

STATE OF WISCONSIN  
SUPREME COURT

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In the matter of:

Docket Nos. 13-07; 13-13

The Petition of the State Bar of Wisconsin  
Proposing Revisions to SCR 10.04 and SCR  
10.05 Relating to Officers and the Board of  
Governors of the State Bar of Wisconsin;

and

The Petition to Review Changes in State Bar  
Bylaws

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**STATE BAR OF WISCONSIN'S COMBINED BRIEF  
IN SUPPORT OF AMENDMENTS TO ITS BYLAWS AND  
PROPOSED CHANGES TO THE SUPREME COURT RULES**

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**INTRODUCTION**

Suppose the Treasurer of the State Bar of Wisconsin (“State Bar” or “Bar”) pleaded guilty to sexually assaulting a 15 year old boy, or the President was found to have mishandled more than \$500,000 in public funds while serving as President, or used powers as President to inappropriately remove members from an ethics committee because those members had connections to a law firm with which the President was engaged in a bitter fee dispute.<sup>1</sup> Such conduct could be a basis for removal if that person was a member of the United States Congress or the Wisconsin legislature. *See* U.S. Const. art. 1, § 5, cl. 2; Wis. Const. art. IV, § 8 (both creating procedures for removal upon two-thirds vote of members). Removal, however,

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<sup>1</sup> These examples are not merely hypotheticals, but actual cases of two different state bar presidents in Kentucky and the treasurer and would-be-future president of the Minnesota State Bar. *See Ky. Bar Ass’n v. Catron*, 229 S.W.3d 910 (Ky. 2007); *Bonar v. Ky. Bar Ass’n*, 405 S.W.3d 465 (Ky. 2013). News articles discussing the sexual assault of a child by the Minnesota state bar treasurer are attached as **Exhibit A**. These cases are discussed more fully below.

would not be possible if those same violations were committed by a governor or officer of the State Bar of Wisconsin. Unlike other state bars throughout the country, neither the Wisconsin Supreme Court Rules nor the bylaws of the State Bar of Wisconsin provide a mechanism for removal of officers or governors.

The State Bar has taken two steps to remedy that situation, both of which are challenged in the pending petitions.

First, on June 12, 2013, 95% of the Board of Governors voted to approve bylaws creating procedures relating to the manner of succession in the event of a vacancy among officers or governors of the State Bar, the definition of a vacancy, and the terms under which an officer or member of the Board of Governors could be removed.<sup>2</sup> Second, Petition 13-07 was filed by the State Bar to amend Supreme Court Rules 10.04 and 10.05 to provide clarity and resolve inconsistencies within the Rules and to remove any question concerning the propriety of the removal procedures set out in the bylaws.

Challenges to both actions are before this Court. The Bar's petition to amend the Supreme Court Rules, No. 13-07, has been opposed by Attorney Steven Levine in a memorandum filed on December 5, 2013. On September 11, 2013, Petition 13-13 was filed by

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<sup>2</sup> These provisions have been reproduced in previous filings, but are provided again here for the Court's convenience:

Article II, Section 7(b). Removal by Board of Governors. An officer shall be removed if the officer is unable or unwilling to fulfill his or her duties, or if the officer's conduct while in office is contrary to the best interest of the State Bar as determined by an affirmative vote of 75 percent of the total membership of the Board of Governors (including the officer subject to the motion to remove). Before any vote on the motion, notice of the motion to remove and of the grounds alleged against the officer, and an opportunity to be heard by the Board must be given to the officer.

Article III, Section 10(b). Removal by Board of Governors. A governor shall be removed if the governor is unable or unwilling to perform his or her duties, or if the governor engages in conduct which is contrary to the best interest of the State Bar as determined by the affirmative vote of 75 percent of the total membership of the Board (including the governor subject to the motion to remove). Before any vote on the motion to remove the governor, notice of the motion and of the grounds alleged against the governor, and an opportunity to be heard by the Board must be given to the governor.

27 active members of the State Bar of Wisconsin asking this Court to review and reject the Board of Governors' amendment of Article II, Section 7(b), and Article III, Section 10(b), of the Bar's bylaws which allow for removal of officers or members of the Board.<sup>3</sup>

By Order dated October 2, 2013, this Court informed the parties that it would address petitions 13-07 and 13-13 together and directed the parties to brief their respective positions. In docket 13-13, the opposition argues that the amended bylaws regarding removal are inconsistent with SCR 10.04(1) and 10.05(3) and are therefore void; or, alternatively, that the bylaw amendments are unacceptably vague, threaten First Amendment rights, and are undemocratic and unnecessary. In docket 13-07, these same arguments are repackaged in a different form, but the substance of the arguments is the same.

The actions taken by the Board of Governors – to amend the bylaws and to ask this Court to amend the Supreme Court Rules – were appropriate. The bylaw amendments were necessary to conform to good governance practices, the wisdom of which is illustrated by the problems other state bar associations have experienced. Petitioning this Court to amend SCR 10.04 and 10.05 was also appropriate to provide clarity and resolve inconsistencies within the Rules and to create a mechanism for enforcement that is currently absent from the Rules.

The opposition attempts to paint a picture of a “rush to judgment” by the State Bar, suggesting that the amendments were hastily passed with little thought or deliberation, and that removal threatens First Amendment rights, undermines this very Court, and threatens the democratic process. That picture is not reality. The Board spent years of careful study and consideration before adopting the challenged bylaws, modeled the removal provisions on those

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<sup>3</sup> The dockets are separate because the procedural rules for bylaw amendments differ from the requirements to amend Supreme Court Rules. A bylaw change requires a 2/3 vote of the members of the board of governors, subject to a review by this Court upon a petition signed by 25 or more active members of the State Bar of Wisconsin. *See* SCR 10.13(2). A change to Supreme Court Rules can only be done by this Court presented through a petition by the board of governors or upon a petition approved by members through a referendum procedure. *See* SCR 10.13(1).

existing in other bar associations, and was motivated by a desire to avoid problems experienced by other state bar associations that led to questions about how the State Bar would handle similar situations without appropriate provisions in its bylaws. Moreover, the State Bar purposefully did not make removal easily accomplished, but conversely established a high bar for removal coupled with due process rights for the individual involved. This provides sufficient safeguards from the parade of horrors the opposition theorizes will occur if this Court approves the amended bylaws and proposed changes to the Supreme Court Rules.

This Court should approve the amended bylaws, adopt the proposed changes to SCR 10.04 and 10.05, and reject the opposition's proposal that any change by the Court should limit removal to officers or governors whose licenses to practice law have been revoked or suspended.

## **BACKGROUND**

### **A. The Board of Governors' Acted with Care and Deliberation in Amending the Bylaws to Create a Procedure for Removal that Protects both the Bar and the Officer/Governor Involved.**

In its Petition, the State Bar did not provide the Court with a full recitation of the process that resulted in the adoption of the challenged bylaws. A more complete recitation of these facts is now necessary to expose the fallacy of the opposition's suggestion that the amended bylaws were hastily passed without proper study and consideration.

Establishing a removal procedure has been considered by the State Bar for years, dating back at least to 2003 as part of a package of comprehensive changes to the bylaws.<sup>4</sup>

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<sup>4</sup> The Board of Governors meeting minutes can be found online here: <http://www.wisbar.org/formembers/groups/leadership/BoardOfGovernors/Pages/FileCabinet.aspx?CurrentPath=BOG+Meeting+Minutes%2f>. The minutes will hereafter be referred to by date of meeting.

The meeting materials from 2008 to present are also online here: <http://www.wisbar.org/formembers/groups/leadership/BoardOfGovernors/Pages/FileCabinet.aspx?CurrentPath=BOG+Meeting+Materials%2f>. Any minutes relied on prior to 2008 are attached as an exhibit to this brief.

These amendments to the bylaws, which included a provision on removal upon a vote of 60 percent of the total membership of the Board, were passed by the Board of Governors by vote of 44-1 at the May 7-8, 2004 meeting.<sup>5</sup> Although the State Bar never published notice of these changes or filed a certified copy of the bylaws with this Court, and the bylaws were thus not officially enacted, it served as a basis for future amendments and revisions as the State Bar continued to study and look for ways to improve both the bylaws and Supreme Court Rules.

The State Bar again considered creating a provision on removal beginning in 2010 when both a bylaws revision committee and governance committee studied the issue. Led by then-President Jim Boll, the State Bar created several committees to study and review various aspects of the State Bar. The governance committee was tasked with the responsibility of studying and making recommendations for improvements in how the Board of Governors functions. To make its recommendations, the governance committee was asked to complete a comprehensive review of the State Bar's bylaws and the Supreme Court Rules and to make recommendations for any necessary changes. The governance committee memorialized its findings and recommendations in a memorandum dated May 1, 2013. (Attached as **Exhibit C**.) The committee noted specifically in the memorandum that it was making its recommendations after study of other state, local, and national bar associations as well as work done by the 2010-11 bylaws revisions committee. (*Id.*)

In addition to the recommendations made by the governance committee, examples of misconduct in office by state bar presidents and officers in other states motivated the governance committee to recommend adoption of a removal procedure. While the misconduct

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Attachment N of the 11/14/03 BOG minutes which detail comprehensive proposed reforms to various SCRs and State Bar bylaws is attached as **Exhibit B**.

<sup>5</sup> **Exhibit B** at Att. N-37.; *see also* March 7-8, 2003 meeting minutes at 9.

seen in other states had, fortunately, not occurred in Wisconsin, it clarified the need to create a mechanism for removal to protect the Bar's best interests if such a situation ever arose.

The governance committee provided numerous updates to the Board of Governors as it did its work. At the September 28-29, 2012 meeting in Wausau, Governor Frederick Kaftan reported to the Board that the committee was working on creating removal provisions to deal with misconduct.<sup>6</sup> Governor Kaftan provided additional updates to the Board at both the December 7, 2012<sup>7</sup> and February 1, 2013<sup>8</sup> meetings in Madison. In April of 2013, another update was provided to the Board and outlined the committee's preliminary recommendations regarding the terms under which an officer or member of the Board could be removed.<sup>9</sup>

At the June 12, 2013 meeting in Madison, the Board of Governors was presented with the amended bylaws regarding succession, vacancy, and removal.<sup>10</sup> Governor Levine's motion to amend the bylaws by specifying that removal could not be based on conduct protected by the First Amendment failed by a 34 to 3 vote on a show of hands. (*Id.* at 10) The motion to amend the bylaws then passed on a 38 to 2 vote. (*Id.*)

The amended bylaws creating provisions for removal are almost identical to the provisions passed nearly unanimously by the Board of Governors in 2004, with one significant exception. In 2004, only a 60 percent vote of the total membership of the Board was needed for removal. The current, challenged bylaws increased that requirement to 75 percent. To put this

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<sup>6</sup> September 28-29, 2012 meeting minutes at 8-9.

<sup>7</sup> December 7, 2012 meeting minutes at 7.

<sup>8</sup> February 1, 2013 meeting minutes at 6.

<sup>9</sup> April 19, 2013 meeting minutes at 11.

<sup>10</sup> June 12, 2013 meeting minutes at 9.

number in perspective, there are currently 52 members of the Board of Governors.<sup>11</sup> Thus, it would require 39 votes to remove (the subject of removal gets to vote), and the vote may only occur after the governor or officer subject to removal has had an opportunity to present his/her case to the Board of Governors about why removal is inappropriate or unnecessary.<sup>12</sup>

By raising the requirement for removal from 60 percent to 75 percent, the bylaws impose a significant burden for removal that is only likely to be satisfied by substantial and egregious misconduct.

**B. The Governance Committee Also Recommends Changing the Supreme Court Rules.**

In addition to amending the bylaws, the governance committee recommended that the State Bar petition this Court to change Supreme Court Rules 10.04 and 10.05. As part of its review, the committee found inconsistencies in the Rules which dictated certain standards and requirements, but provided no mechanism for enforcement, and chose to adopt enabling language consistent with that found in a number of other Rules.

**ARGUMENT**

Both the amendment of the bylaws and the petition to amend Supreme Court Rules 10.04 and 10.05 are appropriate and should be approved by this Court. The amended bylaws are an important step to ensure good governance and provide an ability to deal with

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<sup>11</sup> “The board comprises the association's five officers, and the immediate past president, all of whom are ex officio members-at-large of the board, 35 members elected from the State Bar districts, one member selected by the Young Lawyers Division, one member selected by the Government Lawyers Division, one member selected by the Senior Lawyers Division, and five members selected by the Nonresident Lawyers Division, and three nonlawyers appointed by the Wisconsin Supreme Court....”

<http://www.wisbar.org/formembers/groups/leadership/boardofgovernors/pages/home.aspx#File+Cabinet>

<sup>12</sup> Effectively, the requirement is higher than 75% since there are always some governors absent from any particular board meeting. For example, at the February 1, 2013 meeting, there were only 45 members present. Nevertheless, the challenged bylaws still require 75 percent of all members of the Board, not just those present, to remove an officer or governor. So if a vote on removal was held when the Board was situated as it was at the February 1, 2013 meeting, it would take 88 percent of those present members to agree.

misconduct by officers or governors, and the rule changes are necessary to clarify and resolve internal inconsistencies which currently exist. While Wisconsin has been fortunate to have had no problems to date, situations faced by other state bar associations have highlighted the necessity and desirability of creating a removal process.

**I. THE AMENDED BYLAWS ARE NOT VOID.**

**A. The Bylaws are Not Inconsistent with Existing Supreme Court Rules.**

The Board of Governors is authorized to “adopt bylaws and regulations, not inconsistent with this chapter, for the orderly administration of the association’s affairs and activities.” SCR 10.05(4)(a)8. The opposition argues that Article II, Section 7(b), and Article III, Section 10(b) of the amended bylaws are void because they are inconsistent with the Supreme Court Rules – specifically, SCR 10.04(1) and 10.05(3) which define the term for officers and governors to be “2 years.” Since removal of an officer or governor would necessarily make that term less than “2 years,” the opposition contends that the amended bylaws are inconsistent with the Rules and therefore void.

The opposition’s argument should be rejected, as it inappropriately takes a very limited and narrow reading of selected Supreme Court Rules as opposed to the entire “chapter” as required. Supreme Court Rule 10.05(4)(a)8 prohibits only bylaws which are inconsistent “with this chapter.” Thus, in determining whether the amended bylaws are inconsistent, a review of the entire “chapter” is required, not just selected provisions. When reviewing the entire “chapter,” it is evident that the amended bylaws are not inconsistent with the Rules.

As noted in the State Bar’s original petition to this Court seeking the revision to the rules, SCR 10.03(3)(c) prohibits inactive or judicial members from holding any office in the State Bar. In addition, SCR 10.04(1) states that “only active members of the state bar residing and practicing law in Wisconsin are eligible to serve as present or president-elect of the

association.” The Rules also require that the State Bar “promote the public interest by maintaining high standards of conduct,” SCR 10.01(2), and state that the purpose of the Bar is to “foster and maintain . . . high ideals of integrity, learning, competence and public service and high standards of conduct.” SCR 10.03(3)(c).

