

Texas Lawyers for State Bar Reform
Questionnaire to Candidates for State Bar Positions in 2018

This Questionnaire is provided by Texas Lawyers for State Bar Reform (TLSBR), which is a not-for-profit 501(c)(4) organization. Our mission is to inform Texas lawyers and the public concerning operations of the State Bar of Texas, and to promote openness, transparency, fiscal responsibility, fair elections, and the right of Texas lawyers to vote on disciplinary rules and dues increases.

This Questionnaire is being sent to all State Bar President-elect and Director candidates. The results will be published and distributed to Bar members across Texas. We appreciate your participation. If you choose not to respond to this Questionnaire, we will note that fact in our publication of the results.

Instructions: Please complete this Questionnaire by circling your answers below, signing and returning the Questionnaire by emailing or mailing it to: Texas Lawyers for State Bar Reform, at txlawyersforreform@gmail.com or P.O. Box 685008, Austin, TX 78768.

Please return the completed Questionnaire on or before 5:00 p.m. March 20,2018.

I believe these questions are written in such a way as to force a certain result which is inappropriate and will not reflect a true representation of the facts or of a candidate's opinions.

I will answer these questions BUT ONLY AGREE TO THEIR BEING PUBLISHED IF YOU PUBLISH THE COMPLETE AND FULL RESPONSE INCLUDING THE PARAGRAPH ABOVE. If you choose not to print the full and complete response, I do not give you permission to state that I failed or refused to respond. If you state as such, I will take appropriate action.

Openness and Transparency

1. As a general principle, do you agree that State Bar of Texas operations should be open and transparent?

Agree **Agree**

Disagree

2. The Texas Public Information Act (TPIA) makes public information of state agencies (such as the State Bar) available to the public unless a specific exemption applies to require or permit the agency to withhold the information. The Bar's Task Force on Openness and Transparency is evaluating the Bar's public-information policies and has received testimony that the Bar apparently attempts to invoke disclosure exceptions whenever possible. Some observers believe that the Bar's default position should be that it will produce all information requested by Bar members or the public, and should not withhold information under a discretionary exception, unless a good reason exists to withhold the documents.

Do you agree that the State Bar should produce all information requested by Bar members or members of the public, and should not rely on a discretionary exception to production, unless a good reason exists to withhold the documents?

Agree

I cannot agree or disagree because this question is too global and general. I do believe the State Bar should follow the TPIA.

Disagree

3. State Bar President-elect Joe Longley was elected by the largest vote in the history of State Bar elections. When he requested permission to send out his first President-elect's Report to Bar members, the Bar's Executive Committee refused to allow him to send out the report through the State Bar's email system.

Do you agree that the State Bar's President-elect be able to use the State Bar's email system to send periodic reports to Bar members?

Agree

I cannot agree or disagree. To the best of my knowledge the State Bar President is the official voice of the State Bar, not the President-elect.

Disagree

4. The State Act provides that "The board of directors, by a majority vote, elects the executive director." However, when Bar's previous Executive Director resigned during 2017, Bar leaders set up a "search committee" that refused to have open meetings and refused to allow Bar members to observe the proceedings, despite President-elect Joe Longley's request for open meetings. The search committee initially refused to release the names of applicants for executive director—until an article in *Texas Lawyer* exposed the secrecy of the process. The search committee then refused to allow Bar members to meet the applicants for executive director or attend the applicant interviews. The search committee voted in secret in a closed session.

Do you agree that any future election of an executive director of the Bar should be open to Bar members?

Agree

The election was open to Bar members through the State Bar Board of Directors which represents the Bar members. The question insinuates that it was not. Furthermore, the election and the search are two completely different things.

Disagree

5. The State Bar Act says that the Bar Board shall "elect" a General Counsel for the State Bar, and provides for various duties and obligations for the General Counsel, including service as an ex officio member of the Executive Committee. However, in 2010, apparently at the behest of the then Executive Director, the Board stopped filling the general counsel position. Instead, the Bar then had only "legal counsel," who reported to the Executive Director. The Bar thus fell out of compliance with the Bar Act and the Board lost the independent voice of a General Counsel who reported directly to the Board.

