

Part VIII. LEGISLATION

8.01 Legislative Actions

8.01.01 General. Legislative actions to be undertaken by the State Bar shall be strictly limited to those that conform to State Bar legislative policy and applicable law. No legislative action shall be authorized in the name of the State Bar that cannot be properly and effectively managed. The terms "legislation" or "legislative proposal," when used in this Policy Manual, shall be construed to mean any existing or proposed statute, rule, or regulation of the State of Texas or the United States or of any department or agency of the United States or the State of Texas. The terms "legislative position" or "legislative action" shall mean the legislative action taken or proposed to be taken by the Board with respect to legislative proposals in the name of the State Bar or, pursuant to this policy, by any section of the State Bar.

8.01.02 Support or Opposition by State Bar. The State Bar will neither support nor oppose any proposed legislation or pending enactment by the Texas Legislature or the United State Congress, or any department or agency thereof, unless that legislative action has been approved by the Board or by the Executive Committee acting within the scope of its authority under this Policy Manual.

8.01.03 Criteria. The Board, the Executive Committee, or the Board Legislative Policy Subcommittee, when acting within the scope of its authority under this policy in deciding whether to recommend, support, remain neutral, or oppose proposed legislation or to initiate any legislative action in either house of the Texas Legislature, in the United States Congress, or before any department or agency of the United States or the State of Texas shall, in addition to the policy considerations set forth in this Section, determine that the proposed legislation or legislative action conforms in all material respects to the following criteria:

- (A) The proposed legislation or legislative action falls within the purposes, expressed or implied, of the State Bar as provided in the State Bar Act.
- (B) Adequate notice and opportunity has been afforded for the presentation of opposing opinions and views.
- (C) The proposed legislation or legislative action does not carry the potential of deep philosophical or emotional division among a substantial segment of the membership of the bar.
- (D) The proposed legislation or legislative action is in the public interest.
- (E) The primary purpose of the proposed legislation or legislative action is not to provide economic benefit to the members of the State Bar.
- (F) The proposed legislation or legislative action is not designed to promote or impede the political candidacy of any person or party or to promote a partisan political purpose.

(G) The proposed legislation cannot be construed to advocate political or ideological positions. See, e.g. *Keller v. The State Bar of California*, 496 U.S. 1 (1990).

Nothing herein shall prohibit the State Bar's support of or opposition to legislation relating to the selection, tenure, compensation, staffing, equipping, and housing of the federal or state judiciary.

8.01.04 Consideration. No legislative proposal shall be considered by the State Bar unless:

(A) it has been recommended by the Board Legislative Policy Subcommittee or proposed by motion of a Director after review by the Board Legislative Committee; and

(B) it has been approved by majority vote of the Directors present at the meeting or by majority vote of the Executive Committee during the time when the Texas Legislature is in session, subject to the limitations applicable to the Executive Committee set forth below.

8.01.05 Board Legislative Policy Subcommittee.

(A) The Chair shall appoint the Board Legislative Policy Subcommittee. It shall be composed of nine Board members, at least three of whom shall be public members.

(B) The Board Legislative Policy Subcommittee will meet as often as necessary to develop recommendations to the Board for the Board to initiate legislative action in accordance with this policy.

(C) In each case involving a proposed legislative position, the Board Legislative Policy Subcommittee shall, by a majority vote, include in its recommendations to the Board the following:

(1) that the proposed legislation or legislative action conforms to the requirements of §8.01; and

(2) the legislative position the Board should adopt or initiate.

(D) The Board Legislative Policy Subcommittee shall also have the authority to draft and submit to the Board proposed legislation that it recommends be a part of the State Bar's legislative action program.

8.01.06 Approval Required by Board on Legislative Proposals.

(A) Procedure for Obtaining Approval of the Board for Legislative Action:

(1) Proposals for legislative action shall be submitted to the Executive Director in the form and with the information specified in this policy at least 45 days before the date of a scheduled meeting of the Board Legislative Policy Subcommittee.

- (2)** The Executive Director shall circulate copies of all legislative proposals to the Board Legislative Policy Subcommittee for review and action in accordance with this policy.
- (3)** Legislative proposals not submitted by the time specified in Subsection 8.01.06(A)(1) will not be considered until the next scheduled meeting of the Board Legislative Policy Subcommittee.
- (4)** The Board may be called on to consider the adoption of a legislative position for the State Bar either by:
 - (a)** a recommendation of the Board Legislative Policy Subcommittee adopted by a majority vote of its members present; or
 - (b)** a motion of a Director after consideration by the Board Legislative Policy Subcommittee in accordance with this policy.
- (5)** Consideration of any legislative proposal by the Board shall proceed in the following order:
 - (a)** an affirmative vote of a majority of those present that the proposed legislative action is consistent with §8.01 of this policy; and
 - (b)** if the vote concerning each of the findings required by §8.01 is affirmative, then a second vote will be taken to determine the specific legislative position to be adopted. A motion to support, oppose, or take a neutral position on the legislation shall require a majority vote of the Board members present.