These Rules prescribe specific requirements for any member to hold office in the State Bar: s/he must be an active member, cannot be a member of the judiciary, and should also maintain high standards of conduct by fostering and maintaining high ideals of integrity. If any of these requirements cease to exist, a member is no longer eligible to serve, but there is no mechanism in place to ensure that the member is removed from the position. Creating a mechanism for enforcement of these requirements cannot be found to be a conflict with the rules.

But at a more basic level, the opposition’s arguments engraft a nonsensical requirement onto the rules. The opposition’s reading of the rules would prove unworkable in situations where, for example, an officer or governor wants to resign, or becomes ill and can no longer serve. At the extreme, a governor or officer could die before the term of exactly “2 years” is completed. Or consider a situation where a governor or officer is elected or appointed to the judiciary before his/her term expires. In any of these situations, a governor or officer would not be able to complete a precise “2 year” term. If the opposition’s position was correct, however, the Rule would both require and prohibit the completion of a “2 year” term. Such an interpretation would be illogical and absurd, a result this Court should avoid.

When this Court reviews and interprets statutory language, it is a cardinal rule that the interpretation should avoid an absurd result and that competing statutes should be construed in a manner that harmonizes the statutes and serves a logical purpose. *See, e.g., Johnson v. Masters*, 2013 WI 43, ¶ 13, 347 Wis. 2d 238, 830 N.W.2d 647. While Supreme Court Rules are

not by definition statutes, the same logical analysis should apply. Reading the term requirements in the Supreme Court Rules to be precisely “2 years” and never any shorter, creates conflict with the requirements of SCR 10.03(3)(c). Providing a mechanism to enforce SCR 10.03(3) and harmonize the rules is “not inconsistent” with Chapter 10, and it is therefore within the authority of the Board of Governors.

**B. Amending SCR 10.04 and 10.05 as Proposed by the State Bar Does Not Remove this Court’s Input.**

The opposition also argues that providing that the procedures for removal shall be as set forth in the bylaws itself is a strategy designed to prevent the Court from having direct input into the language of any future provisions adopted by the Board of Governors. This is untrue. Delegating to the Board the authority to adopt basic procedures for the governance of the Bar is not a unique concept, and a number of other Rules contain similar provisions. *See, e.g.*, SCR 10.03(6) (allows for the suspension of a member who fails to pay annual dues “in the manner provided by the bylaws”); SCR 10.04(1) (officers are nominated and elected “in the manner provided by the bylaws.”); SCR 10.05(3) (nominations and elections of members of the board of governors shall be conducted in accordance with the provisions of the bylaws). Deferring the specifics to the bylaws creates an easier mechanism for the Board to make changes and ensure that the Court’s limited resources need not be squandered on day-to-day governance issues of the Bar. If experience teaches that further amendments to the removal procedures are necessary in the future, the Board can more easily change the bylaws to address any perceived problems without the need to bother this Court to further amend the Rules.

The argument that this common provision removes this Court’s involvement in future changes where necessary ignores the very challenge in this very case. Future bylaws amendments will still require publication in the Wisconsin Lawyer and the filing of a certified

copy with the clerk of this Court. *See* SCR 10.13(2). If members are dissatisfied with proposed changes, they can petition for review of the bylaws with this Court, under the same procedure currently being utilized here, but this Court need only be involved when and if necessary, not every time a revision is proposed. In short, any concern that this Court’s input would be precluded by the proposed change is simply misplaced.

**C. Removal is an Appropriate Subject of a Bylaw.**

The opposition also contends that the removal bylaw is void because it is not “administrative” in nature and therefore outside the scope of a permissible bylaw. *See* SCR 10.05(4)(a)8 (board of governors may “adopt bylaws and regulations, not inconsistent with this chapter, for the orderly administration of the association’s affairs and activities.”). The opposition does little to support its contention that removal is not administrative in nature, other than citing *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 832-36 (1995), for the proposition that an “administrative” activity is something along the lines of whether elections shall be conducted via paper ballot or done electronically. It is unclear how *Thornton* – which determined whether the State of Arkansas could pass a state constitutional amendment to limit the terms for its elected members of Congress – supports the opposition’s position. The State Bar does not disagree that the procedure used to conduct elections is administrative in nature. But the opposition does not articulate, nor does *Thornton* explain, why the procedure for removal of an officer or governor of the Bar also is not administrative in nature, particularly when the procedure by which those same officers and governors are nominated and elected is prescribed in the bylaws. SCR 10.04(1) (officers are nominated and elected “in the manner provided by the bylaws.”); SCR 10.05(3) (nominations and elections of members of the board of governors shall be conducted in accordance with the provisions of the bylaws).

Arguing that the challenged bylaws are not “administrative” is not an appropriate reason to reject the State Bar’s enacted procedures for removal. As explained below, the removal provisions are in fact intended to ensure “the orderly administration of the association’s affairs and activities” as explicitly required by the Rules. No more is required.

**II. THE CHALLENGED BYLAWS WERE APPROPRIATELY MODELED FROM PROVISIONS ADOPTED BY OTHER STATE BAR ASSOCIATIONS.**

The State Bar is not the first bar association to prescribe a mechanism for removal of officers or governors. In developing the challenged bylaw, the governance committee studied the work of numerous other organizations. As is evidenced by the examples below, similar removal procedures are common not only in numerous other state bar associations, but also state bar sections, young lawyer associations, and local federal bar associations like the Wisconsin Western District Bar Association:

Washington

***Section IV. A. 4.***<sup>13</sup>

Any Governor may be removed from office for good cause by a 75% vote of the entire Board of Governors exclusive of the Governor subject to removal, who shall not vote. The vote shall be by secret written ballot. *Good cause for removal shall include incapacity to serve or conduct or activities that bring discredit to the Bar.*

Indiana

***Bylaw X. F.***<sup>14</sup>

Any elected or appointed officer shall be automatically removed from office by reason of termination of membership in the Association, death, disability or disqualification (as determined by a two-thirds vote of the Board of Governors). In addition, an

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<sup>13</sup> <http://www.wsba.org/News%20and%20Events/~media/Files/About%20WSBA/Governance/WSBA%20Bylaws/Current%20Bylaws.ashx> at 27-28 (emphasis added).

<sup>14</sup> <http://inbar.org/Portals/0/downloads/bog/BOG%20Bylaws.pdf> at 11 (emphasis added).

elected or appointed officer may be removed by the Board of Governors if it determines, by a three-fourths vote, that the officer is either neglecting assigned duties to the Association, *or has done or is threatening to do some act that is detrimental to the Association.*

#### South Carolina

##### ***Article VI; Section 6.6***<sup>15</sup>

Any Board of Governors member may be removed from office for cause, as hereinafter defined, on the two-thirds affirmative vote of the membership of the Board present at a meeting called for that purpose. For purposes of this section, the term “cause” means any of the following: . . . (e) the member’s engaging in adjudicated *misconduct which is injurious to the Bar*; . . . (g) conduct which would seriously impair the member’s ability to perform the member’s duties to the bar.

#### West Virginia

##### ***Article IV, Section 8 Vacancies***<sup>16</sup>

Vacancies in the office of governor shall be filled by the board for the unexpired term. If any governor be determined by the board to have become incapacitated from performing his or her duties as governor, or if any governor be absent from any two consecutive meetings of the board, without cause deemed adequate by the board, he or she may be removed by the board.

#### Oregon

##### ***Article 2 Board of Governors; Subsection 2.202***<sup>17</sup>

Any officer of the Bar may be removed *with or without cause* on a three-fourths affirmative vote of all board members. That position is then filled by the Board, at the same or a subsequent meeting, using the above rules as far as applicable.

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<sup>15</sup> <http://www.scbarg.org/AboutUs/Bylaws.aspx> (emphasis added).

<sup>16</sup> <http://www.wybar.org/wp-content/uploads/2012/04/WV-Bar-Const-By-Laws-and-Rule-Regulations.pdf> at 16.

<sup>17</sup> [http://www.osbar.org/\\_docs/rulesregs/bylaws.pdf](http://www.osbar.org/_docs/rulesregs/bylaws.pdf) at 12 (emphasis added).

## New Mexico

### ***4.2 c Removal of Officers and Commissioners***<sup>18</sup>

Any five commissioners may sign a petition seeking the removal of an officer or commissioner and present that petition to the Executive Director. The Petition for Removal shall set forth the reasons for removal. Upon receipt of the Petition for Removal, the Executive Director shall send written notice to all commissioners that removal of the officer(s) or commissioner(s) has been requested, along with a copy of the Petition for Removal. . . . An officer or commissioner may be removed for cause by a three-quarters (3/4) vote of the full BBC present at a regularly scheduled meeting of that body.

## Utah

### ***Rule 14-205(c)***<sup>19</sup>

A lawyer commissioner may be removed from the Board by the vote of eight of the twelve commissioners (other than the commissioner proposed for removal) at a meeting of which advance notice of the removal vote is given as provided in paragraph 14-204(a)(2), provided that commissioners who are eligible to vote but who are not in attendance at the meeting may submit their vote in writing to the executive director.

## Hawaii

### ***Article VII, Section I***<sup>20</sup>

Members of the Board of Directors may be removed *for cause* at any meeting duly called for that purpose upon a two-thirds (2/3) vote of the total members of the Board of Directors entitled to vote.

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<sup>18</sup> <http://www.nmbar.org/AboutSBNM/Governance/Bylaws.pdf> at 8.

<sup>19</sup> <http://www.utcourts.gov/resources/rules/ucja/ch14/02%20Bylaws/USB14-205.html>

<sup>20</sup> <http://hsba.org/resources/1/Governance/HSBAConstitutionBylaws.pdf> at 8 (emphasis added).

Maryland – Section of Taxation

***Article IV, Section 3***<sup>21</sup>

The Officers may, in their discretion, remove a Council member for failure to attend three (3) meetings (excepting excused absences) during any fiscal year of the Section *or for other conduct unbecoming to the Section*, or the Officers may accept the resignation of a Council Member.

Missouri Association of Trial Attorneys

***Article III, Section 6***<sup>22</sup>

The removal of any officer for good cause may be effected by a two-thirds (2/3) vote of the Board of Governors voting on the issue, provided however that notice of intent to propose such action is given to the members of the Board at least thirty (30) days prior to the vote.

Texas Young Lawyers Association

***Article VII; Section 1***<sup>23</sup>

For cause shown upon the presentation of written charges, the Board shall have the power to remove any officer or director from the Board not less than fourteen days after notice has been given to the Board and such officer or director. The notice shall state the asserted charges and the date and time the same will be presented to the Board for action.

It shall require at least 2/3rds vote of the directors present and voting in favor of removal in order to remove an officer or director from the Board . . . .

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<sup>21</sup> [http://www.msba.org/sec\\_comm/sections/taxation/docs/bylaws.pdf](http://www.msba.org/sec_comm/sections/taxation/docs/bylaws.pdf) at 3.

<sup>22</sup> [https://www.matanet.org/index.cfm?pg=MATA%20Bylaws.](https://www.matanet.org/index.cfm?pg=MATA%20Bylaws)

<sup>23</sup> <http://www.tyla.org/tasks/sites/tyla/assets/File/08-09-TYLA-BYLAWS.pdf> at 6.

Western District Bar Association of Wisconsin

***Article VII 7.9 Removal***<sup>24</sup>

A member of the Board of Governors may be removed after an appropriate hearing by the affirmative vote of two-thirds of all the members of the Board of Governors whenever in its best judgment *the best interest of the Association would be served thereby*.

This list is not an exhaustive one<sup>25</sup>, but it clearly illustrates that the bylaw provisions at issue here are common and accepted. Although the wording may vary slightly among the states, all of the examples quoted above, and others, allow removal by the bar's governing board on a vote of something more than the majority if that officer's conduct is not in the best interest of the association. The bylaw challenged here is among the most stringent in requiring not just a two-thirds majority of the Board, but a full 75 percent before removal may be effected.

The opposition argues that the wording is vague and fails to state specific conduct which would be subject for removal. Allowing removal for conduct which is contrary to the best interest of the State Bar is inherently broad, and was purposefully drafted that way. Trying to draft a specified list of conduct that would be subject to removal would be an almost impossible task, and would create an inflexible standard unable to be used for unthinkable situations. If it is permissible for the Wisconsin and United States Constitutions to permit expulsion for unspecified reasons, it follows that it should not be a concern for the challenged bylaws here. *See Wis. Const. art. IV, § 8; U.S. Const. art. 1, § 5, cl. 2* ("Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-

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<sup>24</sup> <http://www.wdbar.org/bylaws.htm#7> (emphasis added.)

<sup>25</sup> In addition, *Board Source*, a national organization that provides resources and guidance to non-profit organizations in matters of governance recommends a model removal provision similar to what was adopted by the Bar. Attached as **Exhibit D**.

thirds, expel a member.”); *see also Rangel v. Boehner*, No. 13-540, 2013 U.S. Dist. LEXIS 173308, at \* 46-48 (D.D.C. Dec. 11, 2013) (describing the “Discipline Clause” as necessarily “broad” and noting that an “accused Member is judged by no specifically articulated standards and is at the mercy of an almost unbridled discretion of the charging body.”) (citing *United States v. Brewster*, 408 U.S. 501, 519 (1972)).

The opposition also argues that removal undermines the democratic process. But that argument simply makes no sense when the very documents which guarantee that process allow expulsion of the elected members of the state legislature and of Congress under a process that similarly delegates to those bodies the authority to determine the grounds for removal and permits removal with the approval of a smaller majority than is required here.

The opposition has failed to present any argument other than speculation about why removal would be an issue here in Wisconsin and ignores the fact that the challenged bylaws and proposed amended rules are nearly identical to, but more stringent than those governing Congress, the Wisconsin Legislature and many other bar associations. The amended bylaws should be approved

### **III. PROBLEMS IN OTHER STATE BAR ASSOCIATIONS ILLUSTRATE THE WISDOM AND NECESSITY OF REMOVAL PROCEDURES.**

In 2010, the treasurer and future president of the Minnesota State Bar, was sentenced to 18 years in prison after he sexually assaulted his 15-year old neighbor, a friend of his son’s, whom he spent years “grooming” for the attack. (**Exhibit A.**)<sup>26</sup>

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<sup>26</sup> According to news reports and court documents, Aaron Biber “groomed” his 11 year old neighbor for sex for many years, culminating with Biber getting his victim drunk on the night of the teen’s freshman homecoming and having sex with him for more than two hours. (**Exhibit A.**) The victim threatened to kill himself and suffered severe physical, emotional, and psychological injury. (*Id.*) Biber was eventually caught after the police recorded a subsequent telephone call between the boy and Biber in which they arranged to meet for oral sex. (*Id.*)

In Kentucky, the Supreme Court permanently disbarred a past-president of the Kentucky State Bar in 2007, for various violations of ethical rules including mishandling more than \$500,000 in public funds. *Ky. Bar Ass'n v. Catron*, 229 S.W.3d 910 (Ky. 2007). At the time of the violations, Catron was serving as the past-president of the Kentucky State Bar and had over ten years of service as an officer and/or board member. Another former Kentucky Bar Association president was recently publicly reprimanded for “brazen misrepresentations” while serving as president. *See Bonar v. Ky. Bar Ass'n*, 405 S.W.3d 465 (Ky. 2013). The investigation leading to the reprimand revealed that Bonar removed four individuals from a bar ethics committee who had ties to a firm with which she was involved in a fee dispute.

