

MEMORANDUM TO FULL COMMITTEE

TO: TEXAS SUPREME COURT ADVISORY COMMITTEE

FROM: JUDICIAL ADMINISTRATION SUB-COMMITTEE

RE: ARTICLE IV, SECTION 5.A.3 OF THE STATE BAR RULES

A. Background.

1. Charge from Chief Justice Hecht.

Amendments to the State Bar Rules. Article IV, § 5(A)(3) of the State Bar Rules prohibits a person who has ever been suspended or disbarred from the practice of law from serving as a State Bar director or officer. Effective June 14, 2016, Article III, § 9 of the Rules authorizes the Supreme Court Clerk to expunge an administrative suspension for nonpayment of membership fees from a member's record, but by its express terms, the rule does not authorize the expunction of a disciplinary suspension. The Court asks the Committee to consider under what circumstances a member who has previously been suspended from the practice of law should be eligible to serve as a director or officer of the State Bar and to draft appropriate amendments to the Rules. See the attached letter from Thomas Keyser.

2. Attachments: (1) Article IV, Section 5 of the State Bar Rules, (2) Article III, Section 9 of the State Bar Rules, and (3) Thomas Keyser letter.

B. Subcommittee proposal for February 3, 2017, meeting: The Subcommittee believes it is premature to provide a rule proposal at this time because the input of the State Bar (including the Nominations and Elections Subcommittee) should first be sought and considered. Subject to that caveat, the full Committee might consider the issues set out below.

C. Potential discussion issues.

1. Threshold issue. Should there be any change to the State Bar Rule that “[n]o person may serve as an officer or director who . . . as to an elected or ex officio director or an officer, has ever been suspended or disbarred from the practice of law”?

2. Secondary issues. *If* there is a change to the rule, what should the revised rule look like?

a. Bright line options:

- i. Substitute “is” for “has ever been.” (So, the amended rule would read: “No person may serve as an officer or director who . . . as to an elected or ex officio director or an officer, is suspended or disbarred from the practice of law.”)
- ii. At end of sentence, add: “within the prior [#] years.” (So, the amended rule would read: “No person may serve as an officer or director who . . . as to an elected or ex officio director or an officer, has been suspended or disbarred from the practice of law within the prior [#] years.”)

- b. Discretionary option: add, at end of the sentence: “unless determined otherwise by [e.g., “the State Bar Board of Law Examiners” or “the State Bar Board of Directors”]. (So, the amended rule would read: “No person may serve as an officer or director who . . . as to an elected or ex officio director or an officer, has ever been suspended or disbarred from the practice of law, unless determined otherwise by [e.g., the State Bar Board of Law Examiners or the State Bar Board of Directors].”

- c. Use a modified expunction rule, or something similar: Do not modify Article IV, Section 5. Instead, either modify the expunction rule in Article III, Section 9 to allow the expunction of additional types of suspensions or provide a new rule, modeled after the expunction rule, to apply here.

D. Potential considerations:

1. Pros and cons of a bright line standard.
2. If discretion is left to a board or individual, what board or individual should be specified?
3. Should discretion be allowed, and, if so, should criteria be specified?
4. Is a modified expunction rule the proper vehicle for any revision?

ARTICLE IV ADMINISTRATION

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 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 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 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) minority directors appointed by the president and confirmed by the Board. The Board may, in its discretion, also include other members who shall be 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.** No person may serve as an officer or director who,
1. has not taken the official oath by the second regular board meeting of the term for which the person was elected or appointed,
 2. as to an elected or ex officio director or an officer, is not an active member in good standing,

3. as to an elected or ex officio director or an officer, as ever been suspended or disbarred from the practice of law,
4. as to an elected director, does not maintain in the district from which elected, his principal place of practice,
5. as to an elected director, has his principal place of practice in the same county as the last preceding director from that district, except for an elected director in a Metropolitan County or in El Paso County, and except as necessary to achieve a rebalancing of the sizes of the Board classes in accordance with the provisions of Art. IV, § 8(C),
6. as to an elected director, has previously served at least one and a half (1 ½) years of the immediately preceding director term,
7. is, or becomes, incapacitated from performing the duties of such office for all or a substantial portion of such term,
8. as to a director, is absent from more than half of the regularly scheduled board meetings that the director is eligible to attend during a calendar year without an excuse approved by a majority vote of the board,
9. as to a public director, has failed confirmation by the senate of the State of Texas,
10. is an elected official paid by the State of Texas, except that such prohibition shall not apply to public directors,
11. as to a director or a director's spouse, is an officer, employee, or paid consultant of a Texas trade association in the field of board interest as defined in State Bar Act §81.028.