The fact that any proposed legislation or legislative action is not considered by the Board or, if considered, did not receive the required majority vote shall not be considered "action" of the Board with respect to that proposed legislation or legislative action.

(B) The Board Legislative Policy Subcommittee, the Board, and the Executive Committee may allow any interested person to appear before them in support of or in opposition to any legislative proposal being considered, subject to reasonable limitations on available time.

(C) Requests that the State Bar take a legislative position shall be accompanied in all cases by a copy of the legislation proposed or opposed, together with substantially the following information, in the form prescribed by the Executive Director:

- (1)** A brief narrative explanation of the legislation.
- (2)** Identification of, reference to, or copies of similar legislation, if any, proposed to or being considered by the same legislative or administrative body.

(3) A verification that all sections and committees of the State Bar have been sent the legislation for comment and the comments received (copy of form letter and copy of return receipt from each committee and section).

(4) A statement indicating whether the proposed legislation had been introduced in either the House or Senate during prior legislative sessions, as well as a statement of any amendments proposed to the proposed legislation during the prior legislative sessions and the status of the proposed legislation.

(5) A statement of the known position on the legislative proposal taken by any section or committee of the State Bar that has considered the same proposal, including the principal reasons for support of or opposition to the proposal.

(6) Such other information as the Executive Director may reasonably request from time to time.

(D) All section councils are required to review all legislative proposals not less than fourteen days before the first meeting of the Board Legislative Policy Subcommittee. Sections opposing a legislative proposal must submit written objections not less than ten days before the first meeting of the Board Legislative Policy Subcommittee in order to be heard during the meeting. If no comments supporting or objecting to a legislative proposal are received as provided herein from one or more sections, the Board Legislative Policy Subcommittee will enter a position of "no objection" concerning the proposal from those sections not responding.

(E) A legislative position, once adopted by the Board, shall remain the position of the State Bar for the duration of the legislative session unless the position is later modified in accordance with this policy.

(F) Legislative positions shall be stated to support, oppose, or take a neutral position on legislation. Failure to receive the necessary majority vote to support or remain neutral on the proposed legislation shall not be construed as adoption of a position to oppose that legislation. Reconsideration by the Board of a previous legislative position may be proposed by any Director or of the Executive Committee and required on a majority vote of those present at a meeting. Legislative positions may be altered, amended, or withdrawn by a majority vote of the Board present at a meeting.

(G) At the meeting of the Board during which any recommendations of the Board Legislative Policy Subcommittee will be considered, the chair of the Board Legislative Policy Subcommittee or a representative shall personally appear before the Board to present and explain the committee's recommendations. Directors who serve as Board advisors to sections recommending proposed legislation may also advise the Board about the merits and rationale of each proposal.

(H) The Board shall not include a legislative proposal on its agenda for consideration for inclusion in the State Bar's legislative program unless it appears that the proponent has complied satisfactorily

with the applicable provisions of this policy, including having fully presented the proposal to the Board Legislative Policy Subcommittee and obtained a recommendation from the committee.

(I) Any proponent whose legislative proposal is not recommended by the Board Legislative Policy Subcommittee for inclusion in the State Bar's legislative program and who wishes to appeal to the Board shall give written notice to the Executive Director within ten days after the date of the action. A representative of the proponent shall appear personally before the Board to present and explain the legislative proposal. Such an appeal shall not be allowed unless a full presentation has been made to the Board Legislative Policy Subcommittee.

8.01.07 Role of the Executive Committee.

(A) The Executive Committee, unless otherwise expressly directed by majority vote of the Board, shall take no legislative action unless the Executive Committee shall determine by majority vote of those voting at a meeting that:

- (1)** the proposed legislative action could not reasonably have been submitted for consideration by the Board Legislative Policy Subcommittee to the Board in accordance with this policy; or
- (2)** there has been a material change in circumstances concerning a legislative proposal or legislative action approved previously by the Board making it necessary that legislative action be taken by the State Bar; or
- (3)** prompt legislative action is necessary by the State Bar to address a pending legislative proposal.