These types of situations were known by the governance committee, who questioned what action it would be able to take to force removal if an officer or governor of the State Bar of Wisconsin engaged in similar conduct. This concern was heightened after the committee also learned of a case in Rhode Island where the sitting state bar president resigned mid-term in the face of criminal charges. The State Bar has discussed this case with the Rhode Island Bar Association, who noted that without a removal provision, they would have been unable to remove the sitting president if he had decided not to resign. Similarly at the time Aaron Biber was charged with sexual assault of a minor in Minnesota, the Minnesota State Bar had no provision to remove him as treasurer. Although Biber eventually resigned, the Minnesota State Bar realized that a change to its bylaws were necessary and adopted a removal provision in December 2010.<sup>27</sup> Similar issues and concerns were presented at a National Association of Bar Executives conference that warned state bar associations to be mindful of such situations and to

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<sup>27</sup> <http://www.mnbar.org/governance/assembly/minutes/2010-11.htm>.

check the bylaws to make sure a procedure for removal is in place if it ever became necessary.

See **Exhibit E**.

Examples like these demonstrate why creating removal provisions is crucial to good governance and well within the requirement that the bylaws provide for “the orderly administration of the association’s affairs and activities” consistent with this Court’s Rules.

#### **IV. THE CHALLENGE TO THE BYLAWS ON FIRST AMENDMENT GROUNDS IS PREMATURE.**

Finally, the opposition argues that the amended bylaws and proposed Supreme Court Rule changes should both be rejected because they present a danger to the First Amendment rights of officers and governors. This challenge is premature, and if ever appropriate, should be brought as an as-applied challenge by the aggrieved governor or officer, not as a facial challenge to the amended bylaws.

While governors and officers of the State Bar do not relinquish their First Amendment right to freedom of speech as a consequence of serving as a governor or officer, the First Amendment is “not a license for insubordinate speech that impedes an [officers’ or governors’] performance of [their] duties or that interferences with the proper functioning of the workplace.” *Domiano v. River Grove*, 904 F.2d 1142, 1145 (7th Cir. 1990). In other words, there certainly could be situations where certain speech or conduct of officers and governors would serve as an appropriate basis to seek that person’s removal. The courts apply a balancing test, stemming from *Pickering v. Board of Educ.*, 391 U.S. 563 (1968), to determine whether the action was justifiable, despite the individuals’ First Amendment right to speak. *Domiano*, 904 F.2d at 1145.

If a governor or officer was threatened with removal for what they believed was protected speech or conduct, that individual would have the opportunity to make their case to the

full Board before removal could be effected and, if removed regardless, could bring a cause of action against the State Bar if they believed appropriate. Courts have already concluded – and use the same framework to analyze – that volunteers on governmental boards are afforded the same protections from termination or non-appointment as public employees who claim to have lost their employment in retaliation for exercise of their first amendment rights. *See Hyland v. Wonder*, 972 F.2d 1129, 1136-40 (9th Cir. 1992); *Morrison v. City of Reading*, No. 02-7788, 2007 U.S. Dist. LEXIS 16942, at \*15 (E.D. Pa. 2007).

Therefore, even if this Court has concerns that the State Bar may wield its removal authority improperly (although there is no basis for such a fear, and the opposition provides nothing to the contrary in its filings), those concerns can, and should, be addressed only in the context of a specific circumstance where the affected individual's and the organization's respective interests can be appropriately balanced. *See League of Women Voters of Wis. Educ. Network, Inc. v. Walker*, 2013 WI App 77, ¶ 7, 348 Wis. 2d 714, 834 N.W.2d 393 (distinguishing differences between facial challenges where it must be shown that a law cannot be enforced “under any circumstances” and as-applied challenges where “the challenger must show that his or her constitutional rights were actually violated.”). Because the opposition cannot show that the removal provision would be impermissible “under any circumstances” the challenge is premature.

## CONCLUSION

For all the reasons outlined above, the Court should reject the challenges to both petitions and should adopt the proposed revisions to SCR 10.04 and 10.05 and approve the changes to Article II, Section 7(b), and Article III, Section 10(b), of the Bar's bylaws.

Dated: January 3, 2014

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# **EXHIBIT A**

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## Disgraced attorney owes \$15 million to teenager he raped

Article by: ABBY SIMONS, Star Tribune | Updated: May 25, 2011 - 11:54 AM

Aaron Biber's actions "intolerable," judge said.



Aaron Biber

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Disgraced former attorney Aaron Biber, imprisoned for raping a 15-year-old friend of his son, has been ordered to pay \$15 million to a trust in the teen's name for acts a judge deemed "utterly intolerable to the civilized community."

Hennepin County District Judge Denise Reilly ordered Biber, 48, formerly of Shorewood, to pay \$10 million in punitive damages and \$5 million for assault, battery and emotional distress inflicted on the teen, leading up to and including the October 2009 assault.

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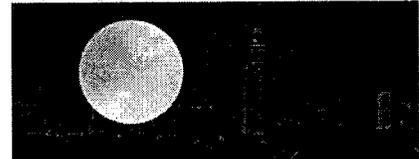
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Attorney Michael Schwartz, trustee for the teen, said he and other attorneys will immediately work toward collecting on the civil judgment, which concluded a lawsuit brought by the boy and his family.

"He was a prominent Twin Cities lawyer for a number of years, and we expect that he's got assets that would be available to the judgment that he owes," Schwartz said.

He noted that such damages are not dischargeable should Biber ever file bankruptcy.

Attorneys for the boy's family sued Biber in June 2010, a month before he pleaded guilty to having sex with a minor over whom he had authority. He was sentenced in October to 18 years in prison and later disbarred.

Biber responded to the suit only by invoking his Fifth Amendment right not to incriminate himself. Reilly then issued a judgment by default earlier this month. Biber's attorney, Robert Stich, did not return a telephone call on Tuesday.

Jeff Anderson, whose St. Paul law firm represents victims of childhood sexual abuse, namely by clergy, said the \$15 million award is large but in line with the crime that prompted it.

"It reflects really two things," he said. "The gravity of the harm that was done to the youth, and secondly, it's magnified by the position of authority than he had and used."

Defense attorney Joe Friedberg concurred, saying: "Based on my limited knowledge, it doesn't seem completely out of line."

**'Shocking, horrific'**

In her 29-page order, Reilly said the \$15 million judgment was justified by the same factors District Judge Lloyd Zimmerman cited in issuing a prison term six years longer than prescribed by state guidelines.

Zimmerman cited the "shocking, horrific and stunning" nature of Biber's conduct, which he further called "repulsive as a matter of law and repulsive as a matter of fact."

According to court documents, Biber, a former partner at the firm Gray Plant Mooty who had served as treasurer of the Minnesota State Bar Association, "groomed" the boy for sex, starting when the boy, his neighbor, was 11.

He was accused of sending the boy explicit text messages and pornography, giving him back rubs and asking him to perform sexual acts. On the night of the teen's freshman homecoming, Biber got him drunk and had sex with him for more than two hours, court records said.

The boy threatened to kill himself and was hospitalized before telling a psychiatrist, his parents and police what happened. Biber was arrested in December 2009 after police recorded a telephone call between the boy and Biber in which they arranged to meet for oral sex.

Reilly wrote that the teen suffered "physical, emotional and psychological injury ... so severe that no reasonable person could be expected to endure it." The teenager is receiving inpatient psychological treatment out of state at a cost of \$10,000 a month. He is expected to remain there for as long as a year.

Schwartz said the boy's family feels somewhat vindicated by the sentence and the award. However, he added:

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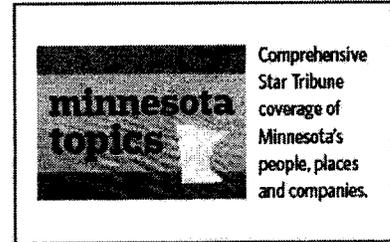
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WEEKLY ADS



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## Twin Cities lawyer accused of raping boy

Article by: MATT MCKINNEY, Star Tribune | Updated: December 15, 2009 - 6:03 AM

Aaron F. Biber, treasurer of the State Bar Association, was charged with two felonies, stunning many who know him.



Aaron Frank Biber

Photo: Photo courtesy Hennepin County Sheriff  
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A prominent Twin Cities lawyer who was in line to become president of the Minnesota State Bar Association was charged Monday with plying a teenage boy with alcohol at his home and then raping him.

The charges against Aaron F. Biber, of the Gray Plant Mooty law firm, say he arranged in a phone call to meet the boy for more sex, unaware that police were listening.

"Let's get this party started," Biber allegedly told the boy.

Police said they arrested Biber, 46, on Friday at the [Eden Prairie Mall](#) as he arrived there to meet the boy.

The allegations landed Biber in jail over the weekend and stunned those who knew him as a past president of the Hennepin County Bar Association and a "super lawyer" who was co-chair of the antitrust and trade regulation team at Gray Plant Mooty.

"We are deeply saddened by this completely unexpected news," read a statement issued Monday by the law firm's board chair, Tamara Hjelle Olsen. Biber has been placed on leave, she said.

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Biber was also treasurer of the Minnesota State Bar Association, a position that in two years would make him president.

"Biber is a recognizable figure to anyone involved with bar activities (and is made all the more recognizable by the fact that he is one of only a handful of local lawyers who favors wearing a bow tie)," read a posting at MinnLawyer blog discussing his arrest.

Current bar President Leo Brisbois said the bar association will suspend Biber in light of the "deeply troubling" allegations.

His lawyer, Rachael A. Goldberger, said Monday she had no comment. Biber, who is being held on \$1 million bail, will make his first court appearance Tuesday afternoon.

"We'll obviously be asking for lower bail than the county is asking for," Goldberger said.

Biber allegedly knew the boy for four years, and the boy sometimes slept over at Biber's Shorewood home, police said. Biber is married and has at least one child.

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# **EXHIBIT B**

**RULES AND BY LAWS COMMITTEE  
SUMMARY OF PROPOSED CHANGES  
NOVEMBER, 2003**

**CHAPTER SCR 10**

**General:**

The rule was reorganized and many items in the current rule thought to be more administrative in nature were moved to the by-laws.

**Specific items of note:**

**Classes and Categories of Membership.** The proposed rules provide for two classes of membership. The first class is referred to as **enrolled** members and includes:

- Active Members:** Those licensed to practice in Wisconsin who fall into no other category.
- Judicial Members:** Judges or full time court commissioners of a Court of record, excluding administrative law judges and court commissioners of appellate courts. Judicial members may either pay full dues and vote or pay reduced dues and not vote in State Bar matters.
- Inactive Members:** Lawyers who are eligible for active membership but who do not practice law in Wisconsin. Inactive members cannot vote or hold State Bar office.
- Emeritus Members:** Lawyers who have attained age 75 (up from 70) may select either Active Emeritus status, and have full membership rights but pay dues at a reduced rate, or inactive Emeritus Status and pay no dues and may not practice.

The second class of membership is **registered** members and includes:

**Associate Members:** Lawyers licensed elsewhere but who are not required to be licensed in Wisconsin. The Associate Member pays dues, but cannot vote or hold State Bar office, and cannot practice in Wisconsin.

**Temporary Members:** Pro Hac Vice members who apply, pay a fee and are subject to OLR rules for their conduct while practicing in Wisconsin.

**Dues Reduction for certain activities (KELLER).** No changes were made to existing Keller provisions.

**Board of Governors Provisions.** Much of the detail concerning the Board of Governors was moved to the By-Laws.

**Referendum Procedure.** These provisions remained largely intact and were clarified as to class of membership.

**General Housekeeping.** All member communication/voting provisions were enhanced to provide the most efficient manner of communication, utilizing electronic means wherever possible.

## **STATE BAR BYLAWS**

### **Article 1 Membership**

This administrative section was reorganized, updated as to types of membership and reworded to enable the Executive Director to delegate some administrative duties.

### **Article 2 Board of Governors**

Much of this section was taken from the old rules. Several clarifications were made. Significant changes include:

- Office of Secretary** This position was viewed as unnecessary - with due respect to all who have held this position (reduced Board by one seat).
- SLAC seat** Adds a two year term to a representative chosen by the Section Leaders Advisory Council.
- Liaisons** The Board may, as needed, appoint a non voting member to the Board for a one year term. This member had floor privileges.
- Ballots** Allows an independent third party (not necessarily a CPA) to count ballots - potential cost saving.
- Governors** Required a two year hiatus between terms, sets forth duties, elaborates on conflicts of interest, provides for removal for failure to perform duties, or two consecutive unexcused absences, requires governors to be a liaison to committees.
- Meetings** Provides Board with ability to adopt its rules of procedure, defaults to ABA Rules of Procedure, sets a consistent supermajority wherever required at 60% of total membership of board, except for spending the reserve which is 75% of total membership of the Board.

**Board Committees** Executive. Adds a SLAC and Senior Division member, expressly prohibits the committee from publicly taking a position on behalf of the Bar or taking any position that overrules previous action by the Board of Governors.

Finance. Adds the Chairperson of the Board to the committee.

Strategic Planning. Established this committee to review or revise the Strategic Plan, and annually review work of and necessity of continuing committees.

Legislative Policy Committee. Established to review and report all matters concerning Legislative Policy taken or proposed to be taken by the Bar and its sections.

Leadership Development. In addition to the customary nominating function, this committee will cultivate and identify potential bar leadership to ensure organization wide continuity of leadership.

### **Article 3 Officers**

In Addition to eliminating reference to the Secretary position, the new section includes a conflict of interest provision, clarifies filling of vacancies in officer positions and provides for removal where appropriate.

### **Article 4 Committees of the State Bar**

This section established committees by type and includes a provision to require reporting to the Board annually to enable the Board to review the need for continued committee existence.

**Standing Committees** Encourages judiciary participation on committees which include Access to Justice (formerly Legal Aid), Continuing Legal Education, Communications, and Legal Ethics and Attorney Professionalism. No significant changes in committee purpose or composition.

**Continuing Committees** Provides that continuing committees be reviewed annually by the Strategic Planning Committee annual approval required to continue.

**Special Committees** Allows special committees for specific purposes to be established by president, board or executive committee and supermajority of board to continue beyond defined task.

## **Article 5 Sections**

This section is revamped to provide:

Approval by supermajority of Board of Governors to establish or discontinue a section.

Sections must be dedicated to **area of practice or interest related to the practice of law.**

Adds "level of interest by State Bar Members" and "lobbying intent" to criteria to establish section.

Includes provisions, including imposition of administrative fee to ensure that section revenue will be sufficient to cover lobbying cost. Administrative fee to be determined by the Board of Governors after consultation with SLAC.

Required annual report of activities **and finances** to section members and Board of Governors.

Includes provisions for SLAC, its composition, and governance.

## **Article 6 Divisions**

This section reorganizes the division provisions from the Old Rules, clarifies general division governance matters and requires an annual report to the Board of Governors concerning activities and finances.

## **Article 7 Public Policy Positions**

Revisions of this section include:

Defines Public Policy Positions as "lobbying positions, legislative policy, proposed Supreme Court rule changes, proposed state agency rule changes and other positions of public policy."

Requires supermajority to adopt by Board of Governors by roll call vote.

Limits Divisions and Committees from taking positions without approval by the Board of Governors.

