee published these, uh, proposed rule changes in the Texas Bar Journal and in the Texas Register, uh, and the

committee will accept comments from you and from anyone through November 1st of 2018. And comments can be submitted at [texasbar.com/CDRR](http://texasbar.com/CDRR). I'll say that two more times. You can submit comments online at [texasbar.com/CDRR](http://texasbar.com/CDRR), [texasbar.com/CDRR](http://texasbar.com/CDRR).

Claude Ducloux: [02:22](#)

And, uh, if you wish to comment, uh, please fill here today, fill out please one of these blue cards and hand it up here to-to Amy and myself so we can call on-on you, uh, uh, specifically. Uh, and each speaker I-I don't we think we have a lot of speakers so we'll probably be a little more liberal than, uh, we didn't know what to expect. Uh, let me say we're all sort of here on a first date, uh, under the new statutes.

Claude Ducloux: [02:49](#)

So I'll assure you though that the committee has met every single month and we've been working hard every single month to try to do what we collect-collectively believe will be, uh, in the interest of modernizing the rules to make them easier to understand, and to assist the profession and the public while protecting the integrity of the practice of law. And with that, I will open the meeting. What I'd like to do. I have one comment, uh, about ... do I have anyone that would like to comment on the Rule 102, the Scope and Objectives of Representation?

Claude Ducloux: [03:26](#)

I only have one card so far and that's a different rule. I wanted to sort of see if it was an easy part of the process to-to do these in-in order. So if anybody would like to-to do that, that's, uh, fine. You know, so I don't have any comments. Mr. Kinard, we don't have any comments on that. All right, let's go to, uh, Rule 105. That's the situations where lawyers can divulge, uh, in-in certain circumstances confidential information.

Claude Ducloux: [03:57](#)

You should have that, uh, before you, uh, and that basically says that in addition to those situations, uh, that a lawyer is allowed, that we can also divulge confidential information specifically for the lawyer to obtain ethics advice from an ethics attorney. And that seems like what we've always done anyway. I-I-I think that, I think Jack Herring is here and-and I both probably get three, or four, or 10 maybe, maybe he gets 10 calls a week from people saying, "Here's a situation." And of course, we always treat that as confidential information.

Claude Ducloux: [04:32](#)

But it was nice to have this opportunity to clarify that rule saying, "Yeah, that's a specific exception also to go get ethics advice." And of course you follow the rest of the rule and it says you can't divulge more than is necessary, and you have to pull back other things that have been instructed to you, uh, by your

client, but that's an exception. Uh, do I have any other comments on that rule? Well, I don't so I'm ... yes, go ahead.

- Bob Schuwerk: [04:59](#) Yeah, I'm Marty. I just wanted to know whether your committee is rationing in comments as they change these rules and explain how they work?
- Claude Ducloux: [05:07](#) Yes, we will be but the-the comments, uh, as we understand. And again, this is a new process. Uh, we believe the comments have to be sent to the Supreme Court. I will give you an example, though, for example. Now that Texas has statutes, uh, governing the disclosure of, uh, child abuse. When a lawyer has, uh, reliable knowledge of child abuse or elder abuse, there is a duty to disclose that. Well, we talked about putting that into a rule and then when we read all of the-the, uh, parameters for actually drafting rules, it appeared to us that that should be clarified in a comment.
- Claude Ducloux: [05:45](#) So to say the lawyers' duty to disclose includes a legal and a-a duty if required by law to disclose that just clarifies for the lawyer that yes, you have the same duty. Of course, you have that underlying duty that you can't reveal more than is necessary. But we're going to clarify with three proposed comments to Rule 105 that there is a legal duty if you're, uh, if you're state or, uh -
- Bob Schuwerk: [06:09](#) And those will eventually be circulated as the rules then?
- Claude Ducloux: [06:13](#) Well, they're going to be available to see online, but I think those go to the court, uh, to enact comments. We have big ... uh, it's a great question because we had a big discussion during one of our meetings about well, do we try to pass, uh, comments as rules? And, uh, with all the best information and briefing we could do, we decided that no, we have to suggest comments to the court as a clarification rather than try and enact comments, because those are not part of the rules. Okay. So but yes.
- Claude Ducloux: [06:46](#) The-the comments ... each one of these rules that there's usually at least a corresponding comment in one of the numbered comments under the rule that tries to clarify why-why that was added. This additionally clarifies that a lawyer has the right to receive, you know, ethics advice under confidentiality to make sure that he or she is pursuing the ethical path in representing this client. So that-that's what we'll have to. Uh, that of course, is a big rule of-of discussion. All right.

Claude Ducloux:	<a href="#">07:20</a>	Now I think we're-we're down to then the-the 116 ... I'm sorry.
Claude Ducloux:	<a href="#">07:26</a>	I'm sorry, yes. Carlos Leon. You can come over here if you want so that ... we can all hear you from there but I think if we're going to be making record, maybe you ought to use the microphone.
Carlos Leon:	<a href="#">07:37</a>	Okay.
Claude Ducloux:	<a href="#">07:38</a>	You wanted to talk first about, uh, Rule 105 and then I-I know you had another comment just simply about this procedure, and we'll hold onto-to that for a second.
Carlos Leon:	<a href="#">07:47</a>	You got it, sir. So with Carlos Leon in Austin, Texas October 10, 2018 to speak what's right.
Claude Ducloux:	<a href="#">07:57</a>	Yeah.
Carlos Leon:	<a href="#">07:58</a>	First and foremost, for letting me speak at this public hearing. I'm a member of the public speaking for myself. For proposed Rule 1.05C9, "Published comments to specify to whom the lawyer may reveal confidential information to secure legal advice about the lawyer's compliance with these rules to close a potential loophole before it opens by intentionally limiting who is eligible to provide that legal advice to the inquiring lawyer. To minimize potential confidential information leakage, to maximally protect the lawyer, client and client's interests."
Carlos Leon:	<a href="#">08:44</a>	That legal advice provider should be required to not reveal to anyone else the confidential information revealed to him or her by the inquiring lawyer, amplifying consideration five from opinion number 673, issued by the Professional Ethics Committee for the State Bar of Texas, August 2018 in front of you now on record, handed out here at this meeting by me. In fact, not only do considerations one through four also appear applicable, but considerations two and three are critical when confidential information is electronically revealed and or discussed.
Carlos Leon:	<a href="#">09:32</a>	Because the electronic communication can be seen, heard, and or altered, and or shared by others like the NSA, which electronically vacuums it all up all the time. Should Rule 1.05C9 be adopted? Published comments explicating all this upfront to avoid creating negative outcomes for lawyers and their clients. In Jesus name I pray, Amen. Thank you, Lord. God bless Texas, the United States of America constitutional law and truth, and above all, God's word.



Claude Ducloux: [10:16](#) Thank you very much and I know one of the things that we are addressing, because I think of your concerns was cyber security and that is another area that we are looking at, uh, at least adding additional comments that lawyers have to keep up with, uh, the latest technology and the details of preserving all confidential information when using digital methods of communication. So your-your words are well taken, and well spoken, and I appreciate your being here. Uh, because let's have ... does anybody else, did anybody fill out a blue card or would you like to make a comment? We, I think we have time if somebody would like to make a comment.

Claude Ducloux: [11:01](#) I know that, uh, I did receive some comments, uh, saying that in-in our, uh, descriptions we, uh, varied from the, uh, model rule of the ABA by not including the word, uh, and appointment of a guardian and instead we added the phrase, "Or submission of an information to ... submitting an information with jurisdiction to initiate a guardianship, uh, proceedings for the client." And we did that in contemplation that the way the Texas probate, uh, system works.

Claude Ducloux: [11:34](#) And, uh, also a-a concern, a maximum concern that not put a lawyer in a position where he or she would be deciding on a guardianship him or herself. So we-we think that we made a good choice. That was I think the one, uh, diversion from the ABA model rule that we made in this and we, uh, took it under a great consideration. I do appreciate very much, and I welcome those people who commented because.

PART 1 OF 3 ENDS [00:12:04]

Claude Ducloux: [12:00](#) Appreciate very much, and I welcome those people who commented because, as they were telling us, its easier to pass these rules if you're saying are model rules. But we think we have an obligation to endure that they, uh, meet, uh the mandates of Texas law and consider other things that are happening in the law.

Claude Ducloux: [12:18](#) Um, there is also, I will say there are also, if, unless anybody has any comments, there is also a comment uh on that, that the model rule says, uh, "You- in- in subsection C, that the law is allowed to re- to reveal, uh, to the extent, re- reasonably necessary." Well we clarified that to say, "under whose standard? What the lawyer knows?" So we said that the lawyer reasonably believes is necessary, because you have to examine what's in the lawyer's knowledge when he's doing that.

Claude Ducloux:	<a href="#">12:50</a>	For example, it might be typical in a case, and I'm making up this example, I'm not speaking on behalf of the committee, I'm just saying it would be- if you believe your client is declining, your first obligation might be to tell that lawyer's spouse. But if the lawyer's acknowledged that there is some conflict going on between this spouse, you might say, "I need to reveal this outside of that."
Claude Ducloux:	<a href="#">13:12</a>	So, it's- you can do that to what you reasonable believe is the best way to transmit that information. That was the purpose of clarifying it's what that- what that is. Even though it's a minor variance from the, uh, model rule. Uh, I'm- I'm, now, I- There was one more Mr. Carlos, you had a comment about, it less there- I don't have any more blue cards so, I want to address, you additionally had some comments about process that you wanted to, and you filled out a blue card and I think you have a minute left, so you can go ahead, or you can just- we'll allow you what you- the time you need to do that.
Carlos Leon	<a href="#">13:46</a>	Oh, yeah I would appreciate that.
Claude Ducloux:	<a href="#">13:47</a>	Sure.
Carlos Leon	<a href="#">13:48</a>	I'll go back over there.
Claude Ducloux:	<a href="#">13:49</a>	That's fine. Thank you.
Carlos Leon	<a href="#">13:50</a>	I might need a little more than 3 minutes 'cause I'm gonna ask 'em to put your web page on the screen for all of us to view, and that's what- will give the actual call number.
Claude Ducloux:	<a href="#">13:58</a>	I don't think we can do that this miring, but go ahead. I'm- I'm happy to tell you your-
Carlos Leon	<a href="#">14:02</a>	Oh, we can't do that? I appreciate you letting me know.
Claude Ducloux:	<a href="#">14:03</a>	Sure.
Carlos Leon	<a href="#">14:06</a>	Okay. So according to the September 2018 Texas Law journal, page 622, in front you of you, its on the other side of my hand out. You said, quote, "Pursuing to government codes section 81.076, the committee publishes the following proposed rules." That's false. Because it's actually pursuant to government code section 81. 0876.

Carlos Leon	<a href="#"><u>14:33</u></a>	Two sentences later, you said, quote, "Comments can be submitted at texlaw.com/cdrr." Really? Where and how on the webpage do you expect that to happen?
Claude Ducloux:	<a href="#"><u>14:44</u></a>	Right.
Carlos Leon	<a href="#"><u>14:45</u></a>	I'd say put it on screen but I know we can't do that, so I'll just continue.
Carlos Leon	<a href="#"><u>14:48</u></a>	Further, there's no announcement of this public hearing on your webpage or on the state bar of Texas Event calender or list. All of that directly contradicts government code 81.0876a4, which says, "This committee shall 'make all reasonable efforts to solicit comments from different geographic regions in this state, not attorney members of the public, and members of the state bar' not following that statue negatively affects 81.0876c and e." Which say, quote, "The committee shall give interested parties at least 30 days from the date the proposed disciplinary rule is published, to submit comments on the rule to the committee." End that quote. On conclusion of the comment period described by sub-section C, the committee may amend the proposed disciplinary rule, in response to the comments. End quote.
Carlos Leon	<a href="#"><u>15:40</u></a>	Therefore, I respectfully suggest you immediately take the following action. First of all, fix these mistakes. Second, uh, next to the announcement, or first of all, put this announcement on your actual webpage, the CDRR website page. Then second, next to the announcement, create 2 hyperlinks. One to the text of the proposed rule changes, as printed on pages 622 and 623, and one to a specific comment box for visitors to type or attach comments on the proposed rule changes that you are required by law to make all reasonable efforts to solicit. Lastly, someone needs to be assigned the responsibility to make sure these tasks get done right now, and from now on. For future proposed rule charges or be held accountable if not.
Claude Ducloux:	<a href="#"><u>16:37</u></a>	Thank you.
Claude Ducloux:	<a href="#"><u>16:38</u></a>	Thank you very much, those were excellent suggestions and indeed, as I said this is our first public hearing, it's our first publication, I think we can do and we will do a better job in publishing this to all the stakeholders and people who would like to have, uh, input on that. And I appreciate that you brought that to our attention.
Claude Ducloux:	<a href="#"><u>16:56</u></a>	Uh, I'm not sure since I don't have the statute on me, I think, it- that should probably be 0872etC. Which means and the

sequential provisions after that. But we'll look at that and make sure that we accurately, and I think that's an excellent idea. I think it's- people would love to just be able to say, "I can go here, look at the rule, and have make a comment," And- and then we can have those. Those are excellent ideas and I hope that our IT people could make that- that happen. 'Cause it's a- it's a great idea Carlos. And, again, this is a- a great benefit you've done by being at our meeting this morning.

Carlos Leon	<a href="#">17:31</a>	Thanks for hearing and considering.
Claude Ducloux:	<a href="#">17:35</a>	Okay. Um, and of course, if anybody has any comments to any of these rules, or wants to discuss them further, we have time. And, uh, yes.
Michelle Jordan:	<a href="#">17:43</a>	We need a blue card
Claude Ducloux:	<a href="#">17:43</a>	What?
Michelle Jordan:	<a href="#">17:45</a>	We need a blue card
Claude Ducloux:	<a href="#">17:46</a>	Oh we-
Bob Schuwerk	<a href="#">17:46</a>	Um, yeah [inaudible 00:17:49].
Claude Ducloux:	<a href="#">17:49</a>	Would you- would you fill out a blue card, so we can keep a record of that?
Bob Schuwerk	<a href="#">17:53</a>	I'll fill that out [crosstalk 00:17:57] and hand it up to you.
Bob Schuwerk	<a href="#">17:59</a>	Uh, good miring, my name is Bob Schuwerk for those of you who don't know me. Was on the-
Claude Ducloux:	<a href="#">18:03</a>	Welcome, Professor Schuwerk.
Bob Schuwerk	<a href="#">18:05</a>	Thank you. On the rules committee for some years, as you know. Um, my question is, really about the 102 and 116 change. Um, the- the rule 1.16 as I read it, uh, it requires nothing of lawyers.
Claude Ducloux:	<a href="#">18:22</a>	Mm-hmm (affirmative)
Bob Schuwerk	<a href="#">18:23</a>	I mean, it- it vests complete discretion to do or not to do, in various things. And, so I- I kinda wonder why it isn't a comment. Uh, rather than a rule. I didn't- for years we more or less, with very rare exceptions, follow the- the idea that, if we weren't willing to tell lawyers they had to do something or they could

not do something, it did- it wasn't a rule, but rather it was a comment.

- Bob Schuwerk [18:51](#) Um, course, if you eliminate paragraph G, it would- there's nothing for it to be a comment too. Because there's nothing left anywhere in the rules that talks about the particular issues that are addressed in rule 1.16. So I was just curious as to whether this a one and done, that was seen as a special need to give lawyers more guidance in this area, so we're gonna break the general rule of, the rules actually imposing obligations, or, on lawyers, or whether this is a more general change in philosophy in rule drafting.
- Claude Ducloux: [19:35](#) I don't think it's a general change in philosophy at all. I think uh, we've been- we've tried to be careful in reading those and- and that why, for example, in my clarification, it was pointed out that that shouldn't be in a rule, it should be in a comment. And so we are- we are concentrating a lot on the comments to clarify those things. I- Is it your position that the rule doesn't require anything? Is that what it- it is?
- Bob Schuwerk [19:57](#) Yeah, so, it looks- maybe I read it too hastily-
- Claude Ducloux: [20:00](#) In other words it looks too much like a comment.
- Bob Schuwerk [20:01](#) But as I read rule 1.16 It offers lawyers suggestions on how they might wish to proceed. Gives them the freedom to proceed. Um, but does not tell them to do anything. Uh, and- and my concern with things like that is that, if nothing forbade a lawyer to do those things, until now, rule 1.16 is not necessary as a disciplinary rule.
- Claude Ducloux: [20:34](#) Well-
- Bob Schuwerk [20:35](#) I- I have no quarrel by the way, with the substance of rule 1.16, I mean, I- I'm not saying that those suggestions to lawyers are misguided or inappropriate at all, it's just that they don't seem to me to be rule material.
- Claude Ducloux: [20:49](#) Okay. I- I understand that we do have those debates all the time and I appreciate those comments.
- Bob Schuwerk [20:54](#) Sure.
- Claude Ducloux: [20:57](#) Thanks very much. Thank you for making the effort to appear, Professor.

Bob Schuwerk	<a href="#"><u>21:04</u></a>	That's alright. [inaudible 00:21:05] [laughter]
Claude Ducloux:	<a href="#"><u>21:06</u></a>	Okay. Uh, anybody else, uh, want to make a comment? Yeah. Hi.
Claude Ducloux:	<a href="#"><u>21:13</u></a>	Can I have your blue cards so I can have it for the record?
Holly Taylor:	<a href="#"><u>21:18</u></a>	I mean, I could give you my card or I could just give you my name? I'm an attorney.
Claude Ducloux:	<a href="#"><u>21:21</u></a>	Okay, yeah I think-
Michelle Jordan:	<a href="#"><u>21:22</u></a>	You need a blue card.
Claude Ducloux:	<a href="#"><u>21:22</u></a>	We- Pardon?
Michelle Jordan:	<a href="#"><u>21:22</u></a>	You need a blue card.
Claude Ducloux:	<a href="#"><u>21:25</u></a>	Yeah, we- we, unfortunately, under the statute I think we need to keep a record.
Audience Member	<a href="#"><u>21:28</u></a>	Well, the concern we had was that, she's an attorney, I'm in a judge run courtroom, and she's an attorney in our court, and so, I guess [inaudible 00:21:38].
Claude Ducloux:	<a href="#"><u>21:39</u></a>	Oh, I- I think everybody- all I know is what I'm told to do, and that's everybody's suppose to, you know, file a blue card.
Holly Taylor:	<a href="#"><u>21:46</u></a>	I'm on the rules committee for our court, hence how we- we knew you [inaudible 00:21:49].
Claude Ducloux:	<a href="#"><u>21:48</u></a>	Thank you. Again, this is our- the first hearing, I'm- I'm gonna follow the rules. Just gonna [laughter]. Thank you. Yes, please.
Holly Taylor:	<a href="#"><u>21:58</u></a>	Hi, my names Holly Taylor, I'm the rules attorney for the court of criminal appeals.
Claude Ducloux:	<a href="#"><u>22:01</u></a>	Thank you very much.
Holly Taylor:	<a href="#"><u>22:02</u></a>	And I mainly just have a few questions.
Claude Ducloux:	<a href="#"><u>22:04</u></a>	Sure.
Holly Taylor:	<a href="#"><u>22:04</u></a>	So, my first question is, are there any people who are criminal law practitioners on your committee?

Claude Ducloux:	<a href="#">22:11</a>	Yes. Uh, and- and in fact, uh Rick Hagen's on the committee and you will see an up coming- Uh, hello? Are you there? Rick?
Rick Hagen:	<a href="#">22:21</a>	Yes I'm here.
Claude Ducloux:	<a href="#">22:21</a>	Okay, so he's on the court.
Holly Taylor:	<a href="#">22:22</a>	Right.
Claude Ducloux:	<a href="#">22:22</a>	And he is a- a very viable and outspoken voice on thing that need to be done for the criminal lawyers.
Holly Taylor:	<a href="#">22:29</a>	Okay. And is the term diminished capacity defined in the rules anywhere?
Claude Ducloux:	<a href="#">22:35</a>	I am not sure. [laughter]
Holly Taylor:	<a href="#">22:36</a>	Okay.
Claude Ducloux:	<a href="#">22:40</a>	I- I don't think so.
Holly Taylor:	<a href="#">22:41</a>	That- That's something that has some concern to us. There are very specific, uh, criminal law statutes. I haven't had that much time to look at it to be honest, I saw this posting yesterday, so [laughter]. Um. I- There are very specific criminal law statutes having to do with what a, uh, criminal defense attorney needs to do, when they have, and what a judge needs to do when they have concerns about the capacity of- of the attorney's client. And so, I- I just, I'm just wondering whether the committee has considered, uh, the interaction between those code of criminal procedures statutes and this rule, the new rule proposed.
Claude Ducloux:	<a href="#">23:21</a>	Uh, well I can tell you, nothing in our rules obviates the Texas estate's code, the- any other rules, uh, that it does, that are applicable to the definition to diminished capacity. Uh, this of course, is- deals with the ethical obligations when you sense that there is. But I- I think the lawyers under the duty to observe diminished capacity, under the guides of the laws that would be applicable to that situation. If its criminal defendants, certainly if- If they're criminal definitions that would be it if it's a probate situation, you'd probably look to the- he or she would probably look to the estates code.
Holly Taylor:	<a href="#">23:58</a>	Sure. I guess- The thing that caught our eye was 1.16, sub-section C

PART 2 OF 3 ENDS [00:24:04]

Holly Taylor:	<a href="#">24:00</a>	-that caught our eye was 1.16 subsection C.
Claude Ducloux:	<a href="#">24:04</a>	Yes.
Holly Taylor:	<a href="#">24:04</a>	Which, uh, when taking protective action pursuant to subsection B, the lawyer may disclose the client's confidential information to the extent the lawyer reasonably believes is necessary to protect the client's interest. We just had some concerns 'cause it seems like some pretty broad language, especially given that the term "diminish capacity" is not defined. Uh ...
Holly Taylor:	<a href="#">24:27</a>	W- well, but, um, under the comments th- I- I- it makes it ... Again, as professor [Schuwerk 00:24:32] were saying, there's lots of comments say, "No, your, your duty is to, a- as little as possible to accomplish that task and protect the client." You don't go back 20 years, you don't say that, you know ... You have to judge the minimal information that would allow you to comply with this, so I'm sorry that all the rules aren't, uh, all- aren't available. All the comments aren't.
Claude Ducloux:	<a href="#">24:55</a>	But yes, we're- ... That what- that's what we're trying to do with those comments.
Holly Taylor:	<a href="#">24:59</a>	Okay. Thank you.
Claude Ducloux:	<a href="#">25:00</a>	Thank you very much for your comment. Thank you for being here, judge. [inaudible 00:25:03] we have a judge on the court of criminal appeals here today. Thank you, I appreciate that. Uh, u- uh, Chuck, did you have a comment or something like that?
Charles Herring:	<a href="#">25:12</a>	Well, wasn't going to, but the Bob said something [inaudible 00:25:15]
Claude Ducloux:	<a href="#">25:12</a>	Alright.
Charles Herring:	<a href="#">25:16</a>	And we get a-
Claude Ducloux:	<a href="#">25:16</a>	Can't let, uh, uh, professor [Schuwerk 00:25:18] [crosstalk 00:25:18] speak. Pardon ... Yeah, he's gonna fill out a card. He, he, he promises to fill out a card.
Charles Herring:	<a href="#">25:23</a>	Uh, first of all, thank you for doing this. It's a lot of work.
Claude Ducloux:	<a href="#">25:27</a>	[crosstalk 00:25:27] The imminent, uh, Charles Herring.



Charles Herring:	<a href="#">25:29</a>	And uh ... Yeah, we, we do all the lawyering. I've got six lawyers and that's about all we do is law and order. Uh, legal malpractice, professional responsibility issues, representing lawyers and clients and grievance hearings and lawsuits and all of that. And helping lawyers and clients avoid problems when we can. But we work with these rules every day and, uh, some of it's in the firm. We're, um, involved heavily in the 2011, uh, referendum, uh, loss. All these ... Uh, the propose rules then ... And I, I would make two observations, if I may offer general observations based on what we learned through that. One is, um ... Because I have a lot of clients who are large law firms, multi jurisdictional law firms and actually small law firms now that are more multi jurisdictional [inaudible 00:26:16] that, uh, have moved into California and New York as well, where there's law they can actually practice, um, in some instances. Um, but, the big ... One of the big objections in 2011 that I heard from my client base, the multi jurisdictional firms, is please stick to the model rules-
Claude Ducloux:	<a href="#">26:34</a>	Whenever possible [crosstalk 00:26:35]
Charles Herring:	<a href="#">26:35</a>	-as closely as possibly because every time we do a firm manual, every time we're trying to have our national ethics conferences for our own firm and deal with our carriers, we have to talk about the, the variations. Now, it's a little bit noble to have variations because Bob [Schuwerk 00:26:51] and I get hired, as you do, to explain-
Claude Ducloux:	<a href="#">26:53</a>	Yeah.
Charles Herring:	<a href="#">26:53</a>	-the variations sometimes, but, but seriously for the-
Claude Ducloux:	<a href="#">26:56</a>	(laughs)
Charles Herring:	<a href="#">26:57</a>	-and the clients as well who ultimately bear their transactional cost, I would strongly recommend that the committee adhere whenever possible to the model rule language and if you need to amplify or explain a Texas twist, do that in a proposed comment whenever possible. It just makes life a whole lot-
Charles Herring:	<a href="#">27:15</a>	-easier and it reduces the costs of the rules. I would also, uh, echo mister, uh, Leon's, uh, comment. Um, I heard earlier this week that, uh ... From public citizen who I've represented at times that they were not, had not been contacted, um, uh, by the committee. And I know you have the statutory obligation that mister Leon mentioned and, um, when I was on the Supreme Court's grievance oversight committee we worked

with CDC, um, to develop a list of local organizations throughout the state that the bar could educate the public through concerning the grievance procedure, the [inaudible 00:27:55] procedure, the fact that you can file a grievance.

Charles Herring: [27:57](#) Um, and they had a pretty good list at the time and I would recommend that [crosstalk 00:28:01] this committee acquire that list and, by email or otherwise, just communicate because the public interest groups, particularly public citizen, was active in 2011. I'm sure they will be now. And the sooner you get them in the loop and the sooner they get buy in or you have an opportunity to get their comments, the better to avoid later, later opposition.

Charles Herring: [28:21](#) Um, I'm not gonna comment. I- I'll, I'll submit written comments on the, on the, uh, specific rules. On professor, uh, [Schuwer's 00:28:30] comment I would amplify ... I think I looked at the rule. There is a ... In 1.16a you do have a mandatory. You do have a "shall" in there, but that's maintaining relationship. The 1.02g that you've pulled into 1.16 [crosstalk 00:28:47] new rule, um, you do have ... A lawyer may do this, may do that. Um, and, and as I think the professor mentioned, we see that in the ABA model rules. The preamble to the Texas Rules, however, says, "The rules ... A rule's a reason, the rules define proper conduct, they are imperatives cast in terms of 'shall' or 'shall not'."

Charles Herring: [29:11](#) Well, that rule, the way it's proposed now, the departs from that, um, and I think that's an important philosophical issue for your committee to address whether you wanna have suggestions in the rules, as opposed to the comments or ... Which is how we traditionally done that in Texas. I ... Whether you wanna leave the rules as rules of discipline, in terms of "shall", uh, and imperatives.

Charles Herring: [29:35](#) I, I've talked over my two minutes or three minutes. I'll, I'll stop there, but [crosstalk 00:29:39] will submit some, some detail comments, um, after this before your November, uh, w-, uh, your, uh ... November one deadline I think for written comments [crosstalk 00:29:48]

Claude Ducloux: [29:48](#) Thank you. Well, we need to hear from, uh, all of you lawyers who practice in the area of legal ethics. It's very important input. Um [crosstalk 00:29:57]

Charles Herring: [29:57](#) Probably you don't. Probably you don't.

Claude Ducloux: [29:59](#) [crosstalk 00:29:59] I know you're, I know you're teasing.

Charles Herring: [30:01](#) Yeah, the other ... Following up on that, the other thing that we found in the referendum, at the end we had groups like the criminal defense lawyers who were very upset, you haven't talked to us about this and you're proposing that rule, the [plies 00:30:14] lawyers. Now, in the real world, regular human beings don't ever wanna hear about these rules and regular lawyers don't. But sometimes they have to.

Claude Ducloux: [30:23](#) Right.

Charles Herring: [30:23](#) And to avoid opposition, and avoid ... 'Cause you're not just writing a rule, you're writing an election ballot proposition. And the legacy you have inherited is a, uh, 80% defeat the last time on, on basically identical rules you're proposing right now, uh, for the two, uh, as far as you've gotten. Um, you've gotta do something different. You've gotta get more buy-in I think, more outreach, uh, or else, uh, people are gonna say, "You're just selling the same goods that the buyers rejected overwhelmingly last time." You will hear that-

Claude Ducloux: [30:57](#) Yeah.

Charles Herring: [30:58](#) -if you get contested rules. And so, the more you get buy-in, the more you get participation I think the better. It's hard to do, but [crosstalk 00:31:04]

Claude Ducloux: [31:04](#) Well, it's, uh ... You know what, I- let me just make one r- [inaudible 00:31:07] and that is simply we spend so many hours looking at these and, uh, sometimes there are rules are, are in the public and in the lawyer's best interest. Even if they were defeated under that process last time, they, uh, you know with better explanations and, uh ... But we're hopeful that we're, we're trying. Really, everyone on this committee is motivated to do what we really think is in the best and we're, we're aware of that history. We're aware of the history of referendu- and we will move forward.

Claude Ducloux: [31:39](#) But your comments are extremely well taken, they are noted and we, we wanna make a better, uh, process [crosstalk 00:31:47]

Charles Herring: [31:47](#) -res- respond very briefly if I might.

Claude Ducloux: [31:48](#) Yeah.

Charles Herring: [31:48](#) Uh, one of the benefits you have, one of the advantages you have, and, as professor [schuwerk 00:31:53], uh, and I both

commented after the, the debacle in 2011, um, the way the proposals were packaged in five or six general propositions ... You had controversial rules lumped in with rules [crosstalk 00:32:07]

Claude Ducloux: [32:07](#)

Exactly. We're aware of that.

Charles Herring: [32:08](#)

And you now have the advantage. And we work with Senator Watson to make sure that this would be true, that there is a separate vote on every rule. And so, your ... You don't have that, uh, detriment.

Claude Ducloux: [32:18](#)

Right, right.

Charles Herring: [32:18](#)

And I think that's a great freedom-

Claude Ducloux: [32:20](#)

[crosstalk 00:32:20] with all that, that whole rule package if you hated one rule you voted everything down [crosstalk 00:32:24] Everything was thrown out. There was great stuff in there that never made it because-

Charles Herring: [32:27](#)

That was a great way not to do it and-

Claude Ducloux: [32:29](#)

Right.

Charles Herring: [32:29](#)

-and you're not handicapped by that fortunately.

Claude Ducloux: [32:31](#)

Right. Thank you very much-

Charles Herring: [32:32](#)

Thank you.

Claude Ducloux: [32:33](#)

-uh, Mr. Herring. I appreciate your appearance. Uh, does anyone else have any, uh, additional comments here? Thank you all then for your, uh, attendance at our first meeting, again. As I say, we're on our first date here trying to w- w- work this process with you. I think we'll t- we'll continue to improve it and we'll tr- continue to make every effort to make, uh, uh, comments more accessible and easily, uh, made to future, uh, rules. We do anticipate you're gonna see some more rules coming out in the, uh, in the d- in December bar journal that's going to streamline some of our a- advertising procedures that are the, the subject of, of a great amount of, uh, problem for a lot of lawyers, so controversy is, is, uh, the nicest word, uh, that I can say.

Claude Ducloux: [33:20](#)

So, thank you all very much. All of the comments were just wonderful. I, I am just honored to, to be here, uh, to preside

today in the absence of Mr. Kinard, uh, Lewis. Are you still there?

Lewis Kinard: [33:32](#)

Yes, hi. Thank you, Claude for handling this. I very much appreciate it. [inaudible 00:33:37] today.

Claude Ducloux: [33:37](#)

Okay. Thank you very much. And with that, I think we'll, we'll close the hearing and, you know ... I don't wanna say fire up the margaritas or [inaudible 00:33:47] (crowd laughs)

Claude Ducloux: [33:46](#)

Than- (laughs) Thank you very much. We're adjourned.

Lewis Kinard: [33:50](#)

Thank you.

Charles Herring: [33:50](#)

Thank you.

PART 3 OF 3 ENDS [00:33:57]

**State Bar of Texas General Fund  
Financial Highlights  
For the Nine Months Ended February 28, 2019**

**Total General Fund YTD results** – As of February 28, 2019, the General Fund had a net excess of revenues over expenditures and transfers of \$3,583,249 compared to a budgeted net excess of \$1,196,177. This resulted in a positive overall variance of \$2,387,072.

	<b>Actual</b>	<b>Budget</b>	<b>Variance</b>	<b>% Variance</b>
Total Revenues	\$34,506,749	\$32,602,777	\$1,903,972	6%
Total Expenditures and Transfers	30,923,500	31,406,600	483,100	2%
<b>Net Excess</b>	<b>\$3,583,249</b>	<b>\$1,196,177</b>	<b>\$2,387,072</b>	

**Revenues**

For the period ending February 28, 2019, total revenues exceeded the budget by \$1,903,972 or 6%, thereby producing a positive actual to budget variance. An analysis of the revenues shows that the following departments had a positive revenue variance in excess of \$10,000 and 10% for the period ending February 28, 2019.

- MCLE Department – Total Positive Revenue Variance: \$580,853 or 25% - This positive variance results primarily from higher than anticipated collection of sponsor accreditation fees for continuing legal education courses.
- Investment Income – Total Positive Revenue Variance: \$349,914 or 189% - This positive revenue variance is due to a higher than anticipated yield on the State Bar's investment portfolio for the current fiscal year.
- CDC Disciplinary Fees – Total Positive Revenue Variance: \$55,262 or 13% - This positive variance results primarily from several large checks received this month for attorney's fees.
- Minority Affairs – Total Positive Revenue Variance: \$81,071 or 25% - This positive revenue variance results from a higher than expected number of sponsorships and attendees for the Texas Minority Council Program.
- Web Management - Total Positive Revenue Variance: \$68,340 or 19% - This positive revenue variance results from higher than expected revenue generated in connection with law firm employment advertising.
- Texas Young Lawyers Association – Total Positive Revenue Variance: \$22,075 or 27% - This positive revenue variance results from higher than anticipated revenue from National Trial Competition.

- Credit Card Processing Fees – Total Positive Revenue Variance: \$41,375 or 14% - This positive variance results from the convenience fee charged for membership dues credit card transactions. The convenience fee revenue is completely offset by credit card fees charged by the State Bar's merchant service provider.

### **Expenditures**

For the period ending February 28, 2019, total expenditures were under the allocated budget by \$483,100 or 2%, which resulted in a positive actual to budget variance.

An analysis of the expenditures shows that five departments, Deputy Executive Director, Member & Public Services Director, Local Bars, Texas Lawyers Assistance Program, and Printing had large positive expenditure variances in excess of \$10,000 and 10% in salaries and benefits for the primarily resulting from open positions.

An analysis of the expenditures shows that two departments, MCLE and Special Financial Advisor, had large negative expenditure variances in excess of (\$10,000) and (10%) in salaries and benefits. The MCLE department variance is primarily the result of additional labor costs to implement a new information system. The Special Financial Advisor is a new position.

An analysis of the expenditures shows that the following department had negative expenditure variances in excess of (\$10,000) and (10%) for the period ending February 28, 2019:

- Minority Affairs – Total Negative Expenditure Variance: (\$83,334) or (21%) - This negative variance results from an increase in sponsorships and contributions which were used towards additional conference expenses.

## **TexasBarCLE (TBCLE)**

For the period ending February 28, 2019, TexasBarCLE's net revenues over expenditures amount was over its budget target by \$757,269 or 21%, thereby producing a positive actual to budget variance.

	<b>Actual</b>	<b>Budget</b>	<b>Variance</b>	<b>% Variance</b>
TBCLE Revenues	\$11,757,483	\$11,383,971	\$373,512	3%
TBCLE Expenditures	7,410,297	7,794,054	383,757	5%
<b>Net TBCLE Income</b>	<b>\$4,347,186</b>	<b>\$3,589,917</b>	<b>\$757,269</b>	<b>21%</b>

In comparing TBCLE's performance to previous years, it is appropriate to make two comparisons: (1) compare the current fiscal year 18-19 to the previous fiscal year 17-18; and (2) compare the current fiscal year 18-19 to fiscal year 16-17. Fiscal years ending in odd numbers are considered to be "non-legislative years", in other words, they do not follow a legislative session. Fiscal years ending in even numbers are considered to be "legislative years" because they do follow a legislative session and TBCLE generally sees a surge in revenues following a legislative year. The surge in revenue generally results from legal issues arising during the legislative process; thereby creating a need for new or revised CLE programs.

In comparing actual revenues and expenditure amounts for the period ending February 28, 2019 to the prior period ending February 28, 2018, we see an increase in revenues of \$235,881 or 2%, and an increase in expenditures of \$23,269 or 0% for an overall increase in net revenues of \$212,612 or 5%. This is showing the difference between financial performances based on a comparison of a "legislative year" to a "non-legislative year".

In comparing actual revenues and expenditure amounts for the current period ending February 28, 2019, to the period ending February 28, 2017, we see an increase in revenue of \$524,399 or 5% and a decrease in expenditures of (\$96,918) or (1%) for an overall increase in net revenues of \$621,317 or 17%. This is showing the difference between financial performances based on a comparison of two "non-legislative years."

## **Salaries and Benefits**

For FY 2019-2019, the salaries and benefits budget totals \$23,988,383 or 55% of the overall \$43,331,890 General Fund budget after budgeted board commitments. The \$23,988,383 includes a 4% vacancy rate. The actual vacancy factor for the period ending February 28, 2019 was 5.9%. The actual salary and benefit expenditures had a (\$149,179) negative variance to budget at the end of February 2019. Additional information on salary and benefit variances is reported in the expenditures section above.