(B) When considering proposed legislative action with respect to legislation previously acted on by the Board, the Executive Committee shall be subject to the following guidelines:

- (1)** The Executive Committee shall take no action inconsistent with a previous decision for legislative action made by the Board unless there has been a significant, material change in circumstances concerning the legislative action since the last meeting of the Board. The failure to receive the required majority vote of the Board shall be considered a rejection by the Board of the legislation.
- (2)** Action by the Executive Committee on legislative proposals shall proceed as follows:
 - (a)** It must be affirmatively established by majority vote of those voting at a meeting that the legislation or legislative action being considered conforms to the criteria of §8.01 of this policy.
 - (b)** If the vote concerning each of the findings required by §8.01 of this policy is affirmative, a second vote, by majority vote of those voting, will be taken to determine the specific legislative position to be adopted.

(3) Any action of the Executive Committee to modify a legislative position adopted previously by the Board or with respect to any legislative action first initiated by the Executive Committee shall be reported to the Board at its next meeting for ratification.

(C) In the event a majority of the President, the President-Elect, the Chair, the chair of the Legislative Policy Subcommittee and the Executive Director determine that a legislative matter meeting the conditions described in Subsections 8.01.07(A)(1), (2) and (3) must be acted upon immediately, and that there is insufficient time to convene the Executive Committee to act pursuant to Subsection 8.01.07, they may convene as an Ad-hoc Emergency Legislative Response Committee to take such action as a majority deems necessary, subject to the guidelines and restrictions set forth in Subsection 8.01.07(B) above.

8.01.08 Executive Director to Administer Legislative Program.

(A) The Executive Director shall coordinate and administer the legislative programs and activities of the State Bar and shall, together with State Bar legal counsel, monitor the State Bar's legislative program as well as pending legislation that may have an impact on the State Bar.

(B) The Executive Director shall publish in the *Texas Bar Journal* or otherwise give to all members of the State Bar reasonable notice of the time, date, and place that legislative proposals will be considered by the Board Legislative Policy Subcommittee together with a reasonably itemized agenda, which shall include the caption for each such legislative proposal.

(C) The Executive Director shall distribute annually to the chair of each section of the State Bar a copy of this policy and the anticipated timetable that the Board Legislative Policy Subcommittee will follow.

(D) The Executive Director shall monitor the time frame in which the Bar's legislative program is to be developed and shall make recommendations concerning the legislative timetable to the Board. The Board shall consider and adopt, a legislative timetable for publication in the *Texas Bar Journal*. The Executive Director shall furnish a copy of the timetable to each Director, and to the chair of each section and committee.

(E) The Executive Director shall assist and advise all sections and other divisions of the State Bar and the Board in the development of the State Bar's legislative program.

(F) The Executive Director shall inform the chair of each section recommending proposed legislation of the action taken by the Board regarding that section's proposed legislation.

(G) The Executive Director shall have a copy of each item of proposed legislation together with the explanatory material required by this policy, including a written legal opinion by State Bar legal counsel regarding the proposed legislation, prepared and forwarded to each member of the Board

Legislative Policy Subcommittee not less than fourteen days before its next meeting, notice of which has been given in accordance with Subsection (B) of this Section.

(H) The Executive Director or designee shall assist the Board Legislative Policy Subcommittee in the submission of its written report or recommendations to the Board. A copy of the Board Legislative Policy Subcommittee's report shall be forwarded to each Director not less than fourteen days before the meeting at which the Board is to consider the Board Legislative Policy Subcommittee's report and appeals from Board Legislative Policy Subcommittee actions. The report shall contain a copy of each legislative proposal and a brief statement of and reasons for the Board Legislative Policy Subcommittee's recommendation.

8.01.09 Procedure for Proposing Legislation for Inclusion in Bar's Program.

(A) Sections are authorized to consider proposed legislation within the scope of their respective purposes and concerns and to make recommendations about it to the Board Legislative Policy Subcommittee. Proposed legislation shall be submitted in accordance with the legislative timetable established each year by the Board and published in the *Texas Bar Journal*.

(B) Committees of the State Bar are specifically not authorized to independently make recommendations to the Board Legislative Policy Subcommittee about proposed legislation. Committees are encouraged to make their recommendations through a section of the State Bar cognizant of the type of legislation recommended by the committee.

(C) If the proponent of a legislative proposal that was approved by the Board for inclusion in a previous legislative program but not enacted desires its inclusion again in the State Bar's legislative program, the proposal must again be submitted to the Board Legislative Policy Subcommittee in accordance with this policy.