The Bar recently sent out a Request for Proposals (RFP) asking for outside, interested lawyers and law firms to submit proposals for consideration to be new General Counsel. However, the proposal narrowly defines the scope of what this relationship would be, and apparently leaves most of the responsibility for legal representation and advice under the separate "legal counsel" hired by and reporting to the Executive Director.

The RFP states that "The State Bar does not expect or desire for the General Counsel to serve as the day-to-day legal advisor to the State Bar or its staff. The State Bar current employs experienced and qualified in-house legal counsel to serve as the day-to-day legal advisor to that organization." By contrast, a standard definition (Black's Law Dictionary) defines a General Counsel as "A lawyer or law firm that represents a client in all or most of the client's legal matters, but that sometimes refers extraordinary matters—such as litigation and intellectual-property cases—to other lawyers."

Do you agree that the Bar should hire an in-house General Counsel who reports directly and independently to the Board, rather than having "the day-to-day legal advisor" report only to the Executive Director?

Agree

I cannot agree or disagree without more information. The "day-to-day legal advisor" may meet the requirements and be more cost effective for the Bar. The Board determined there wasn't enough work to justify the cost of a full-time in-house General Counsel.

Disagree

6. Bar records show that since 2010 the State Bar has spent over \$409,000 hiring outside counsel—sometimes at hourly rates as high as \$950/hour. In the past, the Bar had often handled legal matters in-house, including certain litigation matters, instead of hiring expensive outside counsel. Additionally, many state agencies contract with the Texas Attorney General to represent the agency, and the effective rate for those lawyers has usually been under \$100/hour. Lawyers in the Office of the Texas Attorney General have special expertise in some matters that the State Bar deals with frequently, such as requests and litigation under the Public Information Act.

a. Do you agree that the State Bar should handle legal matters in-house whenever reasonably possible rather than hiring outside counsel?

Agree

I cannot answer this question with the information provided. There are many times in every business that a general counsel will hire outside counsel for many reasons, work load, conflicts of interest, etc. The Bar spending \$409,000 over 7 years averages out to \$58,428.00 per year. That may be more cost effective than hiring a general counsel who would have to be paid a salary and benefits.

Disagree

b. Do you agree that when the State Bar needs to hire outside counsel, the State Bar should retain the Texas Attorney General whenever that office is competent to handle the matter and is substantially less expensive than hiring private outside counsel and is not otherwise prohibited by legal or ethical considerations from handling the matter?

Agree I cannot agree or disagree. The question is too global. There may be many instances the Attorney General would not be competent or may have a conflict.

Disagree

7. During the Sunset Advisory Commission proceedings on the State Bar Sunset issues, the Commission's staff recommended abolishing the right of Texas lawyers to vote in a referendum on all proposed changes to the disciplinary rules. Texas lawyers have had that right for 78 years, since the original State Bar Act of 1939. State Bar officers and staff did not file any written opposition to the proposed elimination of Bar members' voting rights. Not a single Bar officer or staff person spoke against eliminating our right to vote at the Commission hearing.

Do you agree that the State Bar should protect the right of Texas lawyers to cast a controlling vote in a referendum on all proposed changes to the disciplinary rules?

Agree I cannot agree or disagree. The question is misleading at best as to the facts. Lawyers do get to cast a vote through their representatives.

Disagree

8. Recent news media reports indicate that a State Bar employee (now a former employee) was arrested on charges relating to surreptitiously taking "upskirt" photographs of women on the University of Texas campus. A police investigation is now underway. However, thus far the State Bar has refused to disclose what its policies are concerning monitoring the State Bar computer system to ensure that inappropriate sexually explicit material is not maintained on that system.

a. Do you agree that the State Bar should have strong policies and procedures in place to detect and deter use of its computer system for such improper purposes of storing, transmitting, or maintaining inappropriate, sexually explicit material?

Agree I cannot agree or disagree as this question assumes the State Bar does not already have these procedures in place.