Budget	\$ 17,916,726
Actual	18,065,905
Variance	<u>\$ (149,179)</u>



**General Fund**  
**Statement of Revenues, Expenditures and Changes in Fund Balance**  
**For the Nine Months Ending February 28, 2019**

	<b>Annual Budget</b>	<b>YTD Budget</b>	<b>YTD Actual</b>	<b>YTD Variance \$ Fav/(Unfav)</b>	<b>YTD Variance % Fav/(Unfav)</b>	<b>YTD Budget Prior Year</b>	<b>YTD Actual Prior Year</b>	<b>YTD Prior Year Variance \$ Fav/(Unfav)</b>	<b>YTD Prior Year Variance % Fav/(Unfav)</b>
REVENUES:									
Membership Dues	\$20,372,039	\$14,915,907	\$15,301,384	\$385,477	3%	\$15,069,818	\$15,062,087	(\$7,731)	(0%)
Accounting/Management Fees	650,351	488,014	488,013	(1)	(0%)	488,013	488,013		
Texas Bar Journal	580,600	454,940	472,208	17,268	4%	436,040	462,906	26,866	6%
Leadership SBOT	10,000	7,497	3,000	(4,497)	(60%)	3,332		(3,332)	(100%)
MCLE Fees	3,115,250	2,278,557	2,859,410	580,853	25%	2,250,256	2,357,270	107,014	5%
TexasBar CLE	13,777,842	11,383,971	11,757,483	373,512	3%	11,277,678	11,521,601	243,923	2%
Investment Income	185,000	185,000	534,914	349,914	189%	92,000	214,634	122,634	133%
Lawyer Referral	190,000	124,500	119,925	(4,575)	(4%)	150,000	138,130	(11,870)	(8%)
Member Benefits	915,766	738,619	675,475	(63,144)	(9%)	640,982	594,260	(46,722)	(7%)
CDC Disciplinary Fees	535,000	409,604	464,866	55,262	13%	337,103	418,172	81,069	24%
Membership	13,000	9,765	11,555	1,790	18%	9,185	12,901	3,716	40%
Local Bars	12,500	12,500	17,550	5,050	40%	11,500	13,300	1,800	16%
Minority Affairs	335,000	327,000	408,071	81,071	25%	338,000	401,195	63,195	19%
Computer Services Dept.	1,200	900	900			900	900		
Website	365,000	365,000	433,340	68,340	19%	286,000	309,861	23,861	8%
Legal Access Division	11,000	11,000	16,800	5,800	53%	15,000	8,100	(6,900)	(46%)
Law Related Education	15,500	14,500	13,350	(1,150)	(8%)	15,500	11,781	(3,719)	(24%)
TYLA	60,000	81,000	103,075	22,075	27%	71,000	83,600	12,600	18%
Law Student Division	6,000	5,100	6,905	1,805	35%	5,100	5,700	600	12%
Purchasing & Facilities	49,403	36,423	33,921	(2,502)	(7%)	36,423	33,718	(2,705)	(7%)
Advertising Review	370,000	273,653	260,595	(13,058)	(5%)	278,648	302,875	24,227	9%
Miscellaneous, Sales Tax Discounts, Etc.	72,000	54,747	63,129	8,382	15%	46,747	62,240	15,493	33%
Credit Card Processing Fees	290,000	290,000	331,375	41,375	14%	270,000	315,665	45,665	17%
Rent	179,440	134,580	129,505	(5,075)	(4%)	134,580	129,505	(5,075)	(4%)
<b>TOTAL REVENUES</b>	<b>\$42,111,891</b>	<b>\$32,602,777</b>	<b>\$34,506,749</b>	<b>\$1,903,972</b>	<b>6%</b>	<b>\$32,263,805</b>	<b>\$32,948,414</b>	<b>\$684,609</b>	<b>2%</b>
EXPENDITURES									
Executive Division									
Executive Director	627,410	466,941	469,879	(2,938)	(1%)	477,117	443,172	33,945	7%
Deputy Executive Director						190,525	83,496	107,029	56%
Associate Executive Director/Legal Counsel	518,566	386,675	416,933	(30,258)	(8%)	281,968	300,644	(18,676)	(7%)
Deputy Executive Director - Cantu	222,945	167,694	154,900	12,794	8%	160,662	154,408	6,254	4%
Deputy Executive Director - Laney	274,165	205,549	184,308	21,241	10%	235,371	179,646	55,725	24%
Special Financial Advisor	75,000	56,250	121,098	(64,848)	(115%)				
Officers & Directors	836,836	562,783	529,263	33,520	6%	544,816	576,931	(32,115)	(6%)
Human Resources	280,789	211,092	223,019	(11,927)	(6%)	235,688	222,589	13,099	6%
Training/Tuition	71,133	32,500	22,926	9,574	29%	15,575	14,926	649	4%
<b>Total Executive Division</b>	<b>2,906,844</b>	<b>2,089,484</b>	<b>2,122,326</b>	<b>(32,842)</b>	<b>(2%)</b>	<b>2,141,722</b>	<b>1,975,812</b>	<b>165,910</b>	<b>8%</b>

**General Fund**  
**Statement of Revenues, Expenditures and Changes in Fund Balance**  
**For the Nine Months Ending February 28, 2019**

	<b>Annual Budget</b>	<b>YTD Budget</b>	<b>YTD Actual</b>	<b>YTD Variance \$ Fav/(Unfav)</b>	<b>YTD Variance % Fav/(Unfav)</b>	<b>YTD Budget Prior Year</b>	<b>YTD Actual Prior Year</b>	<b>YTD Prior Year Variance \$ Fav/(Unfav)</b>	<b>YTD Prior Year Variance % Fav/(Unfav)</b>
Member & Public Services Division									
Member & Public Services Division Director	118,324	89,301		89,301	100%	129,175	132,336	(3,161)	(2%)
Center for Legal History	149,785	112,019	109,122	2,897	3%	107,843	107,829	14	0%
Law Related Education	508,232	416,087	377,732	38,355	9%	409,108	364,858	44,250	11%
Governmental Relations	156,607	121,671	117,481	4,190	3%	188,624	136,319	52,305	28%
Texas Young Lawyers Association	927,418	627,400	669,813	(42,413)	(7%)	609,046	623,319	(14,273)	(2%)
LeadershipSBOT	94,000	71,019	65,181	5,838	8%	64,469	64,126	343	1%
Sections	318,519	237,853	225,657	12,196	5%	236,917	227,552	9,365	4%
Local Bars	446,571	338,334	294,131	44,203	13%	357,517	334,790	22,727	6%
Special Events	73,604	68,825	63,623	5,202	8%	69,825	60,999	8,826	13%
Law Student Department	20,266	15,566	12,722	2,844	18%	15,620	14,321	1,299	8%
SBOT Volunteer Committees	289,467	223,948	233,843	(9,895)	(4%)	184,585	188,521	(3,936)	(2%)
Total Member & Public Services Division	3,102,793	2,322,023	2,169,305	152,718	7%	2,372,729	2,254,970	117,759	5%
Legal & Attorney Services Division									
Legal & Attorney Services Division Director	222,971	167,438	164,246	3,192	2%	163,637	158,546	5,091	3%
Texas Lawyers Assistance Program	455,312	338,838	301,555	37,283	11%	303,519	324,847	(21,328)	(7%)
Legal Access Division	1,036,508	808,709	777,221	31,488	4%	609,068	659,110	(50,042)	(8%)
Total Legal & Attorney Services Division	1,714,791	1,314,985	1,243,022	71,963	5%	1,076,224	1,142,503	(66,279)	(6%)
Access to Justice Commission	827,206	528,899	484,229	44,670	8%	561,604	509,208	52,396	9%
Member Benefits	343,218	61,277	57,213	4,064	7%	159,164	167,449	(8,285)	(5%)
Research & Analysis	167,645	123,556	128,047	(4,491)	(4%)	119,763	111,616	8,147	7%
Professional Development Division									
Texas Bar CLE	10,174,142	7,794,054	7,410,297	383,757	5%	7,654,337	7,387,032	267,305	3%
Minority Affairs	460,478	396,164	479,498	(83,334)	(21%)	395,612	436,098	(40,486)	(10%)
Total Professional Development	10,634,620	8,190,218	7,889,795	300,423	4%	8,049,949	7,823,130	226,819	3%
Attorney Compliance Division									
Office of Attorney Compliance Director	176,564	132,933	126,675	6,258	5%	129,890	125,514	4,376	3%
Advertising Review	182,597	137,182	134,773	2,409	2%	137,192	136,600	592	0%
Client Attorney Assistance Program	547,352	409,633	408,462	1,171	0%	428,715	395,751	32,964	8%
Lawyer Referral	353,692	258,263	264,636	(6,373)	(2%)	251,180	263,417	(12,237)	(5%)
MCLE	579,699	437,183	484,550	(47,367)	(11%)	438,705	485,810	(47,105)	(11%)
Total Attorney Compliance Division	1,839,904	1,375,194	1,419,096	(43,902)	(3%)	1,385,682	1,407,092	(21,410)	(2%)

**General Fund**  
**Statement of Revenues, Expenditures and Changes in Fund Balance**  
**For the Nine Months Ending February 28, 2019**

	<u>Annual Budget</u>	<u>YTD Budget</u>	<u>YTD Actual</u>	<u>YTD Variance \$ Fav/(Unfav)</u>	<u>YTD Variance % Fav/(Unfav)</u>	<u>YTD Budget Prior Year</u>	<u>YTD Actual Prior Year</u>	<u>YTD Prior Year Variance \$ Fav/(Unfav)</u>	<u>YTD Prior Year Variance % Fav/(Unfav)</u>
Operations/Security Division									
Purchasing & Facilities	1,240,950	919,283	960,810	(41,527)	(5%)	936,591	884,922	51,669	6%
Total Operations/Security Division	<u>1,240,950</u>	<u>919,283</u>	<u>960,810</u>	<u>(41,527)</u>	<u>(5%)</u>	<u>936,591</u>	<u>884,922</u>	<u>51,669</u>	<u>6%</u>
Finance Division									
Accounting	936,017	704,089	728,054	(23,965)	(3%)	771,091	793,765	(22,674)	(3%)
Membership	832,080	510,191	492,936	17,255	3%	524,930	543,137	(18,207)	(3%)
Other Administrative	1,770,550	1,281,022	1,298,975	(17,953)	(1%)	1,230,182	1,289,470	(59,288)	(5%)
Total Finance Division	<u>3,538,647</u>	<u>2,495,302</u>	<u>2,519,965</u>	<u>(24,663)</u>	<u>(1%)</u>	<u>2,526,203</u>	<u>2,626,372</u>	<u>(100,169)</u>	<u>(4%)</u>
Information Technology Division									
Information Technology	1,304,534	980,228	896,441	83,787	9%	991,432	924,413	67,019	7%
Customer Service	370,930	278,385	290,456	(12,071)	(4%)	287,562	281,816	5,746	2%
Total Information Technology Division	<u>1,675,464</u>	<u>1,258,613</u>	<u>1,186,897</u>	<u>71,716</u>	<u>6%</u>	<u>1,278,994</u>	<u>1,206,229</u>	<u>72,765</u>	<u>6%</u>
Communications Division									
Office of Communications Director	249,259	189,222	181,668	7,554	4%	185,187	181,238	3,949	2%
Bar Journal	1,210,030	903,878	908,390	(4,512)	(0%)	979,089	892,571	86,518	9%
Printing	165,407	124,224	101,678	22,546	18%	125,509	133,395	(7,886)	(6%)
Graphics	162,342	119,194	126,182	(6,988)	(6%)	123,942	123,424	518	0%
Public Information	169,455	103,556	94,555	9,001	9%	93,674	84,509	9,165	10%
Web Management	395,862	243,976	241,602	2,374	1%	236,095	216,567	19,528	8%
Total Communications Division	<u>2,352,355</u>	<u>1,684,050</u>	<u>1,654,075</u>	<u>29,975</u>	<u>2%</u>	<u>1,743,496</u>	<u>1,631,704</u>	<u>111,792</u>	<u>6%</u>
Public Protection Division									
Chief Disciplinary Counsel	9,829,435	7,327,929	7,393,222	(65,293)	(1%)	7,259,006	7,185,662	73,344	1%
Grievance Oversight Committee	48,800	36,245	28,393	7,852	22%	36,245	29,522	6,723	19%
Unauthorized Practice of Law	170,000	123,330	124,889	(1,559)	(1%)	122,305	121,574	731	1%
Professional Ethics Commission	11,080	3,909	5,696	(1,787)	(46%)	4,020	4,626	(606)	(15%)
Board of Disciplinary Appeals	619,339	463,503	447,720	15,783	3%	454,261	431,455	22,806	5%
Total Public Protection Division	<u>10,678,654</u>	<u>7,954,916</u>	<u>7,999,920</u>	<u>(45,004)</u>	<u>(1%)</u>	<u>7,875,837</u>	<u>7,772,839</u>	<u>102,998</u>	<u>1%</u>

**General Fund**  
**Statement of Revenues, Expenditures and Changes in Fund Balance**  
**For the Nine Months Ending February 28, 2019**

	<u>Annual Budget</u>	<u>YTD Budget</u>	<u>YTD Actual</u>	<u>YTD Variance \$ Fav/(Unfav)</u>	<u>YTD Variance % Fav/(Unfav)</u>	<u>YTD Budget Prior Year</u>	<u>YTD Actual Prior Year</u>	<u>YTD Prior Year Variance \$ Fav/(Unfav)</u>	<u>YTD Prior Year Variance % Fav/(Unfav)</u>
TOTAL EXPENDITURES	\$41,023,091	\$30,317,800	\$29,834,700	\$483,100	2%	\$30,227,958	\$29,513,846	\$714,112	2%
Transfers to:									
Bldg & Equip Fund	288,800	288,800	288,800			288,800	288,800		
Technology Fund	500,000	500,000	500,000			500,000	500,000		
Client Security Fund	300,000	300,000	300,000			300,000	300,000		
TOTAL TRANSFERS	1,088,800	1,088,800	1,088,800			1,088,800	1,088,800		
TOTAL EXPENDITURES & TRANSFERS	42,111,891	31,406,600	30,923,500	483,100	2%	31,316,758	30,602,646	714,112	2%
Excess (Deficit) of Revenues Over Expenditures & Transfers		1,196,177	3,583,249	2,387,072	200%	947,047	2,345,768	1,398,721	148%
BOARD COMMITMENTS									
Board Commitment - SLRAP	350,000	350,000	350,000			350,000	350,000		
Board Commitment - Sheeran-Crowley Memorial Trust						250,000	250,000		
Board Commitment - Client Security Fund	800,000	800,000	800,000						
Board Commitment - Technology Fund						750,000	750,000		
Board Commitment - Texas Opportunity & Justice Incubator Program	755,278	143,670	143,670			180,671	180,671		
Board Commitment - Presidential Initiatives	157,867	26,263	26,263			119,869	119,869		
Board Commitment - Statewide Pro Bono Campaign	159,060	8,651	8,651			15,590	15,590		
Board Commitment - LAD 2018 Board Commitments	556,772	367,768	367,768			296,339	296,339		
Board Commitment - Referendum Reserve	100,000								
Board Commitment - Run-Off Election Reserve	70,000								
Board Commitment - Ethics Initiatives	12,431	289	289			4,636	4,636		
Board Commitment - Supreme Court Equipment Replacement						100,000	100,000		
Board Commitment - Document Preservation	50,000	50,000	50,000						
Board Commitment - Archives Digitization Project	100,000	24,500	24,500						
Board Commitment - Texas Law Center Renovations						7,749	7,749		
TOTAL BOARD COMMITMENTS	3,111,408	1,771,141	1,771,141			2,074,854	2,074,854		
TOTAL YTD INCREASE (REDUCTION) IN FUND BALANCE	(\$3,111,408)	(\$574,964)	\$1,812,108	\$2,387,072	415%	(\$1,127,807)	\$270,914	\$1,398,721	124%

**State Bar of Texas  
General Fund  
Balance Sheet  
As of February 28, 2019**

Assets

Cash & Money Market Funds		\$	2,147,947
Investments	21,724,071		
Adjust Investments to Market	19,641		
	-----		
Investments at Fair Market Value			21,743,712
Accounts Receivable:			
Sales	43,960		
Less Allowance for Doubtful Accounts	(2,198)		
	-----		
Net Accounts Receivable - Sales			41,762
Accrued Interest			84,098
Interfund			1,819,398
Other			192,756
Inventory			12,358
Prepaid Expenditures			595,098
		-----	
Total Assets		\$	26,637,129
		=====	

Liabilities and Fund Equity

Liabilities

Accounts Payable:			
Cash - A/P			
Trade			589,747
Interfund			2,299,524
Accrued Liabilities			297,818
Deferred Revenue -			
Membership Dues			5,437,089
Other			454,941
Other Liabilities			37,653
		-----	
Total Liabilities		\$	9,116,772
		-----	

**State Bar of Texas  
General Fund  
Balance Sheet  
As of February 28, 2019**

Fund Balances

Nonspendable - Prepaids at May 31, 2018	\$ 672,040	
Nonspendable - Inventory at May 31, 2018	9,453	
Nonspendable - Investments FMV Adjustment at May 31, 2018	(31,424)	
Board Committed - Minimum Reserve January 2019	11,059,004	
Board Committed - Texas Opportunity and Justice Incubator Program	755,278	
Board Committed - Legal Access Division Programs	556,772	
Board Committed - Client Security Fund	800,000	
Board Committed - Student Loan Repayment Assistance Program	865,000	
Board Committed - Technology Fund	150,000	
Board Committed Expenditures - Texas Law Center Renovations	100,000	
Board Committed - Law Focused Education	79,500	
Board Committed - Presidential Initiatives	157,867	
Board Committed - Pro Bono Campaign	159,060	
Board Committed - Run-off Election Reserve	70,000	
Board Committed - Legal Access Fellowship Program	43,270	
Board Committed - Referendum Reserve	100,000	
Board Committed - Archives Digitization Project	100,000	
Board Committed - Ethics Initiatives	12,431	
Board Committed - Document Preservation	50,000	
	<hr/>	
Total Fund Balance at May 31, 2018		<hr/> 15,708,251

Current Year Operations

Nonspendable - Prepaids at February 28, 2019	(76,942)	
Nonspendable - Inventory at February 28, 2019	(2,905)	
Nonspendable - Investments FMV Adjustment at February 28, 2019	51,065	
Board Committed Expenditures - Client Security Fund	(800,000)	
Board Committed Expenditures - SLRAP	(350,000)	
Board Committed Expenditures - Texas Opportunity & Justice Incubator Program	(143,670)	
Board Committed Expenditures - Presidential Initiatives	(26,263)	
Board Committed Expenditures - Statewide Pro Bono Campaign	(8,651)	
Board Committed Expenditures - Legal Access Division Initiatives	(367,768)	
Board Committed Expenditures - Ethics Initiative	(289)	
Board Committed Expenditures - Document Preservation	(50,000)	
Board Committed Expenditures - Archives Digitization Project	(24,500)	
Board Committed Expenditures - Texas Law Center Renovations	-	
Amount Available for Board Commitment from Current Year Operations	3,612,029	
	<hr/>	
Total Current Year Increase (Reduction) in Fund Balance		<hr/> 1,812,106

Total Fund Balance	<hr/> 17,520,357
--------------------	------------------

Total Liabilities and Fund Balance	<hr/> <hr/> \$ 26,637,129
------------------------------------	---------------------------

State Bar of Texas  
Law Practice Resources Division  
Statement of Revenues and Expenses  
For the Nine Months Ending February 28, 2019

	YTD Budget	YTD Actual	Budget to Actual % Variance	2018-2019 Budget
<b>Revenues:</b>				
Book Sales Net of Estimated Returns	\$1,331,918	\$1,247,830	-7%	\$2,075,913
Online Sales	360,989	254,438	-42%	481,318
Total Sales	1,692,907	1,502,268	-13%	2,557,231
Fees	47,319	50,705	7%	55,000
Interest	4,500	6,194	27%	6,000
Royalty	847,500	836,027	-1%	1,130,000
Total Revenues	2,592,226	2,395,194	-8%	3,748,231
<b>Cost of Goods Sold:</b>				
Finished Products	273,043	104,312	162%	425,562
Publicity/Advertising for Specific Titles	28,750	17,913	60%	53,000
Royalties	76,454	69,948	9%	101,353
Other	0	73,210	-100%	40,000
Total Cost of Goods Sold	378,247	265,383	43%	619,915
<b>Expenses:</b>				
Salaries	984,852	1,010,272	-3%	1,313,153
Benefits	330,426	315,791	5%	440,571
Travel	46,250	29,037	59%	48,450
Meetings & Conferences	1,350	1,354	0%	1,800
Professional Services	63,258	73,626	-14%	90,036
Publicity/Advertising	11,250	2,625	329%	15,000
Dues/Subscriptions/Licenses	35,308	37,201	-5%	50,014
Education/Training	9,085	9,038	1%	13,290
Supplies/Awards/Gifts/Spec. Items	11,681	24,136	-52%	15,999
Rentals - Office, Equipment, Storage	126,891	120,330	5%	169,188
Maintenance/Repair	18,000	23,799	-24%	24,000
Postage and Freight	134,317	91,266	47%	209,091
Telephone	3,375	2,637	28%	4,500
Insurance	4,500	4,650	-3%	6,000
Administrative Fee	406,911	406,911	0%	542,548
Bad Debts	34,804	(7,966)	-537%	52,245
Capital Lease Expense	12,500	13,289	-6%	12,500
Printing	0	389	-100%	0
Copying	1,350	1,159	16%	1,800
Total Operating Expenses	2,236,108	2,159,544	4%	3,010,185
Total Expenses	2,614,355	2,424,927	8%	3,630,100
Net Income/(Loss)	(22,129)	(29,733)	-26%	118,131

State Bar of Texas  
Law Practice Resources Division  
Statement of Net Position  
As of February 28, 2019

Assets

Accounts Receivable :		
Sales	\$	537,519
Less Allowance for Doubtful Accounts		(26,876)
Net Accounts Receivable - Sales		510,643
Interfund Receivable - General Fund		453,823
Inventory		
Inventory - Finished Goods		530,195
Inventory - Work in Process		353,185
Less Inventory - Reserve		(47,257)
		-----
Total Inventory Less Reserves		836,123
Intangible Assets:		
Fixed Assets:		
Furniture/Equipment		353,637
Less Accumulated Depreciation		(318,315)
		-----
Net Fixed Assets		35,322
		-----
Total Assets	\$	1,835,911
		=====

Liabilities and Net Position

Liabilities

Payables	\$	15,827
Compensable Leave		95,363
		-----
Total Liabilities		111,190
		-----

Net Position

Net Position at May 31, 2018 - Unrestricted	54,074	
Designated - Minimum Operating Expenditures	702,377	
Designated - Projects in Process	948,000	
Designated - New Approved Projects	50,000	
	-----	
		-----
Total Net Position at May 31, 2018		1,754,451
Current Year Operations		(29,730)
		-----
Total Liabilities and Net Position	\$	1,835,911
		=====



State Bar of Texas  
Client Security Fund  
Statement of Revenues & Expenditures  
For the Nine Months Ending February 28, 2019

Revenues:

Interest	\$ 49,283
Restitution/Other Income	67,303
	-----
Total Revenues	116,586
	-----

Expenditures:

Claims	500,090
Banking Fees	165
	-----
Total Expenditures	500,255
	-----

Excess (Deficit) of Revenue Over Expenditures	(383,669)
	=====

General Fund Operating Transfer In	300,000
General Fund Committed Funds Transfer In	800,000
	-----
Total Transfers In from General Fund	1,100,000

Unrealized Net Gain (Loss) from Investments	(584)
	-----
Net after Operating Transfer & Unrealized Net Gain (Loss)	\$ 715,747
	=====

State Bar of Texas  
Client Security Fund  
Balance Sheet  
As of February 28, 2019

Assets

Cash & Money Market Accts.	\$ 739,525
Investments	2,274,246
Adjust Investments to Market	(1,641)
Interest Receivable	2,492
	-----

Total Assets	\$ 3,014,622
	=====

Liabilities:

Due To (From) General Fund	\$ 268,970
	-----

Total Liabilities	268,970
-------------------	---------

Fund Balance

Beginning Fund Balance	2,029,906
Current Year Activity	715,746
	-----

Total Fund Balance	2,745,652
	-----

Total Liabilities and Fund Balance	\$ 3,014,622
	=====

State Bar of Texas  
Combining Statement of Revenue & Expenditures  
And Changes in Fund Balance  
All Special Revenue Funds  
For the Nine Months Ending February 28, 2019

	Law Focused Grants	TBLS	Convention Fund	Texas Law Center	Texas Bar College	Technology Fund	Misc Grant Fund	Total
<b>Revenues:</b>								
Fees		\$391,475	\$265,845		\$215,734			\$873,054
Sales			29,720		2,673			32,393
Investments	77	24,730	5,424	62,093	3,248			95,572
Grants	598,600						48,900	647,500
Contributions			253,250		1,450		45,117	299,817
Other Revenue		23,485						23,485
<b>Total Revenues</b>	<b>598,677</b>	<b>439,690</b>	<b>554,239</b>	<b>62,093</b>	<b>223,105</b>		<b>94,017</b>	<b>1,971,821</b>
<b>Expenditures:</b>								
Salaries		332,099			46,513			378,612
Benefits		122,235			17,180			139,415
Salaries & Wages - Temporary					772			772
Travel	117,910	30,488	6,137		36,092			190,627
Meetings & Conferences	37,254	24,028	434,964		9,404			505,650
Professional Services	103,925	65,529	8,055	6,310	8,336		33,108	225,263
Publicity/Advertising		70,640	39,000		4,886			114,526
Dues/Subscriptions/Licenses	1,602	21,529			1,259	5,920		30,310
Education/Training	375							375
Supplies/Awards/Gifts/Spec. Items	39,343	5,796	12,251	7,900	13,066	57,262		135,618
Rentals - Office, Equipment, Storage	5,040	87,044	629		1,456			94,169
Maintenance/Repair				9,070		336,116		345,186
Postage and Freight	4,372	3,460	20,143		8,084	36		36,095
Telephone		11,465			459			11,924
Administrative	7,039	67,450	9,800		24,688			108,977
Fixed Assets		1,538		51,489		296,484		349,511
Printing and Copying	11,610	3,463	18,269		12,439			45,781
<b>Total Expenditures</b>	<b>328,470</b>	<b>846,764</b>	<b>549,248</b>	<b>74,769</b>	<b>184,634</b>	<b>695,818</b>	<b>33,108</b>	<b>2,712,811</b>
<b>Transfer (In) / Out</b>				<b>(288,800)</b>		<b>(500,000)</b>		<b>(788,800)</b>
<b>Total Expenditures &amp; Transfers</b>	<b>328,470</b>	<b>846,764</b>	<b>549,248</b>	<b>(214,031)</b>	<b>184,634</b>	<b>195,818</b>	<b>33,108</b>	<b>1,924,011</b>
<b>Net Increase (Decrease) in the Fair Value of Investments</b>				<b>9,837</b>				<b>9,837</b>
<b>Total Revenues less Expenditures</b>	<b>270,207</b>	<b>(407,074)</b>	<b>4,991</b>	<b>285,961</b>	<b>38,471</b>	<b>(195,818)</b>	<b>60,909</b>	<b>57,647</b>
<b>Beginning Fund Balance at 6/1/18</b>		<b>1,858,938</b>	<b>337,791</b>	<b>3,676,630</b>	<b>198,619</b>	<b>1,281,166</b>		<b>7,353,144</b>
<b>Ending Fund Balance at 2/28/19</b>	<b>\$270,207</b>	<b>\$1,451,864</b>	<b>\$342,782</b>	<b>\$3,962,591</b>	<b>\$237,090</b>	<b>\$1,085,348</b>	<b>\$60,909</b>	<b>\$7,410,791</b>



# State Bar of Texas

## *Review of Investment Performance*

Quarter Ended February 28, 2019

**Barry Baughier**  
***Senior Managing Consultant***  
**baughierb@pfm.com**

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PFM Asset Management  
LLC

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Dallas, TX 75201

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214) 247-7079  
**pfm.com**



February 28, 2019

Below is a summary of the State Bar of Texas' investment holdings as of February 28, 2019. For additional, specific investment holding information, please refer to the attached statements for PFM Asset Management LLC, as well as the respective money market fund and checking account bank statements.

<b>Account Name</b>	<b>Month End Market Value</b>
<b>Money Market Mutual Fund Investments</b>	
PFM Funds Gov't Select Series - General Fund	2,093,675.82
PFM Funds Gov't Select Series - Client Security Fund	717,176.51
PFM Funds Gov't Select Series - Texas Law Center	27,336.33
PFM Funds Gov't Select Series - Board of Legal Specialization Fund	523,267.65
PFM Funds Gov't Select Series - Annual Meeting Funds	346,545.05
PFM Funds Gov't Select Series - Texas Bar College Special Revenue Funds	193,719.91
PFM Funds CD Program	714,854.70
<b>High Yield Savings Accounts</b>	
Plains Capital Bank - Hatton Sumner Grant Account	287,300.98
Plains Capital Bank - College Endowment Fund	52,690.34
<b><i>Total Short-Term Funds</i></b>	<b><i>4,956,567.29</i></b>
<b>Individual Portfolios</b>	
Client Security Fund	2,275,097.58
General Fund	21,827,810.30
Texas Law Center Fund	3,908,053.99
<b><i>Total Individual Portfolios</i></b>	<b><i>28,010,961.87</i></b>
<b><i>Grand Total</i></b>	<b><i>32,967,529.16</i></b>
<b>Weighted Average Maturity</b>	
Including Overnight Balances	266 Days
Not Including Overnight Balances	306 Days

If you have any questions, do not hesitate to contact me at 214-247-7079 or [baughierb@pfm.com](mailto:baughierb@pfm.com).

Sincerely,

Barry Baughier



## Portfolio Summary

<b><u>Total Portfolio Value</u></b>	<b><u>February 28, 2019</u></b>	<b><u>November 30, 2018</u></b>	<b><u>February 28, 2018</u></b>
College Fund*	<b>\$246,410.25</b>	\$244,729.19	\$275,982.00
Client Security Fund	<b>\$2,992,274.09</b>	\$2,979,391.21	\$2,894,513.97
Board of Legal Specialization Fund	<b>\$1,238,122.35</b>	\$1,520,895.21	\$1,013,507.45
Law Focused Education Fund	<b>\$287,300.98</b>	\$68,311.49	\$336,944.67
Texas Law Center Fund	<b>\$3,935,390.32</b>	\$3,958,029.89	\$3,621,359.28
Annual Meeting Fund**	<b>\$346,545.05</b>	\$344,645.83	\$336,944.67
General Fund	<b>\$23,921,486.12</b>	\$27,942,146.38	\$22,491,024.06
<b>Totals</b>	<b>\$32,967,529.16</b>	<b>\$37,058,149.20</b>	<b>\$30,970,276.10</b>

## Portfolio Recap

### General Fund

- The portfolios are fully invested in U.S. Treasuries, Federal Agencies, commercial paper, and AAAM-rated money market mutual funds. Overall, the portfolios maintain high credit quality and necessary liquidity.
- The portfolio complies with Texas statutes and the State Bar's investment policy.
- The General Fund portfolio generated a quarterly total return of 0.82%, outperforming the benchmark 6-month Merrill Lynch Treasury Index return of 0.63%.

### Other Funds

- The portfolio for each fund is designed to match the specific cash and liquidity needs of that fund.
- We continue to hold U.S. Treasuries and / or Federal Agency securities as the primary investments for the Texas Law Center and Client Security Fund portfolios.
- We will work with the State Bar to identify funds in overnight investments that could be invested in securities, adding value to the portfolios.
- We will work with the State Bar to target known future cash flow needs to maximize the benefit of the steep yield curve as well as determine an appropriate investment strategy.

\* Includes College Endowment Fund balances.

\*\* Please note that Convention Fund name has been changed to Annual Meeting Fund



## Portfolio Summary (*continued*)

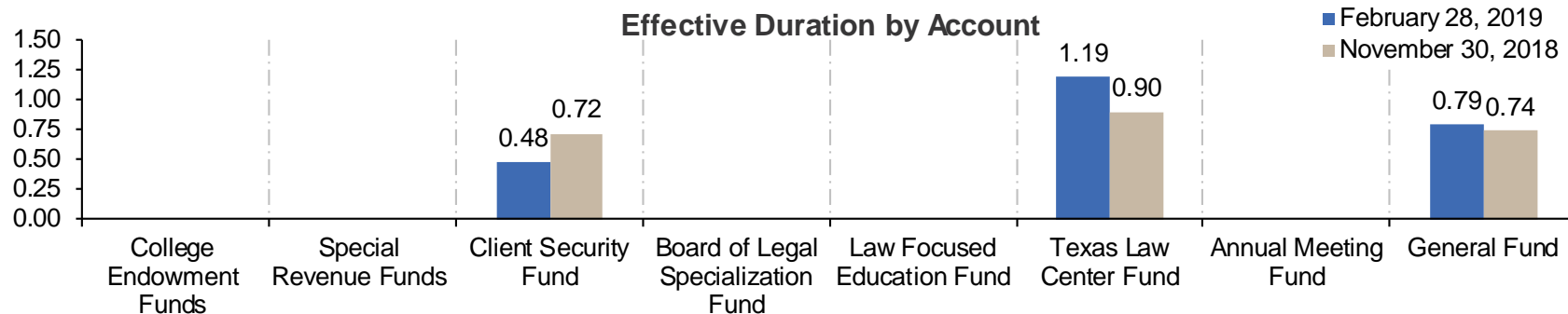
- The economic theme for the quarter was positive overall, though the U.S. experienced moderating GDP growth as the impact of the 2018 tax cuts and increased federal government spending wane. The unemployment rate hovered around 3.8% at the close of the quarter, with the market experiencing strong trailing corporate profits and decelerating business activity. Potential imbalances shape future economic conditions, including a growing budget and trade deficit, high trade tensions, and challenges over border security funding.
- During its first 2019 meeting, the Federal Open Market Committee ("FOMC") expressed it will be "patient" when determining monetary policy in light of global economic developments and muted inflation pressures. In addition, geopolitical tensions persist in North Korea with denuclearization and in Britain with an anticipated exit from the European Union.
- Piecing together strong job gains and low unemployment rates with less optimistic news, the Federal Reserve will likely need more time before considering any additional rate hikes. There were a total of four rate hikes in 2018, bringing the new target short-term rate to 2.25-2.50%.
- Although the U.S. treasury yield curve remains inverted between 2-and 5-year maturities, commercial paper, certificates of deposit, and corporate securities continue to provide a significant yield advantage over government securities.
- We sought to generally maintain portfolio durations and maturity distributions comparable to those of benchmarks to reduce potential performance mismatches given the uncertain rate environment.
- As always, we strive to maintain safety of principal and appropriate liquidity, while seeking opportunities to add value through active management. Our strategy will remain flexible and may change in response to changes in interest rates, economic data, market outlook or specific opportunities that arise.



## Portfolio Performance

Yields	Yield To Maturity - At Market		Yield To Maturity - On Cost	
	February 28, 2019	November 30, 2018	February 28, 2019	November 30, 2018
College Endowment Funds	0.15%	0.15%	0.15%	0.15%
Special Revenue Funds	2.27%	2.06%	2.27%	2.06%
Client Security Fund <sup>1</sup>	2.49%	2.67%	2.33%	2.33%
Board of Legal Specialization Fund <sup>2</sup>	2.27%	2.06%	2.27%	2.06%
Law Focused Education Fund <sup>2</sup>	0.05%	0.05%	0.05%	0.05%
Texas Law Center Fund <sup>1</sup>	2.53%	2.65%	2.52%	2.38%
Annual Meeting Fund <sup>2</sup>	2.27%	2.06%	2.27%	2.06%
General Fund <sup>1</sup>	2.53%	2.63%	2.63%	2.48%

Duration	February 28, 2019	November 30, 2018
College Endowment Funds	0.00	0.00
Special Revenue Funds	0.00	0.00
Client Security Fund <sup>1</sup>	0.48	0.72
Board of Legal Specialization Fund <sup>2</sup>	0.00	0.00
Law Focused Education Fund <sup>2</sup>	0.00	0.00
Texas Law Center Fund <sup>1</sup>	1.19	0.90
Annual Meeting Fund <sup>2</sup>	0.00	0.00
General Fund <sup>1</sup>	0.79	0.74



- Does not include money market funds, FDIC-insured CDs or cash equivalents in performance, duration, and yield computations.
- Yields for these funds represent the APY earned on balances held at Plains Capital Bank for the month prior to quarter end. Duration of each of the funds is equal to 1 day or approximately 0.003 years.

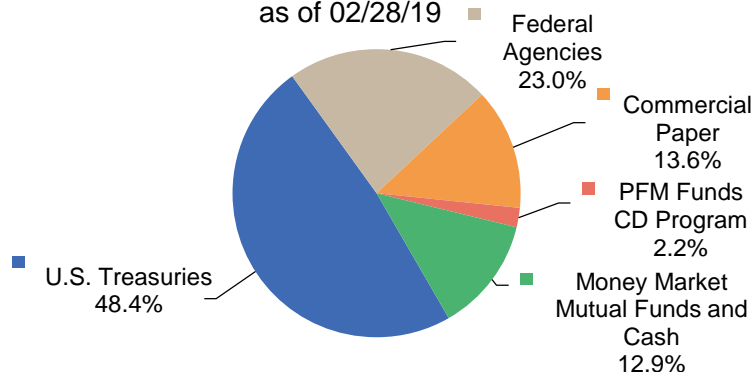




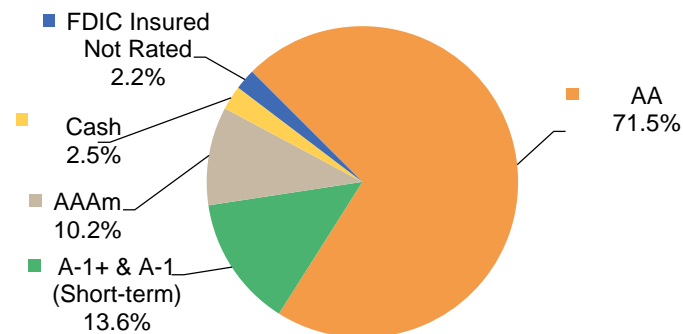
## Composite Portfolio Composition and Credit Quality

<u>Security Type</u>	<u>February 28, 2019</u>	<u>% of Portfolio</u>	<u>November 30, 2018</u>	<u>% of Portfolio</u>	<u>Permitted by Investment Policy</u>
U.S. Treasuries	\$15,953,989.62	48.4%	\$19,108,587.27	51.6%	100%
Federal Agencies	\$7,576,304.75	23.0%	\$6,709,054.54	18.1%	100%
Mortgage-Backed Securities	\$0.00	0.0%	\$0.00	0.0%	30%
Commercial Paper	\$4,480,667.50	13.6%	\$7,450,368.50	20.1%	30%
Certificates of Deposit	\$0.00	0.0%	\$0.00	0.0%	30%
Bankers' Acceptances	\$0.00	0.0%	\$0.00	0.0%	15%
Repurchase Agreements	\$0.00	0.0%	\$0.00	0.0%	30%
PFM Funds CD Program	\$714,854.70	2.2%	\$710,910.97	1.9%	30%
Money Market Mutual Funds and Cash	\$4,241,712.59	12.9%	\$3,079,227.92	8.3%	100%
<b>Totals</b>	<b>\$32,967,529.16</b>	<b>100.0%</b>	<b>\$37,058,149.20</b>	<b>100.0%</b>	

Portfolio Composition  
as of 02/28/19



Credit Quality Distribution  
as of 02/28/19

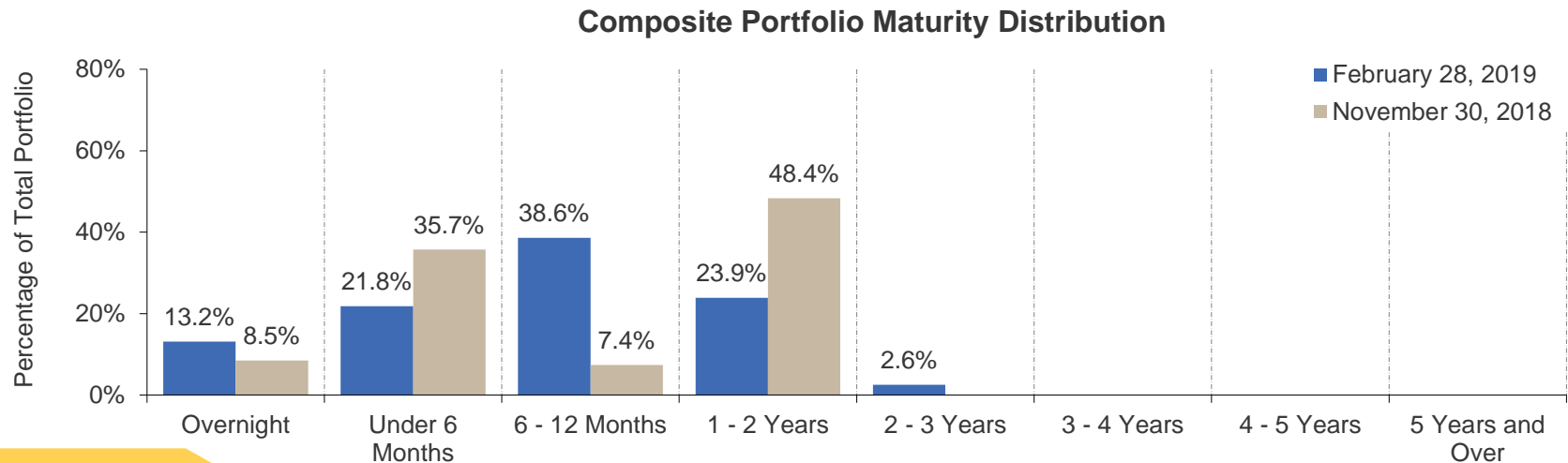


Data represents end of quarter trade-date market values of portfolio holdings, including accrued interest. Percentages may not add up to 100% due to rounding.



## Composite Portfolio Maturity Distribution

<u>Maturity Distribution</u>	<u>February 28, 2019</u>	<u>November 30, 2018</u>
Overnight	\$4,241,712.59	\$3,079,227.92
Under 6 Months	\$7,036,910.43	\$12,992,574.66
6 - 12 Months	\$12,449,545.10	\$2,697,199.45
1 - 2 Years	\$7,701,226.94	\$17,578,236.20
2 - 3 Years	\$823,279.40	\$0.00
3 - 4 Years	\$0.00	\$0.00
4 - 5 Years	\$0.00	\$0.00
5 Years and Over	\$0.00	\$0.00
<b>Totals</b>	<b>\$32,252,674.46</b>	<b>\$36,347,238.23</b>

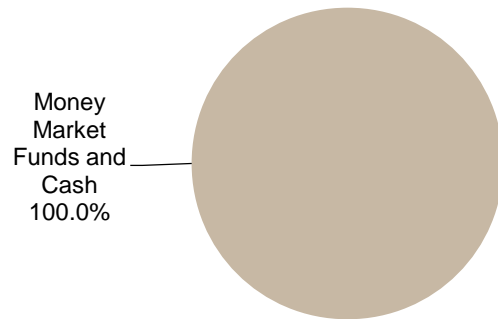




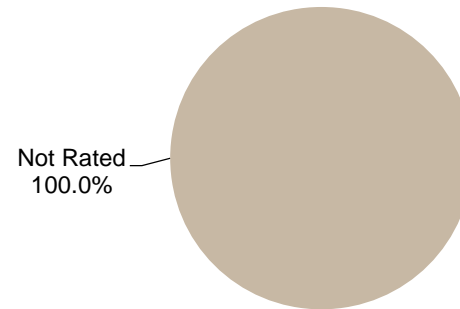
## State Bar College Fund Portfolio Composition and Credit Quality

<u>Security Type</u>	<u>February 28, 2019</u>	<u>% of Portfolio</u>	<u>November 30, 2018</u>	<u>% of Portfolio</u>
U.S. Treasuries	\$0.00	0.0%	\$0.00	0.0%
Mortgage-Backed Securities	\$0.00	0.0%	\$0.00	0.0%
Federal Agencies	\$0.00	0.0%	\$0.00	0.0%
Commercial Paper	\$0.00	0.0%	\$0.00	0.0%
Certificates of Deposit	\$0.00	0.0%	\$0.00	0.0%
Bankers' Acceptances	\$0.00	0.0%	\$0.00	0.0%
Repurchase Agreements	\$0.00	0.0%	\$0.00	0.0%
Money Market Funds and Cash	\$246,410.25	100.0%	\$244,729.19	100.0%
<b>Totals</b>	<b>\$246,410.25</b>	<b>100.0%</b>	<b>\$244,729.19</b>	<b>100.0%</b>

Portfolio Composition  
as of 2/28/2019



Credit Quality Distribution  
as of 2/28/2019



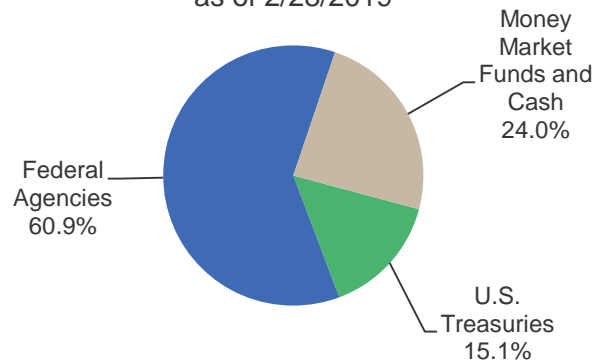
Data represents end of quarter trade-date market values of portfolio holdings, including accrued interest. Percentages may not add up to 100% due to rounding.