Requires sections to comply with procedures for public policy positions as established by the Board of Governors, to clearly state that section positions are of the section only, and to advise the Board of Governors or Executive Committee of the position before it is publicly expressed.

## **Article 8 State Bar Amicus Curiae Briefs**

In an effort to obtain the broadest possible input and support and to ensure that Amicus Curiae Briefs serve the organization well, the proposed section includes:

Requires a supermajority vote of the Board of Governors to approve a State Bar brief only after the proposed action is communicated to all members for comment.

Requires a supermajority of Section Board to file on behalf of a section and requirement that Section Brief clearly state it's sponsorship by the section only.

Because of short time lines to file briefs, allows Executive committee to make determination for filing (same supermajority) and appeal process to full Board of Governors.

**Editor's Note**

In these drafts, underlining is used to indicate text that is new or that has been substantively revised. The information in brackets is used to indicate the location of material that exists in the current rules and bylaws but in a different place than in the proposed revisions. Occasionally, the brackets also contain comments about the substance of a deletion, addition, or change. Please excuse any errors in formatting; they will be fixed later in the process. Thank you!

**CHAPTER SCR 10**  
**REGULATION OF THE STATE BAR**

- SCR 10.01 State Bar of Wisconsin.
- SCR 10.02 Purposes of the State Bar of Wisconsin.
- SCR 10.03 Membership.
- SCR 10.04 Board of Governors.
- SCR 10.05 Referendum Procedure.
- SCR 10.06 Committee to Review Bar Performance.
- SCR 10.07 Official Publications; Notice to Members.
- SCR 10.08 Amendment.
- APPENDIX State Bar Bylaws.

**Judicial Council Committee's Note – 2002:** The following rules, called the State Bar rules, govern the State Bar of Wisconsin and its members. SCR 10.01 is in the 1977 Wisconsin statutes as section 758.25. Former SCR 10.02 to 10.08 were originally adopted by the supreme court on December 7, 1956, effective January 1, 1957. They were amended on February 9, 1972; June 16, 1975; November 1, 1976; November 18, 1977; March 6, 1978; December 14, 1978; and \_\_\_\_\_.

The 1978 version of SCR 10.02(1) was incorporated in SCR 10.01. Current SCR 10.02 is unchanged from the 1978 version of SCR 10.02(2). Portions of the 1978 version of SCR 10.04 (Officers), 10.05 (Board of Governors), 10.06 (Executive Committee), 10.07 (Meetings of the Association), 10.08 (Referendum Procedure), 10.09

(Disbursements), and 10.11 (Executive Director) have been deleted from these State Bar Rules and included in the State Bar Bylaws. The 1978 SCR 10.14 (Rules of Professional Conduct) was deleted from these rules, as it is duplicative of SCR 20. Certain provisions relating to fees are contained in SCR 40.16.

**SCR 10.01 State Bar of Wisconsin.**

(1) There shall be an association known as the "State Bar of Wisconsin" (State Bar) composed of persons licensed to practice law in Wisconsin and such other persons falling within a membership category provided in these rules. No individual other than an enrolled active State Bar member, a registered member pursuant to SCR 10.03(3)(b), or an attorney authorized pursuant to SCR 20:5.5 may practice law in Wisconsin or in any manner purport to be authorized to practice law.

(2) The Wisconsin Supreme Court (Supreme Court) by appropriate orders shall provide for the organization and government of the State Bar and shall define the rights, obligations, and conditions of membership therein, to the end that the State Bar shall promote the public interest by maintaining high standards of conduct in the legal profession and by aiding in the efficient administration of justice.

(3) The State Bar may, for the purpose of carrying out the purposes for which it is organized, sue and be sued, enter into contracts, and acquire, hold, encumber, and dispose of real and personal property. **[Formerly at SCR 10.02(1)]**

(4) The rules of this chapter, which are adopted in the exercise of the Supreme Court's inherent authority over members of the legal profession as officers of the court, may be referred to as "State Bar rules." **[Formerly at SCR 10.02(1)]**

**SCR 10.02 Purposes of the State Bar of Wisconsin.**

The purposes of the State Bar are to aid the courts in carrying on and improving the administration of justice; to foster and maintain on the part of those engaged in the practice of law high ideals of integrity, learning, competence, and public service and high standards of conduct; to safeguard the proper professional interests of the members of the bar; to encourage the formation and activities of local bar associations; to conduct a program of continuing legal education; to assist or support legal education programs at the preadmission level; to provide a forum for the discussion of subjects pertaining to the practice of law, the science of jurisprudence and law reform, and the relations of the bar to the public and to publish information relating thereto; to carry on a continuing program of legal research in the technical fields of substantive law, practice, and procedure and make reports and recommendations thereon within legally permissible limits; to promote the innovation, development, and improvement of means to deliver legal services to the people of Wisconsin; to the end that the public responsibility of the legal profession may be more effectively discharged. [Formerly at SCR 10.02(2)]

**SCR 10.03 Membership.**

(1) **Persons Included in Membership.** Membership in the State Bar consists of all persons who are or become licensed to practice law in Wisconsin, subject in each case to compliance with the conditions and requirements of membership and subject to the applicable rules of professional conduct. Residence in Wisconsin is not a condition of eligibility for State Bar membership.

(2) **Enrollment.** Every person who becomes licensed to practice law in Wisconsin shall enroll in the State Bar within 10 days after admission to practice.

[Removed: reporting of change of office address]

(3) **Classes and Categories of Membership.** The members of the State Bar are divided into two classes: enrolled members and registered members.

(a) **Enrolled Members.** The categories of enrolled members shall be:

1. **Active Members.** Active members are those lawyers who are licensed to practice law in Wisconsin and who do not fall within any other category of membership. Active members of the State Bar shall have all the rights of membership in the State Bar, including the right to vote in State Bar elections and the right to hold office and serve on the Board of Governors. [Formerly at SCR 10.03(3)(a), (c)]

2. **Judicial Members.** Judicial members are judges of courts of record, full-time family court commissioners, full-time circuit court commissioners, U.S. bankruptcy judges, U.S. magistrate judges, and retired judges who are eligible for temporary judicial assignment and are not engaged in the practice of law. This category shall not include administrative law judges and court commissioners of appellate courts. Judicial members shall not practice law and shall not serve as a State Bar officer or on the Board of Governors. When a judicial member ceases to serve in a judicial office, he or she shall no longer be eligible to be a judicial member and may become an active, inactive, or emeritus member by filing with the State Bar a written request for transfer to the appropriate category and by paying the dues required for such category. Judicial members shall choose one of two subcategories of membership: [Formerly at SCR 10.03(3)(a), (b), (c)]

a. Voting Judicial Members. A voting judicial member shall pay the same dues as an active member and shall have the right to vote in State Bar elections.

b. Nonvoting Judicial Members. A judicial member who has not elected voting judicial member status shall pay dues at a reduced rate and shall not have the right to vote in State Bar elections.

3. **Inactive Members.** Lawyers who are eligible for active membership but are not engaged in the practice of law in Wisconsin may file with the State Bar written notice requesting enrollment as an inactive member. No person engaged in the practice of law in Wisconsin may be an inactive member. An inactive member in good standing who has been authorized for active status by the Board of Bar Examiners may change his or her classification to that of an active member by filing with the State Bar a written request for transfer to the category of active members and by paying the dues required of active members. No inactive member who has not actively practiced law in Wisconsin or in another state during the last 10 years may be transferred to active membership until the transfer is approved by the Supreme Court. No inactive member may hold any State Bar office, serve on the Board of Governors, or vote in any State Bar election. [Formerly at SCR 10.03(3)(a), (b), (c)]

4. **Emeritus Members.** Emeritus members are those lawyers who are members in good standing who are at least 75 years of age and who have elected emeritus status. There shall be two subcategories of emeritus members. [Formerly at SCR 10.03(3)(a). Previously, age for emeritus was 70]

a. Active Emeritus Members. An active emeritus member shall have all the duties and privileges of an active State Bar member but may pay membership dues at a reduced rate for the years following the year in which he or she attains the age of 75.

b. Inactive Emeritus Members. An inactive emeritus member is an emeritus member who has filed with the State Bar a written notice requesting enrollment as an inactive emeritus member. An inactive emeritus member has the same rights and privileges as an inactive member, except that an inactive emeritus member need not pay any membership dues for the years following the year in which he or she attains the age of 75. An inactive emeritus member may not practice law in Wisconsin.

c. Phase-in. Any lawyer who was an emeritus member at the time sub. (3)(a)4. became effective may continue to be an emeritus member. Such emeritus member shall be presumed to be an active emeritus member unless he or she notifies the State Bar that he or she wishes to be an inactive emeritus member. The State Bar shall notify members of their options under this provision. This subsection shall expire five years from its effective date.

(b) Registered Members. The categories of registered members shall be:

1. Associate Members. A lawyer who is not licensed in Wisconsin but is licensed in another jurisdiction and who is not required under the applicable rules to be licensed in Wisconsin may apply with the State Bar for registration in the class of associate members. An associate member shall have all the rights and obligations of active members, except that an associate member shall not have the right to vote in State Bar elections or hold a State Bar office; associate member status shall not, of itself, entitle the associate member to practice law in Wisconsin; and associate member status

shall not, of itself, subject the associate member to the continuing legal education requirements of the Board of Bar Examiners.

**2. Temporary Members (Pro Hac Vice Status).**

**a. General.** A judge in Wisconsin may allow an out-of-state lawyer to appear in his or her court and participate in a particular action or proceeding in association with an active State Bar member who appears and participates in the action or proceeding, provided that the out-of-state lawyer has complied with the pro hac vice requirements of this rule. Permission to the out-of-state lawyer may be withdrawn by the judge granting it if the lawyer by his or her conduct manifests incompetence to represent a client in a Wisconsin court or if the lawyer exhibits unwillingness to abide by the Rules of Professional Conduct for Attorneys or the Rules of Decorum of the court.

**b. Military Counsel.** A judge in this state may allow a nonresident military lawyer representing military personnel to appear in his or her court and participate in a particular action or proceeding without being in association with an active member of the State Bar and without being subject to any application fees required by this rule.

**c. Definitions.**

**i.** An "out-of-state" lawyer is a person not admitted to practice law in Wisconsin who is admitted in another state or territory of the United States or the District of Columbia and who has not been disbarred or suspended from practice in any jurisdiction.

**ii.** An out-of-state lawyer is "eligible" for admission pro hac vice if that lawyer lawfully practices solely on behalf of the lawyer's employer and its commonly owned organizational affiliates, regardless of where such lawyer may reside or work; neither resides in Wisconsin nor is regularly employed at an office in Wisconsin; or resides in

Wisconsin but lawfully practices from offices in one or more other states and practices no more than temporarily in Wisconsin, whether pursuant to admission pro hac vice or in other lawful ways.

iii. A "client" is a person or entity for whom the out-of-state lawyer has rendered services or by whom the lawyer has been retained before the lawyer's performance of services in Wisconsin.

iv. "State" is the state of Wisconsin.

**d. Admission in Pending Litigation Before a Court or Agency.**

**i. Authority of Court or Agency to Permit Appearance by Out-of-state Lawyer.**

**A. Court Proceeding.** Upon proof of compliance with these rules, a Wisconsin court may, in its discretion, admit an eligible out-of-state lawyer retained to appear in a particular proceeding pending before such court to appear pro hac vice as counsel in that proceeding.

**B. Administrative Agency Proceeding.** Upon proof of compliance with these rules, an administrative agency may, using the same standards and procedures as a court, admit an eligible out-of-state lawyer who has been retained to appear in a particular agency proceeding to appear as pro hac vice counsel in that proceeding, provided the representation is undertaken in association with a lawyer who is admitted to practice in Wisconsin.

**ii. In-state Lawyer's Duties.** When an out-of-state lawyer appears for a client in a proceeding pending in Wisconsin, either in the role of co-counsel of record with the in-state lawyer or in an advisory or consulting role, the in-state lawyer who is co-counsel or

counsel of record for that client in the proceeding remains responsible to the client and responsible for the conduct of the proceeding before the court or agency. It is the duty of the in-state lawyer to advise the client of the in-state lawyer's independent judgment on contemplated actions in the proceeding if that judgment differs from that of the out-of-state lawyer.

**d. Application.**

**A. Verified Application.** An eligible out-of-state lawyer seeking to appear in a proceeding pending in Wisconsin as counsel pro hac vice shall file a verified application with the court where the litigation is filed. The application shall be served on all parties who have appeared in the case, the Office of Lawyer Regulation (OLR), and the State Bar. The application shall include proof of service. The court has the discretion to grant or deny the application summarily if there is no opposition.

**B. Objection to Application.** The OLR or a party to the proceeding may file an objection to the application or seek the court's imposition of conditions to its being granted. The OLR or objecting party must file with its objection a verified affidavit containing or describing information establishing a factual basis for the objection. The OLR or objecting party may seek denial or modification of the application. If the application has already been granted, the OLR or objecting party may move that the pro hac vice admission be withdrawn.

**e. Application Fee.**

**i.** At the time of filing the application, an applicant for permission to appear as counsel pro hac vice under this rule shall pay a nonrefundable fee set by the State Bar.

ii. An applicant shall not be required to pay the fee if the applicant will not charge an attorney fee to the client(s) and either is employed or associated with a pro bono project or nonprofit legal services organization in a civil case involving the client(s) of such programs or is involved in a criminal case or a habeas proceeding for an indigent defendant.

**f. Standard for Admission and Revocation of Admission.** Wisconsin courts and agencies have discretion as to whether to grant applications for admission pro hac vice. An application ordinarily should be granted unless the court or agency finds reason to believe that such admission: (i) may be detrimental to the prompt, fair, and efficient administration of justice; (ii) may be detrimental to legitimate interests of parties to the proceedings other than the client(s) the applicant proposes to represent; (iii) one or more of the clients the applicant proposes to represent may be at risk of receiving inadequate representation and cannot adequately appreciate that risk; and/or (iv) the applicant's appearances in Wisconsin are sufficiently frequent as to constitute regular practice in Wisconsin.

**g. No Solicitation.** An out-of-state lawyer rendering services in Wisconsin pursuant to this rule is not authorized by anything in this rule to hold out to the public or otherwise represent that the lawyer is admitted to practice in Wisconsin. Nothing in this rule authorizes out-of-state lawyers to solicit clients, advertise legal services, or otherwise hold themselves out in publications as available to assist in litigation in Wisconsin.

**h. Temporary Practice.** An out-of-state lawyer will be eligible for admission pro hac vice or to practice in another lawful way only on a temporary basis.

i. Authorized Services. Preliminary legal services may be undertaken by the out-of-state lawyer in connection with a potential proceeding in which the lawyer reasonably expects to be admitted pro hac vice, even if ultimately no proceeding is filed or if pro hac vice admission is denied.