Disagree

b. Do you agree that the State Bar should disclose to Bar members and staff what those policies and procedures are?

Agree I cannot agree or disagree as this question assumes the State Bar does not tell the staff the policies.

Disagree

Financial Responsibility

9. The State Bar's 2016-2017 combined budget was over \$50 million. In 2000, the Budget was "only" \$25.5 million. The budget has increased faster than the population of State Bar members. In contrast to other state agencies, and because the State Bar is self-funding, the Texas Legislature does not review the Bar's budget during legislative Sessions. Budget scrutiny depends on the Bar itself.

It has been suggested that the Bar should undergo a "zero-based budget" analysis that evaluates each Bar department and program, the proposed bar expenditures for each program, the increase or decrease in each department and program's expenditures for each of the last 10 years, the justification for each department and program, and their effectiveness.

Do you agree that the Bar should conduct such an in-depth evaluation of each Bar department and program?

Agree

I cannot agree or disagree as again this question is misleading at best. The State Bar already does this in the budget process. The State Bar has approximately 270 employees and the State Bar staff has not expanded at the same rate as the population of the State.

Disagree

10. The State Bar sends every Bar member a printed version of the *Texas Bar Journal*, whether an individual member wants the printed version or not. With printing, mailing, and other costs, the State Bar loses over \$700,000 annually on the *Bar Journal*. The State Bar's Financial Responsibility Task Force has recommended that the Bar disseminate the *Bar Journal* in digital, online format, except that members who request a printed copy may receive one.

Do you agree that the State Bar should make the *Texas Bar Journal* available in digital, online format, except for members who request a printed version?

Agree

Agree

Disagree

11. During the last Session of the Texas Legislature, certain Bar leaders and staff successfully convinced the Legislature to reduce the voting rights of Bar members to cast a controlling vote on any proposed dues increase. Those Bar representatives initially sought to eliminate completely our right to vote on Bar dues increases. Under the compromise legislation that passed, the Bar Board can increase Bar dues up to 10% without Bar members having the opportunity to vote on the proposed increase.

a. Do you agree that Bar members should have the right to cast a controlling vote on any proposed dues increase?

Agree I cannot agree or disagree as the members already have a vote through their representative.

Disagree

b. Do you agree that the Bar should seek to have the Legislature restore full voting rights of Bar members to cast a controlling vote on any proposed dues increase?

Agree Again I cannot agree or disagree as the members already have a vote through their representative. Furthermore, this question does not accurately reflect the true process of negotiation that occurs during the Sunset Process.

Disagree

12. From 2003 to 2012, the State Bar Membership Director embezzled over \$555,000 from an account containing monies from Bar members who had overpaid their dues. The State Bar did not sue the embezzler. Instead, the embezzler ended up repaying the Bar for only 13% of the money she stole. The State Bar also lost the deductible (\$25,000) that it had to pay to its theft-insurance carrier, and did not require the employee to pay that amount.

Do you agree that the State Bar should attempt to recover all monies stolen by any State Bar employee?

Agree I cannot agree or disagree with the question as written. The money was NOT stolen from the State Bar. It was stolen from an account controlled by the Supreme Court of Texas. The employee was convicted of a felony and ordered to pay restitution.

Disagree

13. When an employer suffers embezzlement by an employee, the employer often files a Form 1099 with IRS, so that the IRS is on notice to collect tax on the employee's stolen funds. As the former State Auditor of Texas recently stated, "Filing a 1099 on theft funds is highly recommended by anti- fraud professionals." Following the massive embezzlement, the State Bar did not file a Form 1099, even though the monies stolen were Bar dues overpayments.

Do you agree that the State Bar should file, or cause to be filed, an IRS Form 1099 and take other appropriate action to notify the IRS concerning the embezzler's receipt of the stolen funds?

Agree I cannot agree or disagree with the question as written. The money was NOT stolen from the State Bar. It was stolen from an account controlled by the Supreme Court of Texas.