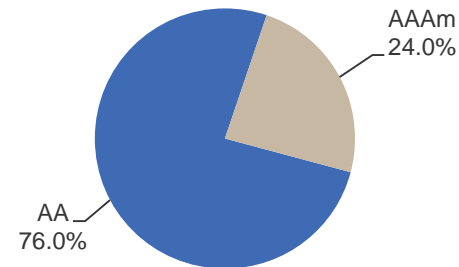
## State Bar Client Security Fund Portfolio Composition and Credit Quality

<u>Security Type</u>	<u>February 28, 2019</u>	<u>% of Portfolio</u>	<u>November 30, 2018</u>	<u>% of Portfolio</u>
U.S. Treasuries	\$451,426.97	15.1%	\$447,789.61	15.0%
Mortgage-Backed Securities	\$0.00	0.0%	\$0.00	0.0%
Federal Agencies	\$1,823,670.61	60.9%	\$1,818,355.53	61.0%
Commercial Paper	\$0.00	0.0%	\$0.00	0.0%
Certificates of Deposit	\$0.00	0.0%	\$0.00	0.0%
Bankers' Acceptances	\$0.00	0.0%	\$0.00	0.0%
Repurchase Agreements	\$0.00	0.0%	\$0.00	0.0%
Money Market Funds and Cash	\$717,176.51	24.0%	\$713,246.07	23.9%
<b>Totals</b>	<b>\$2,992,274.09</b>	<b>100.0%</b>	<b>\$2,979,391.21</b>	<b>100.0%</b>

Portfolio Composition  
as of 2/28/2019



Credit Quality Distribution  
as of 2/28/2019



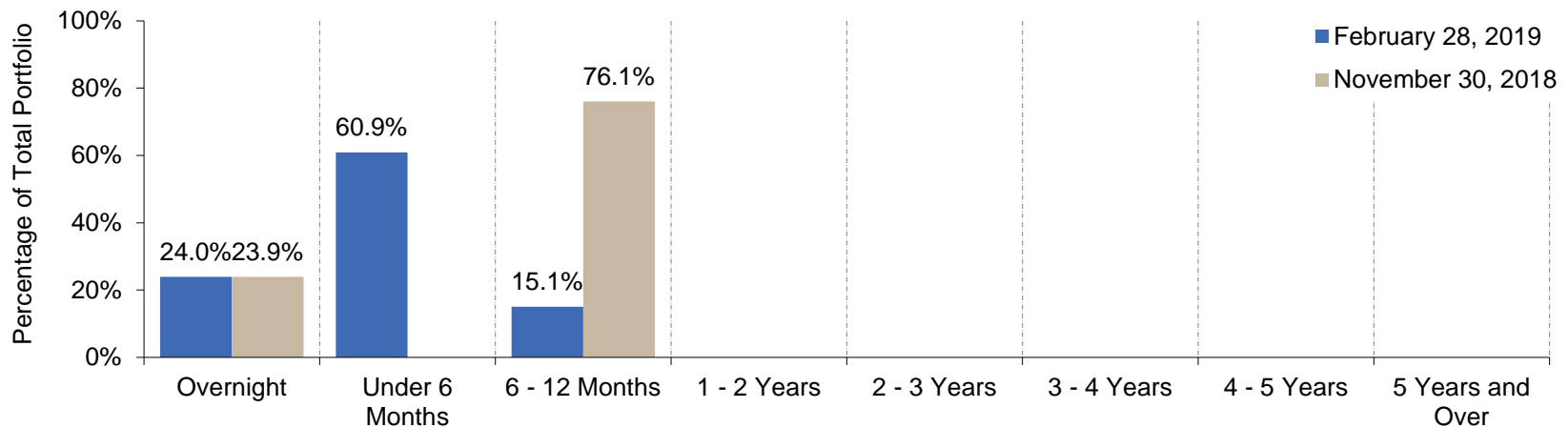
Data represents end of quarter trade-date market values of portfolio holdings, including accrued interest. Percentages may not add up to 100% due to rounding.



## Client Security Fund Portfolio Maturity Distribution

<u>Maturity Distribution</u>	<u>February 28, 2019</u>	<u>November 30, 2018</u>
Overnight	\$717,176.51	\$713,246.07
Under 6 Months	\$1,823,670.61	\$0.00
6 - 12 Months	\$451,426.97	\$2,266,145.14
1 - 2 Years	\$0.00	\$0.00
2 - 3 Years	\$0.00	\$0.00
3 - 4 Years	\$0.00	\$0.00
4 - 5 Years	\$0.00	\$0.00
5 Years and Over	\$0.00	\$0.00
<b>Totals</b>	<b>\$2,992,274.09</b>	<b>\$2,979,391.21</b>

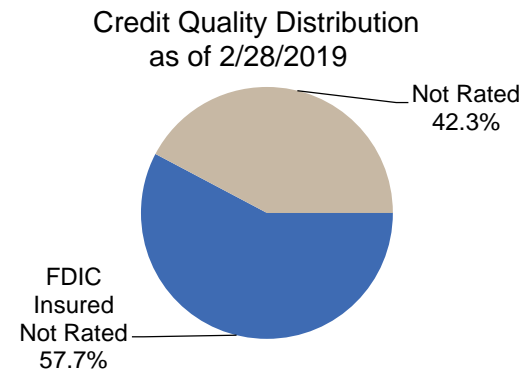
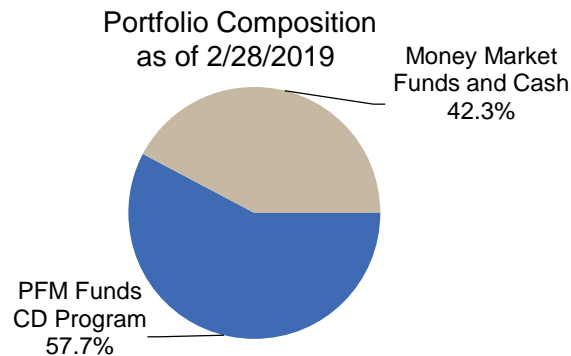
### Client Security Fund Portfolio Maturity Distribution





## State Bar Board of Legal Specialization Portfolio Composition and Credit Quality

<u>Security Type</u>	<u>February 28, 2019</u>	<u>% of Portfolio</u>	<u>November 30, 2018</u>	<u>% of Portfolio</u>
U.S. Treasuries	\$0.00	0.0%	\$0.00	0.0%
Mortgage-Backed Securities	\$0.00	0.0%	\$0.00	0.0%
Federal Agencies	\$0.00	0.0%	\$0.00	0.0%
Commercial Paper	\$0.00	0.0%	\$0.00	0.0%
Certificates of Deposit	\$0.00	0.0%	\$0.00	0.0%
Bankers' Acceptances	\$0.00	0.0%	\$0.00	0.0%
Repurchase Agreements	\$0.00	0.0%	\$0.00	0.0%
PFM Funds CD Program	\$714,854.70	57.7%	\$710,910.97	46.7%
Money Market Funds and Cash	\$523,267.65	42.3%	\$809,984.24	53.3%
<b>Totals</b>	<b>\$1,238,122.35</b>	<b>100.0%</b>	<b>\$1,520,895.21</b>	<b>100.0%</b>



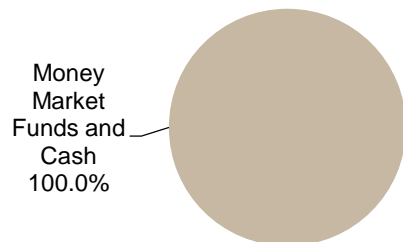
Data represents end of quarter trade-date market values of portfolio holdings, including accrued interest. Percentages may not add up to 100% due to rounding.



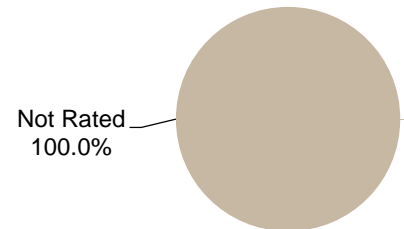
## State Bar Law Focused Education Portfolio Composition and Credit Quality

<u>Security Type</u>	<u>February 28, 2019</u>	<u>% of Portfolio</u>	<u>November 30, 2018</u>	<u>% of Portfolio</u>
U.S. Treasuries	\$0.00	0.0%	\$0.00	0.0%
Mortgage-Backed Securities	\$0.00	0.0%	\$0.00	0.0%
Federal Agencies	\$0.00	0.0%	\$0.00	0.0%
Commercial Paper	\$0.00	0.0%	\$0.00	0.0%
Certificates of Deposit	\$0.00	0.0%	\$0.00	0.0%
Bankers' Acceptances	\$0.00	0.0%	\$0.00	0.0%
Repurchase Agreements	\$0.00	0.0%	\$0.00	0.0%
Money Market Funds and Cash	\$287,300.98	100.0%	\$68,311.49	100.0%
<b>Totals</b>	<b>\$287,300.98</b>	<b>100.0%</b>	<b>\$68,311.49</b>	<b>100.0%</b>

Portfolio Composition  
as of 2/28/2019



Credit Quality Distribution  
as of 2/28/2019

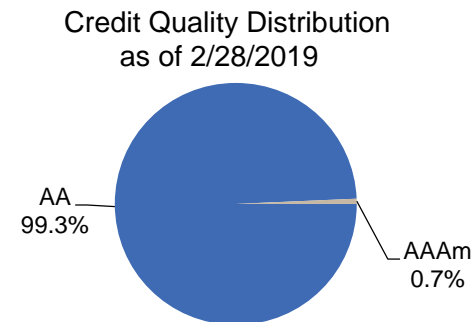
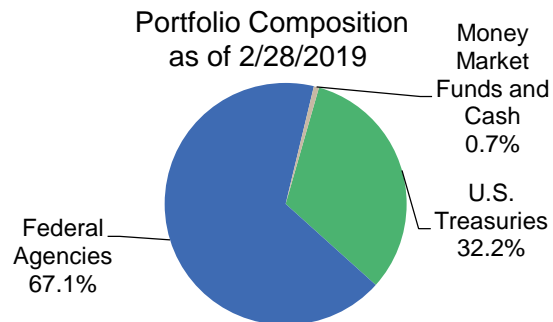


Data represents end of quarter trade-date market values of portfolio holdings, including accrued interest. Percentages may not add up to 100% due to rounding.



## State Bar Texas Law Center Fund Portfolio Composition and Credit Quality

<u>Security Type</u>	<u>February 28, 2019</u>	<u>% of Portfolio</u>	<u>November 30, 2018</u>	<u>% of Portfolio</u>
U.S. Treasuries	\$1,268,026.18	32.2%	\$2,088,126.11	52.8%
Mortgage-Backed Securities	\$0.00	0.0%	\$0.00	0.0%
Federal Agencies	\$2,640,027.81	67.1%	\$1,802,926.53	45.6%
Commercial Paper	\$0.00	0.0%	\$0.00	0.0%
Certificates of Deposit	\$0.00	0.0%	\$0.00	0.0%
Bankers' Acceptances	\$0.00	0.0%	\$0.00	0.0%
Repurchase Agreements	\$0.00	0.0%	\$0.00	0.0%
Money Market Funds and Cash	\$27,336.33	0.7%	\$66,977.25	1.7%
<b>Totals</b>	<b>\$3,935,390.32</b>	<b>100.0%</b>	<b>\$3,958,029.89</b>	<b>100.0%</b>



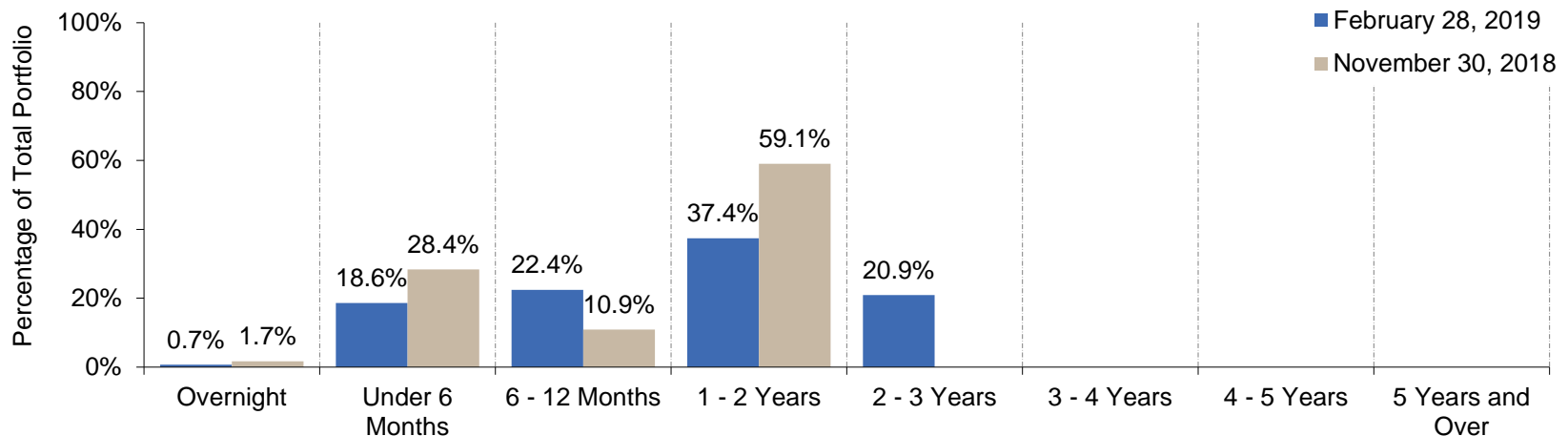




## Texas Law Center Fund Portfolio Maturity Distribution

<u>Maturity Distribution</u>	<u>February 28, 2019</u>	<u>November 30, 2018</u>
Overnight	\$27,336.33	\$66,977.25
Under 6 Months	\$732,572.32	\$1,122,503.06
6 - 12 Months	\$880,677.10	\$431,054.31
1 - 2 Years	\$1,471,525.17	\$2,337,495.27
2 - 3 Years	\$823,279.40	\$0.00
3 - 4 Years	\$0.00	\$0.00
4 - 5 Years	\$0.00	\$0.00
5 Years and Over	\$0.00	\$0.00
<b>Totals</b>	<b>\$3,935,390.32</b>	<b>\$3,958,029.89</b>

### Texas Law Center Fund Portfolio Maturity Distribution

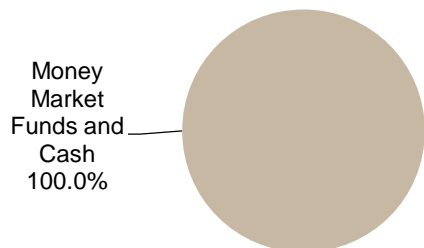




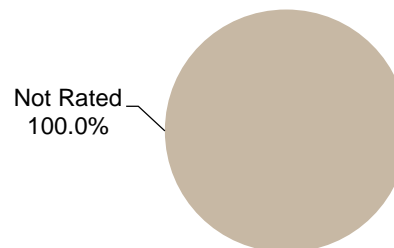
## State Bar Annual Meeting Fund Portfolio Composition and Credit Quality

<u>Security Type</u>	<u>February 28, 2019</u>	<u>% of Portfolio</u>	<u>November 30, 2018</u>	<u>% of Portfolio</u>
U.S. Treasuries	\$0.00	0.0%	\$0.00	0.0%
Mortgage-Backed Securities	\$0.00	0.0%	\$0.00	0.0%
Federal Agencies	\$0.00	0.0%	\$0.00	0.0%
Commercial Paper	\$0.00	0.0%	\$0.00	0.0%
Certificates of Deposit	\$0.00	0.0%	\$0.00	0.0%
Bankers' Acceptances	\$0.00	0.0%	\$0.00	0.0%
Repurchase Agreements	\$0.00	0.0%	\$0.00	0.0%
Money Market Funds and Cash	\$346,545.05	100.0%	\$344,645.83	100.0%
<b>Totals</b>	<b>\$346,545.05</b>	<b>100.0%</b>	<b>\$344,645.83</b>	<b>100.0%</b>

Portfolio Composition  
as of 2/28/2019



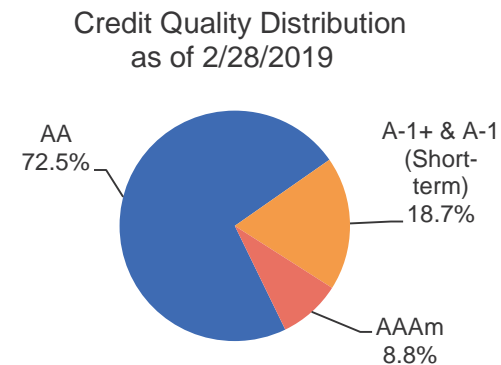
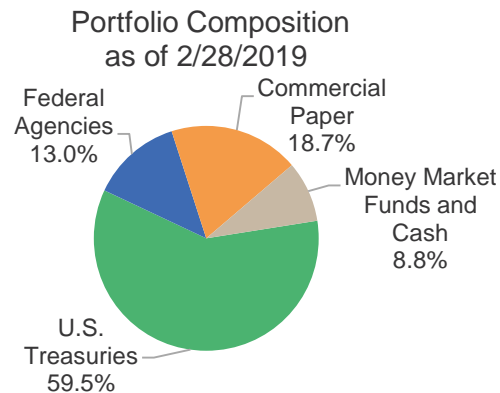
Credit Quality Distribution  
as of 2/28/2019





## State Bar General Fund Portfolio Composition and Credit Quality

<u>Security Type</u>	<u>February 28, 2019</u>	<u>% of Portfolio</u>	<u>November 30, 2018</u>	<u>% of Portfolio</u>
U.S. Treasuries	\$14,234,536.47	59.5%	\$16,572,671.55	59.3%
Mortgage-Backed Securities	\$0.00	0.0%	\$0.00	0.0%
Federal Agencies	\$3,112,606.33	13.0%	\$3,087,772.48	11.1%
Commercial Paper	\$4,480,667.50	18.7%	\$7,450,368.50	26.7%
Negotiable Certificates of Deposit	\$0.00	0.0%	\$0.00	0.0%
Bankers' Acceptances	\$0.00	0.0%	\$0.00	0.0%
Repurchase Agreements	\$0.00	0.0%	\$0.00	0.0%
PFM Funds CD Program	\$0.00	0.0%	\$0.00	0.0%
Money Market Funds and Cash	\$2,093,675.82	8.8%	\$831,333.85	3.0%
<b>Totals</b>	<b>\$23,921,486.12</b>	<b>100.0%</b>	<b>\$27,942,146.38</b>	<b>100.0%</b>



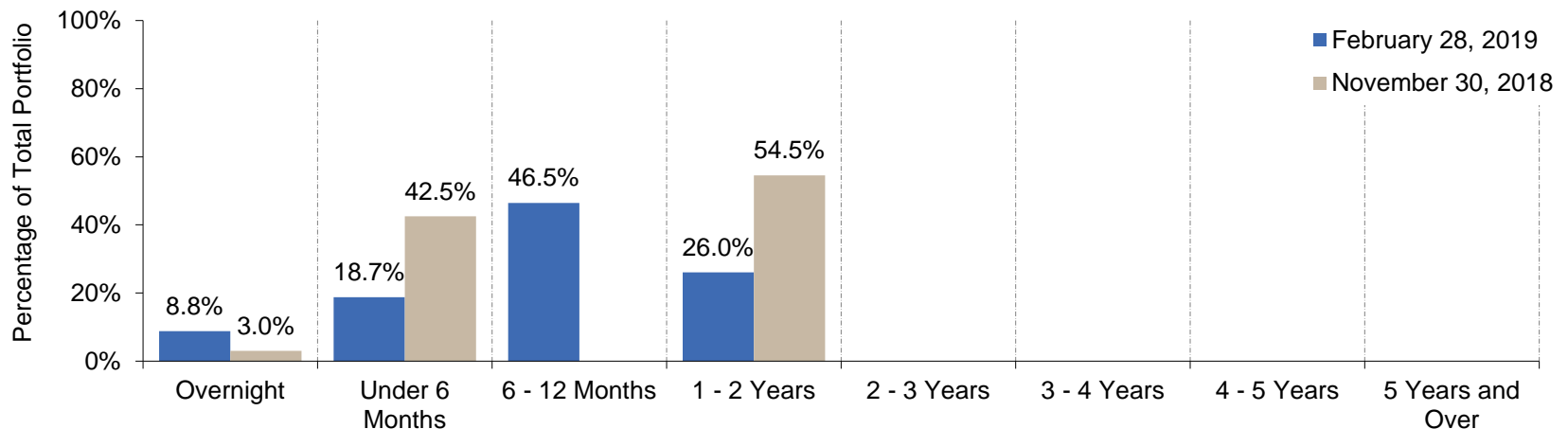
Data represents end of quarter trade-date market values of portfolio holdings, including accrued interest. Percentages may not add up to 100% due to rounding.



## General Fund Portfolio Maturity Distribution

<u>Maturity Distribution</u>	<u>February 28, 2019</u>	<u>November 30, 2018</u>
Overnight	\$2,093,675.82	\$831,333.85
Under 6 Months	\$4,480,667.50	\$11,870,071.60
6 - 12 Months	\$11,117,441.03	\$0.00
1 - 2 Years	\$6,229,701.77	\$15,240,740.93
2 - 3 Years	\$0.00	\$0.00
3 - 4 Years	\$0.00	\$0.00
4 - 5 Years	\$0.00	\$0.00
5 Years and Over	\$0.00	\$0.00
<b>Totals</b>	<b>\$23,921,486.12</b>	<b>\$27,942,146.38</b>

### General Fund Portfolio Maturity Distribution



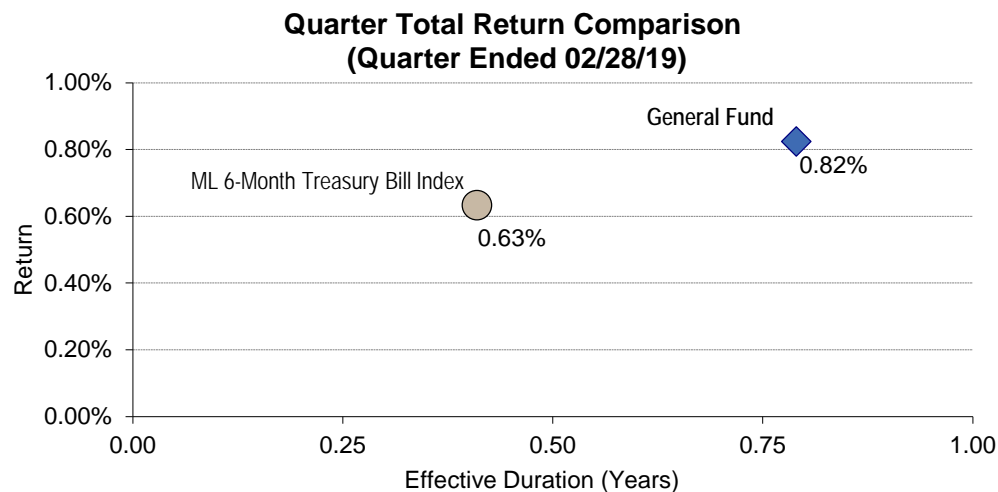


## General Fund Portfolio Performance

<b>Total Return</b>	February 28, 2019	Last 6 Months	Annualized Since Inception
<b>State Bar of Texas General Fund</b>	<b>0.82%</b>	<b>1.34%</b>	<b>1.44%</b>
Merrill Lynch 6-Month Treasury Bill Index	0.63%	1.17%	1.37%

<b>Duration</b>	February 28, 2019	November 30, 2018	<b>Yields</b>	February 28, 2019
<b>State Bar of Texas General Fund</b>	<b>0.79</b>	0.74	Yield at Market	<b>2.53%</b>
Merrill Lynch 6-Month Treasury Bill Index	<b>0.41</b>	0.47	Yield on Cost	<b>2.63%</b>



1. Performance on trade date basis, gross-of-fees in accordance with the CFA Institute's Global Investment Performance Standards.
2. Merrill Lynch Indices provided by Bloomberg Financial Markets.
3. The total returns shown for periods longer than 1 year are the annualized returns for the stated period.
4. The total returns shown for periods shorter than 1 year are the periodic returns for the stated period.
5. Since inception performance is calculated from May 31, 2006 to present.
6. Does not include money market fund in performance, duration, and yield computations as we do not consider these funds to be discretionary in nature.



## Consolidated Summary Statement

## Account Statement

For the Month Ending February 28, 2019

STATE BAR OF TEXAS

### Portfolio Summary

Portfolio Holdings	Cash Dividends and Income	Closing Market Value
PFM Managed Account	45,882.45	27,899,527.89
<b>Total</b>	<b>\$45,882.45</b>	<b>\$27,899,527.89</b>

### Investment Allocation

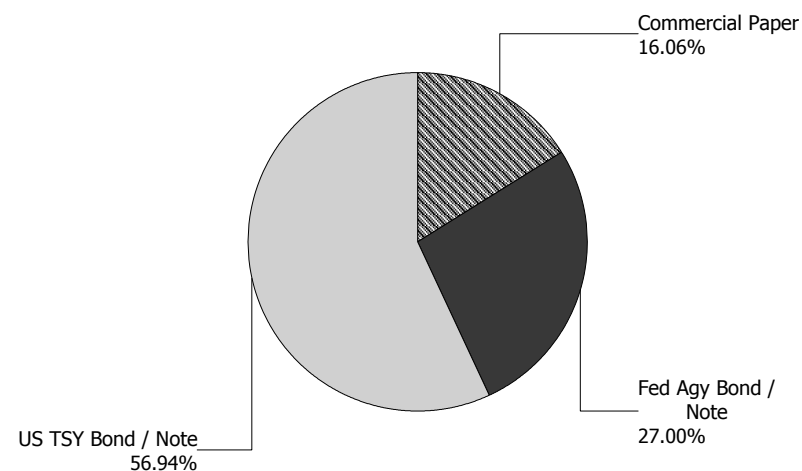
Investment Type	Closing Market Value	Percent
Commercial Paper	4,480,667.50	16.06
Federal Agency Bond / Note	7,533,720.64	27.00
U.S. Treasury Bond / Note	15,885,139.75	56.94
<b>Total</b>	<b>\$27,899,527.89</b>	<b>100.00%</b>

### Maturity Distribution (Fixed Income Holdings)

Portfolio Holdings	Closing Market Value	Percent
Under 30 days	1,498,837.50	5.37
31 to 60 days	1,994,167.00	7.15
61 to 90 days	299,192.40	1.07
91 to 180 days	3,242,213.38	11.62
181 days to 1 year	12,404,800.13	44.46
1 to 2 years	7,646,362.66	27.41
2 to 3 years	813,954.82	2.92
3 to 4 years	0.00	0.00
4 to 5 years	0.00	0.00
Over 5 years	0.00	0.00
<b>Total</b>	<b>\$27,899,527.89</b>	<b>100.00%</b>

**Weighted Average Days to Maturity**      **306**

### Sector Allocation



**Account Statement**For the Month Ending **February 28, 2019****Consolidated Summary Statement****STATE BAR OF TEXAS**

<b>Account Number</b>	<b>Account Name</b>	<b>Opening Market Value</b>	<b>Purchases / Deposits</b>	<b>Redemptions / Sales / Maturities</b>	<b>Unsettled Trades</b>	<b>Change in Value</b>	<b>Closing Market Value</b>	<b>Cash Dividends and Income</b>
81125010	STATE BAR OF TEXAS GENERAL FUND	21,742,888.82	1,981,093.75	(2,000,000.00)	0.00	19,729.28	21,743,711.85	31,150.68
81125011	STATE BAR OF TEXAS CLIENT SECURITY FUND	2,269,428.15	0.00	0.00	0.00	3,177.49	2,272,605.64	8,028.13
81125014	STATE BAR OF TEXAS TEXAS LAW CENTER	3,891,985.39	814,724.40	(825,000.00)	0.00	1,500.61	3,883,210.40	6,703.64
<b>Total</b>		<b>\$27,904,302.36</b>	<b>\$2,795,818.15</b>	<b>(\$2,825,000.00)</b>	<b>\$0.00</b>	<b>\$24,407.38</b>	<b>\$27,899,527.89</b>	<b>\$45,882.45</b>



## Managed Account Summary Statement

For the Month Ending **February 28, 2019**

STATE BAR OF TEXAS GENERAL FUND - 81125010

### Transaction Summary - Managed Account

<b>Opening Market Value</b>	<b>\$21,742,888.82</b>
Maturities/Calls	(2,000,000.00)
Principal Dispositions	0.00
Principal Acquisitions	1,981,093.75
Unsettled Trades	0.00
Change in Current Value	19,729.28
<b>Closing Market Value</b>	<b>\$21,743,711.85</b>

### Cash Transactions Summary - Managed Account

Maturities/Calls	2,000,000.00
Sale Proceeds	0.00
Coupon/Interest/Dividend Income	10,571.88
Principal Payments	0.00
Security Purchases	(1,995,727.73)
Net Cash Contribution	(14,844.15)
Reconciling Transactions	0.00

### Earnings Reconciliation (Cash Basis) - Managed Account

Interest/Dividends/Coupons Received	10,571.88
Less Purchased Interest Related to Interest/Coupons	(14,633.98)
Plus Net Realized Gains/Losses	35,212.78
<b>Total Cash Basis Earnings</b>	<b>\$31,150.68</b>

### Cash Balance

**Closing Cash Balance** **\$0.00**

### Earnings Reconciliation (Accrual Basis)

	<b>Total</b>
Ending Amortized Value of Securities	21,724,070.61
Ending Accrued Interest	84,098.45
Plus Proceeds from Sales	0.00
Plus Proceeds of Maturities/Calls/Principal Payments	2,000,000.00
Plus Coupons/Dividends Received	10,571.88
Less Cost of New Purchases	(1,995,727.73)
Less Beginning Amortized Value of Securities	(21,721,251.00)
Less Beginning Accrued Interest	(57,745.41)
<b>Total Accrual Basis Earnings</b>	<b>\$44,016.80</b>





## Portfolio Summary and Statistics

For the Month Ending **February 28, 2019**

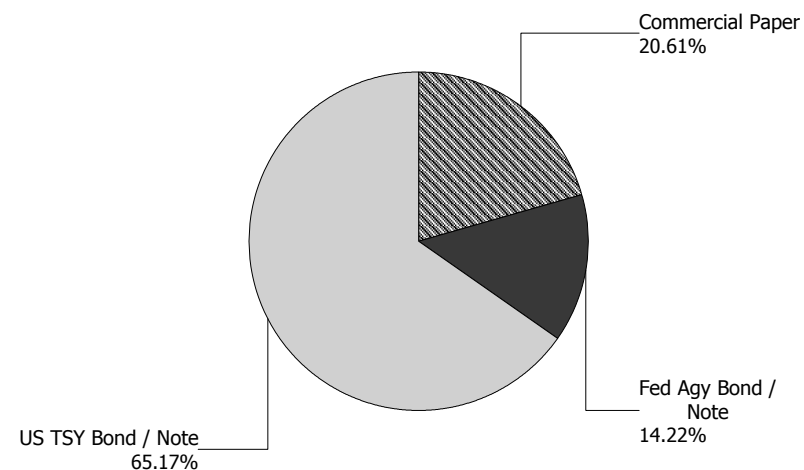
STATE BAR OF TEXAS GENERAL FUND - 81125010

### Account Summary

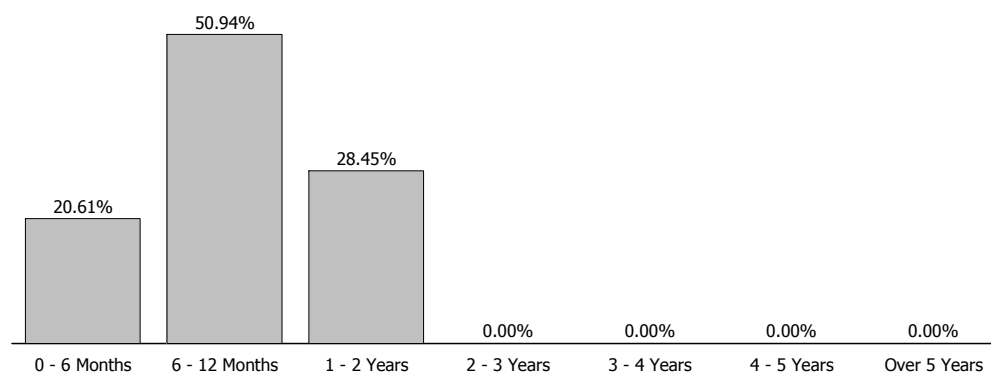
Description	Par Value	Market Value	Percent
U.S. Treasury Bond / Note	14,290,000.00	14,171,641.84	65.17
Federal Agency Bond / Note	3,085,000.00	3,091,402.51	14.22
Commercial Paper	4,500,000.00	4,480,667.50	20.61
<b>Managed Account Sub-Total</b>	<b>21,875,000.00</b>	<b>21,743,711.85</b>	<b>100.00%</b>
Accrued Interest		84,098.45	
<b>Total Portfolio</b>	<b>21,875,000.00</b>	<b>21,827,810.30</b>	

**Unsettled Trades** **0.00** **0.00**

### Sector Allocation



### Maturity Distribution



### Characteristics

Yield to Maturity at Cost	2.63%
Yield to Maturity at Market	2.53%
Duration to Worst	0.79
Weighted Average Days to Maturity	294



## Managed Account Issuer Summary

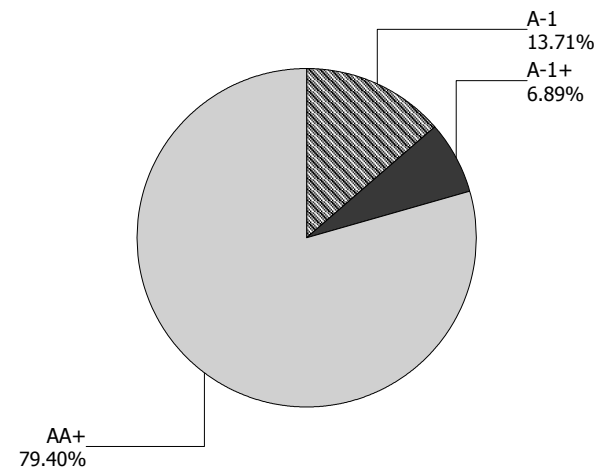
For the Month Ending **February 28, 2019**

STATE BAR OF TEXAS GENERAL FUND - 81125010

### Issuer Summary

Issuer	Market Value of Holdings	Percent
CREDIT AGRICOLE SA	996,455.00	4.58
FANNIE MAE	2,100,307.88	9.66
FEDERAL HOME LOAN BANKS	991,094.63	4.56
JP MORGAN CHASE & CO	997,712.00	4.59
MITSUBISHI UFJ FINANCIAL GROUP INC	987,663.00	4.54
TOYOTA MOTOR CORP	1,498,837.50	6.89
UNITED STATES TREASURY	14,171,641.84	65.18
<b>Total</b>	<b>\$21,743,711.85</b>	<b>100.00%</b>

### Credit Quality (S&P Ratings)





## Managed Account Detail of Securities Held

For the Month Ending **February 28, 2019**

### STATE BAR OF TEXAS GENERAL FUND - 81125010

Security Type/Description Dated Date/Coupon/Maturity	CUSIP	Par	S&P Rating	Moody's Rating	Trade Date	Settle Date	Original Cost	YTM at Cost	Accrued Interest	Amortized Cost	Market Value
<b>U.S. Treasury Bond / Note</b>											
US TREASURY NOTES DTD 12/01/2014 1.500% 11/30/2019	912828G61	1,000,000.00	AA+	Aaa	10/31/18	10/31/18	986,914.06	2.74	3,750.00	990,903.32	992,305.00
US TREASURY NOTES DTD 12/01/2014 1.500% 11/30/2019	912828G61	2,025,000.00	AA+	Aaa	06/08/18	06/11/18	1,997,314.45	2.45	7,593.75	2,010,767.31	2,009,417.63
US TREASURY NOTES DTD 11/30/2017 1.750% 11/30/2019	9128283H1	2,505,000.00	AA+	Aaa	05/23/18	05/24/18	2,477,112.30	2.50	10,959.38	2,491,117.82	2,490,125.31
US TREASURY NOTES DTD 11/30/2017 1.750% 11/30/2019	9128283H1	2,520,000.00	AA+	Aaa	06/05/18	06/06/18	2,494,504.69	2.45	11,025.00	2,507,011.69	2,505,036.24
US TREASURY N/B DTD 01/02/2018 1.875% 12/31/2019	9128283N8	2,100,000.00	AA+	Aaa	11/27/18	11/27/18	2,080,066.41	2.76	6,526.24	2,084,752.43	2,088,433.20
US TREASURY N/B DTD 03/15/2017 1.625% 03/15/2020	912828W63	2,000,000.00	AA+	Aaa	02/22/19	02/25/19	1,981,093.75	2.54	14,993.09	1,981,292.22	1,981,016.00
US TREASURY NOTES DTD 04/30/2013 1.125% 04/30/2020	912828VA5	2,140,000.00	AA+	Aaa	11/27/18	11/27/18	2,089,843.75	2.81	8,047.17	2,098,858.03	2,105,308.46
<b>Security Type Sub-Total</b>		<b>14,290,000.00</b>					<b>14,106,849.41</b>	<b>2.59</b>	<b>62,894.63</b>	<b>14,164,702.82</b>	<b>14,171,641.84</b>
<b>Federal Agency Bond / Note</b>											
FHLB NOTES DTD 02/09/2018 2.125% 02/11/2020	3130ADN32	995,000.00	AA+	Aaa	07/12/18	07/13/18	987,706.65	2.60	1,174.65	990,605.47	991,094.63
FANNIE MAE NOTES DTD 11/01/2018 2.875% 10/30/2020	3135G0U84	2,090,000.00	AA+	Aaa	11/27/18	11/27/18	2,088,892.30	2.90	20,029.17	2,089,051.62	2,100,307.88
<b>Security Type Sub-Total</b>		<b>3,085,000.00</b>					<b>3,076,598.95</b>	<b>2.81</b>	<b>21,203.82</b>	<b>3,079,657.09</b>	<b>3,091,402.51</b>
<b>Commercial Paper</b>											
TOYOTA MOTOR CREDIT CORP COMM PAPER DTD 06/15/2018 0.000% 03/12/2019	89233HOC1	1,500,000.00	A-1+	P-1	09/11/18	09/11/18	1,481,572.50	2.46	0.00	1,498,886.25	1,498,837.50
JP MORGAN SECURITIES LLC COMM PAPER -- 0.000% 04/02/2019	46640QR29	1,000,000.00	A-1	P-1	10/01/18	10/01/18	986,935.83	2.60	0.00	997,715.56	997,712.00



## Managed Account Detail of Securities Held

For the Month Ending **February 28, 2019**

### STATE BAR OF TEXAS GENERAL FUND - 81125010

Security Type/Description Dated Date/Coupon/Maturity	CUSIP	Par	S&P Rating	Moody's Rating	Trade Date	Settle Date	Original Cost	YTM at Cost	Accrued Interest	Amortized Cost	Market Value
<b>Commercial Paper</b>											
CREDIT AGRICOLE CIB NY COMM PAPER DTD 08/22/2018 0.000% 04/22/2019	22533URN5	1,000,000.00	A-1	P-1	10/23/18	10/24/18	986,600.00	2.72	0.00	996,128.89	996,455.00
MUFG BANK LTD/NY COMM PAPER DTD 01/18/2019 0.000% 08/16/2019	62479MVG5	1,000,000.00	A-1	P-1	01/18/19	01/18/19	983,725.00	2.84	0.00	986,980.00	987,663.00
<b>Security Type Sub-Total</b>		<b>4,500,000.00</b>					<b>4,438,833.33</b>	<b>2.63</b>	<b>0.00</b>	<b>4,479,710.70</b>	<b>4,480,667.50</b>
<b>Managed Account Sub-Total</b>		<b>21,875,000.00</b>					<b>21,622,281.69</b>	<b>2.63</b>	<b>84,098.45</b>	<b>21,724,070.61</b>	<b>21,743,711.85</b>
<b>Securities Sub-Total</b>		<b>\$21,875,000.00</b>					<b>\$21,622,281.69</b>	<b>2.63%</b>	<b>\$84,098.45</b>	<b>\$21,724,070.61</b>	<b>\$21,743,711.85</b>
<b>Accrued Interest</b>											<b>\$84,098.45</b>
<b>Total Investments</b>											<b>\$21,827,810.30</b>



## Managed Account Fair Market Value & Analytics

For the Month Ending **February 28, 2019**

### STATE BAR OF TEXAS GENERAL FUND - 81125010

Security Type/Description Dated Date/Coupon/Maturity	CUSIP	Par	Broker	Next Call Date	Market Price	Market Value	Unreal G/L On Cost	Unreal G/L Amort Cost	Effective Duration	Duration to Worst at Mkt	YTM
<b>U.S. Treasury Bond / Note</b>											
US TREASURY NOTES DTD 12/01/2014 1.500% 11/30/2019	912828G61	1,000,000.00	BNP_PARI		99.23	992,305.00	5,390.94	1,401.68	0.74	0.74	2.54
US TREASURY NOTES DTD 12/01/2014 1.500% 11/30/2019	912828G61	2,025,000.00	GOLDMAN		99.23	2,009,417.63	12,103.18	(1,349.68)	0.74	0.74	2.54
US TREASURY NOTES DTD 11/30/2017 1.750% 11/30/2019	9128283H1	2,505,000.00	BNP_PARI		99.41	2,490,125.31	13,013.01	(992.51)	0.74	0.74	2.55
US TREASURY NOTES DTD 11/30/2017 1.750% 11/30/2019	9128283H1	2,520,000.00	CITIGRP		99.41	2,505,036.24	10,531.55	(1,975.45)	0.74	0.74	2.55
US TREASURY N/B DTD 01/02/2018 1.875% 12/31/2019	9128283N8	2,100,000.00	MORGAN_S		99.45	2,088,433.20	8,366.79	3,680.77	0.82	0.82	2.54
US TREASURY N/B DTD 03/15/2017 1.625% 03/15/2020	912828W63	2,000,000.00	GOLDMAN		99.05	1,981,016.00	(77.75)	(276.22)	1.02	1.02	2.55
US TREASURY NOTES DTD 04/30/2013 1.125% 04/30/2020	912828VA5	2,140,000.00	BARCLAYS		98.38	2,105,308.46	15,464.71	6,450.43	1.15	1.15	2.54
<b>Security Type Sub-Total</b>		<b>14,290,000.00</b>				<b>14,171,641.84</b>	<b>64,792.43</b>	<b>6,939.02</b>	<b>0.85</b>	<b>0.85</b>	<b>2.55</b>
<b>Federal Agency Bond / Note</b>											
FHLB NOTES DTD 02/09/2018 2.125% 02/11/2020	3130ADN32	995,000.00	MORGAN_S		99.61	991,094.63	3,387.98	489.16	0.94	0.94	2.54
FANNIE MAE NOTES DTD 11/01/2018 2.875% 10/30/2020	3135G0U84	2,090,000.00	MORGAN_S		100.49	2,100,307.88	11,415.58	11,256.26	1.61	1.61	2.57
<b>Security Type Sub-Total</b>		<b>3,085,000.00</b>				<b>3,091,402.51</b>	<b>14,803.56</b>	<b>11,745.42</b>	<b>1.39</b>	<b>1.39</b>	<b>2.56</b>
<b>Commercial Paper</b>											
TOYOTA MOTOR CREDIT CORP COMM PAPER DTD 06/15/2018 0.000% 03/12/2019	89233HOC1	1,500,000.00	TOYOTA		99.92	1,498,837.50	17,265.00	(48.75)	0.03	0.03	2.33
JP MORGAN SECURITIES LLC COMM PAPER -- 0.000% 04/02/2019	46640QR29	1,000,000.00	JPM_CHAS		99.77	997,712.00	10,776.17	(3.56)	0.09	0.09	2.50
CREDIT AGRICOLE CIB NY COMM PAPER DTD 08/22/2018 0.000% 04/22/2019	22533URN5	1,000,000.00	CREDAG		99.65	996,455.00	9,855.00	326.11	0.14	0.14	2.42