**(4) Voluntary Resignation of Membership.**

(a) If a State Bar enrolled member files with the State Bar a written notice of the member's surrender of his or her license to practice law and the acceptance by the Supreme Court of his or her resignation from the State Bar, the person shall then cease to be a State Bar member and his or her name shall be removed from the membership roll. Before accepting a resignation, the Supreme Court shall request from the Office of Lawyer Regulation information concerning whether the lawyer is the subject of any pending grievances, investigations, or proceedings. [Formerly at SCR 10.03(7)]

(b) A registered State Bar member may resign from membership by sending the State Bar written notice of the member's intent to resign. When the State Bar accepts the resignation, the person shall cease to be a State Bar member and his or name shall be removed from the membership roll. Before accepting a resignation, the State Bar shall request from the Office of Lawyer Regulation information concerning whether the lawyer is the subject of any pending grievances, investigations, or proceedings.

**(5) Membership Dues and Reduction of Dues for Certain Activities.**

(a) The State Bar shall, from time to time, establish annual membership dues for State Bar operations for the various categories of members. The State Bar shall have the authority to include in its annual dues statement the amount necessary, as approved by the Supreme Court, to pay the costs of the Office of Lawyer Regulation, the Board of Bar

Examiners, and the Client Security Fund. Judicial members are not liable to pay the portion of the annual dues for the Office of Lawyer Regulation and Board of Bar Examiners charges or assessments. The State Bar shall show separately on its annual dues statement the portion of the total dues for State Bar operations, and each of the charges and assessments referred to above. **[Several specific provisions moved or removed]**

(b) 1. The State Bar may engage in and fund any activity that is reasonably intended for the purposes of the association. The State Bar may not use compulsory dues of any member who objects to that use for political or ideological activities that are not reasonably intended for the purpose of regulating the legal profession or improving the quality of legal services. The State Bar shall fund those political or ideological activities by the use of voluntary dues, user fees, or other sources of revenue.

2. Before the beginning of each fiscal year, the State Bar shall publish written notice of the activities that can be supported by compulsory dues and the activities that cannot be supported by compulsory dues. The notice shall indicate the cost of each activity, including all appropriate indirect expense, and the amount of dues to be devoted to each activity. The notice shall set forth each member's pro rata portion, according to category of membership, of the dues to be devoted to activities that cannot be supported by compulsory dues. The notice shall be sent to every State Bar member along with the annual dues notice. A State Bar member may withhold the pro rata portion of dues budgeted for activities that cannot be supported by compulsory dues.

3. A State Bar enrolled member who contends that the State Bar incorrectly set the amount of dues that can be withheld may deliver to the State Bar a written demand

for arbitration. Any such demand shall be delivered within 30 days after the member receives his or her dues statement. Delivery may be made in person or by first class mail, and mailed demands will be deemed delivered upon mailing. Demands shall include the name and address of the member or members demanding arbitration, a brief statement of the claim or objection, and the signature of the member or members. **[Consolidated from SCR 10.03(5)(b)3. and Art. I, sec. 5]**

4. If one or more timely demands for arbitration are delivered, the State Bar shall promptly submit the matter to arbitration before an impartial arbitrator. The State Bar shall pay the costs of the arbitration. All such demands for arbitration shall be consolidated for hearing before the arbitrator appointed. The provisions of Wis. Stat. chapter 788 shall apply as if the parties had entered into a written agreement for arbitration. A member demanding arbitration is required to pay his or her dues by October 31 or 15 days after the arbitrator's decision, whichever is later. Failure to pay dues by such date shall result in automatic suspension of the delinquent member. **[Consolidated from SCR 10.03(5)(b)4. and Art. I, sec. 5(b)]**

5. Upon receipt of all demands for arbitration, the State Bar shall apply for appointment of an impartial arbitrator to the Chief Judge of the Federal District Court for the Western District of Wisconsin. **[Formerly at Art. I, sec. 5(c)]**

6. Members demanding arbitration shall have access to the financial records on which the State Bar based the determination of the amount of dues that can be withheld. These records shall be available for inspection and copying during normal business hours. Copying shall be at the member's expense. **[Formerly at Art. I, sec. 5(d)]**

7. No later than seven calendar days before the hearing, any member requesting arbitration shall file with the arbitrator a statement specifying with reasonable particularity each activity he or she believes should not be supported by compulsory dues under this paragraph and the reasons for the objection. **[Formerly at SCR 10.03(5)(b)4.]**

8. The arbitrator shall determine the date, time, and location of the arbitration hearing(s) and shall so notify the parties at least 15 days before the hearing(s). The arbitrator shall promptly hold hearings, in which the parties shall be permitted to participate personally or through a representative. The State Bar shall bear the burden of proof regarding the accuracy of the determination of the amount of dues that can be withheld. All parties shall be given the opportunity to present evidence and to present arguments in support of their positions. The following rules shall apply to the arbitration proceedings.

a. There shall be no transcripts or post-hearing briefs.

b. The arbitrator shall issue an award stating the reasons for the decision within 30 business days of the closing of the hearing. The opinion shall be brief and shall be based on the evidence and arguments presented.

c. The arbitrator shall be paid a reasonable fee for services and shall be reimbursed for all necessary expenses of the arbitration. **[Previously specified that arbitrator could charge a maximum of \$100 per hour for services including the hearing, preparation, and study time]**

d. The hearing shall be held within 60 days of the appointment of the arbitrator.

e. The arbitrator shall not be deemed a necessary party in judicial proceedings relating to the arbitration.

f. The arbitrator shall have no authority to add, subtract, set aside, or delete from any Supreme Court rule or State Bar bylaw. **[Entire subsection formerly at Art. I, sec. 5(e)]**

9. If the arbitrator's decision results in a higher pro rata reduction of dues for members who have delivered timely demands for arbitration for a fiscal year, the State Bar shall offer such higher pro rata reduction for members first admitted to the State Bar during that fiscal year and after the date of the arbitrator's decision. **[Formerly at SCR 10.03(5)(b)5.]**

10. Members first admitted to the State Bar after the date of notification to members of the dues reduction amount shall be given that notification with their initial dues statements. Such members shall be informed that they may deliver a demand for arbitration within 30 days following receipt of the notification. If arbitration is pending at the date of delivery of a demand for arbitration by a newly admitted member, the newly admitted member's demand shall be consolidated with the pending arbitration. All of the provisions of this section shall otherwise apply to demands for arbitration filed by newly admitted members. **[Formerly at Art. I, sec. 5(f)]**

**(c) Penalty for Nonpayment of Dues.** If the annual dues, assessments, or any applicable late fees of any member remain unpaid 120 days after payment is due, the membership of the member may be suspended in the manner provided in the bylaws. No person whose membership is suspended for nonpayment of dues may practice law in Wisconsin during the period of the suspension. **[Formerly at SCR 10.03(6)]**

**(d) Avoidance of hardship.** The State Bar may, as set forth in section 1.3 of the bylaws, waive or refund member dues, permit the retroactive enrollment of members, and

waive penalties prescribed for delinquency in the payment of membership dues.  
[Formerly at SCR 10.03(8)]

#### **SCR 10.04 Board of Governors**

The State Bar shall be governed by a Board of Governors, as provided in article II of the bylaws. The Board shall fairly represent State Bar enrolled members geographically. The Board's membership shall include three persons who are not lawyers, appointed by the Supreme Court for staggered two-year terms. The State Bar shall be administered by officers, who shall be selected as provided in article III of the bylaws. [Formerly at SCR 10.05. Summarizes Board of Governors; most provisions now in Art. II]

#### **SCR 10.05 Referendum Procedure.**

##### **(1) Subject Matter of Referendum.**

(a) A referendum may inquire as to the opinion of voting members on any matter of public policy that is properly the subject of any action by the State Bar, including proposals for change in the State Bar rules or bylaws, except no referendum may be held on administrative, personnel, or financial matters. [Formerly at SCR 10.08(3)(a)]

(b) The same substantive question shall not be submitted to the members by referendum more frequently than one time in two calendar years. [Formerly at SCR 10.08(3)(b)]

(2) **Governors May Initiate.** The Board of Governors may, by the affirmative vote of 60 percent of the total membership of the Board, refer to active State Bar

members for determination by mail or electronic ballot any appropriate question of public policy as provided in sub. (1). [Formerly at SCR 10.08(4)]

(3) **Members May Initiate by Petition.** When required by petition as set forth herein, the Board of Governors shall submit for determination by voting State Bar members any question appropriate for referendum, as provided in sub. (1).

(a) The petition shall succinctly and clearly state the questions to be submitted by the referendum.

(b) A referendum request shall be supported by petitions containing the signatures of at least 1,000 State Bar members who are eligible to vote.

(c) Each signature line in the petition or copy thereof shall contain (i) the member's signature and full name clearly printed or typed; (ii) the member's Bar number; and (iii) the date on which the member signed the petition.

(d) Each petition shall be circulated by an active State Bar member in good standing.

(e) The petitions shall be verified by the circulator, who shall swear that the circulator personally obtained all signatures set forth on the petition and knows them to be the signatures of State Bar members as represented therein.

(f) The 1,000 signatures required shall include not fewer than 50 signatures from each of six separate districts from which members of the Board of Governors are elected.

(g) All signatures must be obtained within a period of 90 days before the date the petition is filed.

(h) The petition shall designate the person (the petitioner) to be notified of any insufficiency of the petition.

(i) The State Bar shall make petitions available upon request.

(j) Nonresident members are considered to reside in a single, nonresident district.

**[Entire subsection formerly at SCR 10.08(5)]**

**(4) Time for Filing Request.** In order to be submitted to the membership in the regularly scheduled spring elections, petitions for referendum initiated by State Bar members must be filed at the State Bar headquarters no later than the first business day in January. Any referendum authorized by the Board of Governors shall be authorized on or before February 28 of the calendar year in which the referendum is to be held.

**[Formerly at SCR 10.08(2)]**

**(5) Procedure for Filing Petition.**

(a) The petition must be complete when filed with the State Bar headquarters. Upon filing, the petition shall be examined by the executive director or his or her designee in order to determine all of the following: (i) whether the question is properly the subject of a referendum; (ii) whether the signatures are of State Bar members who are eligible to vote; (iii) whether the signatures satisfy the geographic distribution and time requirements set forth in sub. (3)(f) and (g); and (iv) whether the petition is otherwise in order as required by this section.

(b) The ruling of the executive director shall be communicated to the petitioner and the Executive Committee as soon as practicable and within two weeks after the date on which the petition is filed. **[Entire subsection formerly at SCR 10.08(60)]**

**(6) Framing the Question.** Upon receipt by the State Bar of a referendum petition as described above and certification by the executive director as to the validity of the petition, the President shall appoint a committee to frame the exact question to be

submitted to the members. That committee shall include the person designated in the petition. The committee shall be responsible for framing the question in a form that is clear, intelligible, and meaningful. [Formerly at SCR 10.08(7)]

**(7) Final Certification by Board of Governors.** Any dispute as to the certification of the validity of the petition by the executive director or the framing of the question by the special committee described above shall be submitted to the Board of Governors, which shall determine the validity of the petition and the form in which the question shall appear on the referendum ballot. [Formerly at SCR 10.08(8)]

**(8) Publication of Question.** As to all questions to be submitted to the members by referendum, reasonable space in a State Bar official publication shall be provided to both the proponents and the opponents of the proposition. This space shall be made available without charge at least 30 days before mailing of the referendum ballots. State Bar mailing lists shall be equally available at the same costs to both proponents and opponents of any referendum. [Formerly at SCR 10.08(8)]

**(9) Time of Holding.** All referendums shall be conducted in any calendar year at the same time as and simultaneous with the election of officers and members of the Board of Governors. [Formerly at SCR 10.08(1)]

**(10) Conduct of Election.** The mailing of the ballots, the return of the ballots, the counting of the ballots, and the reporting of the results shall be conducted in the same manner as for the election of the Board of Governors, as set forth in sections 2.6.4 to 2.6.7 of the bylaws. [Formerly at SCR 10.08(10)]

**(11) Binding Effect.** A referendum receiving an affirmative vote of a majority of the votes cast, provided that at least 25 percent of the eligible voters vote, shall

establish State Bar policy until such time as that policy is changed or modified according to the requirements of Supreme Court rules or State Bar bylaws. [Formerly at SCR 10.08(11)]

**SCR 10.06 Committee to Review Bar Performance.**

The Supreme Court may appoint a committee to review the performance of the State Bar in carrying out its public functions at such time as the court deems it advisable. The Supreme Court shall determine in its order of appointment the size and composition of the committee. The State Bar shall pay the committee's expenses. [Formerly at SCR 10.10]

**SCR 10.07 Official Publications; Notice to Members.**

The Wisconsin Lawyer and the monthly newsletter or their successors are the official publications of the State Bar. All official notices shall be published therein or distributed in a manner designed to reach all State Bar members in a timely manner. [Formerly at SCR 10.12]

**SCR 10.08 Amendment.**

(1) **Amendment of Rules.** Proposals for amendment or abrogation of provisions of this chapter may be presented to the Supreme Court by petition of the Board of Governors or by petition approved by State Bar members through the referendum procedure set forth in SCR 10.05. The hearing on such a petition shall be pursuant to notice in such manner as the court directs.

(2) **Amendment of Bylaws.** The bylaws of the State Bar are subject to amendment or abrogation by resolution adopted by the affirmative vote of 60 percent of the total membership of the Board of Governors, or action of State Bar members expressed through the referendum procedure set forth in SCR 10.05. Notice of changes in the bylaws shall be made by publication of the change, including a copy of the amendatory resolution, in an official State Bar publication. The State Bar shall file a certified copy of the notice with the clerk of the Supreme Court. A petition for review of any change in the bylaws shall be brought to the Supreme Court if the petition is signed by 5 percent or more of the voting members of the State Bar and is filed with the clerk of the Supreme Court within 60 days after publication of notice of the change. The hearing on such a petition shall be pursuant to notice in such manner as the court directs. **[Entire section formerly at SCR 10.13]**

# State Bar Bylaws

## Article I. Membership

**1.1 Membership Roll.** The State Bar shall maintain a membership roll for the enrollment and registration of State Bar members. The roll shall contain as to each member a record showing the member's address, date of enrollment or registration, category of original membership, and each subsequent change of membership status, and such other information as may be required by the Board of Governors or the Supreme Court.

The State Bar shall maintain a record for each member that includes, at a minimum, the following information:

- (a) Full name.
- (b) Residence address.
- (c) Principal office address.
- (d) Date of admission to practice in Wisconsin.
- (e) Date of admission to practice in any jurisdiction or jurisdictions other than Wisconsin.
- (f) Date and place of birth; and, in the case of a naturalized person, the date and place of naturalization.
- (g) Details regarding any suspension or revocation of the right to practice law in any state or county.
- (h) Name of law school and year of graduation.
- (i) Social Security number.

(j) Email address.

(k) Signature of member.

Members shall immediately report any change in the above information after enrollment to the State Bar. Communications to any member shall be sent to the address designated by the member. **[Removed: requirement that copy of lawyer's oath be delivered to each new member]**

**1.2 Membership Dues.**

**1.2.1 General.** Membership dues shall be paid on the basis of the fiscal year of the State Bar. Membership dues for the fiscal year in which admission to the State Bar occurs shall be subject to the proration policy as established by the State Bar. **[Formerly at Art. I, sec. 2. Removed: specific proration policy]**

**1.2.2 New Members.** Membership dues shall be paid before a person becomes a State Bar member.

**1.2.3 Continuing Members.** Any continuing member whose dues are not paid by September 1 shall be notified of his or her delinquency and the consequent penalties. Such notification shall be by certified mail sent to the member's designated address before October 1. A continuing member who fails to pay dues by 5 p.m. on October 31 shall be automatically suspended.