Disagree

14. Recent reports establish that State Bar funds were used to pay "expenses" of \$16,195 for a "Texas Delegation" of the Bar to hold a reception at the Tavern on the Green, in connection with the ABA convention held in New York this past August. Similarly, \$1,873 was paid for a "Texas Breakfast" on that trip; \$27,870 was paid in "travel expenses" for six Bar staff members, two officers, and one officer's spouse; \$19,208 was paid to send TYLA executive board members and five of their spouses; and \$4,981 for State Bar representatives to receive "awards" in NYC at the convention.

a. Do you agree that the State Bar needs stronger policies prohibiting excessive Bar expenditures for out-of-state travel?

Agree I cannot agree or disagree with the question as written. How do we know these expenses were "excessive" for New York? Texas is very involved in the ABA and thus, our representatives needed to be there. The meeting was in New York so travel expenses were necessary.

Disagree

b. Do you agree that the State Bar should not pay for the travel and entertainment expenses of the spouses and families of State Bar members and staff who voluntarily undertake such travel?

Agree I cannot agree or disagree with the question as written. I believe there are instances when the State Bar should pay for the travel of a spouse. Furthermore, what does "entertainment" entail?

Disagree

Fair Elections

15. The State Bar Act allows any Bar member to be a candidate for Bar President-elect if the member presents a petition "signed by at least five percent" of Bar members. At present that number is more than 5,000 signatures. In Texas even candidates for U.S. Senate and other statewide offices need to gather only 5,000 signatures. Yet Texas has some 15 million registered voters compared to only 102,000 Bar members. (Until 1991, the Bar Act required signatures of only one percent, rather than five percent, of Bar members on a petition to run for President-elect.)

Some have argued that the requirement of 5,000 petition signatures is excessive and unduly suppresses and excludes otherwise qualified, competent potential candidates for Bar President-elect.

Do you agree that the number of signatures required to become a candidate for President-elect should be changed back to 1,000 signatures, instead of the current 5,000 signatures?

Agree I disagree

Disagree

16. Currently the State Bar prohibits Bar members from using electronic signatures to sign such a petition online—even though the Bar allows electronic voting and even though Texas has adopted the Texas Uniform Electronic Transactions Act, under which many financial institutions and other businesses routinely allow electronic signatures for large financial transactions. Instead, the Bar requires that Bar members sign a physical copy of the potential candidate's petition.

Do you agree that Bar members should be able to use electronic signatures to sign President-elect candidate petitions?

Agree I disagree.

Disagree

17. During the 2017 election for State Bar President-elect, many Bar members objected to the actions of the Bar's Executive Director, who inserted "editorial comments" in reply to then candidate Joe Longley's candidate-questionnaire responses in the Bar Journal. Many of those members also objected to other actions of State Bar staff and officers that were viewed as illegally using State Bar funds, staff, and resources to put a "heavy thumb" on the election scales.

Do you agree that the State Bar and its staff should be scrupulously neutral in the conduct of all State Bar elections?

Agree I disagree. If a State Bar staff member is being personally attacked with false statements, they should be allowed to respond to those false statements.

Disagree

18. A majority of the Bar Board recently voted to recommend that the Texas Supreme Court impose a 180-day time limit to gather signatures for a petition to be nominated to run for President-elect. The State Bar Act has no such limit. Critics charge that this is an act of candidate suppression to restrict President-elect candidates to persons hand-picked by Bar insiders in a secret, back-room procedure. State Bar President-elect Joe Longley—who was nominated by petition—and some other Board members voted against the proposed 180-limit on gathering signatures. President-elect Longley stated that the proposal was "a form of candidate suppression of the highest magnitude." The State Bar Act does not contain any such time limit for collecting petition signatures.

Do you agree that the State Bar and the Texas Supreme Court should not impose a 180-day limit on the period for gathering signatures for a petition to be nominated for the position of State Bar President-elect?

Agree I disagree. Signatures could be gathered for years in advance. The members signing those petitions should know that their signature is being used in that election cycle.

Disagree

Date: 03-20-18

Name (print): Stephen J. Naylor

Signature: Stephen J. Naylor