

# IN THE SUPREME COURT OF TEXAS

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Misc. Docket No. 17-9161

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## ORDER AMENDING ARTICLES IV AND XIII OF THE STATE BAR RULES AND RULE 8.04 OF THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

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**ORDERED** that:

1. Article IV of the State Bar Rules is amended to (a) replace references to “minority directors” with references to “at-large directors” in accordance with recent amendments to Sections 81.002 and 81.020 of the Government Code;<sup>1</sup> and (b) update the qualifications for officers and directors of the State Bar. Under the amended rules, a lawyer may be qualified to serve as director or officer despite a prior administrative suspension, and a lawyer may be qualified to serve as director despite a prior disciplinary suspension if the condition in § 5(A)(2)(c) is met. The amendments to §§ 1, 3, 8, and 10 are redlined. Because § 5 has been rewritten, only a clean copy of that Section, as amended, is included in this order.
2. The amendments to Article IV are effective immediately.
3. Article XIII of the State Bar Rules and Rule 8.04 of the Texas Disciplinary Rules of Professional Conduct are amended to comply with Section 81.053(a) of the Government Code.<sup>2</sup> The amendments to Article XIII establish the New Opportunities Volunteer Attorney Program. The amended Article is shown in clean form. The amendment to Rule 8.04 of the TDRPC is redlined. Clean-up revisions have also been made to the comment to Rule 8.04.
4. The amendments to Article XIII and Rule 8.04 will take effect on May 1, 2018, after a public-comment period. Written comments should be emailed to [rulescomments@txcourts.gov](mailto:rulescomments@txcourts.gov). The Court requests that comments be submitted by the end of March.

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<sup>1</sup> Government Code Sections 81.002 and 81.020 were amended by Acts 2017, 85th Leg., R.S., ch. 1130 (SB 416), effective June 15, 2017.

<sup>2</sup> Government Code Section 81.053(a) was amended by Acts 2017, 85th Leg., R.S., ch. 87 (HB 1020), effective September 1, 2017.

5. The Clerk is directed to:
  - a. file a copy of this order with the Secretary of State;
  - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
  - c. send a copy of this order to each elected member of the Legislature; and
  - d. submit a copy of the order for publication in the *Texas Register*.

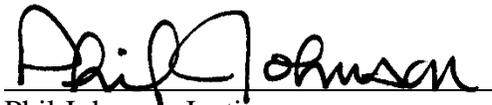
Dated: December 12, 2017.



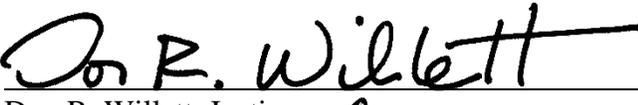
Nathan L. Hecht, Chief Justice



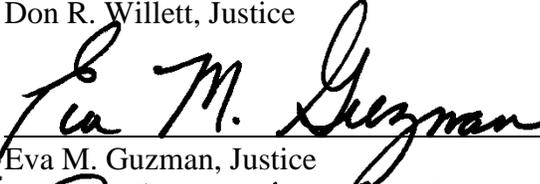
Paul W. Green, Justice



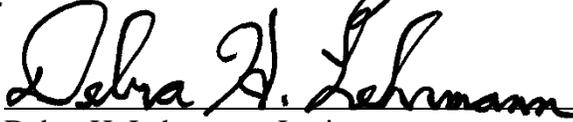
Phil Johnson, Justice



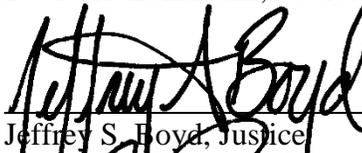
Don R. Willett, Justice



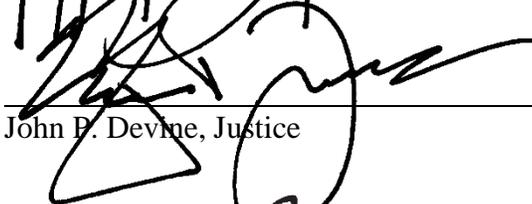
Eva M. Guzman, Justice



Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



Jeffrey V. Brown, Justice

## ARTICLE IV ADMINISTRATION

### Redline of Amendments to Section 1

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

- A. The State Bar shall be governed by a board with shall enforce the Act and these Rules.
- B. The term of office for each elected, public, and ~~minority-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 ~~minority-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 ~~minority-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.

### Redline of Amendments to Section 3

#### 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) ~~minority-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.