**1.2.4 Late Fee.** The State Bar shall have the authority to impose a late fee, the amount of which shall be determined from time to time.

**1.2.5 Notice to Courts of Names of Suspended Members.** Within two business days after October 31, the State Bar shall mail a notice to each person suspended from membership for the nonpayment of dues, advising that the notice of suspension will be sent to

the Supreme Court in 10 days. Ten days after mailing of the notification to the suspended members, the State Bar shall send the list containing the names of all suspended members to the clerk of the Supreme Court and to each judge of a court of record in Wisconsin. **[Formerly at Art. I, sec. 3(a). Removed: requirement that list containing names of all suspended members be sent to all suspended members]**

**1.2.6 Reinstatement.** Whenever a member suspended for nonpayment of membership dues makes full payment of the amount owing plus any late fees or penalties, the member shall be reinstated and the fact of reinstatement shall be certified by the State Bar to the clerk of the Supreme Court and published by a method approved by the State Bar. In the case of any person whose membership dues have been in arrears for a period of three or more consecutive years, no application for reinstatement shall be granted unless ordered by the Supreme Court. No person whose membership is suspended for the nonpayment of dues shall be entitled to practice law in Wisconsin during the period of such suspension. **[Formerly at Art. I, sec. 3(c)]**

**1.3 Dues Adjustment.** The State Bar may, with approval of the President, exempt from payment of dues any State Bar member serving on active duty in the armed forces of the United States at the date of admission or at the beginning of any fiscal year, provided satisfactory proof of active duty status is submitted to the State Bar within 60 days of the date dues otherwise would be payable. Additionally, the State Bar may, in individual cases, with the President's approval, waive or refund dues or penalties when to do otherwise would work an injustice or an undue hardship. **[Formerly at Art. I, secs. 2, 4. Removed: requirement that waivers and refunds be reported to the Board of Governors]**

**1.4 Dues Reduction.** Demands for dues reduction shall comply with the procedures provided in SCR 10.04(5)(b). [**Consolidated at SCR 10.04(5)(b)**]

## **Article II Board of Governors**

**2.1 Authority of the Board of Governors.** The Board of Governors (Board) shall have general charge of the affairs and activities of the State Bar, including but not limited to the following: (a) fixing the time and place of annual and special meetings of State Bar members; (b) making appropriations and authorizing expenditures from State Bar funds; (c) engaging and defining the duties of the executive director, as provided in section 2.11; (d) receiving, considering, and taking action on reports and recommendations submitted by committees, sections, divisions, or other entities; (e) conducting studies of matters affecting the State Bar or the practice of law; (f) arranging for the official State Bar publications as well as other bulletins, newsletters, or journals, in whatever format or medium deemed appropriate by the Board; (g) filling vacancies arising in the elected membership of the Board or any office for the remainder of the unexpired term; (h) adopting policies, programs, bylaws, and regulations, not inconsistent with the Supreme Court rules, for the orderly administration of the State Bar; and (i) electing State Bar delegates to the American Bar Association House of Delegates, pursuant to section 2.12. [**Formerly at SCR 10.05(4)**]

**2.2 Chairperson of the Board.** A chairperson of the Board shall be elected by the Board from its members at its last regular meeting each fiscal year. The President-elect shall nominate one or more candidates. Those eligible for nomination and election to this office shall be all those governors who are then members of the Board, including governors whose second term expires at the end of the then-current fiscal year, except for the President and the

President-elect. The Chairperson of the Board shall be a governor at large and not a district governor. [Formerly at Art. II, sec. 3. Previously, there was a nominating committee]

**2.3 Composition of the Board.** The affairs of the State Bar shall be governed by a Board of Governors consisting of the following:

**2.3.1 Chairperson and Officers.** The Chairperson of the Board and the four officers of the State Bar: the President, the President-elect, the Immediate Past President, and the Treasurer. [Formerly at SCR 10.05(1). Removed: secretary, because office has been abolished]

**2.3.2 District Representatives.** The then-current number of governors to be elected from the various State Bar districts. The exact number of governors to be elected from each district shall be reviewed and adjusted as provided in section 2.5.1 and set forth by resolution of the Board. The numbers so set shall govern until the next review period. [Formerly at SCR 10.01(1). "Then-current number" replaces "not fewer than 34"]

**2.3.3 Division Representatives.** The six division representatives: (a) Nonresident Lawyers Division – three representatives; (b) Young Lawyers Division – one representative; (c) Government Lawyers Division – one representative; and (d) Senior Lawyers Division – one representative. Each division representative shall be selected in the manner determined by the bylaws of the applicable division and shall serve for a term set by the division. [Formerly at SCR 10.05(1)]

**2.3.4 Section Representative.** One representative to represent the sections of the State Bar, selected in the manner determined by the Section Leaders Advisory Council. The section representative shall serve a two-year term.

**2.3.5 Public Appointed Representatives.** Three nonlawyer members, appointed by the Supreme Court in the manner specified in the Supreme Court rules. [Formerly at SCR 10.05(1)]

**2.4 Liaisons.** The Board may, from time to time, create liaison positions from various entities, if in the Board's opinion such liaisons would be beneficial to the workings of the Board. Liaisons shall be appointed for one-year terms, shall have the right to attend all Board meetings, and shall have floor privileges, but shall not have the right to vote or be considered members of the Board for the purpose of determining a quorum.

**2.5 Additional Persons with Floor Privileges.** All past presidents of the State Bar and the deans of the Marquette University Law School and the University of Wisconsin Law School shall have floor privileges at all Board meetings but shall not have the right to vote or be considered members of the Board for the purpose of determining a quorum. [Formerly at SCR 10.05(1)]

**2.6 Elections.**

**2.6.1 State Bar Districts and Number of Governors.** For purposes of conducting elections for the Board, the state shall be divided into districts. Each county shall be designated as belonging to a specific district, and no county shall be divided among districts. The number of governors to be elected from each district shall be in proportion to the number of active members entitled to vote. In setting the districts, the Board shall consider the following: (a) the composition of the judicial administrative districts established by Wis. Stat. section 757.60; (b) the geographic area of each district; and (c) all existing multi-county bar associations. Every ten years, commencing in 1995, the Board shall submit to the Supreme Court a proposed redistricting map setting forth the proposed State Bar districts. Notice,

filing, review, hearing, and adoption of the redistricting proposal shall be done in accordance with SCR 10.08(2). [Formerly at SCR 10.05(2)]

**2.6.2 Nomination Petitions.** If a current governor's term is due to expire at the end of that fiscal year, a member entitled to vote in the governor's district may be nominated for governor from that district by submitting a petition signed by not fewer than 10 members entitled to vote in that district. Forms for this purpose shall be supplied by the State Bar upon request. Nomination petitions for each election shall be filed with the State Bar not later than the first business day of March. Each petition shall contain a statement signed by the nominee giving the nominee's consent to nomination for the office of district governor. If the nominee's petition complies with the requirements of this section, the nominee's name shall be placed on the ballot. [Formerly at Art. III, sec. 3]

**2.6.3 Voting List.** The voting list shall close on the third Friday of March of each year. Each State Bar member who is in good standing and eligible to vote on that day shall be entitled to vote in the State Bar district in which the member maintains his or her principal office. If the member does not maintain an office, the member shall vote in his or her district of residence. [Formerly at Art. III, sec. 4]

**2.6.4 Mailing of Ballots.** On or before the second Friday of April, the State Bar shall prepare and mail required ballots to each State Bar member eligible to vote in the annual election. If any member entitled to vote in the election fails to receive his or her ballot(s), or if it appears that any such ballot has been lost or destroyed, a new ballot shall be furnished to the member by the State Bar upon the filing of a sworn statement as to the loss or non-receipt of the ballot(s). [Formerly at Art. III, sec. 5]

**2.6.5 Voting of Ballots.** The fourth Friday of April in each year shall be the last day for voting in such election. No ballots received after 5 p.m. on that day shall be counted. Only ballots received in envelopes furnished by the State Bar marked "Ballot" shall be considered votes. [Formerly Art. III, secs. 5, 6]

**2.6.6 Checking and Custody of Ballots.** The State Bar shall receive and have custody of the ballots after they are received until they are counted. All such ballots shall be segregated by the State Bar districts from which they are received. The envelopes containing the ballots shall be retained unopened until delivered to the independent third party for counting. [Formerly at Art. III, sec. 7. "Independent third party" replaces "certified public accountant"]

**2.6.7 Counting of Ballots.** The ballots shall be counted by an independent third party selected by the Executive Committee. The candidate receiving the highest number of votes for each office shall be declared elected. In case of a tie vote, the Executive Committee shall determine the successful candidate by lot. The independent third party shall certify the results to the State Bar, which shall forthwith notify the candidates and announce the results and shall destroy the ballots 60 days thereafter.

## **2.7 Term and Vacancies.**

**2.7.1 Term.** The term of office for each elected governor is two years and shall commence on the July 1 following his or her election. A governor may be elected to two consecutive full terms, but then must retire from the Board for at least two years. The eligibility of a member to serve as a governor from a State Bar district ceases when the member's principal office, or residence, if the member has no principal office, is no longer located in that district. [Formerly at SCR 10.05(3)]

**2.7.2 Vacancies.** Any vacancy in the office of an elected governor shall be filled by the Board for the remainder of the unexpired term. Any member appointed to fill such a vacancy shall be eligible for election to two consecutive full terms as a governor. Any vacancy in the office of an appointed public member shall be filled by the Supreme Court. Any vacancy in the office of a division representative shall be filled in accordance with the bylaws of the division. Any vacancy in the office of the section representative shall be filled by the Section Leaders Advisory Council. [Formerly at SCR 10.05(4)(a)7.]

**2.7.3 Temporary Incapacity to Serve.** If a governor is temporarily unable to perform his or her duties, the Board may appoint a temporary replacement, who shall serve no longer than until the end of the unexpired term. The replacement shall be a member whose principal office, or residence, if the member has no principal office, is in the same district as that of the governor who is being temporarily replaced.

## **2.8 Office of Governor.**

**2.8.1 Duties.** Each governor shall act to represent his or her district and the overall interests of the State Bar, regularly attend meetings of the Board, and vote on matters brought before the Board. Each governor shall avoid conflicts of interest that might arise from his or her professional obligations and responsibilities and his or her responsibilities and obligations as a member of the Board. When a matter comes to a vote before the Board, each governor who has a direct personal or professional interest in the matter shall disclose the interest. A governor shall abstain from voting if he or she or his or her firm is a party, represents a party, or is related to a party. No governor may use information received while serving on the Board if the personal or professional use of such information would be detrimental in any way to the State Bar. Each governor shall serve as liaison to one or more committees or sections

of the State Bar, if appointed by the President to do so. As liaison, the governor shall regularly attend of the meetings of the committee or section to which assigned.

**2.8.2 Compensation.** A member of the Board shall receive no compensation for services performed as governor but may be reimbursed for necessary expenses incurred in the ordinary course of performing his or her duties. Any such reimbursement shall be subject to reimbursement policies established from time to time. [Formerly at SCR 10.05(4)(f)]

**2.8.3 Removal.**

(a) **Suspension or Termination of Law License.** If a governor's license to practice law is suspended or terminated, he or she shall immediately be removed from the Board, without further notice.

(b) **Removal by Board of Governors.** A governor may be removed by the affirmative vote of 60 percent of the total membership of the Board (including the governor subject to the motion to remove) if the governor is unable or unwilling to perform his or her duties or has more than two consecutive unexcused absences from Board meetings, or if the governor's conduct outside office (e.g., violation of the Rules of Professional Conduct or other Supreme Court rule or conviction of a crime) is contrary to the best interest of the State Bar. The Chairperson shall determine if an absence is excused or unexcused. Before any vote on the motion to remove the governor, notice of the motion and of the charge(s) against the governor and an opportunity to be heard must be given to the governor.

**2.9 Meetings of Board.**

**2.9.1 Regular Meetings.** The Board shall meet regularly, on the dates set by the President. Once determined, the dates shall be announced to all State Bar members. Governors may not participate in a regular meeting by telephone, and governors may not vote

by proxy. Unless otherwise determined by the Board, the ABA Rules of Order shall govern the conduct of the meeting. At any regular meeting, any business may be transacted that is within the power of the Board, whether or not the business is specified in the notice of the meeting. **[Formerly at Art. III, sec. 9. Removed: Four-meeting requirement and date by which meeting times must be announced]**

**2.9.2 Special Meetings.** Special meetings of the Board may be held at any time upon call of the President. Special meetings shall also be called by the President upon written request signed by at least seven governors. At any special meeting of the Board, any business may be transacted that is within the power of the Board, if the business is specified in the notice of the meeting. Governors may participate and vote by approved electronic means at any special meeting. Governors appearing by approved electronic means at a special meeting shall be deemed present for the purpose of determining a quorum. **[Formerly at Art. III, sec. 9]**

**2.9.3 Notice of Meetings.** The executive director shall give notice to each governor and each liaison of the time, place, and agenda of regular and special meetings of the Board. Notice shall be given at least five days before a regular meeting and at least 48 hours before a special meeting. Notice may be given by mail, telephone, facsimile, email, or other reliable form of communication. **[Formerly at Art. III, sec. 9]**

**2.9.4 Quorum and Voting Requirements.**

(a) **Quorum.** A quorum shall be the number that constitutes a simple majority of the number of governors constituting the Board. The Chairperson shall determine the existence of a quorum before each vote. **[Formerly at SCR 10.05(4)(c)]**

(b) **Voting Requirements.**

(i) **General.** Action by the Board may be taken by a majority of governors present when a quorum is present. [Formerly at Art. III, sec. 9]

(ii) **60 Percent Requirement.** In addition to other matters in these bylaws and SCR chapter 10 for which a 60 percent voting requirement is specified, action on the following matters shall require approval by the affirmative vote of 60 percent of the total membership of the Board: initiation of referenda (SCR 10.05); bylaws amendment (SCR 10.08(2)); extension of special committee terms (bylaws section 4.4); establishment of new sections (bylaws section 5.1.1); consolidation of sections (bylaws section 5.1.2); discontinuance of sections (bylaws section 5.1.3); change of section from nonlobbying to lobbying status (bylaws section 5.1.4); approval of public policy positions (bylaws section 7.2); preparation and filing of State Bar amicus curiae briefs (bylaws section 8.2); and approval of appealed requests to file section amicus curiae briefs (bylaws section 8.3). [Formerly at Art. III, sec. 9]

(iii) **75 Percent Requirement.** Action on use of reserve funds shall require approval by the affirmative vote of 75 percent of the total membership of the Board.

(c) **Consent Agenda.** At any regular meeting, any business placed on a consent agenda that was included in the meeting notice shall be acted upon without debate. Business listed on the consent agenda may be removed by any one governor by requesting removal of the item at least 72 hours before the meeting at which such consent agenda item is to be considered. The request shall be made to the executive director, who shall report such request to the Chairperson. [Formerly at Art. III, sec. 9]

**2.10 Committees of the Board.** The following committees shall be employed to aid the Board in its general governance function. The Board may also establish additional committees of the Board to assist it with its general governance function.