(D) Legislative proposals and legislative action approved by the Board for inclusion as part of the legislative program shall be published in the *Texas Bar Journal* in accordance with the legislative timetable. Any legislative action that has not been published in the *Texas Bar Journal* shall be dropped from the legislative program, except emergency legislative action that could not have been reasonably anticipated in time to make its publication possible.

(E) Sections supporting legislative proposals for the Texas Legislature that are approved for inclusion in the legislative program of the State Bar shall submit a suggested list of legislative sponsors for each proposal. That list shall be submitted to the Executive Director or designee not less than sixty days before the Texas Legislature convenes in a regular session. The Executive Director shall, in cooperation with those sections, assist in finding legislative sponsors for each proposal for both houses of the Texas Legislature.

(F) Notwithstanding any of the foregoing, a legislative proposal may be dropped from the legislative program and not supported by the Bar if the Executive Director determines that any proposal for

the Texas Legislature, even though previously approved by the Board for inclusion in the legislative program:

- (1) as actually drafted, is not in compliance with this policy; or
- (2) is not introduced in both houses of the Texas Legislature within the first sixty days of the legislative session.

The Executive Director shall certify to the Board each legislative proposal dropped from the legislative program as authorized herein, accompanied by a statement of the reasons therefore.

(G) No section of the State Bar shall support, endorse, or oppose any proposed legislative action except in accordance with the procedures set out in this policy.

(H) It shall be the responsibility of the section proposing legislation to comply with this policy. It shall be the responsibility of such sections to have a representative appear before the Texas Legislature to explain legislative proposals approved by the Board and to conduct such related activities and provide such additional information as may be required; however, no representative of the State Bar or any section thereof shall appear before the Legislature or any committee or member of the Legislature in the pursuit of any legislative action authorized by the Board without complying with all applicable laws of the State of Texas.

8.01.10 Assertion By Section of its Own Position.

No section of the State Bar may assert an independent position regarding legislative, judicial or executive action unless permission has been first obtained by a majority vote of the Board after compliance with the applicable sections of this policy. The other provisions of this policy requiring action by the Board Legislative Policy Subcommittee, the Executive Director, or the Board shall also be followed.

(A) *Legislative Matters.*

- (1) During the legislative session, the Executive Committee by a majority vote may authorize a section to assert its own position, subject to the requirements of this policy.
- (2) Sections shall be allowed to expend funds in their legislative efforts, but prompt and full disclosure of collection and expenditure of funds must be made to the Executive Committee.
- (3) Any legislative action taken by a section pursuant to this provision shall be clearly identified as the legislative position of the section and not that of the State Bar. A legislative position statement of a section to a public, judicial, executive, or legislative body must, as a preamble, contain the following disclaimer in capital letters and underlined:

THIS POSITION IS BEING PRESENTED ONLY ON BEHALF OF THE ()
SECTION OF THE STATE BAR OF TEXAS. THIS POSITION SHOULD

NOT BE CONSTRUED AS REPRESENTING THE POSITION OF THE BOARD OF DIRECTORS, THE EXECUTIVE COMMITTEE, OR THE GENERAL MEMBERSHIP OF THE STATE BAR. THE () SECTION, WHICH TAKES THIS POSITION, IS A VOLUNTARY SECTION OF () MEMBERS COMPOSED OF LAWYERS PRACTICING IN A SPECIFIED AREA OF LAW.

THIS POSITION IS TAKEN AS A RESULT OF A VOTE OF () TO () OF THE COUNCIL OF THE () SECTION, WHICH IS THE GOVERNING BODY OF THAT SECTION. NO APPROVAL OR DISAPPROVAL OF THE GENERAL MEMBERSHIP OF THIS SECTION HAS BEEN OBTAINED.

This disclaimer shall be filed before the presentation of testimony with the chair of the committee or subcommittee before which testimony is to be presented. Additionally, the disclaimer must be read at the beginning of any oral testimony before a committee or subcommittee.

If the general membership of the section has approved the section's position, paragraph 2 of the disclaimer may be omitted.

(4) No section, division, or other entity of the State Bar may adopt a legislative position as its own before a public, judicial, executive, or legislative body unless that position was adopted in the following manner:

(a) A section legislative position must be developed in accordance with the bylaws of the section. The bylaws of a section must require that a legislative position be adopted by a majority of a quorum of the council of the section and that the council shall have been elected by a majority of the members voting after written notice of the nominees for election to the council was sent to the entire membership of the section not less than thirty days before the date set for the election. Floor nominations may also be permitted at a section's annual meeting without the thirty-day notice to the entire section membership.