## Managed Account Fair Market Value & Analytics

For the Month Ending **February 28, 2019**

### STATE BAR OF TEXAS GENERAL FUND - 81125010

Security Type/Description Dated Date/Coupon/Maturity	CUSIP	Par	Broker	Next Call Date	Market Price	Market Value	Unreal G/L On Cost	Unreal G/L Amort Cost	Effective Duration	Duration to Worst at Mkt	YTM
<b>Commercial Paper</b>											
MUFG BANK LTD/NY COMM PAPER DTD 01/18/2019 0.000% 08/16/2019	62479MVG5	1,000,000.00	MITSU		98.77	987,663.00	3,938.00	683.00	0.46	0.46	2.66
<b>Security Type Sub-Total</b>		<b>4,500,000.00</b>				<b>4,480,667.50</b>	<b>41,834.17</b>	<b>956.80</b>	<b>0.16</b>	<b>0.16</b>	<b>2.46</b>
<b>Managed Account Sub-Total</b>		<b>21,875,000.00</b>				<b>21,743,711.85</b>	<b>121,430.16</b>	<b>19,641.24</b>	<b>0.79</b>	<b>0.79</b>	<b>2.53</b>
<b>Securities Sub-Total</b>		<b>\$21,875,000.00</b>				<b>\$21,743,711.85</b>	<b>\$121,430.16</b>	<b>\$19,641.24</b>	<b>0.79</b>	<b>0.79</b>	<b>2.53%</b>
<b>Accrued Interest</b>						<b>\$84,098.45</b>					
<b>Total Investments</b>						<b>\$21,827,810.30</b>					



## Managed Account Security Transactions & Interest

For the Month Ending **February 28, 2019**

### STATE BAR OF TEXAS GENERAL FUND - 81125010

Transaction Type		Security Description	CUSIP	Par	Principal Proceeds	Accrued Interest	Total	Realized G/L	Realized G/L	Sale Method
Trade	Settle							Cost	Amort Cost	
BUY										
02/22/19	02/25/19	US TREASURY N/B DTD 03/15/2017 1.625% 03/15/2020	912828W63	2,000,000.00	(1,981,093.75)	(14,633.98)	(1,995,727.73)			
Transaction Type Sub-Total				2,000,000.00	(1,981,093.75)	(14,633.98)	(1,995,727.73)			
INTEREST										
02/11/19	02/11/19	FHLB NOTES DTD 02/09/2018 2.125% 02/11/2020	3130ADN32	995,000.00	0.00	10,571.88	10,571.88			
Transaction Type Sub-Total				995,000.00	0.00	10,571.88	10,571.88			
MATURITY										
02/22/19	02/22/19	COOPERATIEVE RABOBANK U.A. COMM PAPER DTD 05/29/2018 0.000% 02/22/2019	21687BPN5	2,000,000.00	2,000,000.00	0.00	2,000,000.00	35,212.78	0.00	
Transaction Type Sub-Total				2,000,000.00	2,000,000.00	0.00	2,000,000.00	35,212.78	0.00	
Managed Account Sub-Total					18,906.25	(4,062.10)	14,844.15	35,212.78	0.00	
Total Security Transactions					18,906.25	(\$4,062.10)	\$14,844.15	\$35,212.78	\$0.00	



## Managed Account Summary Statement

For the Month Ending **February 28, 2019**

STATE BAR OF TEXAS CLIENT SECURITY FUND - 81125011

### Transaction Summary - Managed Account

<b>Opening Market Value</b>	<b>\$2,269,428.15</b>
Maturities/Calls	0.00
Principal Dispositions	0.00
Principal Acquisitions	0.00
Unsettled Trades	0.00
Change in Current Value	3,177.49
<b>Closing Market Value</b>	<b>\$2,272,605.64</b>

### Cash Transactions Summary - Managed Account

Maturities/Calls	0.00
Sale Proceeds	0.00
Coupon/Interest/Dividend Income	8,028.13
Principal Payments	0.00
Security Purchases	0.00
Net Cash Contribution	(8,028.13)
Reconciling Transactions	0.00

### Earnings Reconciliation (Cash Basis) - Managed Account

Interest/Dividends/Coupons Received	8,028.13
Less Purchased Interest Related to Interest/Coupons	0.00
Plus Net Realized Gains/Losses	0.00
<b>Total Cash Basis Earnings</b>	<b>\$8,028.13</b>

### Cash Balance

**Closing Cash Balance** **\$0.00**

### Earnings Reconciliation (Accrual Basis)

	<b>Total</b>
Ending Amortized Value of Securities	2,274,246.44
Ending Accrued Interest	2,491.94
Plus Proceeds from Sales	0.00
Plus Proceeds of Maturities/Calls/Principal Payments	0.00
Plus Coupons/Dividends Received	8,028.13
Less Cost of New Purchases	0.00
Less Beginning Amortized Value of Securities	(2,271,591.20)
Less Beginning Accrued Interest	(8,830.11)
<b>Total Accrual Basis Earnings</b>	<b>\$4,345.20</b>





## Portfolio Summary and Statistics

For the Month Ending **February 28, 2019**

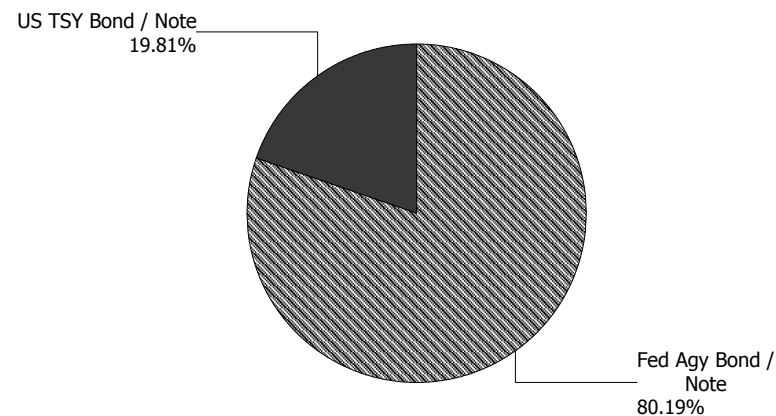
STATE BAR OF TEXAS CLIENT SECURITY FUND - 81125011

## Account Summary

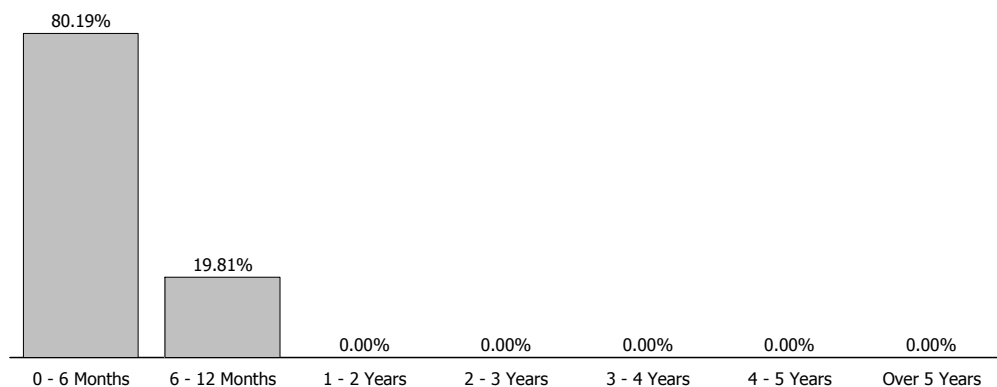
Description	Par Value	Market Value	Percent
U.S. Treasury Bond / Note	455,000.00	450,094.65	19.81
Federal Agency Bond / Note	1,835,000.00	1,822,510.99	80.19
<b>Managed Account Sub-Total</b>	<b>2,290,000.00</b>	<b>2,272,605.64</b>	<b>100.00%</b>
Accrued Interest		2,491.94	
<b>Total Portfolio</b>	<b>2,290,000.00</b>	<b>2,275,097.58</b>	

<b>Unsettled Trades</b>	<b>0.00</b>	<b>0.00</b>
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### Sector Allocation



### Maturity Distribution



## Characteristics

Yield to Maturity at Cost	2.33%
Yield to Maturity at Market	2.49%
Duration to Worst	0.48
Weighted Average Days to Maturity	178



## Managed Account Issuer Summary

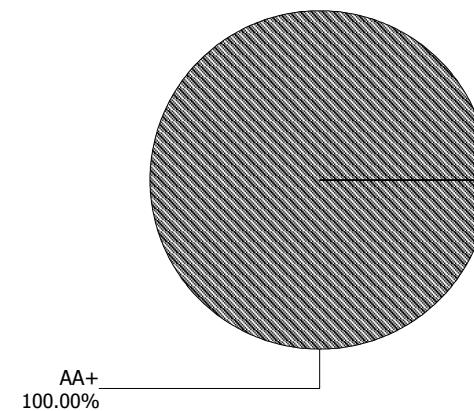
For the Month Ending **February 28, 2019**

STATE BAR OF TEXAS CLIENT SECURITY FUND - 81125011

### Issuer Summary

Issuer	Market Value of Holdings	Percent
FEDERAL HOME LOAN BANKS	1,822,510.99	80.19
UNITED STATES TREASURY	450,094.65	19.81
<b>Total</b>	<b>\$2,272,605.64</b>	<b>100.00%</b>

### Credit Quality (S&P Ratings)





## Managed Account Detail of Securities Held

For the Month Ending **February 28, 2019**

### STATE BAR OF TEXAS CLIENT SECURITY FUND - 81125011

Security Type/Description Dated Date/Coupon/Maturity	CUSIP	Par	S&P Rating	Moody's Rating	Trade Date	Settle Date	Original Cost	YTM at Cost	Accrued Interest	Amortized Cost	Market Value
<b>U.S. Treasury Bond / Note</b>											
US TREASURY N/B DTD 11/15/2016 1.000% 11/15/2019	912828U32	455,000.00	AA+	Aaa	05/21/18	05/21/18	445,117.97	2.50	1,332.32	450,249.65	450,094.65
<b>Security Type Sub-Total</b>		<b>455,000.00</b>					<b>445,117.97</b>	<b>2.50</b>	<b>1,332.32</b>	<b>450,249.65</b>	<b>450,094.65</b>
<b>Federal Agency Bond / Note</b>											
FHLB GLOBAL NOTE DTD 08/04/2016 0.875% 08/05/2019	3130A8Y72	1,835,000.00	AA+	Aaa	03/20/18	03/21/18	1,800,043.25	2.29	1,159.62	1,823,996.79	1,822,510.99
<b>Security Type Sub-Total</b>		<b>1,835,000.00</b>					<b>1,800,043.25</b>	<b>2.29</b>	<b>1,159.62</b>	<b>1,823,996.79</b>	<b>1,822,510.99</b>
<b>Managed Account Sub-Total</b>		<b>2,290,000.00</b>					<b>2,245,161.22</b>	<b>2.33</b>	<b>2,491.94</b>	<b>2,274,246.44</b>	<b>2,272,605.64</b>
<b>Securities Sub-Total</b>		<b>\$2,290,000.00</b>					<b>\$2,245,161.22</b>	<b>2.33%</b>	<b>\$2,491.94</b>	<b>\$2,274,246.44</b>	<b>\$2,272,605.64</b>
<b>Accrued Interest</b>											<b>\$2,491.94</b>
<b>Total Investments</b>											<b>\$2,275,097.58</b>



## Managed Account Fair Market Value & Analytics

For the Month Ending **February 28, 2019**

### STATE BAR OF TEXAS CLIENT SECURITY FUND - 81125011

Security Type/Description Dated Date/Coupon/Maturity	CUSIP	Par	Broker	Next Call Date	Market Price	Market Value	Unreal G/L On Cost	Unreal G/L Amort Cost	Effective Duration	Duration to Worst at Mkt	YTM
<b>U.S. Treasury Bond / Note</b>											
US TREASURY N/B DTD 11/15/2016 1.000% 11/15/2019	912828U32	455,000.00	GOLDMAN		98.92	450,094.65	4,976.68	(155.00)	0.70	0.70	2.54
<b>Security Type Sub-Total</b>		<b>455,000.00</b>				<b>450,094.65</b>	<b>4,976.68</b>	<b>(155.00)</b>	<b>0.70</b>	<b>0.70</b>	<b>2.54</b>
<b>Federal Agency Bond / Note</b>											
FHLB GLOBAL NOTE DTD 08/04/2016 0.875% 08/05/2019	3130A8Y72	1,835,000.00	MORGAN_S		99.32	1,822,510.99	22,467.74	(1,485.80)	0.43	0.43	2.48
<b>Security Type Sub-Total</b>		<b>1,835,000.00</b>				<b>1,822,510.99</b>	<b>22,467.74</b>	<b>(1,485.80)</b>	<b>0.43</b>	<b>0.43</b>	<b>2.48</b>
<b>Managed Account Sub-Total</b>		<b>2,290,000.00</b>				<b>2,272,605.64</b>	<b>27,444.42</b>	<b>(1,640.80)</b>	<b>0.48</b>	<b>0.48</b>	<b>2.49</b>
<b>Securities Sub-Total</b>		<b>\$2,290,000.00</b>				<b>\$2,272,605.64</b>	<b>\$27,444.42</b>	<b>(\$1,640.80)</b>	<b>0.48</b>	<b>0.48</b>	<b>2.49%</b>
<b>Accrued Interest</b>						<b>\$2,491.94</b>					
<b>Total Investments</b>						<b>\$2,275,097.58</b>					



## Managed Account Security Transactions & Interest

For the Month Ending **February 28, 2019**

STATE BAR OF TEXAS CLIENT SECURITY FUND - 81125011

Transaction Type		Security Description	CUSIP	Par	Principal Proceeds	Accrued Interest	Total	Realized G/L Cost	Realized G/L Amort Cost	Sale Method
Trade	Settle									
INTEREST										
02/05/19	02/05/19	FHLB GLOBAL NOTE DTD 08/04/2016 0.875% 08/05/2019	3130A8Y72	1,835,000.00	0.00	8,028.13	8,028.13			
Transaction Type Sub-Total				1,835,000.00	0.00	8,028.13	8,028.13			
Managed Account Sub-Total					0.00	8,028.13	8,028.13			
Total Security Transactions					\$0.00	\$8,028.13	\$8,028.13			



## Managed Account Summary Statement

For the Month Ending **February 28, 2019**

STATE BAR OF TEXAS TEXAS LAW CENTER - 81125014

### Transaction Summary - Managed Account

<b>Opening Market Value</b>	<b>\$3,891,985.39</b>
Maturities/Calls	(825,000.00)
Principal Dispositions	0.00
Principal Acquisitions	814,724.40
Unsettled Trades	0.00
Change in Current Value	1,500.61
<b>Closing Market Value</b>	<b>\$3,883,210.40</b>

### Cash Transactions Summary - Managed Account

Maturities/Calls	825,000.00
Sale Proceeds	0.00
Coupon/Interest/Dividend Income	4,996.88
Principal Payments	0.00
Security Purchases	(822,975.65)
Net Cash Contribution	(7,021.23)
Reconciling Transactions	0.00

### Earnings Reconciliation (Cash Basis) - Managed Account

Interest/Dividends/Coupons Received	4,996.88
Less Purchased Interest Related to Interest/Coupons	(8,251.25)
Plus Net Realized Gains/Losses	9,958.01
<b>Total Cash Basis Earnings</b>	<b>\$6,703.64</b>

### Cash Balance

**Closing Cash Balance** **\$0.00**

### Earnings Reconciliation (Accrual Basis)

	<b>Total</b>
Ending Amortized Value of Securities	3,881,364.78
Ending Accrued Interest	24,843.59
Plus Proceeds from Sales	0.00
Plus Proceeds of Maturities/Calls/Principal Payments	825,000.00
Plus Coupons/Dividends Received	4,996.88
Less Cost of New Purchases	(822,975.65)
Less Beginning Amortized Value of Securities	(3,889,667.30)
Less Beginning Accrued Interest	(15,855.10)
<b>Total Accrual Basis Earnings</b>	<b>\$7,707.20</b>



## Portfolio Summary and Statistics

For the Month Ending **February 28, 2019**

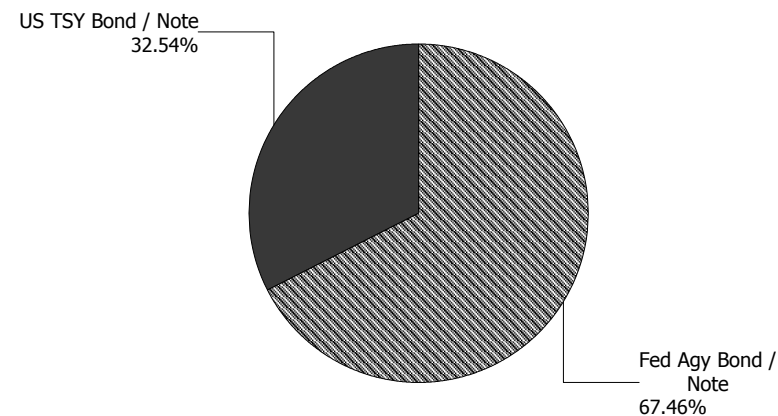
STATE BAR OF TEXAS TEXAS LAW CENTER - 81125014

### Account Summary

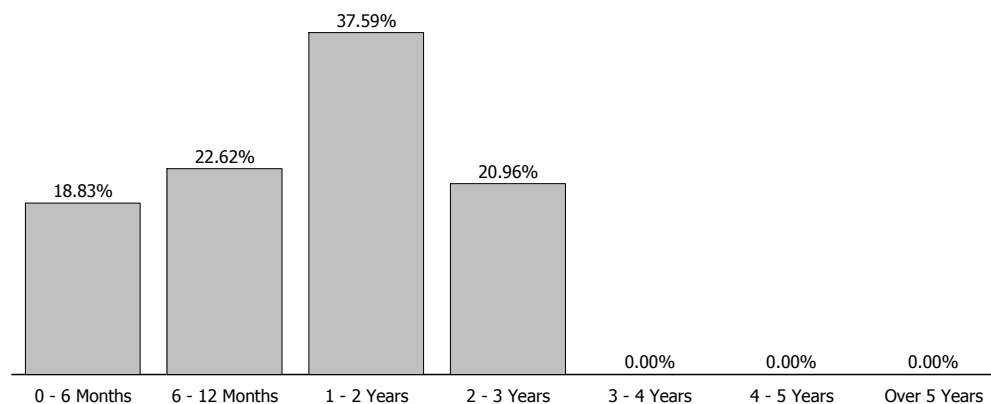
Description	Par Value	Market Value	Percent
U.S. Treasury Bond / Note	1,275,000.00	1,263,403.26	32.54
Federal Agency Bond / Note	2,615,000.00	2,619,807.14	67.46
<b>Managed Account Sub-Total</b>	<b>3,890,000.00</b>	<b>3,883,210.40</b>	<b>100.00%</b>
Accrued Interest		24,843.59	
<b>Total Portfolio</b>	<b>3,890,000.00</b>	<b>3,908,053.99</b>	

**Unsettled Trades** 0.00 0.00

### Sector Allocation



### Maturity Distribution



### Characteristics

Yield to Maturity at Cost	2.52%
Yield to Maturity at Market	2.53%
Duration to Worst	1.19
Weighted Average Days to Maturity	450



## Managed Account Issuer Summary

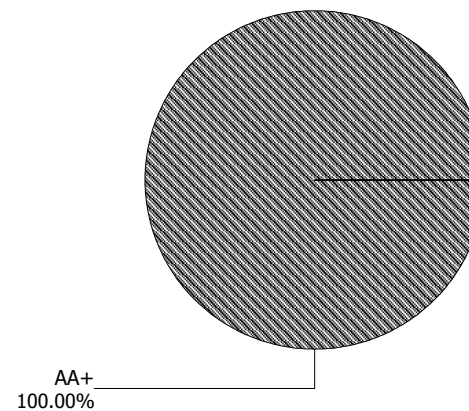
For the Month Ending **February 28, 2019**

STATE BAR OF TEXAS TEXAS LAW CENTER - 81125014

### Issuer Summary

Issuer	Market Value of Holdings	Percent
FEDERAL HOME LOAN BANKS	1,545,186.61	39.79
FREDDIE MAC	1,074,620.53	27.67
UNITED STATES TREASURY	1,263,403.26	32.54
<b>Total</b>	<b>\$3,883,210.40</b>	<b>100.00%</b>

### Credit Quality (S&P Ratings)







## Managed Account Detail of Securities Held

For the Month Ending **February 28, 2019**

STATE BAR OF TEXAS TEXAS LAW CENTER - 81125014

Security Type/Description Dated Date/Coupon/Maturity	CUSIP	Par	S&P Rating	Moody's Rating	Trade Date	Settle Date	Original Cost	YTM at Cost	Accrued Interest	Amortized Cost	Market Value
<b>U.S. Treasury Bond / Note</b>											
US TREASURY NOTES DTD 12/31/2014 1.625% 12/31/2019	912828G95	885,000.00	AA+	Aaa	10/01/18	10/01/18	873,211.52	2.72	2,383.63	877,086.52	878,293.47
US TREASURY NOTES DTD 03/31/2015 1.375% 03/31/2020	912828J84	390,000.00	AA+	Aaa	09/18/18	09/19/18	381,910.55	2.77	2,239.29	384,245.32	385,109.79
<b>Security Type Sub-Total</b>		<b>1,275,000.00</b>					<b>1,255,122.07</b>	<b>2.73</b>	<b>4,622.92</b>	<b>1,261,331.84</b>	<b>1,263,403.26</b>
<b>Federal Agency Bond / Note</b>											
FEDERAL HOME LOAN BANK AGENCY NOTES DTD 05/12/2017 1.375% 05/28/2019	3130ABF92	300,000.00	AA+	Aaa	07/13/17	07/14/17	299,910.00	1.39	1,065.63	299,988.45	299,192.40
FHLB GLOBAL NOTE DTD 08/04/2016 0.875% 08/05/2019	3130A8Y72	435,000.00	AA+	Aaa	03/20/18	03/21/18	426,713.25	2.29	274.90	432,391.61	432,039.39
FHLMC NOTES DTD 04/19/2018 2.500% 04/23/2020	3137EAEM7	1,075,000.00	AA+	Aaa	08/03/18	08/07/18	1,072,129.75	2.66	9,555.56	1,073,081.66	1,074,620.53
FEDERAL HOME LOAN BANKS NOTES DTD 10/12/2018 3.000% 10/12/2021	3130AF5B9	805,000.00	AA+	Aaa	02/14/19	02/15/19	814,724.40	2.53	9,324.58	814,571.22	813,954.82
<b>Security Type Sub-Total</b>		<b>2,615,000.00</b>					<b>2,613,477.40</b>	<b>2.41</b>	<b>20,220.67</b>	<b>2,620,032.94</b>	<b>2,619,807.14</b>
<b>Managed Account Sub-Total</b>		<b>3,890,000.00</b>					<b>3,868,599.47</b>	<b>2.52</b>	<b>24,843.59</b>	<b>3,881,364.78</b>	<b>3,883,210.40</b>
<b>Securities Sub-Total</b>		<b>\$3,890,000.00</b>					<b>\$3,868,599.47</b>	<b>2.52%</b>	<b>\$24,843.59</b>	<b>\$3,881,364.78</b>	<b>\$3,883,210.40</b>
<b>Accrued Interest</b>											<b>\$24,843.59</b>
<b>Total Investments</b>											<b>\$3,908,053.99</b>



## Managed Account Fair Market Value & Analytics

For the Month Ending **February 28, 2019**

STATE BAR OF TEXAS TEXAS LAW CENTER - 81125014

Security Type/Description Dated Date/Coupon/Maturity	CUSIP	Par	Broker	Next Call Date	Market Price	Market Value	Unreal G/L On Cost	Unreal G/L Amort Cost	Effective Duration	Duration to Worst at Mkt	YTM
<b>U.S. Treasury Bond / Note</b>											
US TREASURY NOTES DTD 12/31/2014 1.625% 12/31/2019	912828G95	885,000.00	CITIGRP		99.24	878,293.47	5,081.95	1,206.95	0.82	0.82	2.54
US TREASURY NOTES DTD 03/31/2015 1.375% 03/31/2020	912828J84	390,000.00	CITIGRP		98.75	385,109.79	3,199.24	864.47	1.06	1.06	2.55
<b>Security Type Sub-Total</b>		<b>1,275,000.00</b>				<b>1,263,403.26</b>	<b>8,281.19</b>	<b>2,071.42</b>	<b>0.90</b>	<b>0.90</b>	<b>2.55</b>
<b>Federal Agency Bond / Note</b>											
FEDERAL HOME LOAN BANK AGENCY NOTES DTD 05/12/2017 1.375% 05/28/2019	3130ABF92	300,000.00	MORGAN_S		99.73	299,192.40	(717.60)	(796.05)	0.24	0.24	2.51
FHLB GLOBAL NOTE DTD 08/04/2016 0.875% 08/05/2019	3130A8Y72	435,000.00	MORGAN_S		99.32	432,039.39	5,326.14	(352.22)	0.43	0.43	2.48
FHLMC NOTES DTD 04/19/2018 2.500% 04/23/2020	3137EAEM7	1,075,000.00	NOMURA		99.96	1,074,620.53	2,490.78	1,538.87	1.12	1.12	2.53
FEDERAL HOME LOAN BANKS NOTES DTD 10/12/2018 3.000% 10/12/2021	3130AF5B9	805,000.00	MORGAN_S		101.11	813,954.82	(769.58)	(616.40)	2.48	2.48	2.56
<b>Security Type Sub-Total</b>		<b>2,615,000.00</b>				<b>2,619,807.14</b>	<b>6,329.74</b>	<b>(225.80)</b>	<b>1.33</b>	<b>1.33</b>	<b>2.53</b>
<b>Managed Account Sub-Total</b>		<b>3,890,000.00</b>				<b>3,883,210.40</b>	<b>14,610.93</b>	<b>1,845.62</b>	<b>1.19</b>	<b>1.19</b>	<b>2.53</b>
<b>Securities Sub-Total</b>		<b>\$3,890,000.00</b>				<b>\$3,883,210.40</b>	<b>\$14,610.93</b>	<b>\$1,845.62</b>	<b>1.19</b>	<b>1.19</b>	<b>2.53%</b>
<b>Accrued Interest</b>						<b>\$24,843.59</b>					
<b>Total Investments</b>						<b>\$3,908,053.99</b>					



## Managed Account Security Transactions & Interest

For the Month Ending February 28, 2019

STATE BAR OF TEXAS TEXAS LAW CENTER - 81125014

Transaction Type		Security Description	CUSIP	Par	Principal	Accrued	Total	Realized G/L	Realized G/L	Sale
Trade	Settle				Proceeds	Interest		Cost	Amort Cost	
BUY										
02/14/19	02/15/19	FEDERAL HOME LOAN BANKS NOTES DTD 10/12/2018 3.000% 10/12/2021	3130AF5B9	805,000.00	(814,724.40)	(8,251.25)	(822,975.65)			
Transaction Type Sub-Total				805,000.00	(814,724.40)	(8,251.25)	(822,975.65)			
INTEREST										
02/05/19	02/05/19	FHLB GLOBAL NOTE DTD 08/04/2016 0.875% 08/05/2019	3130A8Y72	435,000.00	0.00	1,903.13	1,903.13			
02/15/19	02/15/19	US TREASURY NOTES DTD 02/15/2016 0.750% 02/15/2019	912828P53	825,000.00	0.00	3,093.75	3,093.75			
Transaction Type Sub-Total				1,260,000.00	0.00	4,996.88	4,996.88			
MATURITY										
02/15/19	02/15/19	US TREASURY NOTES DTD 02/15/2016 0.750% 02/15/2019	912828P53	825,000.00	825,000.00	0.00	825,000.00	9,958.01	0.00	
Transaction Type Sub-Total				825,000.00	825,000.00	0.00	825,000.00	9,958.01	0.00	
Managed Account Sub-Total					10,275.60	(3,254.37)	7,021.23	9,958.01	0.00	
Total Security Transactions					\$10,275.60	(\$3,254.37)	\$7,021.23	\$9,958.01	\$0.00	

**Consolidated Summary Statement**

For the Month Ending **February 28, 2019**

State Bar of Texas

**Portfolio Summary**

Portfolio Holdings	Cash Dividends and Income	Closing Market Value	Current Yield
PFM Funds - Govt Select, Instl Cl	9,068.81	3,901,721.27	2.28 %
PFM Funds CD Program	0.00	700,000.00	* N/A
<b>Total</b>	<b>\$9,068.81</b>	<b>\$4,601,721.27</b>	

\* Not Applicable

**Investment Allocation**

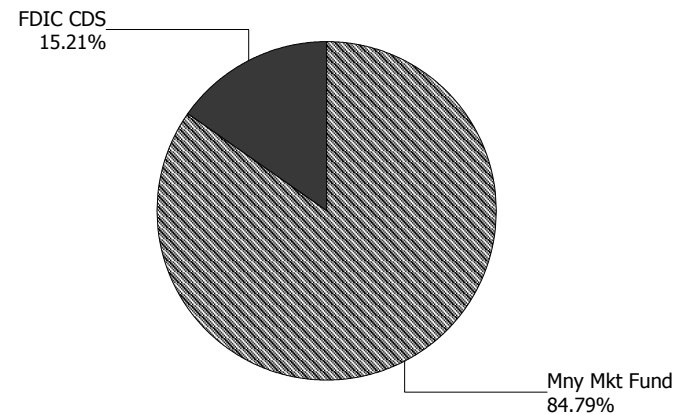
Investment Type	Closing Market Value	Percent
Money Market Mutual Fund	3,901,721.27	84.79
FDIC Insured Bank Certificates of Deposit	700,000.00	15.21
<b>Total</b>	<b>\$4,601,721.27</b>	<b>100.00%</b>

**Maturity Distribution (Fixed Income Holdings)**

Portfolio Holdings	Closing Market Value	Percent
Under 30 days	4,601,721.27	100.00
31 to 60 days	0.00	0.00
61 to 90 days	0.00	0.00
91 to 180 days	0.00	0.00
181 days to 1 year	0.00	0.00
1 to 2 years	0.00	0.00
2 to 3 years	0.00	0.00
3 to 4 years	0.00	0.00
4 to 5 years	0.00	0.00
Over 5 years	0.00	0.00
<b>Total</b>	<b>\$4,601,721.27</b>	<b>100.00%</b>

**Weighted Average Days to Maturity**      **4**

**Sector Allocation**



**Consolidated Summary Statement**

For the Month Ending **February 28, 2019**

State Bar of Texas

Account Number	Account Name	Opening Market Value	Purchases / Deposits	Redemptions / Sales/ Maturities	Unsettled Trades	Change in Value	Closing Market Value	Cash Dividends and Income
200-00	STATE BAR OF TEXAS - MM	3,587,937.90	5,737.92	(1,500,000.00)	0.00	0.00	2,093,675.82	5,737.92
995192	CLIENT SECURITY FUND	715,931.90	1,244.61	0.00	0.00	0.00	717,176.51	1,244.61
995235	TEXAS LAW CENTER	67,229.46	106.87	(40,000.00)	0.00	0.00	27,336.33	106.87
995426	TBLS	1,312,315.02	1,041.82	(90,089.19)	0.00	0.00	1,223,267.65	1,041.82
995463	Annual Meeting Funds	345,943.65	601.40	0.00	0.00	0.00	346,545.05	601.40
995464	Texas Bar College Special Revenue Funds	193,383.72	336.19	0.00	0.00	0.00	193,719.91	336.19
<b>Total</b>		<b>\$6,222,741.65</b>	<b>\$9,068.81</b>	<b>(\$1,630,089.19)</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$4,601,721.27</b>	<b>\$9,068.81</b>

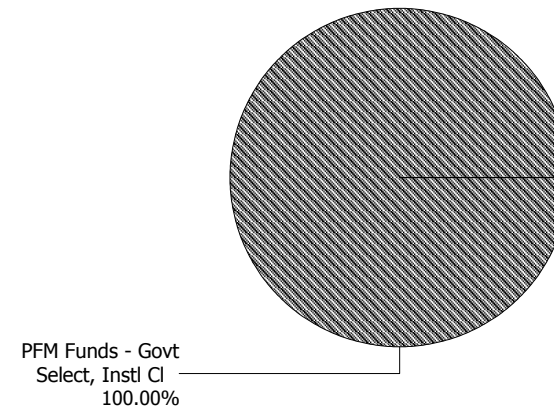
## Account Statement - Transaction Summary

For the Month Ending **February 28, 2019**

State Bar of Texas - STATE BAR OF TEXAS - MM - 200-00

PFM Funds - Govt Select, Instl CI	
Opening Market Value	3,587,937.90
Purchases	5,737.92
Redemptions	(1,500,000.00)
Unsettled Trades	0.00
Change in Value	0.00
<b>Closing Market Value</b>	<b>\$2,093,675.82</b>
Cash Dividends and Income	5,737.92

Asset Summary		
	February 28, 2019	January 31, 2019
<b>PFM Funds - Govt Select, Instl CI</b>	2,093,675.82	3,587,937.90
<b>Total</b>	<b>\$2,093,675.82</b>	<b>\$3,587,937.90</b>
Asset Allocation		



**Account Statement**

For the Month Ending **February 28, 2019**

State Bar of Texas - STATE BAR OF TEXAS - MM - 200-00

Trade Date	Settlement Date	Transaction Description	Share or Unit Price	Dollar Amount of Transaction	Total Shares Owned
<b>PFM Funds - Govt Select, Instl Cl</b>					
<b>Opening Balance</b>					<b>3,587,937.90</b>
02/15/19	02/15/19	Redemption - Wire Redemption	1.00	(500,000.00)	3,087,937.90
02/28/19	02/28/19	Redemption - Wire Redemption	1.00	(1,000,000.00)	2,087,937.90
02/28/19	03/01/19	Accrual Income Div Reinvestment - Distributions	1.00	5,737.92	2,093,675.82

**Closing Balance** **2,093,675.82**

	Month of February	Fiscal YTD January-February		
<b>Opening Balance</b>	3,587,937.90	332,029.31	<b>Closing Balance</b>	2,093,675.82
<b>Purchases</b>	5,737.92	3,261,646.51	<b>Average Monthly Balance</b>	3,302,428.54
<b>Redemptions (Excl. Checks)</b>	(1,500,000.00)	(1,500,000.00)	<b>Monthly Distribution Yield</b>	2.27%
<b>Check Disbursements</b>	0.00	0.00		
<b>Closing Balance</b>	<b>2,093,675.82</b>	<b>2,093,675.82</b>		
<b>Cash Dividends and Income</b>	5,737.92	11,646.51		

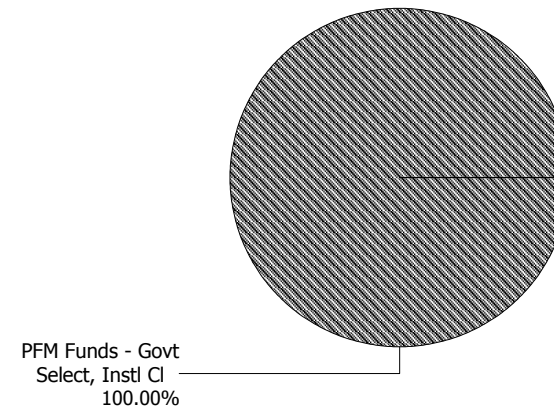
**Account Statement - Transaction Summary**

For the Month Ending **February 28, 2019**

State Bar of Texas - CLIENT SECURITY FUND - 995192

<b>PFM Funds - Govt Select, Instl CI</b>	
Opening Market Value	715,931.90
Purchases	1,244.61
Redemptions	0.00
Unsettled Trades	0.00
Change in Value	0.00
<b>Closing Market Value</b>	<b>\$717,176.51</b>
Cash Dividends and Income	1,244.61

<b>Asset Summary</b>		
	<b>February 28, 2019</b>	<b>January 31, 2019</b>
<b>PFM Funds - Govt Select, Instl CI</b>	717,176.51	715,931.90
<b>Total</b>	<b>\$717,176.51</b>	<b>\$715,931.90</b>
<b>Asset Allocation</b>		





**Account Statement**

For the Month Ending **February 28, 2019**

State Bar of Texas - CLIENT SECURITY FUND - 995192

Trade Date	Settlement Date	Transaction Description	Share or Unit Price	Dollar Amount of Transaction	Total Shares Owned
<b>PFM Funds - Govt Select, Instl Cl</b>					
<b>Opening Balance</b>					<b>715,931.90</b>
02/28/19	03/01/19	Accrual Income Div Reinvestment - Distributions	1.00	1,244.61	717,176.51
<b>Closing Balance</b>					<b>717,176.51</b>

	Month of February	Fiscal YTD January-February		
<b>Opening Balance</b>	715,931.90	714,558.48	<b>Closing Balance</b>	717,176.51
<b>Purchases</b>	1,244.61	2,618.03	<b>Average Monthly Balance</b>	715,976.35
<b>Redemptions (Excl. Checks)</b>	0.00	0.00	<b>Monthly Distribution Yield</b>	2.27%
<b>Check Disbursements</b>	0.00	0.00		
<b>Closing Balance</b>	<b>717,176.51</b>	<b>717,176.51</b>		
<b>Cash Dividends and Income</b>	1,244.61	2,618.03		

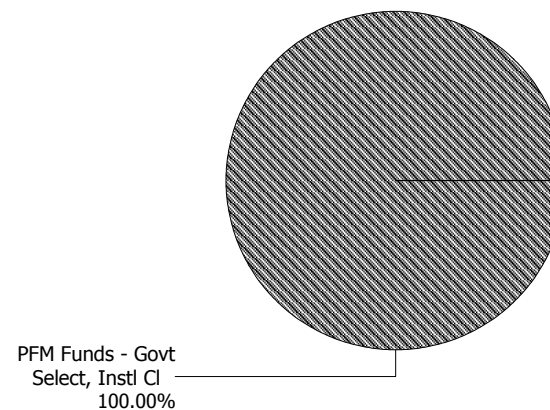
## Account Statement - Transaction Summary

For the Month Ending **February 28, 2019**

State Bar of Texas - TEXAS LAW CENTER - 995235

PFM Funds - Govt Select, Instl CI	
Opening Market Value	67,229.46
Purchases	106.87
Redemptions	(40,000.00)
Unsettled Trades	0.00
Change in Value	0.00
<b>Closing Market Value</b>	<b>\$27,336.33</b>
Cash Dividends and Income	106.87

Asset Summary		
	February 28, 2019	January 31, 2019
<b>PFM Funds - Govt Select, Instl CI</b>	27,336.33	67,229.46
<b>Total</b>	<b>\$27,336.33</b>	<b>\$67,229.46</b>
Asset Allocation		



## Account Statement

For the Month Ending **February 28, 2019**

State Bar of Texas - TEXAS LAW CENTER - 995235

Trade Date	Settlement Date	Transaction Description	Share or Unit Price	Dollar Amount of Transaction	Total Shares Owned
<b>PFM Funds - Govt Select, Instl Cl</b>					
<b>Opening Balance</b>					<b>67,229.46</b>
02/25/19	02/25/19	Redemption - Wire Redemption	1.00	(40,000.00)	27,229.46
02/28/19	03/01/19	Accrual Income Div Reinvestment - Distributions	1.00	106.87	27,336.33
<b>Closing Balance</b>					<b>27,336.33</b>

	Month of February	Fiscal YTD January-February		
<b>Opening Balance</b>	67,229.46	67,100.49	<b>Closing Balance</b>	27,336.33
<b>Purchases</b>	106.87	235.84	<b>Average Monthly Balance</b>	61,518.99
<b>Redemptions (Excl. Checks)</b>	(40,000.00)	(40,000.00)	<b>Monthly Distribution Yield</b>	2.27%
<b>Check Disbursements</b>	0.00	0.00		
<b>Closing Balance</b>	<b>27,336.33</b>	<b>27,336.33</b>		
<b>Cash Dividends and Income</b>	106.87	235.84		

## Account Statement - Transaction Summary

For the Month Ending **February 28, 2019**

State Bar of Texas - TBLs - 995426

### PFM Funds - Govt Select, Instl CI

Opening Market Value	612,315.02
Purchases	1,041.82
Redemptions	(90,089.19)
Unsettled Trades	0.00
Change in Value	0.00

**Closing Market Value** **\$523,267.65**

Cash Dividends and Income 1,041.82

### PFM Funds CD Program

Opening Market Value	700,000.00
Purchases	0.00
Redemptions	0.00
Unsettled Trades	0.00
Change in Value	0.00

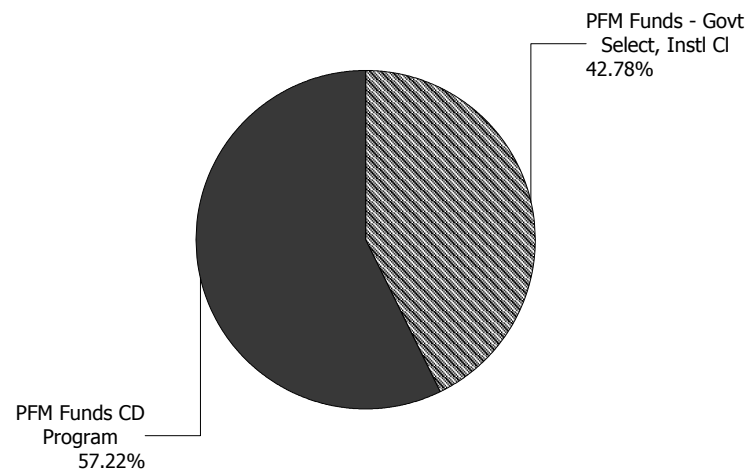
**Closing Market Value** **\$700,000.00**