**2.10.1 Executive Committee.**

(a) **Composition.** The Executive Committee shall consist of not more than 16 members, as follows: the President, the Immediate Past President, the President-elect, the Treasurer, the Chairperson of the Board, the Young Lawyers Division representative, the Government Lawyers Division representative, the Nonresident Lawyers Division representative, the Senior Lawyers Division representative, the Section Leaders Advisory Council representative, and six additional members elected annually by the Board. The six additional members shall be elected at the Board's final regular meeting of the fiscal year from among the governors-elect and current governors whose terms extend through the following fiscal year. Any vacancy occurring in the elected membership of the Executive Committee shall be filled by vote of the Board. The President shall chair the Executive Committee unless he or she designates another committee member to be the chairperson.  
[Formerly at SCR 10.06(1)]

(b) **Powers and Duties.** The Executive Committee may exercise all the powers and perform all the duties of the Board between meetings of the Board, except the Executive Committee shall not, unless otherwise authorized by the Board, do any of the following: (i) amend the bylaws; (ii) make rules or regulations governing nominations or elections; (iii) initiate the taking of any referendum or poll of State Bar members; (iv) express publicly any opinion on any matter, including legislative policy, of major public interest or concern or of major importance to the State Bar; or (v) take any position that overrules or is contrary to or

inconsistent with a stated position or approved motion of the Board. [Formerly at SCR 10.06(2). Removed: “prescribe regulations for proceedings before grievance committees”]

(c) **Meetings; quorum.** The Executive Committee shall meet at the call of the President or at the call of the executive director upon written request signed by at least five members of the Executive Committee. All members of the committee shall be given notice of the time and place of each meeting at least 48 hours before any meeting. The notice may be given by mail, telephone, facsimile, or other electronic communication. A majority of all Executive Committee members constitutes a quorum. Action may be taken by a majority of a quorum. [Formerly at SCR 10.06(3) and Art. IV, sec. 1(a)]

#### 2.10.2 Finance Committee.

(a) **Composition.** The Finance Committee shall be composed of the President, the President-elect, the Immediate Past-President, the Treasurer, the Chairperson of the Board, and four additional State Bar members appointed by the President. Those appointed shall be experienced with State Bar governance and with financial management. Any vacancy occurring in the appointed membership shall be filled by the President. The President shall designate the chairperson. [Formerly at Art. V, sec. 1. Removed: CLE Committee chairperson; added: Chairperson of Board]

(b) **Duties.** The Finance Committee shall review and prepare the State Bar's annual budget and make recommendations to the Board thereon and shall maintain continuing budget and expenditure scrutiny during the year. The Finance Committee also shall attend to other financial aspects of the State Bar's operation, including reviewing and making recommendations concerning financial statements, pension administration, investment and

other asset management, and long-range financial planning; shall serve as a resource on financial policies and procedures for proposed actions of the Board and the Executive Committee; and shall perform such other functions and duties as are assigned by the Board, the Executive Committee, or the President. [Formerly at Art. V, sec. 2]

(c) Meetings; quorum. The Finance Committee shall meet at the call of its chair, at the call of the President, or at the call of the executive director upon written request signed by at least four Finance Committee members. All members of the committee shall be given notice of the time and place of each meeting at least 48 hours before any meeting. The notice may be given by mail, telephone, facsimile, or other electronic communication. A majority of all committee members constitutes a quorum. Action may be taken by a majority of a quorum. [Formerly at Art. IV, sec. 1(a)]

### 2.10.3 Strategic Planning Committee.

(a) Composition. The Strategic Planning Committee shall be composed of the President, the President-elect, the Immediate Past President, the Finance Committee chairperson, four additional State Bar members appointed by the President, and State Bar staff nominated by the executive director and appointed by the President. Any vacancy occurring in the appointed membership shall be filled by the President. The President-elect shall chair the Strategic Planning Committee unless he or she designates another member of the Strategic Planning Committee to be chairperson.

(b) Duties. The Strategic Planning Committee annually shall review the activities and resources of the State Bar, including the existence and charter of continuing committees pursuant to section 4.3.1. Following such review, the committee shall prepare, update, or revise the strategic plan for the State Bar.

(c) Meetings; quorum. The Strategic Planning Committee shall meet at the call of its chair or at the call of the President. All members of the committee shall be given notice of the time and place of each meeting at least 48 hours before any meeting. The notice may be given by mail, telephone, facsimile, or other electronic communication. A majority of all committee members constitutes a quorum. Action may be taken by a majority of a quorum. [Formerly at Art. IV, sec. 1(a)]

#### 2.10.4 Legislative Policy Committee.

(a) Composition. The Legislative Policy Committee shall be composed of seven members appointed by the President. The committee shall consist of six State Bar members, at least three of whom are governors, and one member of the Section Leaders Advisory Council. Any vacancy occurring in the appointed membership shall be filled by the President. The President shall designate the chairperson.

(b) Duties. The Legislative Policy Committee shall review legislative and public policy positions taken or proposed to be taken by the State Bar and its sections. The Legislative Policy Committee shall report to the Board regarding the interaction and effect of positions or proposed positions and lobbying efforts. The Legislative Policy Committee shall be subject to the information requests and reporting requirements set forth in section 4.1.2.

(c) Meetings; quorum. The Legislative Policy Committee shall meet at the call of the chair or at the call of the President. All members of the committee shall be given notice of the time and place of each meeting at least 48 hours before any meeting. The notice may be given by mail, telephone, facsimile, or other electronic communication. A majority of all committee members constitutes a quorum. Action may be taken by a majority of a quorum. [Formerly at Art. IV, sec. 1(a)]

**2.10.5 Leadership Development Committee.**

**(a) Composition.** The Leadership Development Committee shall be composed of the President-elect and at least 10 additional State Bar members nominated by the President-elect and appointed by the President. Any vacancy occurring in the appointed membership shall be filled by the President. The President-elect shall chair the Leadership Development Committee unless he or she designates another member to be chairperson.

The Nominating Subcommittee of the Leadership Development Committee shall be composed of the President-elect and four additional committee members appointed by the President. The President-elect shall chair the subcommittee. [Formerly at Art. II, sec. 1]

**(b) Duties of Leadership Development Committee.** The Leadership Development Committee shall establish, cultivate, and maintain relationships with committees, divisions, sections, and local and specialty bars so as to identify potential bar leaders for committee, section, Board, and officer positions. The Leadership Development Committee shall be subject to the information requests and reporting requirements set forth in section 4.1.2.

**(c) Duties of the Nominating Subcommittee.** On or before December 31 each year, the Nominating Subcommittee shall report to the Board regarding the candidates nominated for the various officer positions to be elected in that fiscal year. [Formerly at Art. II, sec. 1]

**(d) Meetings; quorum.** The Leadership Development Committee shall meet at the call of its chair or at the call of the President. All members of the committee shall be given notice of the time and place of each meeting at least 48 hours before the meeting. Notice may be given by mail, telephone, facsimile, or other electronic communication. A majority of all committee members constitutes a quorum. Action may be taken by a majority of a quorum. [Formerly at Art. IV, sec. 1(a)]

**2.11 Executive Director.** There shall be an executive director of the State Bar who is the chief executive officer and in direct charge of the State Bar office, records, property, equipment, and staff. The executive director shall be hired by the Board under employment and compensation terms fixed by the Executive Committee. The executive director shall devote full time to the affairs of the State Bar. **[Formerly at SCR 10.11. Removed: specific duties. Previously, the Board set the employment and compensation terms]**

**2.12 American Bar Association Delegates.** (a) Upon expiration of the term of office of each State Bar delegate to the House of Delegates of the American Bar Association (ABA), the successor shall be elected by the Board. Every vacancy thereafter occurring in such office shall be filled in the manner specified below.

(b) The election of delegates shall be held at the meeting of the Board held in conjunction with the State Bar's annual meeting.

(c) Qualification for election as State Bar delegate to the ABA House of Delegates shall be membership in the State Bar and the ABA. A State Bar member may be nominated for the ABA House of Delegates by submitting a nomination petition signed by at least 10 governors, except that a candidate for Young Lawyer delegate who is otherwise qualified under section 6.4 of the ABA Constitution shall be nominated by a petition endorsed by at least four members of the Young Lawyers Division Board of Directors. Governors or, in the case of nomination of the Young Lawyer delegate, members of the Young Lawyers Division Board of Directors, may endorse any number of candidate petitions. Nomination petitions shall be substantially in the form of petitions for election to the Board as prescribed in section 2.6.2, with appropriate changes in order to make the petition germane to this purpose.

Nomination petitions shall be filed in the office of the executive director no later than April 15 in the year the election is to be held.

(d) Notice of election for delegates' terms expiring at the close of the ABA annual meeting each year shall be substantially in the form as the notice attached hereto as Exhibit A. This notice shall be published in the February and March issues of the *Wisconsin Lawyer* each year.

(e) No candidate shall be elected to more than three consecutive terms.

### **Article III. Officers**

**3.1 Titles.** The officers of the State Bar shall include the President, the President-elect, the Immediate Past President, the Treasurer, and the Chairperson of the Board of Governors. Only active State Bar members whose principal office and residence are in Wisconsin are eligible to serve as State Bar officers. If the President or President-elect ceases to reside or to maintain his or her principal office in Wisconsin, he or she shall resign and the vacancy shall be filled as specified in section 3.5. The term of office of the President, the President-elect, the Immediate Past President, and the Chairperson is one year. The term of office of the Treasurer is two years. All terms begin on July 1.

#### **3.2 Nomination and Election.**

**3.2.1 General.** The officers of the State Bar shall be nominated in the manner provided in either section 2.10.5(c) or section 3.2.2 and shall be elected in the manner provided in sections 2.6.3 to 2.6.7.

**3.2.2 Officer Petitions.** Notwithstanding the nominations made by the Nominating Subcommittee pursuant to section 2.10.5(c), other persons may be nominated by petition for

any State Bar office. Each candidate wishing to be placed on the ballot by petition must obtain the signatures of at least 100 State Bar members entitled to vote in the election and file the petition with the executive director on or before the first business day of February in the year of the election. The petition must also contain a statement signed by the prospective candidate giving the prospective candidate's consent to the nomination for the designated office. If the prospective candidate's petition is properly completed, the prospective candidate's name shall be placed on the ballot. [Formerly at Art. II, sec. 1]

### **3.3 Duties of Officers.**

3.3.1 General. Each officer shall avoid conflicts of interest that might arise from his or her professional obligations and responsibilities and the responsibilities and obligations of an officer of the State Bar. When voting on matters that are before the Board of Governors, each officer shall disclose any personal or professional interest that he or she has in the matter and shall abstain from voting on the matter. No officer may use information received while serving as a State Bar officer if the personal or professional use of such information would be detrimental in any way to the State Bar.

**3.3.2 President.** The President is the chief governing officer of the State Bar. He or she shall be a member-at-large of the Board of Governors and shall preside at all meetings and assemblies of the State Bar. He or she shall make the appointments to and designate the chairperson of all standing committees, create and appoint special committees, and be an ex officio member of every committee. The President shall perform all other duties assigned to him or her by the Board of Governors or under the rules or bylaws. At the expiration of the President's one-year term of office, the President shall succeed to the office of Immediate Past

President. [Formerly at SCR 10.04(2)(a), (b). Previously, the President was chief "executive" officer]

**3.3.3 President-elect.** The President-elect shall be a member-at-large of the Board of Governors, the Executive Committee, and the Finance Committee and shall perform all other duties assigned to him or her by the President or Board of Governors or under the rules or bylaws. At the expiration of the President's one-year term of office, the President-elect shall succeed to the office of President. The President-elect shall perform the duties of the President in the event of a vacancy in the office of President. [Formerly at SCR 10.04(2)(b)]

**3.3.4 Immediate Past President.** At the expiration of the President's one-year term of office, the President shall succeed to the office of Immediate Past President. The Immediate Past President shall be a member-at-large of the Board of Governors, the Executive Committee, and the Finance Committee and shall perform all other duties assigned to him or her by the President or Board of Governors or under the rules or bylaws. [Formerly at SCR 10.04(2)(b)]

**3.3.5 Treasurer.** The Treasurer shall be a member-at-large of the Board of Governors. The Treasurer shall be a member of the Executive Committee and the Finance Committee and shall perform all other duties assigned to him or her by the President or Board of Governors or under the rules or bylaws. [Formerly at SCR 10.04(2)(e). Removed: specific duties]

**3.3.6 Chairperson of Board of Governors.** The Chairperson of the Board of Governors shall be elected from the board membership by the governors and shall be a member-at-large of the Board of Governors during his or her term as Chairperson. The

Chairperson shall be an ex officio member of the Executive Committee and shall preside and serve as parliamentarian at all meetings of the Board of Governors. The Chairperson shall perform the duties of the President in the temporary absence or disability of the President. [Formerly at SCR 10.04(2)(c)]

**3.4 Compensation.** State Bar officers shall receive no compensation for services performed as an officer but may be reimbursed for necessary expenses incurred in the ordinary course of performing their duties. Any such reimbursement shall be subject to reimbursement policies established from time to time. [Formerly at SCR 10.04(3)]

**3.5 Vacancies.**

**3.5.1 General.** A vacancy is created by death or resignation of an officer or by removal of an officer pursuant to section 3.6.

**3.5.2 President.** If the office of President becomes vacant, the President-elect shall succeed to the office of President for the unexpired term of the President and shall serve a one-year term thereafter, if the President-elect was elected as President-elect at the previous annual election.

**3.5.3 President-elect.** A vacancy in the office of President-elect shall be filled by a vote of a majority of the total membership of the Board of Governors. A President-elect so chosen shall succeed to the office of President only if necessary to fill a vacancy as provided for in this section and shall not serve an additional one-year term as President unless elected as such at the next annual election.

**3.5.4 Treasurer.** A vacancy in the office of Treasurer shall be filled by a vote of a majority of the total membership of the Board of Governors.

**3.6 Removal.** An officer may be removed from office as follows:

**3.6.1 Suspension or Termination of Law License.** If an officer's license to practice law is suspended or terminated, he or she shall immediately be removed from office, without further notice.

**3.6.2 Removal by Board of Governors.** An officer may be removed by the affirmative vote of 60 percent of the total membership of the Board of Governors (including the officer subject to the motion to remove), if the officer is unable or unwilling to fulfill his or her duties or if the officer's conduct outside office (e.g., violation of the Rules of Professional Conduct or other Supreme Court rule or conviction of a crime) is contrary to the best interest of the State Bar. Before any vote on the motion, notice of the motion to remove and of the charge(s) against the officer and an opportunity to be heard must be given to the officer.