(b) Notice of the proposed legislative position of a section must be circulated as provided below.

(c) If no objection is raised to a proposed section legislative position, the position shall be cleared by the Executive Director and shall then be presented to the Board or Executive Committee.

(d) Generally, it is perceived that a legislative position of a section is given greater weight when it has been adopted as the position of the State Bar. Consideration should first be given to the traditional methods for approval and presentation of a legislative position of a section. There are several situations, however, in which it might be more appropriate for a section to state its own legislative position. Examples include the following situations:

(i) **Technicality** - A section may more appropriately present a legislative position when the subject matter is so technical or so clearly within the special expertise of a section that review by the Board or Executive Committee would be merely pro forma and other entities of the State Bar would have little interest or concern.

(ii) **Supplemental Views** - When the Board has acted generally on a matter, a section may wish to supplement the legislative position to update it or to accommodate changing circumstances. The supplemental legislative proposal shall be consistent with the previously adopted position of the Board.

(B) Approval Procedure.

(1) In order to present its own views, a section must send the completed application form and the notice form to the President of the State Bar, the Chair, the president of the TYLA, the Executive Director, and the chairs of all sections and committees of the State Bar.

(2) The Executive Director shall coordinate review of section requests and shall notify the Board or the Executive Committee as appropriate. All questions regarding the status of requests should be directed to the Executive Director.

(3) Objections to proposed requests must be directed to the Executive Director before the deadline date set forth in the application form. If no objections are received by the deadline, the legislative proposal shall be presented to the Board at its next meeting, unless time is of the essence or the Legislature is in session, in which case it shall be presented to the Executive Committee.

(a) Any member, including the *ex officio* members, of the Executive Committee, may raise objection to a section's legislative action request if the member is of the opinion that the proposed legislation:

(i) conflicts with an existing policy of the State Bar;

(ii) is not within the primary or special expertise, purpose, or concerns of the section;

(iii) is of such a general interest to the membership of the State Bar or the legal profession or the public in general that the presentation should be made only by the State Bar; or

(iv) does not comply with this policy.

(b) A chair on behalf of a section of the State Bar or a member of the State Bar may raise objection to a legislative action proposed by a section within the required time by

communicating the objection by telephone to the Executive Director and to the chair of the proposing section. The objection shall be confirmed in writing to the Executive Director and the chair of the proposing section within five days, or the objection shall be waived.

(c) When a section or member raises an objection to a proposed legislative position of a section, the Executive Director shall immediately advise the chair of the proposing section who shall promptly undertake to determine whether the objection can be resolved. If the objection cannot be resolved, the chair of the proposing section without delay shall advise the Executive Director, who shall then present the legislative proposal together with the objections to the Board or to the Executive Committee, as may be appropriate, before the proposed presentation date set forth in the request. The Board or the Executive Committee shall promptly consider and grant or deny the request. The party adversely affected by a ruling of the Executive Committee may appeal in writing within ten days to the Board, which shall forthwith consider and grant or deny the appeal. The vote of the Board on the appeal may be by mailed ballot. The Executive Director will coordinate all appeals, will notify the persons or entities involved by telephone, and will confirm in writing, either by letter or by telegraph, all objections to the legislative action request, so that all interested parties may have an opportunity to be heard.

(C) Sections As Resources.

(1) A section may provide background information or act as a resource witness for any legislative, executive, or judicial body ("governmental body") or individual member thereof. In order to be authorized to act in any such capacity (as a "resource entity"), the section must be requested to participate by the governmental body or one of its members. A section may not directly or indirectly solicit appointment as a resource entity. If a section serves as a resource entity for any governmental body or individual on any proposal, it may take no affirmative action to support or oppose the proposal (unless authorized by other provisions of this policy) other than to provide advice and counsel to the body or individual requesting its services. Within ten business days after first being designated as a resource entity by any governmental body or individual, a section shall inform the Executive Director in writing of:

(a) the name of the governmental body or individual requesting the section to serve as a resource entity;

(b) the matter about which the section is serving as a resource entity (including, if applicable, a copy of the specific legislation or proposal); and

(c) the advice given by the section as a resource entity.