Cash Dividends and Income 0.00

### Asset Summary

	February 28, 2019	January 31, 2019
<b>PFM Funds - Govt Select, Instl CI</b>	523,267.65	612,315.02
<b>PFM Funds CD Program</b>	700,000.00	700,000.00
<b>Total</b>	<b>\$1,223,267.65</b>	<b>\$1,312,315.02</b>

### Asset Allocation



**Investment Holdings**

For the Month Ending **February 28, 2019**

State Bar of Texas - TBLS - 995426

Trade Date	Settlement Date	Security Description	Maturity Date	Rate	Investment Amount	Accrued Interest	Est. Value at Maturity
<b>PFM Funds CD Program</b>							
03/27/18	03/27/18	CD - Bank Leumi Usa, NY	03/27/19	2.30	244,000.00	5,212.24	249,612.00
03/27/18	03/27/18	CD - Cibc (Acquired Privatebank & Trust Co), MI	03/27/19	2.25	212,000.00	4,430.22	216,770.00
03/27/18	03/27/18	CD - First Central Savings Bank, NY	03/27/19	2.30	244,000.00	5,212.24	249,612.00
<b>Total</b>					<b>\$700,000.00</b>	<b>\$14,854.70</b>	<b>\$715,994.00</b>

**Account Statement**

For the Month Ending **February 28, 2019**

State Bar of Texas - TBLS - 995426

Trade Date	Settlement Date	Transaction Description	Share or Unit Price	Dollar Amount of Transaction	Total Shares Owned
<b>PFM Funds - Govt Select, Instl Cl</b>					
<b>Opening Balance</b>					<b>612,315.02</b>
02/01/19	02/01/19	IA_FEE CD GROUPED FEE TRANSACTION FOR: 1-31-2019	1.00	(89.19)	612,225.83
02/25/19	02/25/19	Redemption - Wire Redemption	1.00	(90,000.00)	522,225.83
02/28/19	03/01/19	Accrual Income Div Reinvestment - Distributions	1.00	1,041.82	523,267.65

**Closing Balance** **523,267.65**

	Month of February	Fiscal YTD January-February		
<b>Opening Balance</b>	612,315.02	611,229.55	<b>Closing Balance</b>	523,267.65
<b>Purchases</b>	1,041.82	2,216.46	<b>Average Monthly Balance</b>	599,405.90
<b>Redemptions (Excl. Checks)</b>	(90,089.19)	(90,178.36)	<b>Monthly Distribution Yield</b>	2.27%
<b>Check Disbursements</b>	0.00	0.00		
<b>Closing Balance</b>	<b>523,267.65</b>	<b>523,267.65</b>		
<b>Cash Dividends and Income</b>	1,041.82	2,216.46		

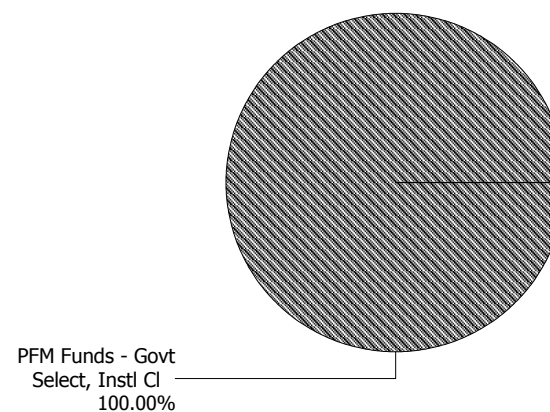
## Account Statement - Transaction Summary

For the Month Ending **February 28, 2019**

State Bar of Texas - Annual Meeting Funds - 995463

PFM Funds - Govt Select, Instl CI	
Opening Market Value	345,943.65
Purchases	601.40
Redemptions	0.00
Unsettled Trades	0.00
Change in Value	0.00
<b>Closing Market Value</b>	<b>\$346,545.05</b>
Cash Dividends and Income	601.40

Asset Summary		
	February 28, 2019	January 31, 2019
<b>PFM Funds - Govt Select, Instl CI</b>	346,545.05	345,943.65
<b>Total</b>	<b>\$346,545.05</b>	<b>\$345,943.65</b>
Asset Allocation		



**Account Statement**

For the Month Ending **February 28, 2019**

State Bar of Texas - Annual Meeting Funds - 995463

Trade Date	Settlement Date	Transaction Description	Share or Unit Price	Dollar Amount of Transaction	Total Shares Owned
<b>PFM Funds - Govt Select, Instl Cl</b>					
<b>Opening Balance</b>					<b>345,943.65</b>
02/28/19	03/01/19	Accrual Income Div Reinvestment - Distributions	1.00	601.40	346,545.05
<b>Closing Balance</b>					<b>346,545.05</b>

	Month of February	Fiscal YTD January-February		
<b>Opening Balance</b>	345,943.65	345,280.00	<b>Closing Balance</b>	346,545.05
<b>Purchases</b>	601.40	1,265.05	<b>Average Monthly Balance</b>	345,965.13
<b>Redemptions (Excl. Checks)</b>	0.00	0.00	<b>Monthly Distribution Yield</b>	2.27%
<b>Check Disbursements</b>	0.00	0.00		
<b>Closing Balance</b>	<b>346,545.05</b>	<b>346,545.05</b>		
<b>Cash Dividends and Income</b>	601.40	1,265.05		



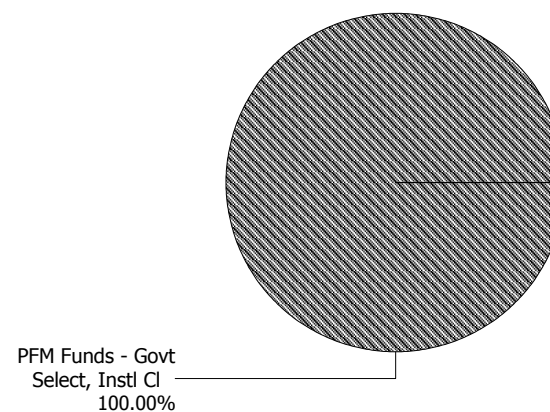
## Account Statement - Transaction Summary

For the Month Ending **February 28, 2019**

State Bar of Texas - Texas Bar College Special Revenue Funds - 995464

PFM Funds - Govt Select, Instl CI	
Opening Market Value	193,383.72
Purchases	336.19
Redemptions	0.00
Unsettled Trades	0.00
Change in Value	0.00
<b>Closing Market Value</b>	<b>\$193,719.91</b>
Cash Dividends and Income	336.19

Asset Summary		
	February 28, 2019	January 31, 2019
<b>PFM Funds - Govt Select, Instl CI</b>	193,719.91	193,383.72
<b>Total</b>	<b>\$193,719.91</b>	<b>\$193,383.72</b>
Asset Allocation		



**Account Statement**

For the Month Ending **February 28, 2019**

State Bar of Texas - Texas Bar College Special Revenue Funds - 995464

Trade Date	Settlement Date	Transaction Description	Share or Unit Price	Dollar Amount of Transaction	Total Shares Owned
<b>PFM Funds - Govt Select, Instl Cl</b>					
<b>Opening Balance</b>					<b>193,383.72</b>
02/28/19	03/01/19	Accrual Income Div Reinvestment - Distributions	1.00	336.19	193,719.91
<b>Closing Balance</b>					<b>193,719.91</b>

	Month of February	Fiscal YTD January-February		
<b>Opening Balance</b>	193,383.72	193,012.74	<b>Closing Balance</b>	193,719.91
<b>Purchases</b>	336.19	707.17	<b>Average Monthly Balance</b>	193,395.73
<b>Redemptions (Excl. Checks)</b>	0.00	0.00	<b>Monthly Distribution Yield</b>	2.27%
<b>Check Disbursements</b>	0.00	0.00		
<b>Closing Balance</b>	<b>193,719.91</b>	<b>193,719.91</b>		
<b>Cash Dividends and Income</b>	336.19	707.17		

## Quarterly Investment Report Certification

This report fairly represents the investment standing of the State Bar of Texas as of February 28, 2019 and the investment activity for the period December 1, 2018 through February 28, 2019.

We believe the data presented for the quarter ending February 28, 2019 is accurate in all material respects, and is presented in a manner that fairly sets forth the investment standing of the State Bar of Texas. We further believe that all data necessary to represent the activity for the quarter is included in this text.

This report was prepared in compliance with the State of Texas "Public Funds Investment Act" and the State Bar of Texas' "Investment Policy".

Public Funds Investment Act Training Report: All State Bar board members and officers have received training as required by the Texas Government Code Section 2256.007 as of the date of this investment report. All new board members have received training within 6 months of taking office. The investment officer received training from a board approved training provider within the fiscal biennium.



Trey Appfel  
Executive Director  
State Bar of Texas



Tracy Jarratt, CPA  
Finance Division Director  
State Bar of Texas



Barry Baughier  
Sr. Managing Consultant  
PFM Asset Management LLC

Dated: 4/5/2019



**State Bar of Texas**  
**Internal Audit Services**  
An Internal Audit of:  
**Public Funds Investment Act**  
**Compliance Audit**  
**Report #19-001**  
**December 18, 2018**

This report provides management with information about the condition of risks and internal controls at a specific point in time. Future changes in environmental factors and actions by personnel will impact these risks and internal controls in ways that this report cannot anticipate.



**McCONNELL & JONES LLP**  
CERTIFIED PUBLIC ACCOUNTANTS

## Table of Contents

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2.0 Compliance Audit Details .....	4



McCONNELL & JONES LLP  
CERTIFIED PUBLIC ACCOUNTANTS

December 18, 2018

Mr. Jarrod Foerster  
State Bar of Texas  
Audit & Finance Committee  
1414 Colorado Street  
Austin, TX 78701

Dear Audit & Finance Committee Chair:

Attached is Internal Audit Report #19-001 Public Funds Investment Act Compliance Audit. This audit was performed as part of the approved Annual Internal Audit Plan.

We assessed the State Bar of Texas' (SBOT) compliance with Texas Government Code Chapter 2256 Public Funds Investment and determined that the agency was compliant with all requirements except obtaining evidence of required investment officer training for two individuals. Additionally, management's internal controls for investment processes and reporting are effective and working as designed.

Please contact Darlene Brown at 281.740.0017 if you should have any questions about this audit report.

Sincerely,

Ira Wayne McConnell, CPA  
Partner

7600 Chevy Chase Drive  
Suite 307  
Austin, TX 78752  
Phone: 512.430.5358

WWW.MCCONNELLJONES.COM

## 1.0 INTRODUCTION

McConnell & Jones LLP (MJ), serving as the outsourced internal audit function (Internal Audit) for the State Bar of Texas (SBOT), performed an internal audit of SBOT's compliance with Texas Government Code Chapter 2256 Public Funds Investment, commonly referred to as the Public Funds Investment Act (PFIA).

Government Code Chapter 2256 Section 2256.005 Investment Policies, Investment Strategies; Investment Officer subsection (n) requires that at least once every two years a state agency arranges for a compliance audit of management controls on investments and adherence to the agency's established investment policies to be performed by their internal auditor or a private auditor. The resulting audit reports must be reported to the state auditor no later than January 1<sup>st</sup> of each even numbered year.

SBOT's investment policy requires an annual audit of the investment funds' records.

SBOT does invest public funds and therefore is required to comply with Texas Government Code Chapter 2256 Public Funds Investment. These funds are invested through SBOT's investment manager (PFM Asset Management LLC). SBOT's investment manager was selected through a formal bid process.

We performed this audit as part of the approved Annual Internal Audit Plan. This audit was conducted in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives.

### SBOT's Investment Standard

*The State Bar shall invest its funds in a manner in which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but to, in order of priority, preserve and safeguard the principal amount invested, provide liquidity to meet operating cash flow needs, and earn the highest yield possible considering the required safeguards.*

### SBOT's Investment Principals

- ✓ Safety of Principal
- ✓ Diversification
- ✓ Yield

### May 31, 2018 Investment Account Balances

The Texas State Bar has a total of \$34.5 million in the following investment funds:

- ✓ General Fund \$25,122,664
- ✓ Texas Law Center - \$3,649,307
- ✓ Client Security Fund - \$2,963,469
- ✓ Texas Board of Legal Specialization - \$1,804,186
- ✓ Annual Meetings Fund - \$451,121
- ✓ Texas Bar College - \$302,455
- ✓ Hatton Sumners Grant - \$255,611

We believe that the evidence obtained accomplishes that requirement.

Pertinent information has not been omitted from this report. This report summarizes the audit objectives and scope, our assessment based on our audit objectives and the audit approach.

### **Objectives and Scope**

The purpose of this audit is to assess SBOT's compliance with the PFIA's specific requirements. In doing so, we also evaluated management controls in place to ensure that the agency's funds are invested according to SBOT's investment policy and that the investment reports are accurately compiled and distributed in a timely manner.

Texas Government Code Chapter 2256 Public Funds Investment sections applicable to SBOT are:

- ✓ Section 2256.005 Investment Policies, Investment Strategies; Investment Officer
- ✓ Section 2256.007 Investment Training; State Agency Board Members and Officers
- ✓ Section 2256.023 Internal Management Reports

The State Bar of Texas' applicable investment policy requirements are based upon its investment standard to preserve and safeguard the principal amount invested, provide liquidity to meet operating cash flow needs, and earn the highest yield possible considering the required safeguards. SBOT's investment policy is imbedded in the State Bar of Texas Board of Directors Policy Manual

(September 2018). The investment policy contains the following components:

- ✓ Approved investment vehicles
- ✓ Investment concentrations
- ✓ Maturity periods
- ✓ Investment rating
- ✓ Reporting
- ✓ Training
- ✓ Investment principals
- ✓ Investment settlement
- ✓ Compliance with the Public Funds Investment Act
- ✓ Annual audit

The scope period was June 1, 2017 through May 31, 2018.

### **Results and Conclusion**

**We determined that SBOT's internal controls over investments are effective and operating as intended.**

The State Bar of Texas is in compliance with two out of three of the applicable requirements of Texas Government Code Chapter 2256 Public Funds Investment. SBOT was unable to provide documentation demonstrating that two of the required individuals had completed their investment training within the required timeframe. It is important to note that this non-compliance does not impact SBOT's internal controls over investment activities.

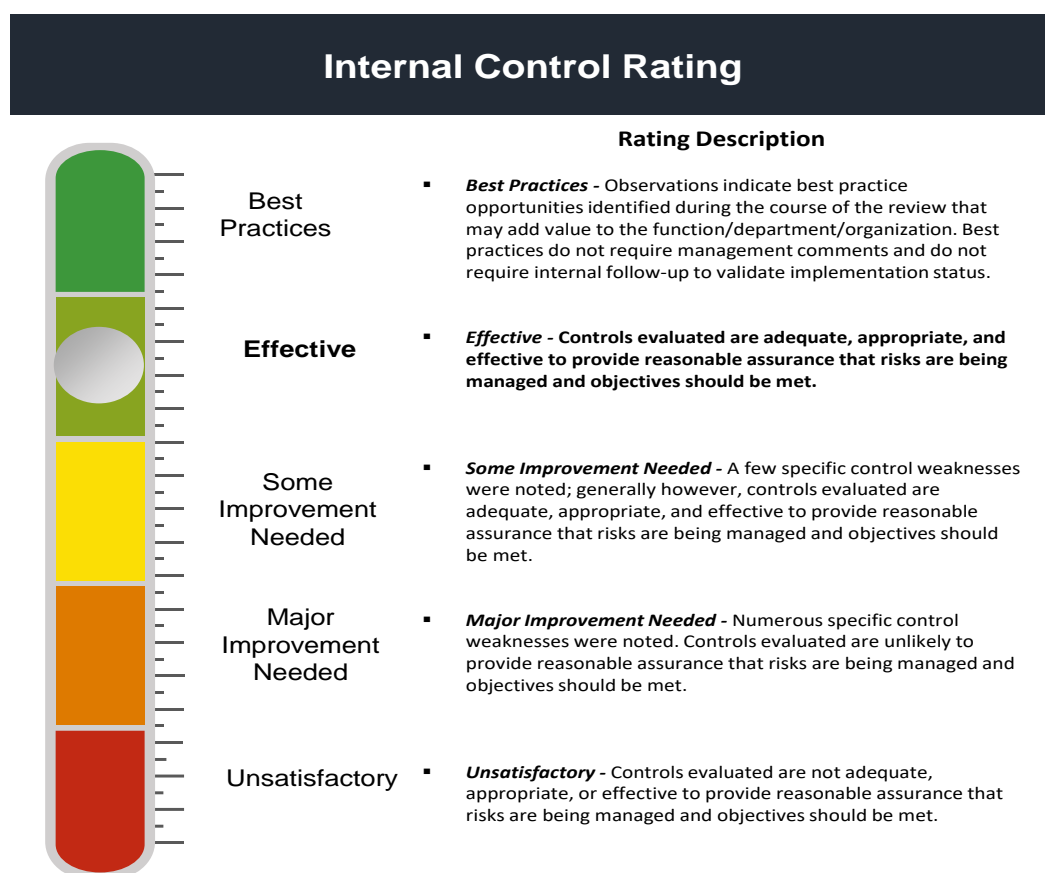


SBOT is in compliance with the State Bar of Texas Board of Directors Policy Manual Investment Policy Section 3.05.06. Additionally, management's internal controls for investment activities and reporting are effective and working as designed.

We noted that the investment reports provided by the SBOT's Investment Manager are comprehensive and provide summary

level investment balances and transactions in addition to a significant amount of detailed analysis. The investment reports provided to the SBOT Audit & Finance Committee continue to be some of the most comprehensive investment reports we see provided to boards.

**Figure 1** describes the internal control rating.



**Figure 1** Internal control rating description.

## 2.0 COMPLIANCE AUDIT DETAILS

The State Bar of Texas maintains investments for seven funds. These funds are:

- ✓ General Fund
- ✓ Client Service Fund (CSF)
- ✓ Texas Board of Legal Specialization (TBLS)
- ✓ Texas Bar College (TBC), which includes an Endowment Fund
- ✓ Hatton Sumners Grants (HSG)

✓ Texas Law Center (TLC)

✓ Annual Meetings Fund (AM)










## A. Investment Policy




The PFIA requires state organizations that invest public funds to have a written investment policy that is reviewed at least once per year by the governing body. Section 2256.005 Investment Policies, Investment Strategies; Investment Officer lists specific topics that must be included in the agency's investment policy.

Audit procedures applied to determine compliance with these requirements included:

- ✓ Reviewed SBOT's investment policy and compared it to requirements listed in Section 2256.005.

**Figure IP1** compares Section 2256.005 requirements to SBOT's investment policy.

Texas Government Code Sec. 2256.005 Section	PFIA Investment Policy Requirements	SBOT Investment Policy Meets Requirement
(b)(1)	The investment policies must be written.	
(b)(2)	Primarily emphasize safety of principal and liquidity.	
(b)(3)	Address investment diversification, yield, and maturity and the quality and capability of investment management.	
(b)(4)(A)	Include a list of the types of authorized investments in which the investing entity's funds may be invested.	
(b)(4)(B)	Include the maximum allowable stated maturity of any individual investment owned by the entity.	
(b)(4)(C)	Include for pooled fund groups, the maximum dollar weighted average maturity allowed based on the stated maturity date for the portfolio.	N/A SBOT does not invest in pooled fund groups.
(b)(4)(D)	Include methods to monitor the market price of investments acquired with public funds.	
(b)(4)(E)	Include a requirement for settlement of all transactions, except investment pool funds and mutual funds, on a delivery versus payment basis.	
(b)(4)(F)	Include procedures to monitor rating changes in investments acquired with public funds and the liquidation of such investments consistent with the provisions of Section <a href="#">2256.021</a> .	
(d)	As an integral part of an investment policy, the governing body shall adopt a separate written investment strategy for each of the funds or group of funds under its control. Each investment strategy must describe the investment objectives for the particular fund using the following priorities in order of importance: (1) understanding of the suitability of the investment to the financial requirements of the entity;	

Texas Government Code Sec. 2256.005 Section	PFIA Investment Policy Requirements	SBOT Investment Policy Meets Requirement
	(2) preservation and safety of principal; (3) liquidity; (4) marketability of the investment if the need arises to liquidate the investment before maturity; (5) diversification of the investment portfolio; and (6) yield.	
(e)	The governing body of an investing entity shall review its investment policy and investment strategies not less than annually.	
(e)	The governing body shall adopt a written instrument by rule, order, ordinance, or resolution stating that it has reviewed the investment policy and investment strategies and that the written instrument so adopted shall record any changes made to either the investment policy or investment strategies.	
(f)	Each investing entity shall designate, by rule, order, ordinance, or resolution, as appropriate, one or more officers or employees of the state agency, local government, or investment pool as investment officer to be responsible for the investment of its funds consistent with the investment policy adopted by the entity.	

**Figure IP1** Section 2256.005 requirements and SBOT's compliance.

Legend:



Internal controls are effective and SBOT is in compliance with requirement; no observations noted.



Internal controls are not in compliance with requirements; observation noted and discussed in this report.

## Conclusion

SBOT is in compliance with Section 2256.005 Investment Policies, Investment Strategies; Investment Officer. Our audit procedures resulted in no exceptions noted.

## Management's Response

Management response is not required as no observations were noted for this compliance requirement.

## Recommendation

No recommendations are made for this compliance requirement.

## B. Investment Officer, State Agency Board Member and Officer Training

The PFIA section 2256.007 lists specific training requirements for the agency





investment officers, board members and officers.

Audit procedures applied to determine compliance with these requirements included:

2256, provided to SBOT's governing body.

- ✓ Reviewed SBOT's investment training records to determine compliance with the requirements of section 2256.007.
- ✓ Reviewed quarterly investment reports and reports on Subchapter A, Chapter

**Figure IT1** compares section 2256.007 training requirements to SBOT's records of investment officer training taken.

Texas Government Code Sec. 2256.007 Section	INVESTMENT TRAINING; STATE AGENCY BOARD MEMBERS AND OFFICERS.	SBOT Investment Officer and Officers Training Meet Requirements
(a)	Each member of the governing board of a state agency and its investment officer shall attend at least one training session relating to the person's responsibilities under this chapter within six months after taking office or assuming duties.	
(b)	The Texas Higher Education Coordinating Board shall provide the training under this section.	N/A
(c)	Training under this section must include education in investment controls, security risks, strategy risks, market risks, diversification of investment portfolio, and compliance with this chapter.	
(d)	An investment officer shall attend a training session not less than once each state fiscal biennium and may receive training from any independent source approved by the governing body of the state agency.	
(d)	The investment officer shall prepare a report on this subchapter and deliver the report to the governing body of the state agency not later than the 180th day after the last day of each regular session of the legislature.	

**Figure IT1** Texas Government Code training requirements compared to SBOT's training taken.

Legend:



Internal controls are effective and SBOT is in compliance with requirement; no observations noted.



Internal controls are not in compliance with requirements; observation noted and discussed in this report.

## Conclusion

SBOT was in compliance with PFIA section 2256.007 training with the exception of section 2256.007 (a). SBOT did not have training completion certificates on file for two individuals to demonstrate that training had been taken.

SBOT's investment officer has completed all training required to perform the role of an investment officer.

## Recommendation

SBOT's Finance Division Director should continue tracking required board member training and ensure that all completion

certificates are provided to SBOT for retention in the appropriate files. Additionally, the Finance Division Director should report instances of non-compliance to the SBOT's Audit & Finance Committee.

## Managements Response

Management agrees with this recommendation and has implemented a tracking sheet to ensure that all completion

certificates are provided to SBOT. This tracking sheet has been in place for the past 3 years; however, findings related to 2 board members who attended New Director's Orientation from fiscal year 15-16 and were serving as board members during the FY 17-18 fiscal year.

Those officers received the training, but the certification of training was not retained, and had to be requested of the officers at the time of audit.

## C. Management Reports



The PFIA requires state agencies that invest public funds provide investment management reports to its governing body. Section 2256.023 Internal Management Reports lists specific information that must be included in the investment management reports.








SBOT's Finance Division Director works with SBOT's investment manager, PFM Asset Management LLC, to prepare detailed investment reports. The investment reports are signed/certified by the SBOT Executive Director, Finance Division Director and PFM. The investment reports are provided to the SBOT Audit & Finance Committee each quarter.

Audit procedures applied to determine compliance with Section 2256.023 requirements included:

- ✓ Reviewed quarterly investment reports for completion and content compliance with Section 2256.023.
- ✓ Compared quarterly investment reports to SBOT Balance Sheets and trail balance report to determine completeness and accuracy.

**Figure MR1** compares the Section 2256.023 investment management report requirements to SBOT's investment reports.

Texas Government Code Sec. 2256.023 Section	Internal Management Reports	SBOT Investment Management Reports Meet Requirements
(a)	Not less than quarterly, the investment officer shall prepare and submit to the governing body of the entity a written report of investment transactions for all funds covered by this chapter for the preceding reporting period.	
(b)(1)(2)(3)	The report must: (1) describe in detail the investment position of the entity on the date of the report; (2) be prepared jointly by all investment officers of the entity; (3) be signed by each investment officer of the entity;	

Texas Government Code Sec. 2256.023 Section	Internal Management Reports	SBOT Investment Management Reports Meet Requirements
(b)(4)	contain a summary statement of each pooled fund group that states the: (A) beginning market value for the reporting period; (B) ending market value for the period; and (C) fully accrued interest for the reporting period;	
(b)(5)	state the book value and market value of each separately invested asset at the end of the reporting period by the type of asset and fund type invested;	
(b)(6)	state the maturity date of each separately invested asset that has a maturity date;	
(b)(7)	state the account or fund or pooled group fund in the state agency or local government for which each individual investment was acquired;	
(b)(8)	state the compliance of the investment portfolio of the state agency or local government as it relates to: (A) the investment strategy expressed in the agency's or local government's investment policy; and (B) relevant provisions of this chapter.	
(c)	The report shall be presented not less than quarterly to the governing body and the chief executive officer of the entity within a reasonable time after the end of the period.	
(d)	If an entity invests in other than money market mutual funds, investment pools or accounts offered by its depository bank in the form of certificates of deposit, or money market accounts or similar accounts, the reports prepared by the investment officers under this section shall be formally reviewed at least annually by an independent auditor, and the result of the review shall be reported to the governing body by that auditor.	

**Figure MR1** Texas Government Code reporting requirements compared to SBOT's management reports.  
Legend:



Internal controls are effective and SBOT is in compliance with requirement; no observations noted.



Internal controls are not in compliance with requirements; observation noted and discussed in this report.

## Conclusion

SBOT's investment reports are in compliance with Section 2256.023. Additionally, the monthly investment reports were complete and accurate.

## Recommendation

No recommendations are made for this compliance requirement.

***Management's Response***

Management response is not required as no observations were noted for this compliance requirement.





## State Bar of Texas Internal Audit Services

An Internal Audit of:  
**Compliance with Statute and Policies**  
**Report #19-002**  
**February 14, 2019**

This report provides management with information about the internal controls at a specific point in time. Future changes in and actions by personnel will impact these risks and internal this report cannot anticipate.

**MJ**

**McCONNELL & JONES LLP**  
CERTIFIED PUBLIC ACCOUNTANTS





February 14, 2019

Mr. Jarrod Foerster  
State Bar of Texas Audit & Finance Committee  
1414 Colorado Street  
Austin, TX 78701

Dear Mr. Foerster and Audit & Finance Committee Members:

Attached is internal audit report #19-002 State Bar Policy Compliance Audit. This audit was performed as part of the approved FY 2018 Annual Internal Audit Plan. We assessed the State Bar of Texas' (SBOT) compliance with Texas Government Code Chapter 81 State Bar, State Bar of Texas Rules and State Bar of Texas Board of Directors Policy Manual. The scope of our audit focused on SBOT's adherence to the procedures set forth in the State Bar Act, the State Bar Rules and the State Bar Board Policy Manual, and that controls over financial processes in the areas audited are designed properly and operating effectively.

Our audit scope was focused on the following areas:

- ✓ Finance
  - SBOT bank accounts
  - Section financial reports
- ✓ Chief Disciplinary Counsel
  - Disciplinary review process
  - Complaint file management
  - Client Security Funds
- ✓ Minimum for Continuing Legal Education (MCLE)
  - Sponsor accreditation fees
  - Non-compliance penalties
- ✓ Human Resources
  - New hire process
  - Separation process
  - Employee time reporting

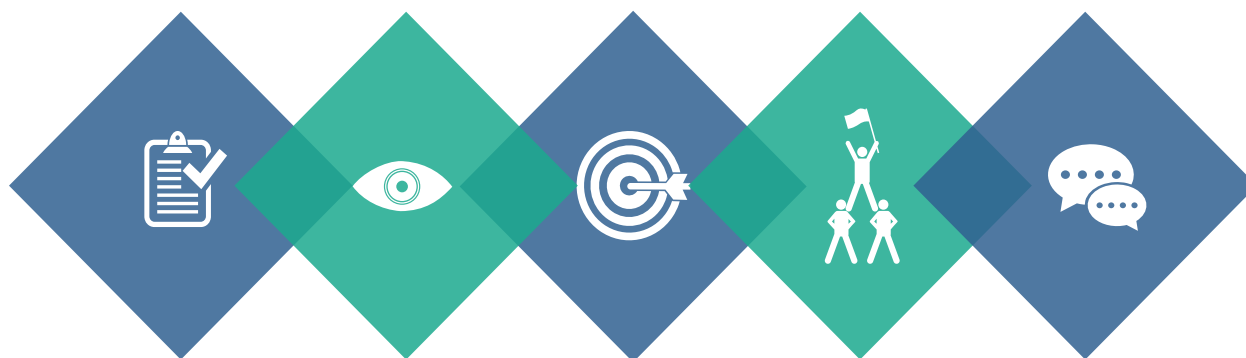
We determined that SBOT is compliant with all of the 41 requirements assessed. Additionally, management's internal controls for the reviewed processes are generally effective and working as designed. We discussed reportable opportunities to enhance internal controls and improve process efficiencies with management.

Please contact Darlene Brown at 281.740.0017 if you should have any questions about this audit report.

Sincerely,

Ira Wayne McConnell, CPA  
Partner

## AUDIT AT A GLANCE



<b>Purpose</b>	<b>Scope</b>	<b>Focus</b>	<b>Internal Control Rating</b>	<b>Recommendations</b>
<ul style="list-style-type: none"> <li>To assess SBOT's compliance with specific sections of the Texas Government Code Chapter 81 State Bar, State Bar Rules and the State Bar of Texas Board of Directors Policy Manual.</li> </ul>	<ul style="list-style-type: none"> <li>June 1, 2017 – May 31, 2018</li> </ul>	<ul style="list-style-type: none"> <li>Disciplinary Review Process</li> <li>Client Security Funds</li> <li>Complaint file management</li> <li>MCLE Sponsor Accreditation fees</li> <li>MCLE Non-compliance penalty assessments</li> <li>SBOT Bank Accounts</li> <li>Section financials</li> <li>Employee time reporting, new hire and separation processes</li> </ul>	<ul style="list-style-type: none"> <li>Effective</li> </ul>	<ul style="list-style-type: none"> <li>Create an agency wide internal operating memo/procedure template that can be utilized by all departments to establish consistency with procedures.</li> </ul>

Number of Finds by Risk Rating

High	Medium	Low	Total
0	0	1	1

## ACKNOWLEDGEMENT



*We wish to thank all staff involved in the audit for their time and efforts. Without their assistance, we would not have been able to complete this audit.*

## REPORT FORMAT

This report contains the introduction section which provides a summary of the audit objectives and observations. This is followed by a detailed assessment section that provides a brief discussion of the audit procedures applied and a discussion of the compliance requirements in a table format along with our assessment of SBOT's compliance with the specific requirement.

## INTRODUCTION



*McConnell & Jones LLP (MJ), serving as the outsourced internal audit function (Internal Audit) for the State Bar of Texas (SBOT), performed an internal audit of SBOT's compliance with Texas Government Code Chapter 81 State Bar, the State Bar Rules and the State Bar of Texas Board of Directors Policy Manual.*

We performed this audit as part of the approved FY 2018 Annual Internal Audit Plan. This audit was conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained accomplishes that requirement.

Pertinent information has not been omitted from this report. This report summarizes the audit objective and scope, our assessment based on our audit objectives and the audit approach.

## OBJECTIVE



*The purpose of this audit was to assess SBOT's compliance with specific sections of the Texas Government Code Chapter 81 State Bar, State Bar Rules and the State Bar of Texas Board of Directors Policy Manual. In doing so, we also evaluated management controls in place to ensure that the organization's business risks are mitigated where possible and that resources are used efficiently.*

This audit focused on specific sections of the Texas Government Code Chapter 81 State Bar, State Bar Rules and the State Bar of Texas Board of Directors Policy Manual related to the following functions and processes:

- ✓ Disciplinary review process
- ✓ Client Security Funds
- ✓ Complaint file management
- ✓ MCLE sponsor accreditation fees
- ✓ MCLE non-compliance penalty assessments
- ✓ SBOT bank accounts
- ✓ Section financial reporting
- ✓ Employee time reporting, new hire and separation processes

## SCOPE



*The audit period was June 1, 2017 through May 31, 2018. Some test procedures were performed as of the fieldwork date. This work product was at a point in time evaluation that cannot address the inherent dynamic nature of subsequent changes to the process and procedures reviewed.*

## CONCLUSION AND INTERNAL CONTROL RATING



*This audit identified findings that resulted in an overall internal control rating of **effective**. **Figure 2** describes the internal control rating.*

We determined that the State Bar of Texas is compliant with all of the 41 requirements assessed. Additionally, management's internal controls for reviewed processes are generally effective and working as designed.

We discussed reportable opportunities to enhance internal controls and improve process efficiencies with management. Those observations are:

- ✓ JPMorgan Chase Exhibit A signer for Executive Director had not been updated; and
- ✓ Agency-wide standardized template for memos/procedures do not exist.

During the audit there were other non-reportable matters discussed with management.

**Figure 1** provides a summary of compliance requirements reviewed by SBOT function.

Function	Gov't Code	SBOT Rules	SBOT Policy*	Total
Disciplinary Review & Complaint File Management	14	8	4	26
Client Security Funds	0	0	3	3
SBOT Bank Accounts & Section Financials	0	0	3	3
MCLE Sponsor Accreditation Fees & Non-Compliance Penalty	0	7	0	7
Human Resource Processes	0	0	2	2
<b>Total</b>	<b>14</b>	<b>15</b>	<b>12</b>	<b>41</b>

**Figure 1: Government Code, SBOT Rules and SBOT Policy Requirements Assessed**

*\*Policy may be internal department policy and/or SBOT Board of Directors policy*

## INTERNAL CONTROL RATING

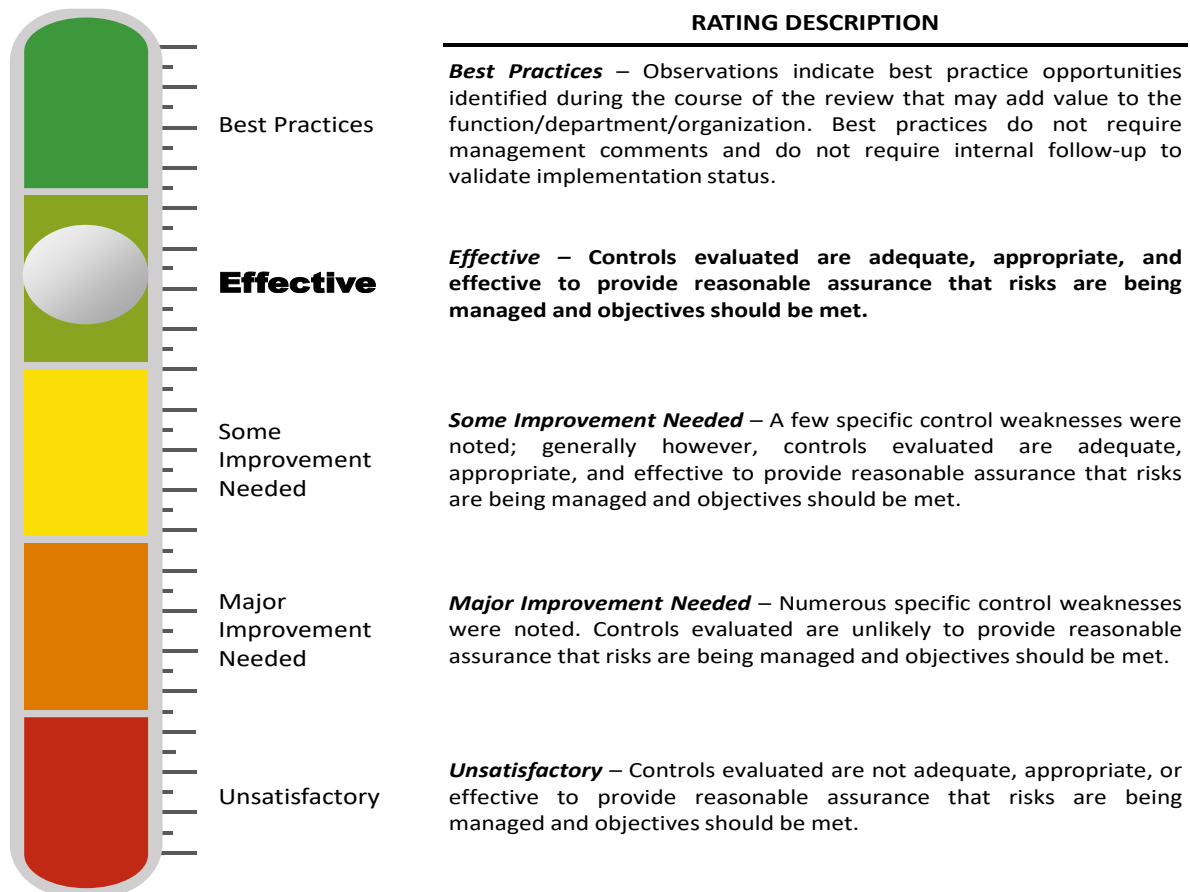


Figure 2 Internal control rating description

## DETAILED OPPORTUNITIES AND RECOMMENDATIONS



*This section of the report provides a detailed discussion of opportunities we noted during the audit along with recommendations to improve internal controls or the business process.*

### 1. Disciplinary Review Process and Complaint File Management

The Texas Government Code Chapter 81 State Bar (State Bar Act), the Texas Rules of Disciplinary Procedure and the State Bar of Texas Board of Directors Policy Manual describes disciplinary review requirements for the agency to follow.

**14** State Bar Act requirements

**8**

Texas Rules of Disciplinary Procedure requirements

**0** State Bar Rules requirements (Not Applicable)

**4**


State Bar of Texas Board of Directors Policy Manual requirements






Audit procedures applied to determine compliance with these requirements included:

- ✓ Conducted interviews and walkthroughs
- ✓ Reviewed written procedures
- ✓ Reviewed process flowcharts
- ✓ Reviewed database entries



**Figure 3** compares Texas Government Code Chapter 81 State Bar Requirements; **Figure 3A** compares the Texas Rules of Disciplinary Procedure requirements; and **Figure 3B** compares the State Bar of Texas Board of Directors Policy Manual requirements to SBOT's processes and controls.