### Clean Version of Section 5, as Amended

#### Section 5. Directors, Qualifications and Other Requirements

- 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 Code.
  2. *Attorney directors.* A director who is an attorney also:
    - a. must be an active member in good standing;
    - b. must never have been disbarred or resigned in lieu of discipline; and
    - c. if ever suspended for professional misconduct, must have been reinstated at least ten years before the term as director begins.
  3. *Elected directors.* An elected director also:
    - a. must have their principal place of practice in the district from which the director is elected;
    - b. must not have their principal place of practice in the same county as the last director from the district—but this requirement does not apply to a director from a Metropolitan County or El Paso County, and the board may disregard the requirement if necessary to rebalance the board membership under section 8;
    - c. must not have served one and one-half years or more of the prior director's term; and
    - d. must not be an elected official paid by the State of Texas.
  4. *Public directors.* A public director also:
    - a. must not have a financial interest in the practice of law, other than as a consumer; and
    - b. must be confirmed by the senate.
  5. *At-large directors.* An at-large director also must not be an elected official paid by the State of Texas.
  6. *Ex officio directors.* An ex officio director also must not be an elected official paid by the State of Texas.
- B. Other Requirements. A director must:
1. take the oath of office by the second regularly scheduled board meeting of the first year of the director's term; and
  2. attend at least half of the regularly scheduled board meetings each calendar year—but a majority of the board may excuse a director's absence.

- C. The board must provide a training program for board members that meets the requirements of Section 81.0201, Government Code. An elected or appointed director cannot participate at a board meeting or vote before completing the training program.

### **Redline of Amendments to Section 8**

#### **Section 8. Director Vacancies and How Filled**

- A. Death of a board member, judgment of incompetency, a board member's resignation or any failure to qualify shall create a vacancy. In case of a vacancy as to an elected director, the president, shall appoint a member whose principal place of practice is within the district within which the vacancy has occurred. Vacancies in ex officio directorships shall be filled by the person who succeeds to the office in the State Bar or in the Texas Young Lawyers Association to which such directorship is incident, except that the directorship incident to the office of immediate past president of the State Bar or Texas Young Lawyers Association or immediate past chairperson of the board of the State Bar shall be filled by the most recent holder of such offices respectively who is willing to serve. Vacancies in public and ~~minority-at-large~~ directorships shall be filled in the 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.

### **Redline of Amendments to Section 10**

#### **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.

**BD.** 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.

**CE.** The president-elect shall preside at meetings of the State Bar in the absence of the president and otherwise assist the president, as the president shall request, in carrying out the responsibilities of the office of president.

## State Bar Rules

### Clean Version of Article XIII, as Amended

#### Article XIII—New Opportunities Volunteer Attorney Pro Bono Program

##### Section 1. Definitions

- (A) “Program” is the New Opportunities Volunteer Attorney Pro Bono Program established by this article.
- (B) A “New Opportunities Volunteer Attorney” or “NOVA” is a person of any age who:
1. is an inactive or emeritus member of the State Bar or is licensed to practice law in another U.S. jurisdiction, even if inactive or retired; and
  2. meets the following conditions:
    - is in good standing with the State Bar or the entity that governs the practice of law in the jurisdiction where the attorney is licensed;
    - is in good standing with all courts and jurisdictions in which the attorney is admitted to practice;
    - agrees to abide by the Texas Disciplinary Rules of Professional Conduct and to submit to the disciplinary jurisdiction of the Supreme Court of Texas and the State Bar;
    - has not been disciplined for professional misconduct within the past 10 years and is not subject to a pending disciplinary proceeding;
    - provides legal services under the supervision of an approved legal service organization;
    - is not compensated for legal services rendered under the Program; and
    - complies with the policies and procedures of the Program.
- (C) An “approved legal service organization” must:
1. provide free legal services;
  2. maintain malpractice insurance for its NOVAs; and
  3. be either:
    - (a) a nonprofit that:
      - is funded in part by the Texas Access to Justice Foundation;

- is funded in part by the Legal Services Corporation;
  - is a current participant in the State Bar of Texas Malpractice Insurance Network Exchange; or
  - provides at least 50% of its legal services at no cost to Texans living at or below 200% of the federal poverty guidelines published annually by the U.S. Department of Health and Human Services;
- (b) a clinic or pro bono program of a Texas law school; or
- (c) a pro bono project or program of the State Bar or of a local or specialty bar association within Texas.