(2) The section shall update in writing the information specified above on or before the tenth business day after the initial report to the Executive Director and before the expiration of each ten business days thereafter until the section ceases to serve as a resource entity. The section shall, within twenty business days after ceasing to be a resource entity for a governmental body

or individual, file a final written report with the Executive Director clearly explaining all advice given by the section as a resource entity for that body or individual. The Executive Director may, at any time, instruct any section either not to act as a resource entity or not to render specific advice if in the opinion of the Executive Director (or in the opinion of the Board or Executive Committee) the advice given:

- (a) is contrary to the best interests of the State Bar;
- (b) conflicts with an existing policy of the State Bar;
- (c) is not within the primary or special expertise, purpose, or concern of the section; or
- (d) does not comply with this policy.

(3) Any advice given by a section as a resource entity shall be accompanied by the disclaimer contained in this Subsection.

8.01.11 Section Tracking of Legislation. Nothing in this policy shall be construed to prevent a section from tracking specific legislation through the Legislature and informing its membership about any aspect of pending legislation. A section or any of its members may, without complying with any of the provisions of this policy, advocate any position with respect to any legislative proposal to the membership of the section or any of its council members.

8.01.12 Members May Present Individual Views. Nothing herein shall preclude individual members of the State Bar from presenting their individual, personal views on any legislative proposal.

8.01.13 Procedure For Special Legislative Sessions.

The legislative program, if any, of the State Bar, to be presented to any special session of the Texas Legislature shall be adopted under the same procedures as set forth herein, modified only as reasonably required, and with a legislative timetable adopted by the Board by majority vote for each special session.

8.01.14 Suspension of this Policy. Any policy provided for herein may be suspended by the Board by a vote of a majority of the Directors present and voting.

8.01.15 Attachments.

(A) *Attachment A - Application Form.*

REQUEST FOR AUTHORITY OF SECTION TO ASSERT ITS OWN POSITION

FROM:

RE:

OBJECTION DEADLINE:

PROPOSED PRESENTATION DATE:

The _____ Section, if permitted by the Board of Directors of the State Bar by the above presentation date, proposes to submit the attached resolution to _____ setting forth its position concerning _____. The resolution was adopted by the council of the _____ Section on _____. The council of the _____ Section is composed of _____ members. A quorum being present, _____ members voted for and _____ against the proposed statement.

[Include additional paragraphs covering:

Summary of position, explanation of attachments and explanation of the reason for requesting authority to assert its own position. If fewer than sixty days are allowed for objection, a reason why a shorter time is necessary must be given. A certificate of notice shall conclude the application and shall list all persons to whom the application has been mailed.]

Enclosure(s)

cc: President of the State Bar
Chair of the Board of Directors
President of the TYLA

Executive Director
P. O. Box 12487
Capitol Station
Austin, TX 78711

Chairs of all sections and committees [naming them]

(B) *Attachment B - Notice Form.*

NOTICE BY A SECTION OF A REQUEST FOR AUTHORITY TO ASSERT ITS OWN POSITION

The _____ Section proposes to submit its own position to _____ on _____, if permission to do so is given by the Board of Directors of the State Bar. This notice is given so that, if you have any objections to this proposed position, you may make them known by calling the Executive Director of the State Bar at 512/463-1463, or writing to P. O. Box 12487, Capitol Station, Austin, TX 78711. Objections are to be made on or before _____. The position this section proposes to present is set out in "Exhibit A". The effect of the proposed position would be to _____.

8.02. Amicus Curiae Briefs

8.02.01 Definitions

(A) The "Ad Hoc Submission Committee" consists of the President, the President-Elect, the Chair, the chair of the Board Legislative Policy Subcommittee, and the Executive Director.

(B) “Court means any state or federal court.

(C) References to the “Executive Director” includes any person to whom the Executive Director delegates any duty required of the Executive Director by this §8.02.

(D) “Position” means any position or positions proposed to be advocated in an amicus curiae brief.

(E) “Request” means a request for approval for the State Bar to file an amicus curiae brief in its own name, or a request for approval for a State Bar section to file an amicus curiae brief in the section’s name.

(F) “State Bar sections” includes State Bar divisions

(G) “Subcommittee” means the Board Legislative Policy Subcommittee.

8.02.02 Restrictions.

(A) No request may be approved unless the position:

(1) falls within the purposes, expressed or implied, of the State Bar as provided in the State Bar Act;

(2) cannot be construed as violating any state or federal law or any applicable case law;

(3) does not carry the potential of deep philosophical or emotional division among a substantial segment of the membership of the State Bar;

(4) cannot be construed as conflicting with any existing State Bar policy; and

(5) in the case of State Bar sections, falls within the primary or special expertise, purpose, or concern of the section, and has been approved by the section council or board.