Section	Texas Government Code Chapter 81 State Bar Requirement	SBOT Process(es) Meets Requirement
81.036 Information on Certain Complaints	<p>(a) The state bar shall maintain a file on each written complaint, other than a grievance against an attorney, filed with the state bar. The file must include:</p> <ul style="list-style-type: none"> <li>(1) The name of the person who filed the complaint;</li> <li>(2) The date the complaint is received by the state bar;</li> <li>(3) The subject matter of the complaint;</li> <li>(4) The name of each person contacted in relation to the complaint;</li> <li>(5) A summary of the results of the review or investigation of the complaint; and</li> <li>(6) An explanation of the reason the file was closed, if the state bar closed the file without taking action other than to investigate the complaint.</li> </ul> <p>(b) The state bar shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy</p>	


Section	Texas Government Code Chapter 81 State Bar Requirement	SBOT Process(es) Meets Requirement
	<p>of the state bar's policies and procedures relating to complaint investigation and resolution.</p> <p>(c) The state bar, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.</p>	
81.072 General Disciplinary and Disability Procedures	<p>(a) In furtherance of the Supreme Court's powers to supervise the conduct of attorneys, the court shall establish powers to supervise the conduct of attorneys, the court shall establish disciplinary and disability procedures in addition to the procedures provided by this subchapter.</p> <p>(b) The Supreme Court shall establish minimum standards and procedures for the attorney disciplinary and disability system. The standards and procedures for processing grievances against attorneys must provide for:</p> <ol style="list-style-type: none"> <li>(1) The name of the person who filed the complaint;</li> <li>(2) A full explanation to each complainant on dismissal of an inquiry or a complaint;</li> <li>(3) Periodic preparation of abstracts of inquiries and complaints filed that, even if true, do or do not constitute misconduct;</li> <li>(4) An information file for each grievance filed;</li> <li>(5) A grievance tracking system to monitor processing of grievances by category, method of resolution, and length of time required for resolution;</li> <li>(6) Notice by the state bar to the parties of a written grievance filed with the state bar that the state bar has the authority to resolve of the status of the grievance, at least quarterly and until final disposition, unless the notice would jeopardize an undercover investigation;</li> <li>(7) An option for a trial in a district court on a complaint and an administrative system for attorney disciplinary and disability findings in lieu of trials in district court, including an appeal procedure to the Board of Disciplinary Appeals and the supreme court under the substantial evidence rule;</li> <li>(8) An administrative system for reciprocal and compulsory discipline;</li> <li>(9) Interim suspension of an attorney posing a threat of immediate irreparable harm to a client;</li> <li>(10) Authorizing all parties to an attorney disciplinary hearing, including the complainant, to be present at all hearings at which testimony is taken and requiring notice of those hearings to be given to the complainant not later than the seventh day before the date of the hearing;</li> <li>(11) The commission adopting rules that govern the use of private reprimands by grievance committees and that prohibit a committee:</li> </ol>	

Section	Texas Government Code Chapter 81 State Bar Requirement	SBOT Process(es) Meets Requirement
	<p>(A) Giving an attorney more than one private reprimand within a five-year period for a violation of the same disciplinary rule; or</p> <p>(B) Giving a private reprimand for a violation:</p> <p>(i) That involves a failure to return an unearned fee, a theft, or a misapplication of fiduciary property; or</p> <p>(ii) Of a disciplinary rule that requires a prosecutor to disclose to the defense all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, including Rule 3.09(d), Texas Disciplinary Rules of Professional Conduct; and</p> <p>(12) Distribution of a voluntary survey to all complainants urging views on grievance system experiences.</p>	
81.072 General Disciplinary and Disability Procedures	(d) Each attorney is subject to the Texas Rules of Disciplinary Procedure and the Texas Disciplinary Rules of Professional Conduct.	
81.072 General Disciplinary and Disability Procedures	<p>(f) Responses to the survey provided for in Subsection (b) (12) may not identify either the complaint or attorney and shall be open to the public. The topics must include:</p> <p>(1) treatment by the grievance system staff and volunteers;</p> <p>(2) the fairness of grievance procedures;</p> <p>(3) the length of time for grievance processing;</p> <p>(4) disposition of the grievance; and</p> <p>(5) suggestions for improvement of the grievance system.</p>	
81.072 General Disciplinary and Disability Procedures	<p>(i) A panel of a district grievance committee of the state bar the votes on a grievance matter shall disclose to the complainant and the respondent in the matter the number of members of the panel:</p> <p>(1) voting for a finding of just cause;</p> <p>(2) voting against a finding of just cause; and</p> <p>(3) abstaining from voting on the matter.</p>	
81.072 General Disciplinary and Disability Procedures	(j) A quorum of a panel of a district grievance committee of the state bar must include one public member for each two attorney members.	
81.073 Classification of Grievances	<p>(a) The chief disciplinary counsel's office shall classify each grievance on receipt as:</p> <p>(1) a complaint, if the grievance alleges conduct that, if true, constitutes professional misconduct or disability cognizable under the Texas Disciplinary Rules of Professional Conduct; or</p>	









Section	Texas Government Code Chapter 81 State Bar Requirement	SBOT Process(es) Meets Requirement
	<p>(2) an inquiry, if:</p> <p>(A) the grievance alleges conduct that, even if true, does Not constitute professional misconduct or disability cognizable under the Texas Disciplinary Rules of Professional Conduct; or</p> <p>(B) the respondent attorney is deceased, has relinquished the attorney's license to practice law in the state to avoid disciplinary action, or is not licensed to practice law in the state</p> <p>(b) A complainant may appeal the classification of a grievance as an inquiry to the Board of Disciplinary Appeals, or the complainant may amend and resubmit the grievance. An attorney against whom a grievance is filed may not appeal the classification of the grievance.</p>	
81.074 Disposition of Inquiries	<p>The chief disciplinary counsel shall:</p> <p>(1) dismiss a grievance classified as an inquiry; and</p> <p>(2) refer each inquiry classified under Section 81.073(a)(2)(A) and dismissed under this section to the voluntary mediation and dispute resolution procedure established under Section 81.072(e).</p>	
81.075 Disposition of Complaints	<p>(a) The chief disciplinary counsel shall review and investigate each grievance classified as a complaint to determine whether there is just cause, as defined by the Texas Rules of Disciplinary Procedure.</p> <p>(b) After the chief disciplinary counsel reviews and investigates a complaint:</p> <p>(1) if the counsel finds there is no just cause, the counsel shall place the complaint on a dismissal docket; or</p> <p>(2) if the counsel finds just cause:</p> <p>(A) the respondent attorney may request a trial in a district court on the complaint in accordance with the procedures adopted by the supreme court; or</p> <p>(B) the counsel shall place the complaint on a hearing docket if the respondent attorney does not request a trial in a district court.</p> <p>(c) A panel of a district grievance committee shall consider each complaint placed on the dismissal docket at a closed hearing without the complainant or the respondent attorney present. The panel may:</p> <p>(1) Approve the dismissal of the complaint and refer the complaint to the voluntary mediation and dispute resolution procedure established under Section 81.072 (e); or</p> <p>(2) Deny the dismissal of the complaint and place the complaint on a hearing docket.</p> <p>(d) A panel of a district grievance committee shall conduct a hearing on each complaint placed on the hearing docket. The commission and the respondent attorney are parties to the hearing, and the chief disciplinary counsel presents the complainant's case at the hearing. Each party may seek and</p>	



Section	Texas Government Code Chapter 81 State Bar Requirement	SBOT Process(es) Meets Requirement
	<p>the panel may issue a subpoena to compel attendance and production of records before the panel. Each party may conduct limited discovery in general accordance with the Texas Rules of Civil Procedure as prescribed by rules of the supreme court.</p> <p>(e) After conducting a hearing under Subsection (d), the panel of district grievance committee may:</p> <ol style="list-style-type: none"> <li>(1) Dismiss the complaint and refer to the voluntary mediation and dispute resolution procedure established under Section 81.072 (e);</li> <li>(2) Find that the respondent attorney suffers from a disability and forward that finding to the Board of Disciplinary Appeals for referral to a district disability committee; or</li> <li>(3) Find that professional misconduct occurred and impose sanctions.</li> </ol>	
81.0751 Appeals	<p>(a) The commission or a respondent attorney may appeal:</p> <ol style="list-style-type: none"> <li>(1) a finding of a panel of a district grievance committee under Section 81.075 (e) only to the Board of Disciplinary Appeals;</li> <li>(2) a finding of the Board of Disciplinary Appeals to the supreme court; and</li> <li>(3) a judgement of a district court as in civil cases generally.</li> </ol>	
81.0752 Confidentiality	<p>(a) All types of information, proceedings, hearing transcripts, and statements presented to a panel of a district grievance committee are confidential and may not be disclosed to any person other than the chief disciplinary counsel unless:</p> <ol style="list-style-type: none"> <li>(1) disclosure is ordered by a court; or</li> <li>(2) the panel finds that professional misconduct occurred and a sanction other than a private reprimand is imposed against the respondent attorney.</li> </ol>	
81.076 Commission for Lawyer Discipline	<p>(a) The Commission for Lawyer Discipline shall review the structure, function, and effectiveness of the disciplinary and disability procedures implemented pursuant to this chapter and supreme court rules.</p> <p>(b) The commission is a standing committee of the state bar. The commission is composed of 12 persons. Six members must be attorneys, and six members must not be attorneys. The president of the state bar appoints the attorney members. The supreme court appoints the public members. The public members may not have, other than as consumers, an interest, direct or indirect, in the practice of law or the professional of law. The supreme court may remove any member for good cause.</p> <p>(c) Members serve staggered three-year terms with one-third of the members' terms expiring each year.</p>	
81.078 Disciplinary Proceedings	<p>(a) Except as provided by Subsection (b), until an attorney has been convicted of the charges for disbarment pending against the attorney may be suspended from the practice of law only if the attorney concurs in an order of suspension entered by the grievance committee.</p>	

Section	Texas Government Code Chapter 81 State Bar Requirement	SBOT Process(es) Meets Requirement
81.079 Public Notification and Information	<p>(a) To provide information to the public relating to the attorney grievance process, the state bar shall:</p> <ol style="list-style-type: none"> <li>(1) develop a brochure written in Spanish and English describing the bar's grievance process;</li> <li>(2) establish a toll-free "800" telephone number for public access to the chief disciplinary counsel's office in Austin and list the number in telephone directories statewide;</li> <li>(3) describe the bar's grievance process in the bar's telephone directory listings statewide; and</li> <li>(4) make grievance forms written in Spanish and English available in each county courthouse.</li> </ol>	




**Figure 3 Texas Government Code Chapter 81 State Bar Requirements Table – Disciplinary Review Process and Complaint File Management**


Section	Texas Rules of Disciplinary Procedure	SBOT Process(es) Meets Requirement
2.10 Classification of Grievances	The Chief Disciplinary Counsel shall within thirty days examine each Grievance received to determine whether it constitutes an Inquiry, a Complaint, or a Discretionary Referral.	
2.11 Venue	<p>Venue of District Grievance Committee proceedings shall be in accordance with the following:</p> <ol style="list-style-type: none"> <li>A. Investigatory Panel Proceedings. Proceedings of an Investigatory Panel shall be conducted by a Panel for the county where the alleged Professional Misconduct occurred, in whole or in part. If the acts or omissions complained of occurred wholly outside the State of Texas, proceedings shall be conducted by a Panel for the county of Respondent's residence and, if Respondent has no residence in Texas, by a Panel for Travis County, Texas.</li> <li>B. Summary Disposition Panel Proceedings. Proceedings of a Summary Disposition Panel shall be conducted by a Panel for the county where alleged Professional Misconduct occurred, in whole or in part. If the acts or omissions complained of occurred wholly outside the State of Texas, proceedings shall be conducted by a Panel for the country of Respondent's residence and, if Respondent has no residence in Texas, by a Panel for Travis County, Texas.</li> <li>C. Evidentiary Panel Proceedings. Proceedings of an Evidentiary Panel shall be conducted by a Panel for the county where Respondent's principal place of practice is maintained; or if the Respondent maintains neither a residence nor a place of practice within the State of Texas, then in the county where the alleged Professional Misconduct occurred, in whole or in part. In all other instances, venue is in Travis County, Texas.</li> </ol>	
2.12 Investigation and	<ol style="list-style-type: none"> <li>A. The Chief Disciplinary Counsel will investigate a Complaint to determine whether Just Cause exists.</li> </ol>	

Section	Texas Rules of Disciplinary Procedure	SBOT Process(es) Meets Requirement
Determination of Just Cause	<ol style="list-style-type: none"> <li>1. General Rule: The Chief Disciplinary Counsel must make a Just Cause determination within 60 days of the date that the Respondent's response to the Complaint is due.</li> <li>2. Exceptions: The Just Cause determination date is extended to 60 days after the latest of:               <ol style="list-style-type: none"> <li>a. The date of compliance specified in any investigatory subpoena issued by the Chief Disciplinary Counsel;</li> <li>b. The date of any enforcement order issued by a district court under (E); or</li> <li>c. The date that an investigatory hearing is completed.</li> </ol> </li> </ol>	
2.15 Election	<p>A Respondent given written notice of the allegations and rule violations complained of, in accordance with Rule 2.14, shall notify the Chief Disciplinary Counsel whether the Respondent seeks to have the Complaint heard in a district court of proper venue, with or without a jury, or by an Evidentiary Panel of the Committee. The election must be in writing and served upon the Chief Disciplinary Counsel no later than twenty days after the Respondent's receipt of written notification pursuant to Rule 2.14. If the Respondent timely elects to have the Complaint heard in a district court, the matter will proceed in accordance with Part III hereof. If the Respondent timely elects to have the Complaint heard by an Evidentiary Panel, the matter will proceed in accordance with Rules 2.17 and 2.18. A Respondent's failure to timely file an election shall conclusively be deemed as an affirmative election to proceed in accordance with Rules 2.17 and 2.18.</p>	
2.17 Evidentiary Hearings	<p>Within fifteen days of the earlier of the date of Chief Disciplinary Counsel's receipt of Respondent's election or the day following the expiration of Respondent's right to elect, the chair of a Committee having proper venue shall appoint an Evidentiary Panel to hear the Complaint. The Evidentiary Panel may not include any person who served on a Summary Disposition or an Investigatory Panel that heard the Complaint and must have at least three members but no more than one-half as many members as on the Committee. Each Evidentiary Panel must have a ratio of two attorney member for every public member.</p>	
2.20 Notice of Decision	<p>The Complainant, the Respondent, and the Commission must be notified in writing of the judgement of the Evidentiary Panel. The notice sent to the Respondent and the Commission must clearly state that any appeal of the judgement must be filed with the Board of Disciplinary Appeals within thirty days of the date of the notice. If the Evidentiary Panel finds that the Respondent committed professional misconduct, a copy of the Evidentiary Petition and the judgement shall be transmitted by the Office of the Chief Disciplinary Counsel to the Clerk of the Supreme Court. The Clerk of the Supreme Court shall make an appropriate notation on the Respondent's permanent record.</p>	

Section	Texas Rules of Disciplinary Procedure	SBOT Process(es) Meets Requirement
2.25 Disposition on Appeal	<p>The Board of Disciplinary Appeals may, in any appeal of the judgement of an Evidentiary Panel within its jurisdiction:</p> <ul style="list-style-type: none"> <li>A. Affirm the decision of the Evidentiary Panel, in whole or in part;</li> <li>B. Modify the Evidentiary Panel's judgement and affirm it as modified;</li> <li>C. Reverse the decision of the Evidentiary Panel, in whole or in part, and render the judgement that the Evidentiary Panel should have rendered;</li> <li>D. Reverse the Evidentiary Panel's judgement and remand the Disciplinary Proceeding for further proceeding by either the Evidentiary Panel or a statewide grievance committee panel composed of members selected from state bar districts other than the district from which the appeal was taken.</li> <li>E. Vacate the Evidentiary Panel's judgement and dismiss the case; or</li> <li>F. Dismiss the appeal.</li> </ul>	
2.26 Remand to Statewide Grievance Committee Panel	<p>In determining whether a remand is heard by a statewide grievance committee panel, the Board of Disciplinary Appeals must find that good cause was shown in the record on appeal. The Board of Disciplinary Appeals shall randomly select the members of the statewide grievance committee panel from grievance committees other than the district from which the appeal was taken. Six such members shall be selected, four of whom are attorneys and two of whom are public members. The statewide grievance committee panel, once selected, shall have all duties and responsibilities of the Evidentiary Panel for purposes of the remand.</p>	

**Figure 3A Texas Rules of Disciplinary Procedure Requirements Table - Disciplinary Review Process and Complaint File Management**

Section	SBOT Policy Requirement	SBOT Process(es) Meets Requirement
6.03.02 Administration of Disciplinary System	The Office of the Chief Disciplinary Counsel shall administer the attorney discipline and disability system in accordance with the Texas Rules of Disciplinary Procedure and as directed by the Commission.	
6.03.03 Filing of Complaints	Allegations of professional misconduct against any member of the State Bar shall be filed with the Office of the Chief Disciplinary Counsel.	
6.03.04 Ethics Opinions	The Chief Disciplinary Counsel shall maintain as a service to the members of the Bar, a toll-free Attorney Ethics Helpline, operated from 8:00 a.m. to 5:00 p.m., Monday through Friday. The Ethics Helpline is designated to assist members of the State Bar who have questions about their ethical obligations to clients, courts, and public under the Texas Disciplinary Rules of Professional Conduct. The advice shall be given orally to members of the State Bar, but such advice shall not be binding on grievance committees or the State Bar. No advice may be given to a member of the State Bar if the advice relates to a matter that is pending in the	

Section	SBOT Policy Requirement	SBOT Process(es) Meets Requirement
	disciplinary system. No options on ethical or unauthorized practice of law matters shall be given to non-members of the State Bar of Texas.	
6.03.05 Grievance Committee Training	The Office of Chief Disciplinary Counsel shall conduct annual training sessions for all grievance committee members. The training shall include, among other topics, structure of the attorney discipline system, grievance procedure, and committee organization, duties and authority with appropriate references to the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure. In addition, members shall be provided with a procedural guide on conducting evidentiary hearings.	

**Figure 3B State Bar of Texas Board of Directors Policy Manual Requirements Table - Disciplinary Review Process and Complaint File Management**

### Observations

#### Best Practice Implemented

SBOT has established best practices in the complaint file management processes. The Chief Disciplinary Counsel (CDC) oversees the requirements of the disciplinary review process and complaint file management. The CDC utilizes a well-known grievance system/database called JustWare to track and retain data related to each grievance submitted. The CDC's discipline process progresses through JustWare and is handled by CDC staff within designated timeframes. Each step of the process is tracked and claimants are notified of the outcome/status at various points throughout the process.

Correspondence is mailed directly to the complainant to notify them that the case has progressed, been dismissed or if additional documentation is required. During FY17-18, 7,452 complaints were received by the Chief Disciplinary Council:

- 4,971 (67 percent) were dismissed
- 1,348 (18 percent of the original complaints received) resulted in appeals
- 1,224 (91 percent) of the appeals were dismissed

Chief Disciplinary Council has documented processes for each step of its disciplinary review process. The procedures are detailed and provide employees the ability to perform processes by solely utilizing the written procedures. Also, process maps offer the ability to follow along and correlate the process to the procedure to be performed.

#### Observations

No reportable observations were noted for the disciplinary review process and complaint file management related compliance requirements reviewed.

### Recommendation

No recommendations are made for the disciplinary review process and complaint file management related compliance requirements reviewed.



## Managements Response

No management response is required.

## 2. Client Security Funds

The State Bar of Texas Board of Directors Policy Manual describes the Client Security Fund requirements. The State Bar Act and the State Bar Rules are silent on Client Security Fund administration requirements.

**0** State Bar Act requirements (Not Applicable)



**3** State Bar of Texas Board of Directors Policy Manual requirements


**0** State Bar Rules requirements (Not Applicable)

Audit procedures applied to determine compliance with the State Bar of Texas Board of Directors Policy Manual requirements included:

- ✓ Conducted interviews and walkthroughs
- ✓ Reviewed client security fund subcommittee summaries and voting outcomes
- ✓ Reviewed client security fund Chief Disciplinary Council's approval for disbursements
- ✓ Reviewed client security fund reconciliations

**Figure 4** compares State Bar of Texas Board of Directors Policy Manual requirements to SBOT's processes and controls.

Section	SBOT Policy Requirement	SBOT Process(es) Meets Requirement
3.08.02 (B) Administration of the Fund	The Client Security Fund shall be administered through the Office of the Chief Disciplinary Counsel and the Client Security Fund Subcommittee ("the Subcommittee"). The Client Security Fund Subcommittee operates as a standing subcommittee of the Discipline and Client Attorney Assistance Committee.	
3.08.02 (D) Funding of the Client Security Fund	(1) Corpus. The Client Security Fund corpus shall be maintained at an amount of not less than \$2,000,000. Any amount exceeding 2,000,000 in the corpus may be withdrawn to fund grants. (2) Investment Portfolio. The Executive Director shall establish a separate portfolio of investments to constitute the assets of the Client Security Fund. (3) Funding for Grants. Funding sources include: (a) An appropriation of not less than \$300,000 made annually from the State Bar's general fund; (b) Interest earned on the corpus during the fiscal year; (c) Restitution and/or reimbursements to the Fund during the fiscal year;	

Section	SBOT Policy Requirement	SBOT Process(es) Meets Requirement
	(d) Any funds deposited into the corpus through funds collected from outside sources; and (e) Any funds deposited into the corpus from unused money available for grants.	
3.08.02 Rule 13 Maximum Reimbursement Limits	Regardless of the amount of the loss proven in the application for grant, no application shall be approved for a grant in excess of \$40,000 for losses to any one applicant arising out of the dishonest conduct. Multiple applicants having losses arising out of the same transaction may be considered by the Subcommittee to constitute one loss subject to the \$30,000 cap on grants.	

**Figure 4 State Bar of Texas Board of Directors Policy Manual Requirements Table – Client Security Funds**

### Observation

#### Best Practice Implementation

The Chief Disciplinary Council staff has established structured and well documented processes for staff to follow from application receipt to presentation to the Client Security Fund Subcommittee for review and their voting decision. While the SBOT Directors Policy Manual requires \$300,000 to be appropriated to the general fund annually, over \$900,000 was paid to Client Security Fund applicants during FY18. As of May 31, 2018 SBOT's investment account balance for Client Security Fund totaled \$2,963,469.

#### Observations

No reportable observations were noted for the disciplinary review process and complaint file management related compliance requirements reviewed.

### Recommendation

No recommendations are made for the disciplinary review process and complaint file management related compliance requirements reviewed.

### Managements Response

No management response is required.



### 3. Bank Accounts and Section Financials

The State Bar of Texas Board of Directors Policy Manual describes requirements related to activity bank accounts and section financials for the agency to follow. The State Bar Act and the State Bar Rules are silent on bank account activity and section financial reporting.

0 State Bar Act requirements



3 State Bar of Texas Board of Directors  
Policy Manual requirements


0 State Bar Rules requirements

Audit procedures applied to determine compliance with these requirements included:

- ✓ Conducted interviews and walkthroughs
- ✓ Reviewed Section's budget planning documents
- ✓ Reviewed bank account listings and authorized signatories
- ✓ Reviewed bank account reconciliations

**Figure 5** compares the State Bar of Texas Board of Directors Policy Manual requirements to SBOT's processes and controls.

Section	SBOT Policy Requirement	SBOT Process(es) Meets Requirement
5.01.06 (B) Depositories and Investments	Section funds must be invested consistent with State Bar investment policy as set forth in Section 3.05 of this Policy Manual. Each section shall deposit its funds into either a branch of the State Bar banking depository, or an alternative banking depository meeting the requirements of the investment policy as set forth in Section 3.05 of this Policy Manual.	
5.01.06 (C) Books, Records and Reports	Each section shall maintain accurate financial books and records and have appropriate controls on the maintenance and disbursement of section funds, all in a fashion that permits the inclusion of the sections' financial information in the State Bar's financial statements and audit. Each section also shall provide to the State Bar such financial information as may be required for compliance with the requirements for the independent financial and/or internal audits of the State Bar as required by applicable law, rules and regulations. To this end, the Audit and Finance Committee of the Board, in consultation with the State Bar's external auditors and the Council of Chairs, shall adopt, subject to approval by the Board, procedures for sections to report financial information for inclusion in the State Bar's financial statements and audit. These procedures may include requirements for delivery to the State Bar accounting department, on a basis as often as monthly, of copies of depository and investment statements and transaction histories for disbursements and deposits. Each section also	

Section	SBOT Policy Requirement	SBOT Process(es) Meets Requirement
	shall submit to the Executive Director by July 15 of each year a section budget for the current Fiscal Year.	
5.01.06 (E) State Bar Assistance to Sections	For each section supplying the required monthly financial information of the section, the accounting department of the State Bar shall prepare and provide to the treasurer of the section, a monthly and year-to-date section financial report and a monthly cash and investment account reconciliation. Upon request, the accounting department of the State Bar shall be available to work with the bank and the treasurer of the section to facilitate the submission of the financial information to the State Bar. Additionally, any section may elect to have the State Bar manage section funds, including depositing dues, managing operating expenses, issuing checks, and preparing financial reports and budgets. The State Bar will provide assistance to sections under this Subsection 5.01.06 at no charge to sections, except that expenses incurred in providing financial information in a format other than an electric format prescribed by the accounting department of the State Bar shall be borne by the section.	

**Figure 5 State Bar of Texas Board of Directors Policy Manual Requirements Table - Finance**

### Observation

No reportable observations were noted for the bank accounts and sections compliance requirements reviewed.

The SBOT maintains 41 different bank accounts (checking, savings and money market) for the different funds it manages. Additionally, SBOT's Finance Department provides financial reporting and bank account reconciliations for the Sections that have a total of 57 different bank accounts.

**Figure 6** summarizes the bank accounts maintained or reconciled by the SBOT Finance Department.

We noted that although the former executive director had been removed from individual bank accounts as an authorized signatory, the JPMorgan Chase Exhibit A still listed this individual as a signer. The JP Morgan Chase Exhibit A is the bank's master authorized signatory document.

Account Type	State Bar of Texas	Sections	Total
Checking	25	10	35
Savings/High Yield Savings	2	0	2
Money Market	13	38	51
CD	1	9	10
<b>Total Accounts</b>	<b>41</b>	<b>57</b>	<b>98</b>

**Figure 6 Summary of Bank Accounts Maintained or Reconciled by the SBOT Finance Department**

### Recommendation

SBOT's Finance Director took measures to remove the former executive director as an authorized signatory from JP Morgan Chase's master signatory list when we brought this to her attention. Therefore, no recommendations are made for bank account and section financials compliance requirements reviewed.

### Managements Response

No management response is required as the Finance Director took corrective action as soon as this was noted.

## 4. MCLE Sponsor Accreditation Fees and Non-Compliance Penalties

The State Bar Rules describe compliance requirements for MCLE sponsor accreditation fees and non-compliance penalties. The State Bar Act and the State Bar of Texas Board of Directors Policy Manual are silent on these topics.

**0** State Bar Act requirements (Not Applicable)


**0** State Bar of Texas Board of Directors Policy Manual requirements (Not Applicable)

**7** State Bar Rules requirements

Audit procedures applied to determine compliance with these requirements included:

- ✓ Conducted interviews and walkthroughs
- ✓ Reviewed member MCLE profiles
- ✓ Reviewed MCLE sponsor packets

**Figure 7** lists State Bar Rule requirements for MCLE sponsor accreditation fees and non-compliance penalties

Section	State Bar of Texas Rules Requirement	SBOT Process(es) Meets Requirement
Article XII Section 8. Compliance A	Two months before the end of a member's MCLE compliance year, the Director must send the member and MCLE Annual Verification Report. Members must review the report for accuracy. If the report is accurate and shows that the member has completed all MCLE requirements for the MCLE compliance year or that the member is exempt from MCLE, then no additional action is required by the member. If the report is inaccurate, the member must correct his or her MCLE compliance record by following the instructions on the report. To avoid a fine or suspension, all CLE credit hours must be completed, and all corrections to a member's MCLE compliance record must be received by the Director, before the end of the member's MCLE compliance year.	

Section	State Bar of Texas Rules Requirement	SBOT Process(es) Meets Requirement
Article XII Section 8. Compliance B	On or about the first day of the birth month, the Director shall make available to the member, a report of amendments that have been made to the MCLE record for the compliance year that ended immediately prior to said birth month. The Director shall also notify any member who has not completed MCLE requirements for the compliance year that ended immediately prior to said birth month. A member, who has grace period through the last day of the birth month to completing and reporting CLE credits by the last day of the birth month (grace period).	
Article XII Section 8. Compliance C	On or about the 12 <sup>th</sup> day of the month immediately following a member's birth month, the Director will notify in writing a member who is in non-compliance for the MCLE compliance year just ended of the member's non-compliance status.	
Article XII Section 8. Compliance D	On or about the first day of the third month immediately following a member's birth month, the Director will send a final notice to any member who has not cured the member's noncompliance status.	
Article XII Section 8. Compliance E	If by the last business day of the fourth month following the birth month (or reporting month if the member has been granted an extension in accordance with this article for completion of CLE requirements the member has still not cured his or her noncompliance, the member shall be automatically suspended from the practice of law in Texas as directed by Order of the Supreme Court dated December 23, 2002.	
Article XII Section 8. Compliance F	Upon the execution of suspension, the Director will send a written notice to each member who is suspended from practice by the order.	
Article XII Section 10	Any member whose license to practice law has been suspended under the terms of this Article who after the date of suspension files an activity report with the MCLE Director showing compliance and who has paid all applicable fees associated with non-compliance and suspension, shall be entitled to have such suspension promptly terminated and be returned to former status. Return to former status shall be retroactive to the inception of suspension, but shall not affect any proceeding for discipline to the member for professional misconduct. The MCLE Director shall promptly notify the Clerk that a member formerly suspended under this Article has now complied with this Article.	

**Figure 7 State Bar Rule Requirements Table – MCLE Sponsor Fees and Non-Compliance Penalties**

### Observation

No reportable observations were noted for the MCLE sponsor accreditation fees and non-compliance penalties compliance requirements reviewed.

### Recommendation

No recommendations are made for the MCLE sponsor accreditation fees and non-compliance penalties related compliance requirements reviewed.

### Managements Response

No management response is required.

## 5. Human Resources Processes: Employee Time Reporting, New Hires and Separations



The State Bar Act, the State Bar Rules and the State Bar of Texas Board of Directors Policy Manual are silent on human resource requirements. Internal operating policies govern the human resource functions.

0	State Bar Act requirement	0	State Bar of Texas Board of Directors Policy Manual requirements (Not Applicable)
0	State Bar Rules requirements (Not Applicable)	2	State Bar of Texas Internal Process Memos

Audit procedures applied to determine compliance with these requirements included:

- ✓ Conducted interviews and walkthroughs
- ✓ Reviewed applicable memos/procedures
- ✓ Reviewed employee profiles and benefits elections
- ✓ Reviewed onboarding and separation documentation.

Figure 8 compares internal memos/procedures for human resources related activities.

Section	State Bar of Texas Human Resources Memos	SBOT Process(es) Meets Requirement
Human Resources	The Human Resources Department is responsible for the overall administration of the Human Resources Program, including staff recruitment; screening and hiring; compensation and benefits administration; personnel policy development and administration; performance evaluation administration; employee relations; management training; EEO compliance; and compliance with all federal, state and local laws and regulations. Human Resources is also responsible for maintaining employee personnel records and time files. The department recruits and hires the best-qualified applicants for positions within the State Bar of Texas. This process includes developing job vacancy notices and screening several thousand applications each year.	
Recording Work Hours	The State Bar complies with all applicable laws that require records to be maintained of the hours worked by employees. All non-exempt employees are required to submit a time card each week through the State Bar's online time keeping system, Business Portal. Nonexempt employees are required to record all hours worked and any hours absent each week for payroll and attendance purposes. Exempt	

Section	State Bar of Texas Human Resources Memos	SBOT Process(es) Meets Requirement
	employees, who are paid on a salary basis, are required to submit any paid leave taken to accurately track attendance and leave taken.	

**Figure 8 State Bar of Texas Requirements Table – Human Resources**

### *Observations*

No reportable observations were noted for the Human Resources processes reviewed.

### *Recommendation*

No recommendations are made for the Human Resources processes related compliance requirements reviewed.

### *Managements Response*

No management response is required.

## **6. General Observation: Standard SBOT Internal Operating Procedures Template**

### *Observation (Low Risk)*

SBOT does not have a standardized template for internal operating memos/procedures listing an effective date, approval and review. Internal Audit received Human Resources Memos (internal operating procedures) which contained an overview, employee hiring process, performance evaluation, termination process, payroll information, and time reporting. However, the internal operating memos did not contain a review or update date nor did it include editor name and approval information. Therefore, it is unknown when the memo was created and who reviewed the memo.

Audit procedures applied to determine compliance with these requirements included:

- ✓ Conducted interviews and walkthroughs
- ✓ Reviewed applicable internal operating memos/procedures

### *Recommendations*

Create an agency wide internal operating memo/procedure template that can be utilized by all departments to establish consistency with procedures which can be utilized during training and audits.

### *Managements Response*

Management concurs with this recommendation. The State Bar is developing a procedure for standardizing the documentation of all departmental policies and key processes. Policies and key processes will be updated to include an effective date, a version number and an approval date. The procedure for standardizing documented policies and processes will include a policy template for State Bar departments.





**State Bar of Texas**  
**Internal Audit Services**  
An Internal Audit of:  
**Financial Controls**  
**Report #19-003**  
**February 27, 2019**

This report provides management with information about the condition of risks and internal controls at a specific point in time. Future changes in environmental factors and actions by personnel will impact these risks and internal controls in ways that this report cannot anticipate.

**MJ**

**McCONNELL & JONES LLP**  
CERTIFIED PUBLIC ACCOUNTANTS



February 27, 2019

Mr. Jarrod Foerster  
State Bar of Texas Audit & Finance Committee  
1414 Colorado Street  
Austin, TX 78701

Dear Mr. Foerster and Audit & Finance Committee Members:

Attached is internal audit report #19-003 State Bar Financial Controls Audit. This audit was performed as part of the approved FY 2018 Annual Internal Audit Plan.

We assessed the State Bar of Texas' (SBOT) internal control effectiveness; compliance with internal policies and procedures; and compliance with Texas Government Code, State Bar of Texas Rules and State Bar of Texas Board of Directors Policy Manual. Our audit scope was focused on the following areas:

- |                                    |                                    |
|------------------------------------|------------------------------------|
| ✓ Payment processing and approvals | ✓ Bank reconciliations             |
| ✓ Payment monitoring               | ✓ Revenue collection and reporting |
| ✓ Vendor File Maintenance          | ✓ Payroll                          |
| ✓ Bank accounts                    | ✓ Payroll deduction submissions    |

We determined that the agency's internal control environment for revenues and disbursements is generally effective. We did identify some opportunities to enhance specific processes; therefore this audit resulted in a rating of some improvement needed. These improvement opportunities are described in the attached report. We discussed these reportable opportunities to enhance internal controls and improve process efficiencies with management.

Please contact Darlene Brown at 281.740.0017 if you should have any questions about this audit report.

Sincerely,

Ira Wayne McConnell, CPA  
Partner

7600 Chevy Chase Drive  
Suite 307  
Austin, TX 78752  
Phone: 512.430.5358





## AUDIT AT A GLANCE



Purpose	Scope	Focus	Internal Control Rating	Recommendations
<ul style="list-style-type: none"> <li>To assess SBOT's internal control effectiveness over revenue collection and disbursement processes.</li> </ul>	<ul style="list-style-type: none"> <li>June 1, 2017 – May 31, 2018</li> </ul>	<ul style="list-style-type: none"> <li>Payment processing and approvals</li> <li>Payment monitoring</li> <li>Vendor File Maintenance</li> <li>Bank accounts</li> <li>Bank reconciliations</li> <li>Revenue collection and reporting</li> <li>Payroll</li> <li>Payroll deduction submissions</li> </ul>	<ul style="list-style-type: none"> <li>Some improvement needed</li> </ul>	<ul style="list-style-type: none"> <li>Ensure a closer review of the assigned user roles is conducted when performing the annual vendor master file user access reviews.</li> <li>Establish a Client Security Funds Subcommittee grant decision summary form.</li> <li>Update SBOT Board of Directors Policy Manual Rule #19 to reflect current processes.</li> </ul>

### Number of Finds by Risk Rating

High	Medium	Low	Total
0	2	1	3

### Acknowledgement



*We wish to thank all staff involved in the audit for their time and efforts. Without their assistance, we would not have been able to complete this audit.*



## INTRODUCTION



*McConnell & Jones LLP (MJ), serving as the outsourced internal audit function (Internal Audit) for the State Bar of Texas (SBOT), performed an internal audit of SBOT's internal controls and compliance with SBOT's board policy and internal policies and procedures for certain financial processes.*

We performed this audit as part of the approved FY 2018 Annual Internal Audit Plan. This audit was conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained accomplishes that requirement.

Pertinent information has not been omitted from this report. This report summarizes the audit objective and scope, our assessment based on our audit objectives and the audit approach.

## OBJECTIVE



*The purpose of this audit was to evaluate SBOT's internal control effectiveness, assess compliance with internal policies and procedures, and identify potential process improvement opportunities. In doing so, we also evaluated management controls in place to ensure that the organization's business risks are mitigated where possible and that resources are used efficiently.*

We designed audit procedures to:

1. Determine whether internal controls over disbursements exist, are effective and are in accordance with State Bar of Texas requirements. These include, but are not limited to:
  - ✓ Vendor additions/ modifications
  - ✓ Payment processing
  - ✓ Payment approval
  - ✓ Payment monitoring
  - ✓ Disbursement controls will be assessed for the following areas:
    - ✓ Chief Disciplinary Counsel Client Security Funds
    - ✓ Legal Access Division, including program compliance for key programs
    - ✓ Sections
2. To determine whether internal controls over bank account transactions and reconciliations related to the processing of attorney membership dues and legal service fees (membership and clerk's accounts) are effective and in accordance with State Bar of Texas policies.



3. To determine whether internal controls over payroll payments and deductions are effective and in accordance with IRS requirements and State Bar of Texas policies.
4. To determine whether revenue collection procedures for the Texas Bar CLE provide reasonable assurance that all revenues collected are accurately reported, recorded and reported.
5. To determine whether revenue collection procedures for the MCLE Department provide reasonable assurance that all revenues collected are accurately reported, recorded and reported.
6. To determine whether revenue collection procedures for the Texas Bar Journal provide reasonable assurance that all revenues collected are accurately reported, recorded and reported.

## SCOPE



*The audit period was June 1, 2017 through May 31, 2018. Some test procedures were performed as of the fieldwork date. This work product was at a point in time evaluation that cannot address the inherent dynamic nature of subsequent changes to the process and procedures reviewed.*

## PROCEDURES PERFORMED



*We conducted interviews, business process walkthroughs, reviews of written policies and procedures and sample testing of supporting documentation.*

## CONCLUSION AND INTERNAL CONTROL RATING



*This audit identified findings that resulted in an overall internal control rating of **Some Improvement Needed**. **Figure 1** describes the internal control rating.*

We discussed reportable opportunities to enhance internal controls and improve process efficiencies with management. Those observations are summarized in **Figure 2**. During the audit there were other non-reportable matters that we also discussed with management.



## INTERNAL CONTROL RATING

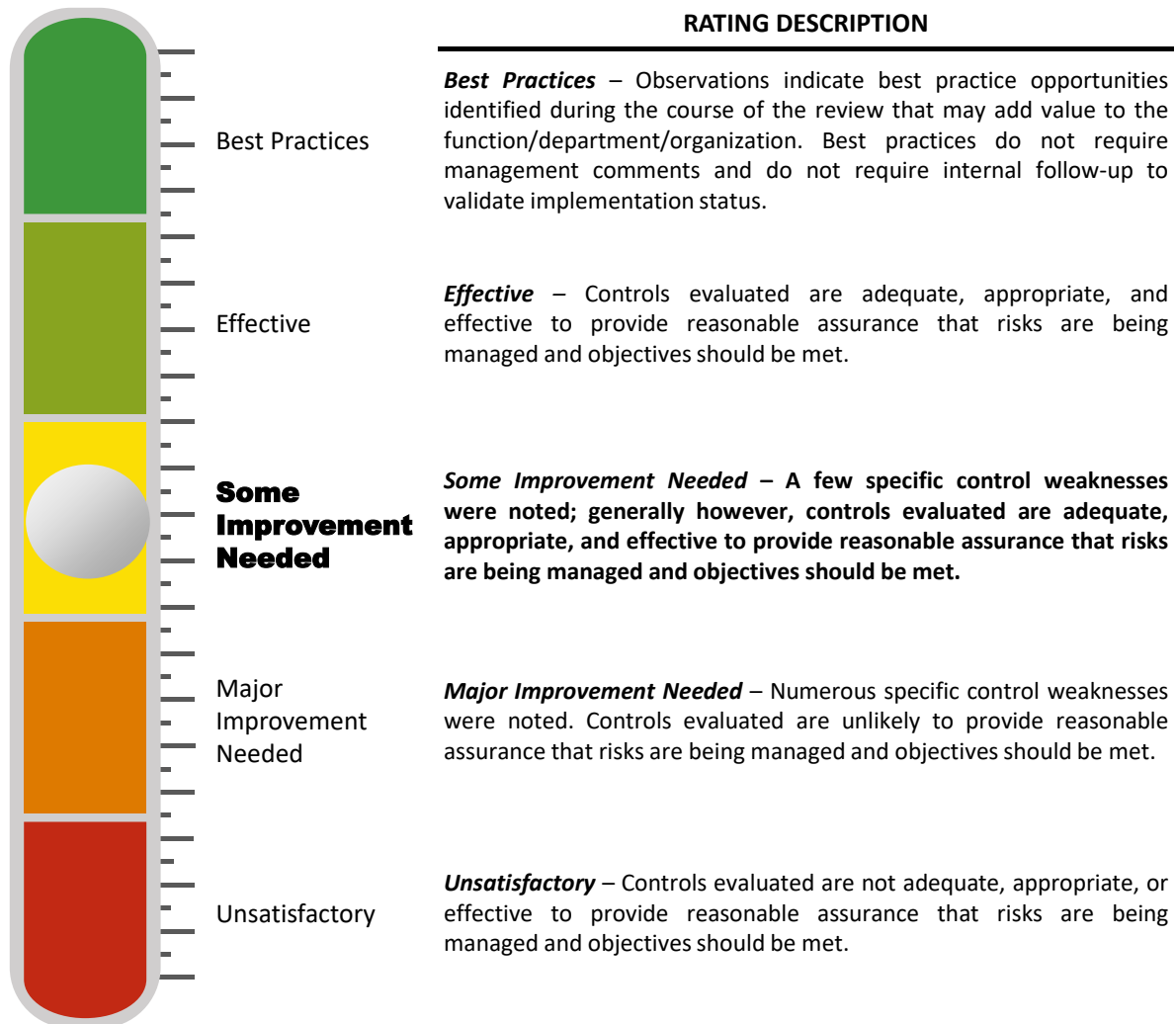








FIGURE 1 Internal control rating description



## OBSERVATION AND RISK RATING SUMMARY



*Figure 2 is a summary of our audit observations. See the detailed observation section of this report for a discussion of all issues identified, recommendations and management implementation plans.*

Number	Observation	Risk Rating
1	<p>Although the annual vendor master file user access reviews include reviewing assigned system roles that define what the user can do, we noted one individual with access that should not have had the access privileges that were assigned.</p> <p> <b>Recommendation:</b> Ensure a closer review of the assigned user roles is conducted when performing the annual vendor master file user access reviews.</p>	
2	<p>The State Bar of Texas Board of Directors Policy Manual Rule #19 does not allow applicants to collect from the Client Security Fund after a six-month period. However, SBOT does allow applicants to collect grants after the six-month period.</p> <p> <b>Recommendation:</b> Update State Bar of Texas Board of Directors Policy Manual Rule #19 based on current processes.</p>	
3	<p>Client Security Fund subcommittee grant decisions are not captured in a summary document and signed by the subcommittee members.</p> <p> <b>Recommendation:</b> Create a Client Security Fund subcommittee grant application summary sheet for the subcommittee chair to sign at each subcommittee meeting where grant applications are reviewed and approved or denied.</p>	

**FIGURE 2** Observation and Recommendation Summary

Risk Rating and Suggested Corrective Action Timing Legend:

Priority:	 Low: < 12 months	 Medium: 6-12 months	 High: < 6 months
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## FINANCIAL CONTROLS PROGRAM OVERVIEW



*This section of the report provides an overview of the revenue collections and disbursements which flow through SBOT's Finance Division.*

**Figure 3** summarizes the revenue and expense types of each department/function included in this audit.

	Continuing Legal Education (CLE)	Client Security Funds (CSF)	HR/Payroll	Legal Access Division	Minimum Continuing Legal Education (MCLE)	SBOT Sections	Texas Bar Journal
Department Purpose	Professional Development	Client Protection Fund	SBOT Staff Services	Support and Training for Pro Bono Volunteers and Legal Service Programs	Professional Development Requirements Monitoring	Legal Specialization Associations	Scholarly Legal Journal and Association Magazine
Revenue Source	<ul style="list-style-type: none"> <li>Course Registration Fees</li> </ul>	<ul style="list-style-type: none"> <li>SBOT General Fund</li> </ul>	<ul style="list-style-type: none"> <li>SBOT General Fund</li> </ul>	<ul style="list-style-type: none"> <li>SBOT General Fund</li> <li>Donations from State Bar Sections</li> <li>Poverty Law Conference registration fees</li> </ul>	<ul style="list-style-type: none"> <li>Accreditation Fees</li> <li>Sponsor Fees</li> </ul>	<ul style="list-style-type: none"> <li>Donations</li> <li>Section Dues</li> </ul>	<ul style="list-style-type: none"> <li>Advertisements</li> <li>Online Subscriptions</li> <li>Online Store Sales</li> <li>Advertising Royalties</li> </ul>
Revenue Receipt Method	<ul style="list-style-type: none"> <li>Web payment</li> <li>Check by Mail</li> </ul>	<ul style="list-style-type: none"> <li>Transfer</li> </ul>	<ul style="list-style-type: none"> <li>Transfer</li> </ul>	<ul style="list-style-type: none"> <li>Check by Mail</li> </ul>	<ul style="list-style-type: none"> <li>Web payment</li> <li>Check by Mail</li> </ul>	<ul style="list-style-type: none"> <li>Direct payment to sections</li> </ul>	<ul style="list-style-type: none"> <li>Web payment</li> <li>Check by Mail</li> </ul>
Primary Expenses	<ul style="list-style-type: none"> <li>Bar Journal Advertisements</li> <li>CLE Course</li> </ul>	<ul style="list-style-type: none"> <li>Attorney Fees</li> <li>CSF Grants</li> </ul>	<ul style="list-style-type: none"> <li>Staff Salaries</li> <li>Staff Benefits</li> </ul>	<ul style="list-style-type: none"> <li>Conferences</li> <li>Staff Travel</li> </ul>	<ul style="list-style-type: none"> <li>Credit Card Fees</li> <li>Postage</li> </ul>	<ul style="list-style-type: none"> <li>Meetings</li> <li>Scholarships</li> <li>Section Travel</li> </ul>	<ul style="list-style-type: none"> <li>Graphic Design</li> <li>Postage</li> <li>Printing</li> </ul>
Expense Payment Method	<ul style="list-style-type: none"> <li>Interdepartmental Transfer</li> <li>Payment Voucher</li> <li>Purchasing Card</li> </ul>	<ul style="list-style-type: none"> <li>Payment Voucher</li> </ul>	<ul style="list-style-type: none"> <li>Interdepartmental Transfer</li> </ul>	<ul style="list-style-type: none"> <li>Payment Voucher</li> <li>Purchasing Card</li> </ul>	<ul style="list-style-type: none"> <li>Payment Voucher</li> <li>Purchasing Card</li> </ul>	<ul style="list-style-type: none"> <li>Sections Direct Pay through their Checking Account</li> </ul>	<ul style="list-style-type: none"> <li>Payment Voucher</li> <li>Purchasing Card</li> </ul>
2017-2018 Statistics	SBOT offered 1,216 CLE activities with a total of 121,556 participants +	222 grant applications were received of which 148 were approved for a total of \$901,719+	291 employees with over 99% of employees receiving direct deposit*	A total of 435 individuals attended three events+	\$2,901,769 was collected for sponsor accreditation fees, non-accreditation fees, member penalties and late fees++	44,442 members+	\$657,985 was collected for advertising, royalties, on-line advertisement, subscriptions and publications++

**Figure 3: Summary of Departments/Functions Reviewed**

Source:

+State Bar of Texas Annual Report 2017-2018

\*based on sampled payroll 5/16/18-5/31/18

++ Information obtained from SBOT Trial Balance



## SBOT FINANCIAL CONTROLS BUSINESS OBJECTIVES AND RISKS



*This section of the report provides a summary of the financial controls business objectives, primary business risks, SBOT's internal controls in place and the respective internal control assessment. SBOT established internal controls in the form of policies, procedures/memos, management review and monitoring processes. These internal controls are effective and working as intended; however, improvement opportunities have been identified.*

### 1

#### BUSINESS OBJECTIVE 1

*Internal Policies and Procedures*

<b>Business Objective</b>	To ensure that SBOT's internal operating processes are documented by well-written policies and procedures.
<b>Business Risk if Management Controls Are not in Place and Working</b>	➤ SBOT's financial processes may not be documented which could result in inconsistent processes and/or key internal control activities not being performed.
<b>Management Controls In Place</b>	➤ Each SBOT department creates its own internal operating procedures.
<b>Control Tests</b>	<ul style="list-style-type: none"> <li>➤ Reviewed internal operating policies and procedures</li> <li>➤ Conducted interviews and walk throughs</li> </ul>
<b>Control Assessment</b>	<p><b>Internal controls are effective</b></p> <ul style="list-style-type: none"> <li>➤ SBOT does have detailed internal operating procedures. However, SBOT does not have a standard template for internal written policies and procedures that includes a version of the procedure and a date of implementation. Instead each department/function uses their own format.</li> </ul>
<b>Recommended Actions</b>	Implement the recommendation made in the FY 2018 compliance audit to develop an agency-wide procedure template.
<b>Management Action Plan</b>	None required as this is being addressed through the FY 2018 compliance audit.