## **Section 2. Scope of Authority**

A NOVA may engage in any activity necessary to resolve a legal matter for a client, including giving legal advice, preparing pleadings or other documents, and appearing before a court or tribunal. A NOVA need not be admitted pro hac vice to appear before a court while providing legal services under the Program. A NOVA may not represent him- or herself to be an active member of the State Bar.

## **Section 3. Compensation and Fees**

- (A) A NOVA may not receive compensation for providing legal services under the Program, but an approved legal service organization may reimburse a NOVA for actual expenses incurred by the attorney.
- (B) A NOVA is exempt from paying the legal services fee mandated by Section 81.054(j), Government Code.
- (C) An approved legal service organization may charge the client for services provided by a NOVA and collect attorneys' or other fees awarded by a court or tribunal or as a part of a settlement.

## **Section 4. Administration**

The State Bar may develop policies and procedures for the Program and is responsible for its administration.

## **Section 5. Discipline**

A NOVA may be sanctioned or disciplined by a court or the State Bar in the same manner as an active member of the State Bar.

**Section 6. MCLE Requirement**

A NOVA must complete at least three hours of CLE annually.

**Section 7. Authority of Approved Legal Service Organizations**

An approved legal service organization is not required to:

- (A) accept any particular NOVA;
- (B) refer any case, a particular type of case, or a particular number of cases to any NOVA; or
- (C) take any action inconsistent with the rules, laws, regulations, policies, or procedures governing the organization's pro bono programs.

## Texas Disciplinary Rules of Professional Conduct

### Redline of Amendments to Rule 8.04

#### Rule 8.04. Misconduct

- (a) A lawyer shall not:
- (1) violate these rules, knowingly assist or induce another to do so, or do so through the acts of another, whether or not the violation occurred in the course of a client-lawyer relationship;
  - (2) commit a serious crime or commit any other criminal act that reflects adversely on the lawyers honesty, trustworthiness or fitness as a lawyer in other respects;
  - (3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
  - (4) engage in conduct constituting obstruction of justice;
  - (5) state or imply an ability to influence improperly a government agency or official;
  - (6) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;
  - (7) violate any disciplinary or disability order or judgment;
  - (8) fail to timely furnish to the Chief Disciplinary Councils 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;
  - (9) engage in conduct that constitutes barratry as defined by the law of this state;
  - (10) fail to comply with section 13.01 of the Texas Rules of Disciplinary Procedure relating to notification of an attorneys cessation of practice;
  - (11) engage in the practice of law when the lawyer is on inactive status, except as permitted by section 81.053 of the Government Code and Article XIII of the State Bar Rules, or when the lawyers right to practice has been suspended or terminated, including, but not limited to, situations where a lawyer's right to practice has been administratively suspended for failure to timely pay required fees or assessments or for failure to comply with Article XII of the State Bar Rules relating to Mandatory Continuing Legal Education; or
  - (12) violate any other laws of this state relating to the professional conduct of lawyers and to the practice of law.
- (b) As used in subsection (a)(2) of this Rule, “serious crime” means barratry; any felony involving moral turpitude; any misdemeanor involving theft, embezzlement, or

fraudulent or reckless misappropriation of money or other property; or any attempt, conspiracy, or solicitation of another to commit any of the foregoing crimes.

### **Clean Version of the Comment to Rule 8.04, as Amended**

#### **Comment:**

1. There are four principal sources of professional obligations for lawyers in Texas: these rules, the State Bar Act, the State Bar Rules, and the Texas Rules of Disciplinary Procedure (TRDP). All lawyers are presumed to know the requirements of these sources. Rule 8.04(a)(1) provides a partial list of conduct that will subject a lawyer to discipline.
2. Many kinds of illegal conduct reflect adversely on fitness to practice law. However, some kinds of offenses carry no such implication. Traditionally in this state, the distinction has been drawn in terms of those crimes subjecting a lawyer to compulsory discipline, criminal acts relevant to a lawyer's fitness for the practice of law, and other offenses. Crimes subject to compulsory discipline are governed by TRDP, Part VIII. In addition, although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for criminal acts that indicate a lack of those characteristics relevant to the lawyer's fitness for the practice of law. A pattern of repeated criminal acts, even ones of minor significance when considered separately, can indicate indifference to legal obligations that legitimately could call a lawyer's overall fitness to practice into question. See TRDP, Part VIII; Rule 8.04(a)(2).
3. A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief, openly asserted, that no valid obligation exists. The provisions of Rule 1.02(c) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges to legal regulation of the practice of law.
4. Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of attorney. The same is true of abuse of positions of private trust.