(B) The State Bar or any State Bar section may not file an amicus curiae brief in any court unless it is approved pursuant to this §8.02.

8.02.03 Requests. Requests may only be submitted by an Officer, a Director, or a section of the State Bar, and must include:

(A) the name and contact information of the person or entity making the request;

(B) the name of the case in which the amicus curiae brief is proposed to be filed;

(C) the court in which the amicus curiae brief is proposed to be filed;

- (D) the date by which the amicus curiae brief must be filed;
- (E) a description of the facts of the case and the questions presented to the court;
- (F) the issue or issues proposed to be addressed by the amicus curiae brief;
- (G) a statement of the position and in what way such position satisfies the restrictions provided in §8.02.02(A) above;
- (H) a draft of the proposed amicus curiae brief, if available at the time of filing the request; and
- (I) a disclosure of any personal or professional conflict of interest that any member of the Board or the section's council may have in the case.

8.02.04 Procedures for Approval.

(A) *Procedure for Obtaining Approval of the Board.*

- (1) All requests must be received by the Executive Director no later than 30 business days prior to the next regular meeting of the Board. The Executive Director shall deliver the request to the Ad Hoc Submission Committee and to the members of the Subcommittee within 3 business days following receipt.
- (2) If a request is received by the Executive Director less than 30 business days prior to the next regular meeting of the Board, a majority of the Ad Hoc Submission Committee may, in its discretion, waive the 30 business day requirement and establish a revised procedural timeline, provided:
 - (a) such majority determines that it was not reasonably possible for the request to have been received by the Executive Director no later than 30 business days prior to the next meeting of the Board, and
 - (b) such majority determines that sufficient time remains for the request to proceed for consideration pursuant to this section.
- (3) The Ad Hoc Submission Committee or the Subcommittee may direct the Executive Director to distribute the request to such State Bar sections as it deems prudent. If a request is distributed to any or all State Bar sections, the sections must be advised that any objections to the request are to be received by the Executive Director by a specific date and time set by the Ad Hoc Submission Committee or the Subcommittee, who may then submit a response to the objection to the Executive Director. Upon the receipt of any objection, the Executive Director will notify the person or entity making the request, who may then submit a response to the objection to the Executive Director. Upon the expiration of the date and time set by the Ad Hoc Submission

Committee or the Subcommittee, the Executive Director will compile and distribute the objections and responses, if any, to the Ad Hoc Submission Committee and to the Subcommittee.

(4) Within 5 business days of receipt, the Executive Director will distribute the request to all members of the Board.

(5) The Subcommittee will convene in person or by teleconference to review and take action on the request no later than 20 business days prior to the next Board meeting. In considering the request, the Subcommittee may allow any interested person to appear before the Subcommittee in support of, or in opposition to the request, subject to reasonable limitations on available time.

(6) At the next meeting of the Board, the Subcommittee will deliver its recommendations for or against approval of the request to the Board for action.

(7) In the event the Board approves the request, it may delegate to the President or to the Executive Committee the authority to approve the retention of outside counsel should the President or the Executive Committee, as the case may be, deem such retention prudent, to oversee the review and, if necessary, the revision of the amicus curiae brief, and to assure that the brief is timely filed.

(B) *Expedited Action by the Executive Committee.*

(1) To be considered for expedited action by the Executive Committee,

(a) the request must be received by the Executive Director no later than 15 business days prior to the date of the next regular meeting of the Executive Committee, and

(b) the deadline for filing the amicus curiae brief is set for a date prior to the date of the next meeting of the Board; and

(c) a majority of the Ad Hoc Submission Committee determines that the request could not reasonably have been submitted to the Executive Director pursuant to 8.02.04(A) above.

(2) The Ad Hoc Submission Committee or the Subcommittee may direct the Executive Director to distribute the request to such State Bar sections as it deems prudent. If a request is distributed to any or all State Bar sections, the sections must be advised that any objections to the request are to be received by the Executive Director by a specific date and time set by the Ad Hoc Submission Committee or the Subcommittee. Upon receipt of any objection, the Executive Director will notify the person or entity making the request, who may then submit a response to the objection to the Executive Director. Upon the expiration of the date and time set by the Ad Hoc Submission Committee or the Subcommittee, the Executive Director will compile and distribute the objections and responses, if any, to the Ad Hoc Submission Committee and to the Subcommittee.