### 2

#### BUSINESS OBJECTIVE 2

*Financial Disbursements: Client Security Funds, Legal Access Division, Sections*

<b>Business Objective</b>	<p>To establish strong internal controls over disbursements and ensure that they are in accordance with State Bar of Texas requirements. These include, but are not limited to:</p> <ol style="list-style-type: none"> <li>1. Vendor master file additions/modification restrictions</li> <li>2. Payment processing requirements</li> <li>3. Payment approval requirements</li> <li>4. Payment monitoring</li> </ol>
---------------------------	--



<b>Business Risk if Management Controls Are not in Place and Working</b>	<ul style="list-style-type: none"> <li>➤ Unauthorized changes to the vendor master file could be made.</li> <li>➤ Payments could be disbursed to incorrect individuals, vendors or sections.</li> <li>➤ Disbursements could be made without department approval.</li> </ul>
<b>Management Controls In Place</b>	<ul style="list-style-type: none"> <li>➤ Access to the vendor master file is restricted to authorized users.</li> <li>➤ Annual reviews of users authorized to access the vendor master file is performed.</li> <li>➤ Department heads review payment memos prior to finance department processing.</li> <li>➤ The Client Security Fund subcommittee reviews and recommends Client Security Fund grant awards.</li> <li>➤ The SBOT Board authorizes Client Security Fund grant awards.</li> <li>➤ Client Security Fund grantees are required to submit proof of identity prior to receiving their grant.</li> <li>➤ Client Security Fund grant award payments are distributed through certified mail.</li> </ul>
<b>Control Tests</b>	<ul style="list-style-type: none"> <li>➤ Conducted interviews and process walk throughs</li> <li>➤ Analyzed applicable documentation</li> <li>➤ Performed audit testing</li> <li>➤ Reviewed activity report of vendor maintenance for October 2017 through May 2018</li> </ul>
<b>Control Assessment</b>	<p><b>Internal controls over vendor file maintenance are generally effective</b></p> <ul style="list-style-type: none"> <li>➤ We noted that the annual review of individuals authorized to access the vendor master file does include what actions they are allowed to perform (roles). We noted that one individual had access to make changes to the vendor files who did not need access as part of their regular job duties. No inappropriate modifications were made by this user to the vendor files for the time-period reviewed by auditors.</li> </ul> <p><b>Internal controls over the supporting documentation used for processing Client Security Fund Disbursement are not effective.</b></p> <ul style="list-style-type: none"> <li>➤ Documentation to support Client Security Fund subcommittee decisions on grant awards could be strengthened.</li> </ul> <p><b>Client Security Funds do not follow Board Policy Section 3.08.02, Rule 19.</b></p> <ul style="list-style-type: none"> <li>➤ SBOT Board of Directors Policy Manual Rule Section 3.08.02, Rule 19 does not reflect the current processes in place for applicants that fail to collect grants within six-month grace period. During audit testing, there were two instances in which a grant was paid after the six-month grace period. Extenuating circumstances existed for those occurrences; however, the subcommittee did not formally approve these exceptions.</li> </ul>
<b>Recommended Actions</b>	<p><b><u>Vendor File Maintenance</u></b></p> <ul style="list-style-type: none"> <li>• Review the authorized user access roles more closely when performing the annual user access review.</li> </ul> <p><b><u>Client Security Funds</u></b></p> <ul style="list-style-type: none"> <li>• Prepare a Client Security Fund subcommittee grant decision summary document that is signed by the subcommittee for each meeting.</li> <li>• Update SBOT Board of Directors Policy Manual Section 3.08.02, Rule 19 to account for exceptional circumstances when paying claims after the six-month period has expired.</li> </ul>





**Management  
Action Plan**

Management will perform a more comprehensive annual review of user access to the Accounting software, including reviewing user roles and necessity of access.

**3**

**BUSINESS OBJECTIVE 3**

*Bank Account Transaction Controls: Attorney Membership Dues and Legal Service Fees*

**Business  
Objective**

To establish internal controls over bank account transactions and reconciliations related to the processing of attorney membership dues and legal service fees (membership and clerk's accounts) in accordance with State Bar of Texas policies.

**Business  
Risk if Management  
Controls Are not in  
Place and Working**

➤ Information provided to the Supreme Court Clerk for reviews and sign off could be incomplete or inaccurate.

**Management  
Controls In Place**

➤ SBOT's Finance department reconciles attorney membership dues and legal service fees on a monthly basis.

**Control  
Tests**

- Conducted interviews
- Reviewed recent account reconciliations
- Performed audit testing

**Control  
Assessment**

Internal controls are effective

**Recommended  
Actions**

None

**Management  
Action Plan**

None Required

**4**

**BUSINESS OBJECTIVE 4**

*Payroll Controls*

**Business  
Objective**

To establish internal controls over payroll disbursements and deductions in accordance with IRS requirements and State Bar of Texas policies.

**Business  
Risk if Management  
Controls Are not in  
Place and Working**

- Fictitious employees may be added to the payroll and go undetected.
- Unauthorized salary amount may be entered into the payroll system and go undetected.
- SBOT may not correctly enter an employee's deductions.
- SBOT may not distribute employee deductions in a timely manner.

**Management  
Controls In Place**

- Payroll reports are reviewed prior to each payroll distribution.
- All changes to pay are reviewed by SBOT's Controller.
- Detailed policies exist for payroll calculation and processing.
- Employees enter their own elections directly into the Business Portal system during their new hire on-boarding process and the annual open-enrollment period.



<b>Control Tests</b>	<ul style="list-style-type: none"> <li>➤ Conducted interviews and walk throughs</li> <li>➤ Performed audit testing</li> <li>➤ Reviewed Business Portal employee data</li> <li>➤ Performed physical verification of employee payroll output</li> </ul>
<b>Control Assessment</b>	Internal controls are effective
<b>Recommended Actions</b>	None
<b>Management Action Plan</b>	None Required

## 5

### BUSINESS OBJECTIVE 5

#### *Continuing Legal Education (CLE) Revenue Collection*

<b>Business Objective</b>	To establish internal controls over CLE revenue collection procedures to provide reasonable assurance that all revenues collected are accurately reported and recorded.
<b>Business Risk if Management Controls Are not in Place and Working</b>	<ul style="list-style-type: none"> <li>➤ CLE revenues may be inaccurately recorded.</li> <li>➤ CLE revenues could be misappropriated.</li> </ul>
<b>Management Controls In Place</b>	<ul style="list-style-type: none"> <li>➤ Registrants pay for CLE courses at the time of enrollment. Most payments are received on-line.</li> <li>➤ Registrants are counted on checklist prepared by Planning Specialists.</li> <li>➤ CLE Finance Manager reconciles revenues prior to course date.</li> <li>➤ Profit and loss statements are generated for each CLE course.</li> </ul>
<b>Control Tests</b>	<ul style="list-style-type: none"> <li>➤ Conducted interviews and walk throughs</li> <li>➤ Performed audit testing</li> </ul>
<b>Control Assessment</b>	Internal controls are effective
<b>Recommended Actions</b>	None
<b>Management Action Plan</b>	None Required



## 6

### BUSINESS OBJECTIVE 6

#### Minimum Continuing Legal Education (MCLE) Revenue Collection

<b>Business Objective</b>	To establish internal controls to ensure revenue collection procedures for the MCLE Department provide reasonable assurance that all revenues collected are accurately reported and recorded.
<b>Business Risk if Management Controls Are not in Place and Working</b>	<ul style="list-style-type: none"> <li>➤ MCLE non-compliance penalties may not be correctly assessed and recorded.</li> <li>➤ MCLE sponsor fees may not be correctly charged and recorded.</li> <li>➤ MCLE revenues could be misappropriated.</li> </ul>
<b>Management Controls In Place</b>	<ul style="list-style-type: none"> <li>➤ Membership profile information is used to create attorney's Dynamics Customer Relationship Management (CRM) profile.</li> <li>➤ MCLE non-compliance penalties are automatically assessed in the Dynamics CRM Database, which are driven by date of birth according to policy requirements.</li> <li>➤ MCLE non-accreditation sponsors are assessed fees at the time the CLE course application is completed.</li> <li>➤ MCLE accredited sponsors are assessed fees annually.</li> </ul>
<b>Control Tests</b>	<ul style="list-style-type: none"> <li>➤ Conducted interviews and walk throughs</li> <li>➤ Performed audit testing</li> <li>➤ Performed physical verification of Dynamics CRM Database where MCLE activity is tracked</li> </ul>
<b>Control Assessment</b>	Internal controls are effective
<b>Recommended Actions</b>	None
<b>Management Action Plan</b>	None Required

## 7

### BUSINESS OBJECTIVE 7

#### Texas Bar Journal Revenue Collections

<b>Business Objective</b>	To establish internal controls to ensure revenue collection procedures for the Texas Bar Journal provide reasonable assurance that all revenues collected are accurately reported and recorded.
<b>Business Risk if Management Controls Are not in Place and Working</b>	<ul style="list-style-type: none"> <li>➤ Texas Bar Journal may not collect all revenue for classified advertisements, subscriptions, and monthly billing publications.</li> <li>➤ Texas Bar Journal revenues could be misappropriated.</li> </ul>
<b>Management Controls In Place</b>	<ul style="list-style-type: none"> <li>➤ Monthly reconciliation is performed to determine outstanding receivables and subscribers are notified and/or services are terminated.</li> </ul>



<b>Control Tests</b>	<ul style="list-style-type: none"> <li>➡ Conducted interviews and walk throughs</li> <li>➡ Performed audit testing</li> <li>➡ Reviewed Texas Bar Journal revenue reconciliations.</li> </ul>
<b>Control Assessment</b>	<b>Internal controls are effective</b>
<b>Recommended Actions</b>	None
<b>Management Action Plan</b>	None Required



## DETAILED OPPORTUNITIES AND RECOMMENDATIONS



*This section of the report provides a detailed discussion of opportunities we noted during the audit along with recommendations to improve internal controls or the business process.*

### ***Business Objective #1: SBOT's internal controls over disbursements exist, are effective and are in accordance with State Bar of Texas requirements. (Risk = Low)***

***Does SBOT have established processes to ensure disbursements are authorized?***

***Does SBOT have established processes in place to ensure disbursements are for valid business purposes?***

***Does SBOT have internal controls over user access to vendor file maintenance?***

***Are all individuals who updated the vendor master file authorized to perform functions?***

#### ***Audit Conclusion #1***

SBOT does have processes and controls in place to provide reasonable assurance that disbursements are authorized and for valid business purposes. However, there was one instance of user access to the vendor maintenance file that was not appropriate, and the annual review of user access did not identify this access.

Inappropriate access to the vendor master file creates the following risks:

- ✓ Authorized users may have more privileges than what their job duties require. For example, most employees should only have access to read and not update the information. While employees in procurement functions should be able to add new vendors and a limited number of employees in finance should be able to change vendor addresses or bank account information, a review and approval process should occur.
- ✓ Increased levels of risk that authorized users could make changes to the vendor master file for fraudulent purposes which could go undetected.

#### ***Audit Recommendation #1***

Review the authorized user access and roles more closely when performing the annual user access review.

#### ***Management Response Recommendation #1***

Management concurs with the audit recommendation. Management will perform a more comprehensive annual review of user access to the Accounting software, including reviewing user roles and necessity of access.



## **Business Objective #2: Internal controls over Client Security Fund disbursements are in accordance with SBOT requirements (Risk = Medium)**

*Are Client Security Fund disbursements in processed in accordance with SBOT Board of Directors policy manual?*

*Does SBOT Chief Disciplinary Counsel staff that administers Client Security Funds present grant applicant's applications to Subcommittee as required by SBOT Board of Directors policy manual?*

### **Audit Conclusion #2**

Client Security Fund grant disbursement requests are presented to the Client Security Fund (CSF) Subcommittee for authorization as required by the State Bar of Texas Board of Directors Policy Manual. However, we noted two exceptions that did not comply with the State Bar of Texas Board of Directors Policy Manual Section 3.08.02, Rule 19 (Rule 19) that requires applicants to collect grants within a six-month grace period.

Prior to each CSF Subcommittee meetings the CSF Administrator creates memorandums for each applicant that provides adequate information regarding the claim being made. The memorandum states the claim and the applicants' interaction with the attorney being referenced. Based on the lead schedule that CSF provided internal audit, a reconciliation was performed and two payments were claimed after the Board Policy's Rule 19. The lead schedule stated that the Client Security Fund administrator approved the payments to be made for the two grants totaling \$6,200 that were paid after the six-month grace period; due to extenuating circumstances such as a death and active duty deployment; however, the policy rules does not allow exceptions. **Figure 2a** shows Section 3.08.02, Rule 19 of the SBOT Board of Directors Policy Manual.

#### **RULE 19. Applicant's Failure to Claim Grant**

**(A)** Should the applicant not claim the grant within six months of the date of the approval by the Subcommittee of the grant, the grant shall revert to the Client Security Fund.

**(B)** In the event the grant reverts to the Fund as set forth in paragraph (A) above, the applicant may reapply to the Office of Chief Disciplinary Counsel. The applicant must show good cause for failing to claim the award. The Subcommittee has sole and final discretion to approve the grant or reject the grant at that time.

**Figure 2a Section 3.08.02, Rule 19 of SBOT Board of Directors Policy Manual**

Issuing Client Security Fund grant payments after the six-month period creates the following risks:

- ✓ Non-compliance with Board of Directors policies related to the Client Security Fund.

### **Audit Recommendation #2**

Update SBOT Board of Directors Policy Manual Section 3.08.02, Rule 19 to account for exceptional circumstances.



### *Management Response Recommendation #2*

Management concurs with the audit recommendation. We will request the Client Security Fund Subcommittee to advise on revisions to the Board Policy Manual, as needed, to account for exceptional circumstances when paying claims after the six-month period has expired.

### ***Business Objective #3: Internal controls over Client Security Fund disbursements exist, are effective and are in accordance with SBOT requirements. (Risk – Medium)***

***Are Client Security Fund Disbursements authorized?***

***Does Accounts Payable receive adequate supporting documentation to process Client Security Fund grants?***

***Does Chief Disciplinary Counsel have sufficient policies and procedures to support their functions?***

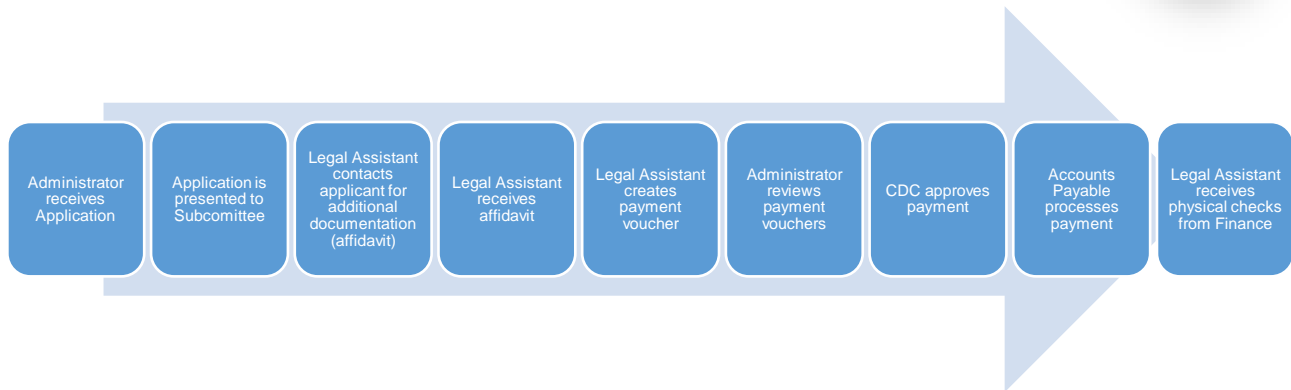
### *Audit Conclusion #3*

Processes are in place to obtain authorization for Client Security Fund grant disbursements and provide reasonable assurance that the approved grant amount is distributed to the authorized individual. However, we noted that there is no summary document that is signed by the Client Security Fund subcommittee that lists the grant decisions made; the individual's name, whether or not the grant application was approved, and approved grant amount. During FY18, the Client Security Fund subcommittee reviewed 222 eligible applications, of which 148 were approved and paid totaling \$901,718.68.

Currently the payment vouchers to be processed are accompanied by a cover letter from the Chief Disciplinary Counsel which acts as the approval for the payments to be processed by accounts payable staff. We noted the following internal controls in place:

- The Client Security Fund subcommittee reviews and recommends grant awards.
- Department heads review payment memos prior to finance department processing.
- Grantees are required to submit proof of identity prior to receiving their grant.
- Grant award payments are distributed through certified mail.

Figure 3a provides the processes performed for Client Security Fund grant disbursements.



**Figure 3a: Client Security Fund process from application receipt to mailing payments**

Not obtaining a summary list of the Client Security Fund subcommittee grant decisions with documented approval creates the following risks:

- The name or amount on the payment voucher request that is submitted to accounts payable could be improperly changed.
- Payment voucher requests could be submitted to accounts payable although the Client Fund Subcommittee denied the applicant's request.

### ***Audit Recommendation #3***

Create a Client Security Fund subcommittee grant application summary sheet for the subcommittee chair to sign at each subcommittee meeting where grant applications are reviewed and approved or denied. This summary sheet should include the applicant name, attorney being referenced regarding claim, date application was received, date application was submitted to subcommittee, amount applicant paid to attorney and the subcommittee's decision (whether the application was approved or denied). This summary sheet should then accompany all payment voucher requests.

### ***Management Response Recommendation #3***

Management concurs with the audit recommendation. The liaison to the Client Security Fund Subcommittee will obtain the Chair of the Subcommittee, or designee's, signature on a summarized list of Client Security Fund claims for which a decision was made during the committee meeting. This signed summary sheet of approved, denied, or reduced claims will be required as supporting documentation in order to process a payment voucher request.





**State Bar of Texas**  
**Internal Audit Services**  
**Follow-Up**  
*on*  
**Prior Audit Findings**  
**Report #19-004**  
**March 4, 2019**

This report provides management with information about the condition of risks and internal controls at a specific point in time. Future changes in environmental factors and actions by personnel will impact these risks and internal controls in ways that this report cannot anticipate.



**McCONNELL & JONES LLP**  
CERTIFIED PUBLIC ACCOUNTANTS



McCONNELL & JONES LLP  
CERTIFIED PUBLIC ACCOUNTANTS

March 4, 2019

Mr. Jarrod Foerster  
State Bar of Texas Audit & Finance Committee  
1414 Colorado Street  
Austin, TX 78701

Dear Mr. Foerster and Audit & Finance Committee Members:

Attached is Internal Audit Report #19-004 Follow-Up on Prior Audit Findings. This audit was performed as part of the approved FY 2018 Annual Internal Audit Plan.

We assessed the State Bar of Texas' (SBOT) implementation status of audit recommendations made to address the finding noted in last year's compliance audit report regarding the database used for advertising review processes. We concluded that SBOT management is in process of fully implementing corrective actions for this finding.

Please contact Darlene Brown at 281.740.0017 if you should have any questions about this audit report.

Sincerely,

Ira Wayne McConnell, CPA

Partner

7600 Chevy Chase Drive

Suite 307

Austin, TX 78752

Phone: 512.430.5358



## INTRODUCTION



*McConnell & Jones LLP (MJ), serving as the outsourced internal audit function (Internal Audit) for the State Bar of Texas (SBOT), applied audit procedures to determine the implementation status of recommendations made in prior year's audit reports.*

## CONCLUSION



*The SBOT Advertising Review team has made progress towards implementing corrective action for the finding noted in the previous year's audit report. However, the recommendation is not yet fully implemented. Details of the open finding is included in the table below.*

#1 – Advertising Review	
<b>Original Audit Objectives</b>	To evaluate management controls in place to ensure that the agency's business risks are mitigated where possible and that resources are used efficiently.
<b>Original Observation/Finding</b>	<p>We noted that the current system used to track advertising review activity is a Microsoft Access Database with limited features. For example, the database does not accommodate electronic submission of advertising review requests and does not retain data to assign a fee to the advertising review application and a field for payment amount received. Therefore, payments are tracked on the Lawyer Advertising and Solicitation Communications Application Form.</p> <p>We noted that the Advertising Review Department staff reconciles the amount of money received for advertising reviews to the amount of money actually deposited in the bank. However, the Advertising Review Department staff do not reconcile the amount of money recorded in the database to the actual amount received. This reconciliation is important to ensure that the Advertising review database is complete and substantiates the money processed in Accounting.</p>
<b>Recommendation</b>	<p>The SBOT is in the process of obtaining a new information system for the advertising review activity. We recommend that the SBOT include the ability to submit advertising review requests electronically and then have a feature to track the review status and decision. Additionally, all information associated with fees and payments, including credit card payments should be tracked in the system. Ideally, the system would have an interface that allows for electronic updates of all electronic payments received.</p>



	Once a new system is in place, the Advertising Review Department should implement processes to reconcile the amount of money received to the advertising review database to ensure that the information in the database is complete. The reconciliation of cash received to the cash deposited should continue being performed.
<b>Management Response</b>	<p>Management agrees with the audit finding. Advertising Review is in the process of implementing a new information system which will allow members to submit payments for advertisements for review online. The new system will interface with the online portal to allow single entry of data. The fee per review will be calculated automatically.</p> <p>Prior to the implementation of the new information system, Advertising Review has worked with the Information Technology Department to develop additional reporting capabilities that allow the capture of credit card payments. All Advertising Review payments as entered in the database are reconciled with the funds collected and deposited.</p>
<b>Internal Audit Follow-Up Conclusion</b>	<p>Audit finding is considered open with the recommendation in process of being implemented.</p> <p>SBOT has contracted with a software development firm and is in the process of developing the new Advertising Review system. SBOT anticipates to go-live with the new Advertising Review system in the Fall of 2019.</p> <p>The new system will be an electronic portal where individuals who file a submission can also pay on-line.</p> <p>Currently, the Advertising Review Department, in conjunction with the SBOT Accounting and Information Technology Departments reconciles payments received on a weekly basis. This remediation action provides the controls that are needed until the new information system can be fully implemented.</p>

COMMISSION FOR LAWYER DISCIPLINE

REPORT

TO THE BOARD OF DIRECTORS  
ON  
ATTORNEY DISCIPLINE

APRIL 2019

**Disciplinary Sanctions**  
**12/01/2018 - 02/28/2019**

DISBARMENTS	District	# of Complaints Resolved
Perez, Linda Irene	10	4
Taylor, Luro C.	4	2

**Board of Disciplinary Appeals:**

Gordon, Shane William	BODA	1
Total:	3	7

RESIGNATIONS IN LIEU OF DISCIPLINE	District	# of Complaints Resolved
Grass, Jeffrey C.	6	1
Total:	1	1

SUSPENSIONS	District	# of Complaints Resolved
Allen, Scottie	6	1
Allen, Scottie	6	1
Allen, Susan Anne	6	1
Barker, Tametha D'Lyn	13	1
Burgos-Gandia, Juan Luis	6	1
Canales, Olivero E.	12	1
Cooper, Gaylyn Leon	3	1
Crews, Jeffrey Earl	4	2
Davis, Mark Anthony	11	1
Deaguero, Richard Joseph	6	1
Deaguero, Richard Joseph	6	1
Dunn, Richard Clement	2	1
Duran, Xavier	6	1
Fiegel, Beauregard Driller	10	1
Finley, W. Thomas	6	1
Gilmet, Yexenia	4	1
Gilmet, Yexenia	4	1
Gupta, Viney K.	9	1

Loyd, Annette R.	7	1
Miller, Darren Anthony	4	2
Quinata, Derek Alfonso	17	1
Rodriguez, Brigida	6	1
Smith, Paul Andrew	9	1
Stein, Jerome Neal	6	1
Stein, Jerome Neal	6	2
Van Dyke, Jason Lee	14	1
Van Dyke, Jason Lee	14	1
Vaughn, William Kyle	4	2
Vaughn, William Kyle	4	2
Willbern, Thomas Austin III	4	3
Willbern, Thomas Austin III	4	5

**Board of Disciplinary Appeals:**

Dixon, Eric D.	BODA	1
Goode, William Kevin	BODA	1
Hoak, Linda Renee	BODA	1
Jaynes, David Andrew	BODA	1
Jaynes, David Andrew	BODA	1
Quitschau, Drew Randolph	BODA	1

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Total:	37	48
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PUBLIC REPRIMANDS	District	# of Complaints Resolved
Edgett, Scott Erik	1	1
Grantham, David Shane	1	1
Harvey, David Nathaniel	4	1
McDowell, Gilda Martha	16	1
Roman, Armando Javier	10	1
Vega, Adan G.	4	1
Yeverino, Francisco R.	4	1
Total:	7	7

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PRIVATE REPRIMANDS

Grievance Comm.	# of Sanctions	# of Complaints Resolved
1	2	2
2	3	3
4	5	6
6	4	5
7	2	2
9	1	1
10	4	4
11	2	2
12	2	2
15	1	1
Total:		28
Grievance Referral Program	14	14
Grand Total:		105



### **Disciplinary Actions - Current Bar Year**

BAR YEARS	Total Sanctions	Total Complaints
2018-2019		Resolved
DISBARMENTS	12	28
RESIGNATIONS IN LIEU OF DISCIPLINE	12	74
SUSPENSIONS	103	134
PUBLIC REPRIMANDS	22	26
PRIVATE REPRIMANDS	86	94
GRIEVANCE REFERRAL PROGRAM	55	61
Total:	290	417

\*does not reflect year-end figures/summary data includes ytd

### **Disciplinary Actions - Previous Bar Year**

BAR YEARS	Total Sanctions	Total Complaints
2017-2018		Resolved
DISBARMENTS	21	47
RESIGNATIONS IN LIEU OF DISCIPLINE	23	102
SUSPENSIONS	115	162
PUBLIC REPRIMANDS	25	29
PRIVATE REPRIMANDS	70	74
GRIEVANCE REFERRAL PROGRAM	79	80
Total:	333	494

BAR YEARS	Total Sanctions	Total Complaints
2016-2017		Resolved
DISBARMENTS	20	60
RESIGNATIONS IN LIEU OF DISCIPLINE	28	122
SUSPENSIONS	126	182
PUBLIC REPRIMANDS	30	37
PRIVATE REPRIMANDS	90	98
GRIEVANCE REFERRAL PROGRAM	50	50
Total:	344	549

BAR YEARS 2015-2016	Total Sanctions	Total Complaints Resolved
DISBARMENTS	22	61
RESIGNATIONS IN LIEU OF DISCIPLINE	27	146
SUSPENSIONS	132	205
PUBLIC REPRIMANDS	30	33
PRIVATE REPRIMANDS	67	72
GRIEVANCE REFERRAL PROGRAM	47	47
Total:	325	564

BAR YEARS 2014-2015	Total Sanctions	Total Complaints Resolved
DISBARMENTS	27	55
RESIGNATIONS IN LIEU OF DISCIPLINE	19	55
SUSPENSIONS	113	147
PUBLIC REPRIMANDS	32	36
PRIVATE REPRIMANDS	66	72
GRIEVANCE REFERRAL PROGRAM	64	72
Total:	321	437

BAR YEARS 2013-2014	Total Sanctions	Total Complaints Resolved
DISBARMENTS	22	41
RESIGNATIONS IN LIEU OF DISCIPLINE	17	58
SUSPENSIONS	130	169
PUBLIC REPRIMANDS	31	35
PRIVATE REPRIMANDS	63	70
GRIEVANCE REFERRAL PROGRAM	57	57
Total:	320	430

BAR YEARS 2012-2013	Total Sanctions	Total Complaints Resolved
DISBARMENTS	39	51
RESIGNATIONS	24	46
SUSPENSIONS	122	160
PUBLIC REPRIMANDS	37	40
PRIVATE REPRIMANDS	89	91
GRIEVANCE REFERRAL PROGRAM	56	56
Total:	367	444

BAR YEARS 2011-2012	Total Sanctions	Total Complaints Resolved
DISBARMENTS	38	45
RESIGNATIONS	27	87
SUSPENSIONS	137	174
PUBLIC REPRIMANDS	40	41
PRIVATE REPRIMANDS	106	115
GRIEVANCE REFERRAL PROGRAM	54	54
Total:	402	516

BAR YEARS 2010-2011	Total Sanctions	Total Complaints Resolved
DISBARMENTS	28	52
RESIGNATIONS	23	101
SUSPENSIONS	157	254
PUBLIC REPRIMANDS	40	50
PRIVATE REPRIMANDS	77	82
GRIEVANCE REFERRAL PROGRAM	46	46
Total:	371	584

BAR YEARS 2009-2010	Total Sanctions	Total Complaints Resolved
DISBARMENTS	25	33
RESIGNATIONS	22	40
SUSPENSIONS	111	169
PUBLIC REPRIMANDS	37	47
PRIVATE REPRIMANDS	81	89
GRIEVANCE REFERRAL PROGRAM	39	39
Total:	315	417

BAR YEARS 2008-2009	Total Sanctions	Total Complaints Resolved
DISBARMENTS	32	43
RESIGNATIONS	26	104
SUSPENSIONS	127	189
PUBLIC REPRIMANDS	46	54
PRIVATE REPRIMANDS	68	73
GRIEVANCE REFERRAL PROGRAM	36	36
Total:	335	499

BAR YEARS 2007-2008	Total Sanctions	Total Complaints Resolved
DISBARMENTS	24	63
RESIGNATIONS	24	90
SUSPENSIONS	121	224
PUBLIC REPRIMANDS	28	35
PRIVATE REPRIMANDS	69	73
GRIEVANCE REFERRAL PROGRAM	33	33
Total:	299	518

BAR YEARS  
2006-2007

Total Sanctions

DISBARMENTS	30
RESIGNATIONS	31
SUSPENSIONS	110
PUBLIC REPRIMANDS	62
PRIVATE REPRIMANDS	87
Total:	320

## DISTRICT 1:

### **Edgett, Scott Erik: #24063588**

#### **12/04/2018-Agreed Public Reprimand**

On December 4, 2018, **Scott Erik Edgett** [#24063588], 43, of Plano, agreed to a public reprimand. The District 1 Grievance Committee found that in June 2016, the Edgett was hired by his client to handle a federal appeal and was paid a fee of \$10,000.00. Edgett failed to keep the client reasonably informed about the status of the case and upon termination of representation, Edgett failed to refund advance payments of the fee that had not been earned. Edgett violated Rules 1.03(a) and 1.15(d). He was ordered to pay restitution in the amount of \$5,350.00 and attorneys' fees and direct expenses in the amount of \$885.00.

### **Grantham, David Shane: #24087614**

#### **01/22/2019-Public Reprimand**

On January 22, 2019, **David Shane Grantham** [#24087614], 46, of McKinney, received a public reprimand. The 219th Judicial District Court of Collin County found that Grantham committed Professional Misconduct by violating Rules 1.01(a) [A lawyer shall not accept or continue employment in a legal matter which the lawyer knows or should know is beyond the lawyer's competence] and 1.15(d) [Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payments of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law only if such retention will not prejudice the client in the subject matter of the representation]. Grantham was ordered to pay attorneys' fees and direct expenses in the sum of \$1,000.00 and restitution in the sum of \$5,000.00.

### **Dallas Attorney**

#### **12/18/2018-Agreed Private Reprimand**

##### **Rule 1.01(b)(1)**

In representing a client, a lawyer shall not neglect a legal matter entrusted to the lawyer.

##### **Rule 1.03(a)**

A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

##### **Rule 1.15(d)**

Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payments of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law only if such retention will not prejudice the client in the subject matter of the representation.

**Dallas Attorney**  
**01/07/2019-Agreed Private Reprimand**

Rule 1.01(b)(1)

In representing a client, a lawyer shall not neglect a legal matter entrusted to the lawyer.

Rule 1.03(a)

A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

DISTRICT 2:

**Dunn, Richard Clement: #06249300**  
**11/15/2018-Fully Probated Suspension**  
**11/07/2018-05/06/2019: PROBATED**

On November 15, 2018, **Richard Clement Dunn** [#06249300], 62, of Longview, received a six month, fully probated suspension, effective November 7, 2018. The District 2 Grievance Committee found that on or about September 23, 2013, Complainant hired Dunn to file a post-conviction writ of habeas corpus in a criminal matter. In representing Complainant, Dunn neglected the legal matter entrusted to him by failing to timely file the writ of habeas corpus on behalf of Complainant. Dunn's physical condition materially impaired Dunn's fitness to represent Complainant and Dunn failed to withdraw from representation. Upon termination of representation, Dunn failed to refund advance payments of the fee that had not been earned. Dunn violated Rules 1.01(b)(1), 1.15(a)(2) and 1.15(d). He was ordered to pay \$2,553.75 in attorneys' fees and \$669.50 in direct expenses. Dunn filed an appeal on December 11, 2018.

**Dallas Attorney**  
**02/13/2019-Agreed Private Reprimand**

Rule 1.01(b)(1)

In representing a client, a lawyer shall not neglect a legal matter entrusted to the lawyer.

**Dallas Attorney**  
**01/14/2019-Agreed Private Reprimand**

Rule 5.03(a)

With respect to a nonlawyer employed or retained by or associated with a lawyer: A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer.

Rule 5.03(b)(1)

A lawyer shall be subject to discipline for the conduct of such a person that would be a violation of these rules if engaged in by a lawyer if the lawyer orders, encourages, or permits the conduct involved.

Rule 7.05(a)(3)

A lawyer shall not send, deliver, or transmit or knowingly permit or knowingly cause another person to send, deliver, or transmit a written, audio, audio-visual, digital media, recorded telephone message, or other electronic communication to a prospective client for the purpose of obtaining professional employment on behalf of any lawyer or law firm if the communication contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.

**Dallas Attorney**

**12/04/2018-Agreed Private Reprimand**

Rule 1.03(b)

A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

DISTRICT 3:

**Cooper, Gaylyn Leon: #04774700**

**10/26/2018-Default Fully Probated Suspension**

**12/01/2018-05/31/2019: PROBATED**

On October 26, 2018, **Gaylyn Leon Cooper** [#04774700], 65, of Port Arthur, received a six-month, fully probated suspension, effective December 1, 2018, and ending on May 31, 2019. An evidentiary panel of the District 3 Grievance Committee found that Cooper failed to keep his client reasonably informed about the status of the case and failed to promptly comply with reasonable requests for information. Cooper failed to explain matters to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. Cooper also failed to timely furnish to the Chief Disciplinary Counsel's Office a response to the grievance. Cooper violated Rules 1.03(a), 1.03(b), and 8.04(a)(8). He was ordered to pay \$1,500.00 in attorneys' fees and direct expenses.

DISTRICT 4:

**Crews, Jeffrey Earl: #24012475**

**11/28/2018-Agreed Partially Probated Suspension**

**08/01/2019-07/31/2020: SUSPENSION**

**08/01/2020-07/31/2022: PROBATED**

On November 28, 2018, **Jeffrey Earl Crews** [#24012475], 57, of Houston, received a three-year, partially probated suspension, effective August 1, 2019, with the first year actively suspended and the remainder probated. An evidentiary panel of the District 4 Grievance Committee found that, in representing his client, Crews neglected the legal matter entrusted to him, frequently failed to carry out completely the obligations he owed to his client, failed to keep his client reasonably informed about the status his client's legal matter and failed to promptly comply with reasonable requests for information, and, upon termination of representation, Crews failed to surrender papers and property to which his clients were entitled and failed to refund advance payments of fee that had not been earned. Crews also failed to timely furnish to the Chief Disciplinary Counsel's office responses or other information as required by the Texas Rules of Disciplinary Procedure. Crews violated Rules 1.01(b)(1), 1.01(b)(2),



1.03(a), 1.15(d), and 8.04(a)(8). He was ordered to pay \$2,500.00 in restitution, \$1,350.00 in attorneys' fees and direct expenses.

**Gilmet, Yexenia: #24059821**

**02/14/2019-Agreed Partially Probated Suspension**

**04/30/2019-06/30/2019: SUSPENSION**

**07/01/2019-04/30/2021: PROBATED**

On February 14, 2019, **Yexenia Gilmet** [#24059821], 39, of Houston, accepted a two-year, partially probated suspension, effective April 30, 2019, with the first two months actively suspended and the remainder probated. An evidentiary panel of the District 4 Grievance Committee found that Gilmet neglected her client's case, failed to keep her client reasonably informed about the status of his case, and failed to promptly comply with her client's reasonable requests for information. Upon termination of her representation, Gilmet failed to refund advance payments of fee that had not been earned. Gilmet further failed to timely respond to the grievance. Gilmet violated Rules 1.01(b)(1), 1.03(a), 1.15(d), and 8.04(a)(8). She was ordered to pay \$1,000.00 in restitution and \$500.00 in attorneys' fees and direct expenses.

**Gilmet, Yexenia: #24059821**

**02/09/2019-Agreed Partially Probated Suspension**

**04/30/2019-06/30/2019: SUSPENSION**

**07/01/2019-04/30/2021: PROBATED**

On February 9, 2019, **Yexenia Gilmet** [#24059821], 39, of Houston, accepted a two-year, partially probated suspension, effective April 30, 2019, with the first two months actively suspended and the remainder probated. An evidentiary panel of the District 4 Grievance Committee found that in representing her client, Gilmet frequently failed to carry out completely her obligations. Gilmet failed to keep her client reasonably informed about the status of his case and failed to promptly comply with his reasonable requests for information. Gilmet further failed to timely respond to the grievance. Gilmet violated Rules 1.01(b)(2), 1.03(a), and 8.04(a)(8). She was ordered to pay \$2,000.00 in restitution and \$500.00 in attorneys' fees and direct expenses.