B. The board shall be the judge of the qualifications of officers and directors.

C. The board shall provide a training program for board members that meets the requirements of § 81.0201 of the State Bar Act. No person who is elected or appointed to and qualifies for office as a member of the board of directors may vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with the requirements of § 81.0201 of the State Bar Act.

Section 6. How Directors Shall Be Elected

Elected directors shall be elected by a majority of the active and emeritus members of the State Bar voting who have their principal place of practice in the same Bar district as that of the candidate. If no candidate receives a majority, a run off shall be held at such time as the board shall prescribe between the two candidates receiving the greatest number of votes.

Section 9. One-Time Expunction of an Administrative Suspension for Nonpayment of Membership Fees

A. This section does not apply to a disciplinary suspension for professional misconduct.

B. A member who meets the following criteria may request a one-time expunction of an administrative suspension for nonpayment of membership fees:

1. the member has not previously obtained an expunction under this rule;
2. the suspension was for 90 days or less;
3. except for the suspension that is the subject of the expunction request, the member has not previously been suspended for nonpayment of membership fees;
4. the member is not currently the subject of a disciplinary proceeding or investigation; and
5. the member has no record of disciplinary suspension – whether active or probated – or of prior disbarment or resignation in lieu of discipline.

C. The member seeking the expunction must make a written request to the State Bar. After verifying that the member meets the criteria in (B), the State Bar will forward to the clerk the member's request and a recommendation that the member's record of suspension be expunged. The clerk will expunge the suspension from the member's record.

D. A suspension expunged under this rule is deemed never to have occurred. The record of an expunction is confidential and may not be disclosed by the clerk or the State Bar.

Section 10. Return to Former Status

A. When a member who has been suspended for nonpayment of fees or assessments removes the default by payment of fees or assessments then owing plus an additional amount equivalent to one-half the delinquency, the suspension will automatically be lifted and the member restored to former status. Return to former status is retroactive to inception of suspension, but does not affect any proceeding for discipline of the member for professional misconduct.

B. A person who has voluntarily resigned from membership must apply to the Board of Law Examiners and comply with the rules of the Court pertaining to admission to the practice of law before resuming the practice of law.

C. An inactive member may return to active status upon written application to the clerk and payment of fees for the current year.

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February 2, 2016

Chief Justice Nathan L. Hecht
Texas Supreme Court
P. O. Box 12248
Austin, Texas 78711

RE: State Bar of Texas-Board of Directors
Candidate Certification Form

Dear Chief Justice Hecht,

We have met a couple of times in passing at the local (San Antonio Bar) and State Bar Conventions over the last few years. More importantly, you eloquently provided the introduction of the recent TLAP Video (2015) where I and a couple of other attorneys tell their stories and share their experience, strength and hope regarding the subjects of Alcoholism, Chemical Dependency and Mental Illness.

In December, I was asked and nominated by several past SBOT Board members to run for Andy Kerr's seat which will expire by operation of law this June. Former Justice Rebecca Simmons (4th Court of Appeals) holds the other position from the 10th Bar District (San Antonio). All three (3) of us are former Presidents of the San Antonio Bar Association. In fact, I am the immediate Past President and I still occupy a seat on the local Board of Directors.

Last week after procuring more than the one hundred (100) signatures from the local Bar which is a requirement to have your name placed on the ballot, I discovered that paragraph 3 in the Candidate Certification Form which is referenced as an Excerpt under State Bar Rules, Article IV, Section 5 (Qualifications of Officers & Directors) (A) NO PERSON MAY SERVE AS AN OFFICER OR BOARD MEMBER who has ever been suspended from the practice of law precludes me from serving in this position.

As you may recall, I got sober in 1990 (11-11-1990). I surrendered my law license on March 15, 1991 to the clerk of the Texas Supreme Court. I received a one (1) year suspension with eight (8) months probated. That was almost 25 years ago. If this Rule cannot be amended with some sort of Plenary Powers of the Court or Waived in my case, perhaps the Texas Supreme Court could take up the matter in the near future to allow the next person with extenuating circumstances to hold such an esteemed position and continue being of service to his or her chosen profession (The State Bar of Texas).

The deadline to make the ballot for this year's election is March 1, 2016. I'll be 70 on my next birthday and to quote Peyton Manning – "This could be my last rodeo."

Kindest regards,

Thomas g. Keyser