

# Section Chairs and Treasurers



**STATE BAR OF TEXAS**

**August 1, 2022**

# Topics



- State Bar Governing Documents
  - State Bar Act
  - Supreme Court State Bar Rules
  - State Bar Policy Manual
  - See [texasbar.com](http://texasbar.com)
- *Keller, McDonald, and Advocacy*
- Section Contracts
- Open Records

# State Bar Governing Documents



- State Bar Act (Tex. Gov't Code Ch. 81) – first adopted in 1939, sets out SBOT purposes and responsibilities
- State Bar Rules (Promulgated by SCOTX) – "adopted in aid of the Court's inherent power to regulate the practice of law"
- State Bar Board Policy Manual (adopted and updated by the Board) governs Bar operations (Part V addresses Sections)

# State Bar Act



- Government Code § 81.026
  - **The [State Bar] board may create ... 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 - Reports
  - 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
- 5.01.03 – Creation of New Section
- 5.01.08 – Section Name Change

# State Bar Board Policy Manual



- 5.01.04(A)
  - Section bylaws must remain in compliance with the State Bar Act, the State Bar Rules, this Policy Manual, state and federal law, 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



# Confidentiality (5.01.04(C))



- Confidential information concerning any section member may be used only for official section business and may not be disclosed to the public.
  - Email address
  - SSN
  - Home address
  - Home phone
- Take reasonable and necessary steps to protect information
- Don't publish members' private info on publicly available web page
- Require third-party vendors to protect member data

# Finances (5.01.05)



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

# Keller



- *Keller v. State Bar of California*, 496 US 1 (1990)
  - Held that State Bar of California could not use mandatory membership dues to finance political and ideological activities when such expenditures were not necessarily or reasonably incurred for the purpose of regulating the legal profession or improving the quality of legal services.

# McDonald



- *McDonald v. Longley*, 4 F.4th 229 (5th Cir. 2021), *cert. denied sub nom. McDonald v. Firth*, 142 S. Ct. 1442 (2022) and *cert. denied sub nom. Firth v. McDonald*, 142 S. Ct. 1442 (2022).
  - Upheld the constitutionality of the vast majority of challenged State Bar of Texas programs and activities.
  - The panel relied on the *Keller* standard that the purposes justifying compelled association in a bar association are “regulating the legal profession” and “improving the quality of legal services,” and that for activities to be germane to those purposes, they must be “necessarily or reasonably incurred for” those purposes.
    - Also held that “[l]obbying for legislation regarding the functioning of the state's courts or legal system writ large” is germane to the purposes identified in *Keller*.
  - The panel found that parts of the State Bar’s and the Texas Access to Justice Commission’s legislative efforts were not germane.

# McDonald (cont'd)



- *McDonald v. Longley*, 4 F.4th 229 (5th Cir. 2021), *cert. denied sub nom. McDonald v. Firth*, 142 S. Ct. 1442 (2022) and *cert. denied sub nom. Firth v. McDonald*, 142 S. Ct. 1442 (2022).
  - In September 2021, the State Bar Board of Directors approved changes to the State Bar Board Policy Manual and the State Bar Rules to comply with the Fifth Circuit opinion. The changes included updates to the Bar's budgeting, legislative, and expenditure objection processes. In October 2021, the Texas Supreme Court issued an order amending the State Bar Rules.
  - It is important to note that the *Keller* and *McDonald* restrictions are not limited to legislative activities; rather, they apply broadly to activities of the State Bar. (Legislative activities are specifically addressed in Part XIII of the State Bar Board Policy Manual.)

# Public Statements and Advocacy



- Tex. Gov't Code Sec. 81.034
    - No funds received by the Bar can be used for influencing legislation unless it relates to:
      - ✦ Regulation of legal profession;
      - ✦ Improving quality of legal services; or
      - ✦ Administration of justice
- (Amount of expenditure must be reasonable & necessary)



# Public Statements and Advocacy (5.01.04(B))



- Applies to Sections/Divisions, Section/Division members, and Section/Division councils
- Unless authorized by the SBOT Board, a section/division may not:
  - purport to **represent the State Bar** before any legislative body, administrative agency, court, or tribunal
  - purport to act, speak, or write on any subject **on behalf of the State Bar**
  - **take a position in the Section's name** that advances or advocates a political or social policy position

# Contracts (5.01.04(D))



- All contracts for goods or services must be reviewed by State Bar Legal Counsel and signed by the State Bar – don't sign individually or on behalf of a section/division
- Send contracts to Office of Legal Counsel via Tracy Nuckols/Sections dept.
- We turn contracts around quickly



# 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 and TBLS records are not.

# 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

# 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 – “promptly” but we only have 10 business days to seek exception from AG

# 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 (Gov't 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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