(3) The Executive Director will deliver the request to the Ad Hoc Submission Committee, to the Subcommittee, and to all members of the Board within 3 business days of such receipt.

(4) If such a request is received by the Executive Director less than 15 business days prior to the next meeting of the Executive Committee, a majority of the Ad Hoc Submission Committee may, in its discretion, waive the 15 business day submission requirement and establish a revised procedural timeline, provided:

(a) such majority determines that it was not reasonably possible for the request to have been received by the Executive Director no later than 15 business days prior to the next meeting of the Executive Committee, and

(b) such majority determines that sufficient time remains for the request to proceed for consideration pursuant to this section.

(5) The Subcommittee will convene in person or by teleconference to review and take action on the request no later than 10 business days prior to the next Executive Committee meeting. In considering the request, the Subcommittee may allow any interested person to appear before the Subcommittee in support of, or in opposition to the request, subject to reasonable limitations on available time.

(6) At the next meeting of the Executive Committee, the Subcommittee will deliver its recommendations for or against approval of the request to the Executive Committee for action

(7) If the Executive Committee approves the request, it may delegate to the President the authority to approve the retention of outside counsel if the President deems such retention prudent, to oversee the review and, if necessary, the revision of the amicus curiae brief, and to assure that the brief is timely filed.

(8) The President will report the action of the Executive Committee and any resulting activities to the Board at its next meeting for ratification.

(C) *Emergency Action*

(1) To be considered for emergency action:

(a) the request must be submitted by an Officer or Director;

(b) the request must be received by the Executive Director no later than 10 business days prior to the deadline for filing the amicus curiae brief; and

(c) the deadline for filing the amicus curiae brief is set for a date prior to the date of the next regular meeting of the Executive Committee.

(2) If a request is received by the Executive Director less than 10 business days prior to the deadline for filing the amicus curiae brief, a majority of the Ad Hoc Submission Committee may waive the 10 business day requirement, provided:

(a) such majority determines that it was not reasonably possible for the request to be received by the Executive Director no later than 10 business days prior to the deadline for filing the amicus curiae brief, and

(b) such majority determines that sufficient time remains for the request to proceed for consideration pursuant to this section.

(3) The Executive Director will distribute the request to all members of the Board as soon as practicable after receipt.

(4) If a request meets the above conditions, the Ad Hoc Submission Committee will consider and take action on the request as soon as practicable. If the request is approved, the President may approve the retention of outside counsel if the President deems such retention prudent, will oversee the review and, if necessary, the revision and filing of the amicus curiae brief, and will assure that the brief is timely filed.

(5) The President will report the action of the Ad Hoc Submission Committee and any resulting activities to the Executive Committee at its next meeting for ratification and, on behalf of the Executive Committee, to the Board at its next meeting for ratification.

8.02.05 Section Statement.

(A) Any action taken by a section pursuant to this provision will be clearly identified as the position of the section and not that of the State Bar. A position statement of the section must provide the following disclaimer in capital letters at a conspicuous location within the document.

THIS AMICUS BRIEF IS BEING PRESENTED ONLY ON BEHALF OF THE (____) SECTION OF THE STATE BAR. THE SECTION'S POSITION SHOULD NOT BE CONSTRUED AS REPRESENTING THE POSITION OF THE BOARD OF DIRECTORS, THE EXECUTIVE COMMITTEE, OR THE GENERAL MEMBERSHIP OF THE STATE BAR. THE (____) SECTION IS A VOLUNTARY SECTION OF (___) MEMBERS COMPOSED OF LAWYERS PRACTICING IN A SPECIFIED AREA OF LAW.

THIS AMICUS BRIEF IS SUBMITTED AS A RESULT OF A VOTE OF (___) TO (___) OF THE COUNCIL OF THE (____) SECTION, WHICH IS THE GOVERNING BODY OF THE SECTION. NO APPROVAL OR DISAPPROVAL OF THE GENERAL MEMBERSHIP OF THE SECTION HAS BEEN OBTAINED.

This disclaimer should state the appropriate votes recorded. For a position statement other than an amicus brief, the disclaimer should use an appropriate term in place of “amicus brief.”

(B) If the general membership of the section has approved the section’s position, paragraph 2 of the disclaimer may be omitted.

8.02.05 Other Requests. From time to time, the State Bar or a State Bar section may be requested to express support or opposition to any position, action or resolution taken or proposed to be taken by any entity outside of the State Bar. In that event, such request will be treated in a similar manner as a request for approval to file an amicus brief, and will be subject to the requirements, restrictions and procedures established in this §8.02.