**Houston Attorney**

**02/21/2019-Agreed Private Reprimand**

Rule 1.07(a)(1)

A lawyer shall not act as intermediary between clients unless: (1) the lawyer consults with each client concerning the implications of the common representation, including the advantages and risks involved, and the effect on the attorney-client privileges, and obtains each client's written consent to the common representation.

**Harvey, David Nathaniel: #24040049**  
**02/21/2019-Agreed Public Reprimand**

On February 21, 2019, **David Nathaniel Harvey** [#24040049], 53, of Houston, accepted an agreed judgment of public reprimand. An evidentiary panel of the District 4 Grievance Committee found that Harvey failed to promptly comply with his client's reasonable requests for information about the status of his case. Harvey violated Rule 1.03(a). He was ordered to pay \$250.00 in attorneys' fees.

**Houston Attorney**  
**12/14/2018-Agreed Private Reprimand**

Rule 1.15(d)  
for failing, upon termination of representation, to reasonably protect a client's interests, give notice to the client to seek other counsel, or surrender papers and property which belongs to the client

**Miller, Darren Anthony: #24007678**  
**12/24/2018-Agreed Fully Probated Suspension**  
**01/01/2019-06/30/2019: PROBATED**

On December 24, 2018, **Darren Anthony Miller** [#24007678], 49, of Houston, accepted a six-month, fully probated suspension, effective January 1, 2019. An evidentiary panel of the District 4 Grievance Committee found that Miller failed to take reasonable remedial action to avoid or mitigate the consequences of misconduct committed by a nonlawyer employee, over whom Miller had direct supervisory authority. Miller violated Rule 5.03(b)(2). He was ordered to pay \$2,071.15 in attorneys' fees and direct expenses.

**Houston Attorney**  
**01/24/2019-Agreed Private Reprimand**

Rule 1.03(a)  
for failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information

**Houston Attorney**  
**10/15/2018-Private Reprimand**

Rule 1.03(a)  
for failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information

**Houston Attorney**  
**10/29/2018-Agreed Private Reprimand**

**Rule 1.14(b)**

Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person.

**Taylor, Luro C.: #19712700**  
**11/29/2018-Disbarment**

On November 29, 2018, **Luro C. Taylor** [#19712700], 68, of Houston, was disbarred. The 215th Judicial District Court, Harris County, found that Taylor committed professional misconduct by violating Rule 1.14(a) [failed to hold funds belonging to his client in his trust account], 1.14(b) [failed to promptly notify and deliver funds to his client that she was entitled to receive], and 1.14(c) [failed to keep funds, in which both he and his client claimed an interest, separate until an accounting and severance of their interests]. Taylor was ordered to pay \$2,000.00 in restitution, and \$6,973.20 in attorneys' fees and direct expenses. Taylor has filed a notice of appeal.

**Vaughn, William Kyle: #00797597**  
**01/28/2019-Agreed Fully Probated Suspension**  
**01/01/2019-06/30/2020: PROBATED**

On January 28, 2019, **William Kyle Vaughn** [#00797597], 50, of Houston, received an 18-month, fully probated suspension, effective January 1, 2019. An evidentiary panel of the District 4 Grievance Committee found that in two matters, while representing his clients, Vaughn neglected the legal matters entrusted to him, failed to keep his clients reasonably informed about the status of their legal matters and to promptly comply with reasonable requests for information, and, upon termination of representation, failed to refund advance payments of fee that had not been earned. Vaughn also failed to timely furnish to the Chief Disciplinary Counsel's office a response or other information as required by the Texas Rules of Disciplinary Procedure. Vaughn violated Rules 1.01(b)(1), 1.03(a), 1.15(d), and 8.04(a)(8). He was ordered to pay \$335.00 in attorneys' fees and costs.

**Vaughn, William Kyle: #00797597**  
**01/28/2019-Agreed Fully Probated Suspension**  
**01/01/2019-06/30/2020: PROBATED**

On January 28, 2019, **William Kyle Vaughn** [#00797597], 50, of Houston, received an 18-month, fully probated suspension, effective January 1, 2019. An evidentiary panel of the District 4 Grievance Committee found that in two matters, while representing his clients, Vaughn neglected the legal matters entrusted to him, failed to keep his clients reasonably informed about the status of their legal matters and to promptly comply with reasonable requests for information, and, failed to timely furnish to the Chief Disciplinary Counsel's office a response or other information as required by the Texas Rules of Disciplinary Procedure. In one of those matters, Vaughn engaged in the practice of law when his right to practice had been administratively suspended for failure to timely pay required fees, and in the other matter, he failed to explain a legal matter to the extent reasonably necessary to permit his client to make

informed decisions regarding the representation and, upon termination of representation, failed to refund advance payments of fee that had not been earned. Vaughn violated Rules 1.01(b)(1), 1.03(a), 1.03(b), 1.15(d), 8.04(a)(8), and 8.04(a)(11). He was ordered to pay \$265.00 in attorneys' fees and costs.

**Vega, Adan G.: #20533590**  
**12/18/2018-Public Reprimand**

On December 18, 2018, **Adan G. Vega** [#20533590], 65, of Houston, received a judgment of public reprimand. An evidentiary panel of the District 4 Grievance Committee found that, upon termination of representation, Vega failed to take steps to the extent reasonably practicable to protect his client's interests by failing to surrender papers and property to which his client was entitled. Vega violated Rule 1.15(d). He was ordered to pay \$1,900.00 in attorneys' fees and \$160.00 in costs.

**Willbern, Thomas Austin III: #21507700**  
**12/14/2018-Agreed Partially Probated Suspension**  
**01/31/2019-03/31/2019: SUSPENSION**  
**04/01/2019-01/31/2022: PROBATED**

On December 14, 2018, **Thomas A. Willbern, III** [#21507700], 67, of Houston, accepted a three-year, partially probated suspension, effective January 31, 2019, with the first two months actively served and the remainder probated. The 234th District Court of Harris County found that in two separate matters, Willbern violated Rule 1.01(b)(1) [a lawyer shall not neglect a legal matter entrusted to the lawyer]; Rule 1.03(a) [a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information]; Rule 1.15(d) [a lawyer, upon termination of representation, shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that was not earned]; and Rule 8.04(a)(8) [a lawyer shall not fail to timely furnish to the Chief Disciplinary Counsel's Office or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure]. Willbern was ordered to pay \$2,000.00 in restitution and \$550.00 in attorneys' fees and direct expenses.

**Willbern, Thomas Austin III: #21507700**  
**12/04/2018-Agreed Partially Probated Suspension**  
**01/31/2019-03/31/2019: SUSPENSION**  
**04/01/2019-01/31/2022: PROBATED**

On December 4, 2018, **Thomas A. Willbern, III** [#21507700], 67, of Houston, accepted a three-year, partially probated suspension, effective January 31, 2019, with the first two months actively served and the remainder probated. An evidentiary panel of the District 4 Grievance Committee found that Willbern frequently failed to carry out obligations to five clients and failed to keep two clients reasonably informed about the status of their matters. Willbern also failed to appropriately safeguard a client's monies and failed to refund advance payments of fees that had not been earned to four clients at the end of the representations. Willbern further failed to respond to grievances filed by four clients. Willbern violated Rules 1.01(b)(2), 1.03(a), 1.14(a), 1.15(d), and 8.04(a)(8). He was ordered to pay \$3,500.00 in total restitution and \$550.00 in attorneys' fees and direct expenses.

**Yeverino, Francisco R.: #00793076**  
**02/06/2019-Agreed Public Reprimand**

On February 6, 2019, **Francisco R. Yeverino** [#00793076], 48, of Richmond, accepted a judgment of public reprimand. An evidentiary panel of the District 4 Grievance Committee found that Yeverino failed to keep his client reasonably informed about the status of their case and failed to promptly comply with reasonable requests for information. Yeverino violated 1.03(a) and 1.03(b). He was ordered to pay \$250.00 in attorneys' fees.

DISTRICT 6:

**Allen, Scottie: #01058020**  
**01/03/2019-Partially Probated Suspension**  
**04/01/2019-09/30/2019: SUSPENSION**  
**10/01/2019-09/30/2023: PROBATED**

On January 3, 2019, **Scottie Allen** [#01058020], 59, of Dallas, received a 54-month, partially probated suspension, with six months active (April 1, 2019, through September 30, 2019) and 48 months probated (October 1, 2019, through September 30, 2023). An evidentiary panel of the District 6 Grievance Committee found that Allen neglected a legal matter entrusted to him, failed to keep his client reasonably informed about the status of his case and failed to promptly comply with client's reasonable requests for information. Allen failed to timely furnish to the Chief Disciplinary Counsel's Office a response and did not timely assert a privilege or other legal ground for his failure to do so. Allen violated Rules 1.01(b)(1), 1.03(a), and 8.04(a)(8). He was ordered to pay \$3,370.50 in attorneys' fees and direct expenses.

**Allen, Scottie: #01058020**  
**12/28/2018-Partially Probated Suspension**  
**04/01/2019-05/31/2019: SUSPENSION**  
**06/01/2019-05/31/2021: PROBATED**

On December 28, 2018, **Scottie Allen** [#01058020], 59, of Dallas, received a 26-month, partially probated suspension, with two months active (April 1, 2019, through May 31, 2019) and 24 months probated (June 1, 2019, through May 31, 2021). An evidentiary panel of the District 6 Grievance Committee found that Allen failed to timely furnish to the Chief Disciplinary Counsel's Office a response and did not timely assert a privilege or other legal ground for his failure to do so. Allen violated Rule 8.04(a)(8). He was ordered to pay \$1,159.50 in attorneys' fees and direct expenses.

**Allen, Susan Anne: #01059350**  
**02/15/2019-Agreed Fully Probated Suspension**  
**12/01/2018-11/30/2019: PROBATED**

On February 15, 2019, **Susan Anne Allen** [#01059350], 66, of Dallas, received a 12-month, fully probated suspension, effective December 1, 2018. An evidentiary panel of the District 6 Grievance Committee found that in 2016, the complainant discovered that Allen settled five cases, but failed to pay complainant for the services provided to the clients in those cases. Upon receiving funds in which the complainant had

an interest, Allen failed to promptly notify complainant and failed to promptly deliver to the complainant the funds that complainant was entitled to receive in those matters. Allen violated Rule 1.14(b). She was ordered to pay \$15,000.00 in restitution and \$1,475.50 in attorneys' fees and direct expenses.

**Burgos-Gandia, Juan Luis: #00789916**  
**10/30/2018-Fully Probated Suspension**  
**11/01/2018-10/31/2019: PROBATED**

On October 30, 2018, **Juan Luis Burgos-Gandia** [#00789916], 67, of Dallas, received a 12-month, fully probated suspension. An evidentiary panel of the District 6 Grievance Committee found that Burgos-Gandia failed to keep his client reasonably informed about case status and failed to promptly comply with the client's reasonable requests for information. Burgos-Gandia also neglected the client's legal matter and failed to explain the legal matter to the client to the extent reasonably necessary to permit the client to make information decisions about the case. Burgos-Gandia failed to hold unearned fees in a separate trust account, and upon termination of representation, failed to refund advance payment of the fee that had not been earned. Burgos-Gandia violated Rules 1.01(b)(1), 1.03(a), 1.03(b), 1.14(a), and 1.15(d). He was ordered to pay \$10,000.00 in restitution and \$1,200.00 in attorneys' fees and direct expenses.

**Deaguero, Richard Joseph: #05623500**  
**11/28/2018-Partially Probated Suspension**  
**12/01/2018-02/28/2019: SUSPENSION**  
**03/01/2019-11/30/2020: PROBATED**

On November 28, 2018, **Richard Joseph Deaguero** [#05623500], 72, of Dallas, received a 24-month, partially probated suspension, with the first three months actively suspended and the remainder probated. An evidentiary panel of the District 6 Grievance Committee found that Deaguero was retained to represent his client in a lawsuit against the client's employer. Deaguero failed to keep the client fees in a separate trust account and failed to withdraw from representing the client when he was discharged. Deaguero violated Rules 1.14(a) and 1.15(a)(3). He was ordered to pay restitution in the amount of \$1,500.00 and attorneys' fees and direct costs in the amount of \$1,858.00.

**Deaguero, Richard Joseph: #05623500**  
**11/27/2018-Fully Probated Suspension**  
**11/08/2018-11/07/2021: PROBATED**

On November 27, 2018, **Richard Joseph Deaguero** [#05623500], 72, of Dallas, received a three-year, probated suspension. An evidentiary panel of the District 6 Grievance Committee found that Deaguero exchanged a series of text messages with a client during which he offered to either pay or credit the client for case referrals. Deaguero engaged in conduct that constituted barratry as defined by the law of this state.

Deaguero violated Rules 7.03(b), and 8.04(a)(9). He was ordered to pay attorneys' fees and direct expenses in the amount of \$1,192.50.

**Duran, Xavier: #24015154**  
**09/18/2018-Partially Probated Suspension**  
**10/15/2018-01/14/2019: SUSPENSION**  
**01/15/2019-10/14/2021: PROBATED**

On September 18, 2018, **Xavier Duran** [#24015154], 47, of Dallas, received a three-year, partially probated suspension, effective October 15, 2018, with the first three months actively suspended and the remainder probated. An evidentiary panel of the District 6 Grievance Committee found that Duran was hired in a criminal matter and paid \$5,000.00 for the representation. Thereafter, Duran neglected the legal matter entrusted to him by failing to complete any legal work on the case. Duran also failed to keep complainant reasonably informed and comply with reasonable requests for information. Upon termination, Duran failed to refund any unearned fee. Duran violated Rules 1.01(b)(1), 1.03(a) and 1.15(d). He was ordered to pay \$5,000.00 in restitution and \$3,522.50.00 in attorneys' fees and direct expenses.

**Dallas Attorney**  
**11/27/2018-Private Reprimand**

Rule 1.01(b)(1)

In representing a client, a lawyer shall not neglect a legal matter entrusted to the lawyer.

Rule 1.03(a)

A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

Rule 8.04(a)(8)

A lawyer shall not fail to timely furnish to the Chief Disciplinary Counsel's office or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure, unless he or she in good faith timely asserts a privilege or other legal ground for failure to do so.

**Finley, W. Thomas: #07025500**  
**01/08/2019-Default Active Suspension**  
**02/01/2019-01/31/2021: SUSPENSION**

On January 8, 2019, **W. Thomas Finley** [#07025500], 71, of Dallas, received a 24-month, active suspension. An evidentiary panel of the District 6 Grievance Committee found that in October of 2017, Finley, as legal counsel in a case, communicated directly with the opposing party, who was represented by legal counsel, and discussed a legal matter in connection with the pending case. The communication occurred without the knowledge or consent of opposing party's legal counsel. Finley also failed to file a response to the grievance. Finley violated Rules 4.02(a), and 8.04(a)(8). He was ordered to pay \$918.00 in attorneys' fees and \$250.00 in direct expenses.

**Grass, Jeffrey C.: #00787581**  
**02/26/2019-Resignation in lieu of Discipline**

On February 26, 2019, the Supreme Court of Texas accepted the resignation, in lieu of discipline, of **Jeffrey C. Grass** [#00787581], 56, of Coppell. At the time of Grass's resignation, there was one pending matter against him. In October 2016, Grass was hired by Complainant and paid a \$10,000.00 retainer fee for representation in a criminal case. Grass failed to maintain the retainer fee in his trust account until the fee was earned. Complainant was not charged with a crime and no legal services were performed. Grass failed to refund the unearned fee as requested and ceased communicating with Complainant. Grass failed to keep Complainant reasonably informed and failed to promptly comply with reasonable requests for information. Alleged Rules Violated 1.03(a), 1.14(b), and 1.15(d).

**Dallas Attorney**  
**01/03/2019-Agreed Private Reprimand**

Rule 1.01(b)(1)

In representing a client, a lawyer shall not neglect a legal matter entrusted to the lawyer.

Rule 1.03(a)

A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

**Dallas Attorney**  
**11/10/2018-Private Reprimand**

Rule 1.01(b)(1)

In representing a client, a lawyer shall not neglect a legal matter entrusted to the lawyer.

**Dallas Attorney**  
**12/07/2018-Private Reprimand**

Rule 1.01(b)(1)

In representing a client, a lawyer shall not neglect a legal matter entrusted to the lawyer.

Rule 1.03(a)

A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

Rule 1.05(b)(1)(ii)

Except as permitted by paragraphs (c) and (d), or as required by paragraphs (e) and (f), a lawyer shall not knowingly reveal confidential information of a client or a former client to anyone else, other than the client, the client's representatives, or the members, associates, or employees of the lawyer's law firm.

Rule 1.15(d)

Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable



to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payments of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law only if such retention will not prejudice the client in the subject matter of the representation.

**Rule 8.04(a)(8)**

A lawyer shall not fail to timely furnish to the Chief Disciplinary Counsel's office or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure, unless he or she in good faith timely asserts a privilege or other legal ground for failure to do so.

**Rodriguez, Brigida: #24046743**  
**10/09/2018-Fully Probated Suspension**  
**11/01/2018-10/31/2020: PROBATED**

On October 9, 2018, **Brigida Rodriguez** [#24046743], 63, of Dallas, received a 24-month, fully probated suspension, effective November 1, 2018. An evidentiary panel of the District 6 Grievance Committee found that in February, 2016, Complainant retained Rodriguez for representation in a family law matter. In representing Complainant, Rodriguez neglected the legal matter entrusted to her. Rodriguez failed to keep Complainant reasonably informed about the status of her case and failed to promptly comply with reasonable requests for information from Complainant. Further, Rodriguez failed to respond to the grievance. Rodriguez, violated Rules 1.01(b)(1), 1.03(a), and 8.04(a)(8). She was ordered to pay \$1,220.50 in attorneys' fees and costs.

**Stein, Jerome Neal: #19128290**  
**02/26/2019-Agreed Partially Probated Suspension**  
**04/01/2019-12/31/2019: SUSPENSION**  
**01/01/2020-09/30/2020: PROBATED**

On February 26, 2019, **Jerome Neal Stein** [#19128290], 60, of Addison, agreed to an 18-month, partially probated suspension, effective April 1, 2019, with the first nine months actively served and the remainder probated. The District 6 Grievance Committee found that in April 2016, Complainant hired Stein for representation in a child custody modification case. In representing Complainant, Stein neglected the legal matter entrusted to him by failing to appear at Complainant's trial and by failing to timely file objections to the final order. Stein, failed to keep Complainant reasonably informed about the status and failed to promptly comply with reasonable requests for information from Complainant about her child custody modification matter. Stein, failed to explain the matter to the extent reasonably necessary to permit Complainant to make informed decisions regarding the representation. Stein, when communicating with Complainant, engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation. Stein violated Rules 1.01(b)(1), 1.03(a), 1.03(b), and 8.04(a)(3). He was ordered to pay \$1,300.00 in attorneys' fees and direct expenses.

**Stein, Jerome Neal: #19128290**  
**02/26/2019-Agreed Active Suspension**  
**04/01/2019-09/30/2020: SUSPENSION**

On February 26, 2019, **Jerome Neal Stein** [#19128290], 60, of Addison, agreed to an 18-month, active suspension, effective April 1, 2019. The District 6 Grievance Committee found that in representing Complainant, Stein neglected the legal matter entrusted to him; failed to keep Complainant reasonably informed about the status of Complainant's matter and failed to promptly comply with reasonable requests for information. Stein failed to hold funds or property belonging in whole or in part to Complainant separate from Stein's own property. Upon termination of representation, Stein failed to surrender papers and property to which Complainants were entitled and failed to refund advance payments of a fee that had not been earned. Stein violated Rules 1.01(b)(1), 1.03(a), 1.14(a), and 1.15(d). He was ordered to pay \$1,200.00 in attorneys' fees and direct expenses and \$4,500.00 in restitution fees.

**DISTRICT 7:**

**Dallas Attorney**  
**11/27/2018-Agreed Private Reprimand**

**Rule 1.14(a)**

A lawyer shall hold funds and other property belonging in whole or in part to clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own property.

**Rule 1.14(c)**

When in the course of representation a lawyer is in possession of funds or other property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interest.

**Dallas Attorney**  
**02/25/2019-Agreed Private Reprimand**

**Rule 3.04(c)(2)**

A Lawyer shall not, except as stated in paragraph (d), in representing a client before a tribunal: state or allude to any matter that the lawyer does not reasonably believe is relevant to such proceeding or that will not be supported by admissible evidence, or assert personal knowledge of facts in issue except when testifying as a witness.

**Loyd, Annette R.: #16731100**  
**01/16/2019-Default Fully Probated Suspension**  
**01/07/2019-01/06/2020: PROBATED**

On January 16, 2019, **Annette R. Loyd** [#16731100], 56, of Tarrant County, received a 12-month, fully probated suspension. An evidentiary panel of the District 7 Grievance Committee found that Loyd neglected the legal matter that was entrusted to her, failed to keep her client reasonably informed about case status, and failed to promptly comply with the client's reasonable requests for information. Loyd also failed to file a response to the grievance. Loyd violated Rules 1.01(b)(1), 1.03(a), and 8.04(a)(8). She was ordered to pay \$750.00 in attorneys' fees and \$250.00 in direct expenses.

**DISTRICT 9:**

**Dallas Attorney**  
**12/11/2018-Agreed Private Reprimand**

Rule 1.01(b)(1)  
for neglecting a legal matter entrusted to the lawyer

Rule 1.03(a)  
for failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information

Rule 1.15(d)  
for failing, upon termination of representation, to reasonably protect a client's interests, give notice to the client to seek other counsel, or surrender papers and property which belongs to the client

Rule 8.04(a)(8)  
for failing to timely furnish a district grievance committee a response or other information as required unless he/she timely asserts a privilege or other legal ground for failure to do so

**Gupta, Viney K.: #00790085**  
**12/13/2018-Agreed Fully Probated Suspension**  
**12/15/2018-09/14/2019: PROBATED**

On December 13, 2018, **Viney K. Gupta** [#00790085], 70, of Orange, California, accepted a nine-month, fully probated suspension, effective December 15, 2018. The District 9 evidentiary panel found that on July 6, 2011, Gupta received \$2,500.00 from the Complainant's family for Complainant's immigration bond. When Complainant's immigration matter was concluded, a check dated January 27, 2017, was sent to Gupta. The total amount of the check was \$2,825.01, which included the original bond amount and accrued interest in the amount of \$325.01. Gupta received the refunded bond check, did not notify Complainant of its receipt, and did not promptly remit the funds to Complainant. Gupta violated Rule 1.14(b) of the Texas Disciplinary Rules of Professional Conduct, Article X, Section 9, State Bar Rules. Gupta was ordered to pay \$1,280.58 in attorneys' fees and expenses.

**Smith, Paul Andrew: #24010408**

**12/07/2018-Agreed Partially Probated Suspension**

**12/15/2018-01/14/2019: SUSPENSION**

**01/15/2019-06/14/2020: PROBATED**

On December 7, 2018, **Paul Andrew Smith** [#24010408], 49, of Austin, accepted an 18-month, partially probated suspension, with one month active. The District 9 evidentiary panel found that Smith represented a client in a personal injury matter. The client received treatment from Complainant, a chiropractor. Smith provided Complainant with a letter of protection. Smith sent Complainant a check from his trust account for \$1,000.00. However, when Complainant attempted to deposit the check three months later, it was returned for insufficient funds. After the grievance was filed, Smith issued another check to Complainant for \$1,000.00 that was successfully negotiated. Smith violated Rule 1.14(a) of the Texas Disciplinary Rules of Professional Conduct, Article X, Section 9, State Bar Rules. Smith was ordered to pay \$630.38 in attorneys' fees and expenses.

**DISTRICT 10:**

**San Antonio Attorney**

**01/24/2019-Private Reprimand**

Rule 1.03(a)

A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

**San Antonio Attorney**

**01/04/2019-Agreed Private Reprimand**

Rule 1.09(a)

without prior consent, a lawyer who personally has formerly represented a client in a matter shall not thereafter represent another person in a matter adverse to the former client.

Rule 1.07(a)

for, upon entering into a business transaction with a client, failing to consult with each client concerning the implications of the common representation, including the advantages and risks involved and the effect of the attorney-client privileges, and failing to obtain each client's written consent to the common representation.

**Fiegel, Beauregard Driller: #24086782**  
**12/03/2018-Agreed Active Suspension**  
**07/01/2019-10/01/2019: SUSPENSION**

On December 3, 2018, **Beauregard Driller Fiegel** [#24086782], 33, of San Antonio, agreed to a three-month, active suspension, effective July 1, 2019. The District 10 Grievance Committee found that Fiegel neglected a client's matter, failed to keep a client reasonably informed, failed to refund the unearned portion of a fee, failed to notify a client of attorney's cessation of practice and failed to respond to the grievance.

Fiegel violated Rules 1.01(b)(1), 1.03(a), 1.15(d), 8.04(a)(8), and 8.04(a)(10) was ordered to pay \$2,256.00 in restitution and \$1,000.00 in attorneys' fees and direct expenses.

**San Antonio Attorney**  
**01/16/2019-Agreed Private Reprimand**

Rule 1.03(a)

A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

**Perez, Linda Irene: #00798427**  
**11/13/2017-Disbarment**

On November 13, 2017, **Linda Irene Perez** [#00798427], 59, of San Antonio, was disbarred. The District 10 Grievance Committee found that in connection with two complaints, Perez neglected legal matters, failed to keep clients reasonably informed, failed to hold client's funds in a trust account, failed to provide a full accounting of funds, failed to return unearned fees, made false statements of material fact to a tribunal and engaged in conduct involving dishonesty, fraud or misrepresentation. Perez violated Rules 1.01(b)(1), 1.03(a), 1.04(a), 1.14(a)&(b), 1.15(d), 3.03(a)(1), and 8.04(a)(3), and was ordered to pay \$14,350.00 in restitution and \$4,250.00 in attorneys' fees and direct expenses.

**Roman, Armando Javier: #24046752**  
**12/18/2018-Agreed Public Reprimand**

On December 18, 2018, **Armando Javier Roman** [#24046752], 44, of San Antonio, accepted a public reprimand. The District 10 Grievance Committee found that Roman failed to communicate with a client, failed to explain to his client the basis for the fee sufficiently, failed refund an unearned fee and failed to return the client's file. Roman violated Rules 1.03(a)&(b), 1.04(c), and 1.15(d), and agreed to pay \$5,960.00 in restitution, and \$2,800.00 in attorneys' fees and direct expenses.

**San Antonio Attorney**  
**01/30/2019-Agreed Private Reprimand**

Rule 1.03(a)

A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

DISTRICT 11:

**San Antonio Attorney**  
**02/26/2019-Agreed Private Reprimand**

Rule 1.15(d)

Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payments of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law only if such retention will not prejudice the client in the subject matter of the representation.

**Davis, Mark Anthony: #24012509**  
**12/18/2018-Agreed Partially Probated Suspension**  
**06/01/2019-06/30/2019: SUSPENSION**  
**07/01/2019-06/30/2020: PROBATED**

On December 18, 2018, **Mark Anthony Davis** [#24012509], 47, of Victoria, accepted a 13-month, partially probated suspension, effective June 1, 2019, with the first month actively served and the remainder probated. The District 11 Grievance Committee found that Davis neglected client's matters, failed to keep a client reasonably informed and failed to return the unearned portion of a fee. Davis violated Rules 1.01(b)(1), 1.03(a), and 1.15(d), was ordered to pay \$1,500.00 in restitution and \$400.00 in attorneys' fees and direct expenses.

**San Antonio Attorney**  
**02/11/2019-Agreed Private Reprimand**

Rule 1.03(a)

A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

Rule 1.03(b)

A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

DISTRICT 12:

**Canales, Olivero E.: #03737200**  
**01/11/2019-Agreed Fully Probated Suspension**  
**03/01/2019-02/29/2020: PROBATED**

On January 11, 2019, **Olivero E. Canales** [#03737200], 66, of Laredo, accepted a one-year, fully probated suspension, effective March 1, 2019. The District 12 Grievance Committee found that Canales failed to hold client's funds separate from his own property and failed to respond to grievance timely. Canales violated Rules 1.14(a) and 8.04(a)(8), and agreed to pay \$300.00 in restitution, and \$400.00 in attorneys' fees and direct expenses.

**San Antonio Attorney**  
**12/11/2018-Agreed Private Reprimand**

Rule 1.14(a)

A lawyer shall hold funds and other property belonging in whole or in part to clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own property. Such funds shall be kept in a separate account, designated as a trust or escrow account, maintained in the state where the lawyers office is situated, or elsewhere with the consent of the client or third person.

**San Antonio Attorney**  
**02/11/2019-Agreed Private Reprimand**

Rule 1.03(a)

A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

DISTRICT 13:

**Barker, Tametha D'Lyn: #24044113**  
**11/27/2018-Fully Probated Suspension**  
**12/01/2018-11/30/2020: PROBATED**

On November 27, 2018, **Tametha D'Lyn Barker** [#24044113], 42, of Amarillo, received a two-year, fully probated suspension, effective December 1, 2018. An evidentiary panel of the District 13 Grievance Committee found that on or about July 12, 2016, Complainant hired Barker to represent her in a divorce proceeding and paid \$2,400.00 for the representation. In representing Complainant, Barker neglected the legal matter entrusted to her by failing to finalize Complainant's divorce case. Barker failed to keep Complainant reasonably informed about the status of her case and failed to promptly comply with reasonable requests for information from Complainant. Barker, violated Rules 1.01(b)(1), and 1.03(a). She was ordered to pay \$1,000.00 in restitution and \$1,687.50 in attorneys' fees and costs.

DISTRICT 14:

**Van Dyke, Jason Lee: #24057426**  
**12/28/2018-Agreed Fully Probated Suspension**  
**11/15/2018-05/14/2019: PROBATED**

On December 28, 2018, **Jason Lee Van Dyke** [#24057426], 38, of Crossroads, agreed to a six-month, fully probated suspension, effective November 15, 2018. The District 14 Grievance Committee found that on October 3, 2017, Van Dyke filed a lawsuit on behalf of his client, against Complainant. Van Dyke threatened to present criminal or disciplinary charges solely to gain an advantage in connection with the civil matter. Van Dyke continued to represent his client after it reasonably appeared that his representation became adversely limited by Van Dyke's own interests. Van Dyke violated Rules 1.06(b)(2), and 4.04(b)(1). He was ordered to pay \$1,800.00 in attorneys' fees and direct expenses.

**Van Dyke, Jason Lee: #24057426**  
**02/21/2019-Agreed Partially Probated Suspension**  
**03/01/2019-05/31/2019: SUSPENSION**  
**06/01/2019-02/29/2020: PROBATED**

On February 21, 2019, **Jason Lee Van Dyke** [#24057426], 38, of Crossroads, agreed to a 12-month, partially probated suspension, effective March 1, 2019, with the first three months actively served and the remainder probated. The District 14 Grievance Committee found that there is legally sufficient evidence to prove by a preponderance of the evidence that on or about March 1, 2018, Van Dyke made threats of physical violence to Complainant, thereby committing criminal acts that reflect adversely on Van Dyke's honesty, trustworthiness or fitness as a lawyer. Van Dyke violated Rule 8.04(a)(2). He was ordered to pay \$7,500.00 in attorneys' fees and direct expenses.

DISTRICT 15:

**San Antonio Attorney**  
**02/08/2019-Agreed Private Reprimand**

Rule 1.15(d)  
for failing, to reasonably protect a client's interests upon termination.

DISTRICT 16:

**McDowell, Gilda Martha: #24063561**  
**01/31/2019-Agreed Public Reprimand**

On January 31, 2019, **Gilda Martha McDowell** [#24063561], 39, of Lubbock, agreed to a judgment of public reprimand. The 99th District Court of Lubbock County found that McDowell violated Rule 5.03(b)(1) [A lawyer shall be subject to discipline for the conduct of a non-lawyer assistant that would be a violation of these rules if engaged in by a lawyer if the lawyer orders, encourages, or permits the conduct involved] McDowell violated Rule 5.03(b)(1) and was ordered to pay \$800.00 in attorneys' fees



and direct expenses.

DISTRICT 17:

**Quinata, Derek Alfonso: #24072292**  
**01/10/2019-Agreed Fully Probated Suspension**  
**01/15/2019-04/14/2019: PROBATED**

On January 10, 2019, **Derek Alfonso Quinata** [#24072292], 38, of El Paso, agreed to a three-month, fully probated suspension, effective January 15, 2019. The District 17 Grievance Committee found that Quinata failed to hold client's funds separate from his own property, failed to promptly deliver funds to parties entitled to receive funds and failed to return the unearned portion of a fee. Quinata violated Rules 1.14(a)&(b), and 1.15(d), was ordered to pay \$700.00 in restitution and \$1,000.00 in attorneys' fees and direct expenses.

BOARD OF DISCIPLINARY APPEALS:

**Dixon, Eric D.: #05906020**  
**01/28/2019-Active Suspension**  
**01/28/2019-10/28/2019: SUSPENSION**

On January 28, 2019, the Board of Disciplinary Appeals signed a judgment of suspension against Portales, NM attorney, **Eric D. Dixon**, 58, State Bar of Texas Card no. 05906020. On November 9, 2018 the Supreme Court of the State of New Mexico entered an Order suspending Dixon from the practice of law for nine months in a matter styled In the Matter of Eric Dixon, an Attorney Suspended from the Practice of Law in the Courts of the State of New Mexico, Case No. S-1-SC-37204. The court found that Dixon was negligent in his representation of a client, NMRPC 16-101; filed a frivolous lawsuit in violation of NMRPC 16-301; made a false statement of fact to a tribunal in violation of NMRPC 16-303; made a false statement of fact during the disciplinary matter in violation of NMRPC 18-801 and engaged in conduct involving dishonesty, deceit and misrepresentation in violation of NMRPC 16-804. He is suspended from the practice of law in Texas from January 28, 2019, until October 28, 2019.

**Goode, William Kevin: #08145550**  
**12/27/2018-Agreed Active Suspension**  
**12/27/2018-12/28/2020: SUSPENSION**

On December 27, 2018, the Board of Disciplinary Appeals signed an agreed judgment of suspension against Las Vegas, NV attorney, **William Kevin Goode**, 63, State Bar of Texas Card no. 08145550. On May 31, 2018, the Supreme Court of Colorado signed an Order and Notice of Suspension suspending Goode from the practice of law for two years in a matter styled Complainant: The People of the State of Colorado, Respondent: William Kevin Goode, #37063, Case No. 17-PDJ059. The court found that Goode was convicted of 28 felony counts of cruelty to animals and failed to report his conviction to the disciplinary authority, in violation of Rules 3.4(c) and 8.4(b) of the Colorado Rules of Professional Conduct. He is suspended from the practice of law in Texas from December 27, 2018, until December 28, 2020.

**Gordon, Shane William: #24040993**  
**01/28/2019-Default Disbarment**

On January 28, 2019, the Board of Disciplinary Appeals signed a default judgment of disbarment against Houston attorney **Shane William Gordon** 47, State Bar of Texas Card No. 24040993. On November 21, 2017, Mr. Gordon pled guilty to False Statement or Representation made to a Department or Agency of the United States, an Intentional Crime as defined in the Texas Rules of Disciplinary Procedure, in United States of America v. Shane Gordon, Cause No. 6:17-CR-00040-002 and was sentenced to 24 months in prison followed by three years of supervised release and ordered to pay restitution in the amount of \$440,000.00. Although duly cited and noticed, Mr. Gordon did not answer or appear.

**Hoak, Linda Renee: #24059218**  
**12/28/2018-Indefinite Disability Suspension**

On December 28, 2018, the Board of Disciplinary Appeals signed an agreed judgment of indefinite disability suspension against Lafayette, LA attorney **Linda Renee Hoak**, 51, State Bar of Texas card no. 24059218.

**Jaynes, David Andrew: #10595790**  
**01/28/2019-Default Active Suspension**  
**01/28/2019-01/27/2020: SUSPENSION**

On January 28, 2019, the Board of Disciplinary Appeals signed a Default Judgment of Suspension against West Palm Beach, FL attorney, **David Andrew Jaynes**, 65, State Bar of Texas Card no. 10595790. On August 24, 2018, the Supreme Court of Florida entered an Order suspending Jaynes from the practice of law for one year in a matter styled The Florida Bar, Petitioner(s) vs. David Andrew Jaynes, Respondent(s), Case No. SC18-917. The court found that Jaynes was in contempt of its order dated September 22, 2017, in case no. SC17-1134 and suspended him from practice of law for one year. He is suspended from the practice of law in Texas from January 28, 2019 until January 27, 2020.

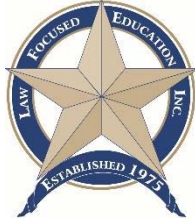
**Jaynes, David Andrew: #10595790**  
**01/28/2019-Default Active Suspension**  
**01/28/2019-07/28/2019: SUSPENSION**

On January 28, 2019, the Board of Disciplinary Appeals signed a Default Judgment of Suspension against West Palm Beach, FL attorney, **David Andrew Jaynes**, 65, State Bar of Texas Card no. 10595790. On June 21, 2018, the Supreme Court of Florida issued a Notice suspending Jaynes from the practice of law for six months in a matter styled The Florida Bar, Complainant(s) vs. David Andrew Jaynes, Respondent(s), Case No. SC17-2219. The court found that Jaynes was in violation of trust accounting rules and suspended him from practice of law for six months. He is suspended from the practice of law in Texas from January 28, 2019 until July 28, 2019.

**Quitschau, Drew Randolph: #24068447**  
**12/12/2018-Agreed Active Suspension**  
**12/13/2018-06/13/2019: SUSPENSION**

On December 12, 2018, the Board of Disciplinary Appeals signed an agreed judgment of suspension against Normal, IL attorney **Drew Randolph Quitschau**, 41, State Bar of Texas Card no. 24068447. On September 20, 2018, the Supreme Court of Illinois signed an Order and Mandate suspending Quitschau from the practice of law for six months in a matter styled In re: Drew Randolph Quitschau, M.R. 02943. The court found that Quitschau engaged in acts of dishonesty, fraud, deceit, and misrepresentation when he registered another attorney on five websites, created a false Facebook account and wrote false reviews of the attorney's legal abilities on three other websites in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct.

## Law Focused Education, Inc.



2-15-19

Chris Oddo  
Barron, Addler, Clough & Oddo, LLP  
808 Nueces St.  
Austin 7801

Re: Request for Permission to File Litigation Section Grant Application

Dear Mr. Oddo:

Law Focused Education, Inc. would like to request permission to file a grant application with the State Bar of Texas Litigation Section for upgrading the What Do Attorneys Do? State Bar of Texas project. We are submitting this request so that LFEI and Law-Related Education and the Litigation Section may partner to improve the litigation process and justice system in the State of Texas by educating the public on the role of lawyers in the justice system. Additionally it serves to provide a catalyst for a discussion on the practice of law and supports attorneys as they interact with students in our schools.

**1. Name of the program, project, committee, or section seeking funds.**

Project Name: What Do Attorneys Do Animations

Requesting Committee/Section: Law Focused Education Committee, Law Focused Education, Inc. and the Law-Related Education Department

**2. Name and position of the individual making the request; if a committee or section, then a statement should be included advising whether the project was endorsed by a majority of the committee or section.**

Jan Miller, Director of Law-Related Education

**3. Description of the project and the time frame for its implementation and conclusion.**

This grant will animate the 10 attorney scenarios we have developed to educate the public about the role of attorneys and the different types of attorneys. These scenarios cover both civil and criminal law as well as the different types of attorneys.

The current scenarios are static and require an attorney to be present to explain what is happening in the scenario. By creating animations students would be able to view and understand the role of attorneys independently. This would be especially beneficial to younger learners who have not yet learned to read. The scenarios cover the following topics:

- Trial
- Defense
- Attorney Preparation
- Family Law
- Transactional attorneys
- Government attorneys
- Legal Aid
- Community Outreach
- Immigration
- Entertainment Law

Attorneys would be able to use the animations to aid in presentations to classrooms and schools would be able to utilize these animations as part of their career days even if it was not possible for an attorney to be present.

The animations would be located on the [www.texaslre.org](http://www.texaslre.org) site under the ***What Do Attorneys Do*** section and would be similar in style to the animations found on the I Was the First website. The animations would be accessible on all platforms and be closed captioned. Closed captioning not only supports those that are hearing impaired but supports learners who are still learning English. Being able to see and hear the words supports language development.

Additionally, this grant would provide for the creation of a game/quiz that would engage students and assess their learning as a result of the animations.

**4. Statement of whether funds from outside sources have been previously solicited for the project and the result of that solicitation.**

No funds or outside sources have been previously solicited for this project.

**5. Detailed budget of expenses.**

Animation Production (including script development and production) \$7,500

**Total Anticipated Cost: \$7,500**

**6. Disclosure of all sources of funding for the project.**

At this time funding will come solely from funds that might be received from the State Bar of Texas Litigation Section.

**7. Statement of whether or not matching funds will be expected from the State Bar.**

Matching funds are not expected from the State Bar.

**8. Statement of whether or not the project meets a particular need of the State Bar.**

This project helps fulfill the State Bar of Texas mission statement by

- To educate the public about the Rule of Law and the role of judges, lawyers, and the public in the justice system.
- To provide forums for the discussion of subjects pertaining to the practice of law, the science of jurisprudence and law reform, and the relationship of the state bar to the public.

**9. Does the project meet a critical need of the State Bar?**

Yes, this project helps the State Bar meet the goal of its mission statement, referenced above, which embodies the essence of our State Bar's existence.

**10. Are there other State Bar programs currently providing or implementing a similar project or service?**

No.

**11. Can any portion of the funds being requested be deferred to the next budget year?**

No

**12. Identification of the target group that will benefit from the grant.**

While we will be targeting attorneys that speak to K-12 students, this program will also benefit K-12 educators, school administrators, parents, and the general public.

**13. Confirmation that a copy of the completed application has been forwarded to the Executive Director.**

Executive Director, Trey Apffel, is copied on this letter.

A copy of the State Bar of Texas Litigation Grant Application will be forwarded to Mr. Apffel as well.

Thank you for your time and consideration of this request. Please do reach out and contact me with any questions about this project or this request.

Respectfully,

A handwritten signature in black ink, reading "Jan L. Miller". The signature is written in a cursive style with a large, looped initial "J".

Jan Miller  
Director  
Law-Related Education

cc: Trey Apffel (via e-mail)  
Ray Cantu (via e-mail)  
KaLyn Laney (via e-mail)  
Josh Caldwell, Law Focused Education, Inc. (via e-mail)  
Kevin Vela, Law Focused Education Committee