

# Section Chairs and Treasurers



**STATE BAR OF TEXAS**

**JULY 24, 2017**

# Topics



- State Bar Policies Governing Sections
- Section Contracts
- Open Records

# State Bar Governing Documents



- State Bar Act (Government Code Chapter 81) – first adopted in 1939, sets out SBOT purposes and responsibilities
- State Bar Rules (Promulgated by the Supreme Court of Texas) – required by the Act, detail membership and administration
- State Bar Board Policy Manual (Maintained and updated by the Board) governs Bar operations (including sections)

# State Bar Act



- Government Code § 81.026
  - (a) **The [State Bar] board may create committees, subject to the executive committee's approval under Subchapter I, and sections as it considers advisable and necessary to carry out the purposes of this chapter.**

# State Bar Rules (Supreme Court)



- Article VIII, Section 1
  - A. ... [sections'] organizational structure, purpose and bylaws shall be subject to approval of the [State Bar] board....

# State Bar Rules



- Article VIII, Section 2
  - The sections and divisions of the State Bar shall deliver to the president and the executive director at least sixty (60) days before the annual meeting of the State Bar, annual reports and recommendations.

# State Bar Board Policy Manual



- Part V addresses State Bar Sections and Divisions
- 5.01 – Sections
- 5.04 – Divisions (mirror Sections provisions)
- 5.01.01 – General
  - ... Sections may, in their bylaws, provide for associate members, such as legal assistants, non-attorney academic professors, and/or law students. The associate members shall not have voting privileges or hold office.
- 5.01.02 – Creation of New Section
- 5.01.03 – Section Name Change

# State Bar Board Policy Manual



- 5.01.04
  - Section bylaws must remain in compliance with the State Bar Act, the State Bar Rules, this Policy Manual and any other applicable action of the Board.
  - Bylaw amendments must be approved by the State Bar Board
    - ✦ Submit proposed amendments to the Executive Director no later than 30 days before the next regularly scheduled Board meeting
    - ✦ The proposed amendments will be reviewed by the legal counsel's office and may be subject to review by the Section Representatives to the Board
- Bylaws must address the following policies:



# Confidentiality (5.01.05)



- All information concerning any section member that is deemed confidential by state or federal law, including Tex. Govt. Code Ch. 552 (Texas Public Information Act) and Tex. Occ. Code Ch. 59 (social security numbers), **including email addresses**, may be used only for official section business and may not be disclosed to the public. Take reasonable and necessary steps to protect information including email addresses, home addresses, home phone numbers (Govt Code 552.1176, 552.137)
- Don't publish private member info on your website
- Require third-party vendors to protect member data (we'll help work this requirement into your contracts)

# Finances (5.01.06)



- Dues and other fees
- Deposits and investments
- Books, records, and reports
- Sales tax
- State Bar assistance to sections
- Bylaws should incorporate these policies

# Public Statements and Advocacy



- *Keller v. State Bar of California*, 496 US 1 (1990)
  - Bar association cannot use mandatory dues to advocate ideological or political positions unless related to Bar's core purposes
- Tex. Govt. Code Sec. 81.034
  - No funds received by the Bar (which includes sections) can be used for influencing legislation unless it relates to SBOT purposes:
    - ✦ Regulation of legal profession
    - ✦ Improving quality of legal services
    - ✦ Supporting the administration of justice

# Public Statements and Advocacy (5.01.07)



- Applies to Sections, Section members, and Section councils
- A section may not purport to **represent the State Bar** before any legislative body, administrative agency, court, or tribunal unless expressly authorized to do so by the Board
- A section may not purport to act, speak, or write on any subject **on behalf of the State Bar** unless expressly authorized to do so by the Board
- A section also may not **take a position in the Section's name** that advances or advocates a political or social policy position unless it fits within the Bar's purposes and the section has Board authorization

# Contracts (5.01.08)



- All contracts for goods or services must be reviewed by State Bar Legal Counsel and signed by the State Bar – don't sign individually nor sign as a section
- Send contracts to my office via Tracy Nuckols/Sections dept.
- We turn contracts around quickly
- Our focuses – indemnification, confidentiality of member data

# The TPIA – Govt. Code Ch. 552 (Open Records)



- The Texas Public Information Act gives the public a right of access to government information
- Liberally construed in favor of disclosure
- State Bar Act §81.033 says SBOT records are subject to the TPIA. Grievance records are not public

# State Bar Records



- State Bar records consist of information related to the official business of the State Bar (including sections)
- Information that is created, collected, assembled, maintained by the State Bar (*officers, directors, volunteers, staff*) or for the State Bar (*i.e. by vendors*)

# What Does That Mean for You?



- If you write, send, or receive something in connection with the transaction of official Section business, it is subject to the TPIA
- Examples: letters, reports, notes, reimbursement requests, and emails (even if in your personal email account)



# Be Professional



- So, treat what you write in letters, emails, etc. as if it might become public
- Be professional
- Pick up the phone

# Why Not Just Delete It?



- Governmental bodies, including the State Bar, are required to retain their records for set time periods
- Agendas and Meeting Materials
  - If they are created or maintained by someone else (State Bar staff), keep them as long as they are useful
- Keep correspondence that you send or receive

# How Long Must I Keep Correspondence?



- Administrative – 4 years\*
  - Substantive re: Section programs, projects, services, policies
- General – 2 years\*
  - Routine operations of your Section
- Transitory – Until completed
  - Of temporary usefulness to completion of an action

# How Do I Manage This?



- Keep it accessible
  - Create a “section” folder in your email box
- If we receive a Public Information Act Request asking for your State Bar communications
  - You will receive a call or email from us about the request
  - We will ask you to send us what you have
  - Statutory deadline – 10 business days

# What Will We Do With It?



- Closely review everything
- Determine what is responsive
- Request an exception opinion from the Attorney General if appropriate

# Open Meetings



- Texas Open Meetings Act (Govt. Code Ch. 551) applies to meetings of State Bar Board of Directors, not to meetings of sections or section councils

# Call Us Anytime



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