**3.7 Indemnification of Governors, Officers, Employees, and Agents.**

**3.7.1 Power.** The State Bar shall indemnify any person who was or is a party or threatened to be a made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether with or without merit (other than an action, suit, or proceeding by or in the right of the State Bar), by reason of the fact that he or she is or was a member of the Board of Governors or Executive Committee, a State Bar officer or employee, or an agent of the State Bar acting on its behalf as a committee, division, or section member or as an appointee of a State Bar officer or the executive director (all of the above hereinafter designated as "State Bar Persons"), against expenses, including attorney fees, judgments, fines, and amounts paid in settlement, actually and reasonably incurred by the person in connection with such action, suit, or proceeding if he or she breached or failed to perform any duty resulting solely from his or her status as a State

Bar Person unless the breach or failure to perform constitutes any of the following: (a) a willful failure to deal fairly with the State Bar or its members in connection with a matter in which the State Bar Person has a material conflict of interest; (b) a violation of criminal law, unless the State Bar Person had reasonable cause to believe that his or her conduct was lawful or no reasonable cause to believe that his or her conduct was unlawful; (c) a transaction from which the State Bar Person derived an improper personal benefit; (d) willful misconduct. [Formerly at Art. VIII, sec. 1]

**3.7.2 Effect of Termination.** The termination of any action, suit or proceeding referred to in section 3.7.1 by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that indemnification of the State Bar Person is not required under this section. [Formerly at Art. VIII, sec. 2]

**3.7.3 Success on Merits.** To the extent that a State Bar Person has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in section 3.7.1, or in defense of any claim, issue, or matter therein, he or she shall be indemnified against expenses, including attorney fees, actually and reasonably incurred by the person in connection therewith. [Formerly at Art. VIII, sec. 3]

**3.7.4 Denial of Indemnification.** Any indemnification under section 3.7.1 shall be made by the State Bar unless there is a determination that indemnification of the State Bar Person is improper in the circumstances because he or she has breached or failed to perform a duty in a manner described in section 3.7.1(a) to (d). Such determination shall be made by one of the following and shall be subject to review by the court that conducted the action, suit, or proceeding or by another court of competent jurisdiction: (a) by the Executive Committee, by a majority vote of a quorum consisting of members who were not parties to such action,

suit, or proceeding; or (b) by the Board of Governors, by a majority vote of a quorum consisting of members who were not parties to such action, suit, or proceeding. [Formerly at Art. VIII, sec. 4]

**3.7.5 Advance Payment.** Expenses, including attorney fees, incurred in defending a civil or criminal action, suit, or proceeding, may be paid by the State Bar in advance of the final disposition of such action, suit, or proceeding upon receipt of any undertaking by or on behalf of the State Bar Person to repay such amount, if it is ultimately determined that he or she is not entitled to be indemnified by the State Bar as provided in section 3.7.1. [Formerly at Art. VIII, sec. 5]

**3.7.6 Insurance.** The State Bar shall have the power to purchase and maintain insurance on behalf of any State Bar Person against any liability asserted against the person and incurred by him or her in any capacity as a State Bar Person, whether or not the State Bar would have to indemnify against such liability under section 3.7.1. If there is insurance coverage, the State Bar shall not indemnify against attorney fees paid by the State Bar Person except if such person has reasonably retained counsel because a claim exceeds the insurance coverage. [Formerly at Art. VIII, sec. 6]

#### **Article IV. Committees of the State Bar**

##### **4.1 General.**

**4.1.1.** There are hereby constituted as committees of the State Bar, standing committees, continuing committees, and special committees.

**4.1.2 Information and Reports.** From time to time, the President, Executive Committee, or Board of Governors may request information from or delegate tasks to a

committee concerning matters within the committee's jurisdiction. Each committee shall submit a report of the committee's activities at least annually, at such time and in such form as the Board of Governors may require.

#### **4.2 Standing Committees.**

##### **4.2.1 General.**

(a) Purpose. The purposes of the standing committees are to aid and foster cooperation with the courts to carry on and improve the administration of justice; to provide a forum for the discussion of subjects pertaining to the practice of law, the administration of justice, the science of jurisprudence and law reform, and the relations of the bar with the public and the courts and to publish information relating thereto; and to foster cooperation between the State Bar and the courts. Whenever practicable, a member of the judiciary shall sit as an ex officio member of each standing committee.

**(b) Appointment.** The chairperson of each standing committee shall be appointed by the President for a term of one year. Each member of each standing committee shall be appointed by the President for a three-year term, except that the Government Lawyers Division representative to the Continuing Legal Education Committee shall be appointed for a term of one year. The terms of each committee member shall be staggered, so that the term of office of only one-third of the committee's members shall expire in any year. A vacancy in a committee shall be filled by appointment by the President for the unexpired term. No person is eligible for appointment to the same committee for more than two consecutive terms. However, a person appointed to fill an unexpired term shall be eligible to serve on the same committee for two additional consecutive terms. [Formerly at Art. IV, sec. 1(a)]

(c) **Removal.** If a committee member has two or more consecutive unexcused absences from committee meetings, the chairperson of the committee may report the absences to the President. The President may then notify the member of the member's removal from the committee, and the President may appoint a replacement for the balance of the term of office. [Formerly at Art. IV, sec. 1(b)]

(d) **Quorum.** A majority of the members of any standing committee shall constitute a quorum for the transaction of business. [Formerly at Art IV, sec. 1(a)]

4.2.2 There shall be the following standing committees:

(a) **Access to Justice.**

(i) **Membership.** The Access to Justice Committee shall consist of not more than 18 members, at least three of whom shall be attorneys employed by legal services, legal assistance, legal aid, or public interest providers. [Formerly at Art. IV, sec. 1(a). Previously called the "Legal Assistance" Committee]

(ii) **Duties and Jurisdiction.** The Access to Justice Committee shall promote the innovation, development, and improvement of means to deliver legal services to the people of Wisconsin and the establishment, efficient maintenance, and adequate funding of legal assistance organizations equipped to provide legal services to those unable to pay for such services; encourage and assist lawyers in providing pro bono legal services to low income and otherwise disadvantaged persons; study the administration of justice as it affects low-income persons; encourage cooperation between the State Bar and the courts in promoting access to justice regardless of financial means; study, report on, and implement methods of making legal services more readily available to persons of moderate means; and encourage and assist

sections, divisions, and local and specialty bar associations in accomplishing this purpose.

[Formerly at Art. IV, sec. 5]

**(b) Continuing Legal Education.**

**(i) Membership.** The Continuing Legal Education Committee shall consist of 13 members, at least one of whom shall be a member of the Government Lawyers Division.

[Formerly at Art. IV, sec. 1(a)]

**(ii) Duties and Jurisdiction.** The Continuing Legal Education Committee shall provide guidance for the State Bar's continuing legal education seminars and books program, which is designed to serve the public interest by improving the competence of lawyers.

Continuing legal education shall provide a range of high quality educational and practice resources. [Formerly at Art IV, sec. 2. Removed: definition of "competence"; removed other language]

**(c) Communications.**

**(i) Membership.** The Communications Committee shall consist of 13 members, at least one of whom shall be a nonattorney member. [Formerly at Art. IV, sec. 1(a)]

**(ii) Duties and Jurisdiction.** The Communications Committee shall create, develop, and implement effective means of communication between the State Bar, the courts, attorneys, clients, all forms of media, and the general public using all forms of communication. [Formerly at Art. IV, sec. 4. Removed: two duties, involving local bar and State Bar public relations]

**(d) Legal Ethics and Attorney Professionalism.**

(i) **Membership.** The Legal Ethics and Attorney Professionalism Committee shall consist of 18 members. [Formerly at Art. IV, sec. 1(a). Previously called "Professional Ethics" Committee; previously had 12 members]

(ii) **Duties and Jurisdiction.** The Legal Ethics and Attorney Professionalism Committee shall formulate and recommend standards and methods for the effective enforcement of high standards of ethics and conduct in the practice of law; consider the Rules of Professional Conduct for Attorneys as adopted by the Wisconsin Supreme Court and the observance thereof and make recommendations for appropriate amendments thereto; and promote the highest standards of professionalism by attorneys. Upon written request of any State Bar member or officer, the committee shall have authority to express opinions regarding proper professional conduct. However, the committee shall not issue opinions as to the propriety of past or present conduct of specific member attorneys. Unless the requester or subject waives confidentiality, the identities of all requesters of past and current opinions or advice shall be confidential and information relating thereto shall also remain confidential. Members of the committee or designees who provide ethics advice to member attorneys shall be subject to this requirement of confidentiality. [Formerly at Art. IV, sec. 3. Removed: committee's authority to issue specific opinions at request of grievance committee or Board of Governors]

#### **4.3 Continuing Committees.**

**4.3.1 General.** The existence and charters of continuing committees shall be reviewed annually by the Strategic Planning Committee, which shall report to the Board for action by the Board.

**4.3.2 Membership, Duties, and Jurisdiction.** Membership, duties, and jurisdiction of each continuing committee shall be as set forth in the committee's charter.

**4.4 Special Committees.**

**4.4.1 General.** The President, Board of Governors, or Executive Committee may create special committees (which term includes committees, task forces, working groups, and commissions), as determined to be necessary from time to time. [Formerly at Art. IV, sec. 6. Extensively revised]

**4.4.2 Term of Existence.** Special committees shall be created for a specified term to complete a defined task. The term of a special committee may be extended by the affirmative vote of 60 percent of the total membership of the Board of Governors.

**4.4.3 Membership, Duties, and Jurisdiction.** Membership, duties, and jurisdiction of each special committee shall be as set forth in the committee's charter.

**Article V. Sections**

**5.1 Establishment, Consolidation, Discontinuance, or Change in Status of Sections.**

**5.1.1 Establishment of Section.** A new section may be established by the Board of Governors if the proposed section is dedicated to a field of law or area of practice or interest related to the practice of law that is consistent with the purposes of the State Bar. [Formerly at Art. VI, sec. 1. Previous voting requirement was "majority"]

**(a) Contents of Application.** An application to the Board of Governors for the establishment of a new section may be filed by a voting State Bar member. Each such application shall set forth: (i) the field of law or area of practice or interest related to the

practice of law to which the proposed section is to be dedicated; (ii) a statement of the need for the proposed section; (iii) whether the section intends to lobby; (iv) the proposed bylaws for the governance of such section; (v) a list of State Bar members who have signified their intent to apply for membership in the proposed section; and (vi) any other relevant information. [Formerly at Art. VI, sec. 1]

**(b) Consideration by Board of Governors.** Notice setting forth the reasons for the proposed establishment of a new section and the date, time, and place of the meeting at which the Board of Governors shall consider the application shall be sent by mail to the Executive Director and the chairperson of the Section Leaders Advisory Council. An application for establishment of a new section may be granted by the affirmative vote of 60 percent of the total membership of the Board of Governors. [Previous voting requirement was majority]

**(c) Criteria.** In acting on an application for establishment of a new section, the Board of Governors shall consider, inter alia, the following criteria: (i) whether any such section covers the field of law or area of practice or interest related to the practice of law that will be covered by the proposed new section; (ii) whether the proposed section is consistent with the purposes of the State Bar; (iii) the level of interest by State Bar members in the proposed section; and (iv) if the section is to be a lobbying section, whether the membership will be large enough to support the cost of such lobbying through its dues. [Formerly at Art. VI, sec. 1]

**5.1.2 Consolidation of Sections.** An application for consolidation of sections may be filed by any voting State Bar member. Such proposal shall set forth the reasons for the proposed consolidation and shall address the criteria in section 5.1.1(c). Notice setting forth the reasons for the proposed consolidation and the date, time, and place of the meeting at

which the Board of Governors shall consider the application shall be sent by mail to the members of each section affected and the chairperson of the Section Leaders Advisory Council. An application for consolidation may be granted by the affirmative vote of 60 percent of the total membership of the Board of Governors. [Formerly at Art. VI, sec. 1. Previous voting requirement was majority]

**5.1.3 Discontinuance of Section.** An application for discontinuance of a section may be filed by any voting State Bar member. Such proposal shall set forth the reasons for the proposed discontinuance and shall address the criteria in section 5.1.1(c). Notice setting forth the reasons for the proposed discontinuance and the date, time, and place of the meeting at which the Board of Governors shall consider the application shall be sent by mail to the members of the section and the chairperson of the Section Leaders Advisory Council. An application for discontinuance may be granted by the affirmative vote of 60 percent of the total membership of the Board of Governors. [Formerly at Art. VI, sec. 1. Previous voting requirement was majority]

**5.1.4 Change from Nonlobbying to Lobbying Section.** If the members of a section want to convert the section from nonlobbying to lobbying status, the section shall comply with the requirements of section 5.1.1.

**5.2 Membership.** Any State Bar member shall be entitled to enroll in any section, subject to any membership requirements imposed by the section. [Formerly at Art. VI, sec. 2]

**5.3 Section Governance.**

**5.3.1 Bylaws.** Each section shall be governed by bylaws not inconsistent with the State Bar bylaws. The section bylaws and any amendments thereto shall become effective

when the Executive Committee approves them. Any section that intends to engage in lobbying or other legislative activity must adopt bylaws as promulgated by the Board of Governors. [Formerly at Art. VI, sec. 3. "Executive Committee" replaced "Board of Governors"]

**5.3.2 Chairperson, Board, and Officers.** Each section shall have a chairperson and a board, and such other officers as the section bylaws may provide, which shall be responsible for the governance of the section. The section board shall consist of the officers and such other members as may be provided in the section bylaws, which shall include provisions ensuring the widest possible participation of section members in section activities and governance. [Formerly at Art. VI, sec. 3]

**5.3.3 Meetings.** The officers and directors of each section may arrange for section meetings to be held in conjunction with the annual meeting of the State Bar. Special meetings may be held at such times and places within Wisconsin as the section board and officers may determine. Special meetings may be called by the section board or at the written request of 10 percent of the members of the section, provided that if section members call a meeting, the meeting shall be held at the State Bar Center in Madison, Wisconsin. [Formerly at Art. VI, sec. 5]

**5.4 Section Dues and Expenditures.** Section members may be required to pay section dues in such amount and for such purposes as the section, with the approval of the Executive Committee, may from time to time determine. In addition to such dues, each section shall collect an administrative fee, to be set from time to time by the Board of Governors after consulting with the Section Leaders Advisory Council. Any section that intends to engage in lobbying or other legislative activity shall also collect a lobbying fee, to

be set from time to time by the Board of Governors after consulting with the Section Leaders Advisory Council. Section expenditures shall be made only at the direction of the section board from revenues on hand. The State Bar shall pay out of such dues only such amounts as authorized by the section chairperson. [Formerly at Art. VI, secs. 4,7. Previously, the Board of Governors approved dues]

**5.5 Reports to the Board of Governors.** Each section shall submit a report of the section's activities and finances to its members and the Board of Governors at least annually, at such time and in such form as the Board of Governors may require. [Formerly at Art. VI, sec. 6]

**5.6 Section Leaders Advisory Council.**

**5.6.1 Establishment and Composition.** There is hereby established a Section Leaders Advisory Council (SLAC), composed of one representative of each State Bar section. Each section board shall designate a representative to serve for a term of at least one year.

**5.6.2 Chairperson.** The chairperson of SLAC shall be elected by SLAC members and shall serve for a two-year term, which shall start at the beginning of the State Bar's fiscal year. The chairperson may serve no more than two successive two-year terms. If the chairperson is unable or unwilling to serve a complete two-year term, SLAC shall elect a successor to complete the term. A chairperson elected to fill an unexpired term shall be eligible to serve two additional complete two-year terms.

**5.6.3 Board of Governors Representative.** SLAC shall elect one person to act as the SLAC representative to the Board of Governors. Such person shall serve for a two-year term and shall be subject to the provisions of section 2.7.

**5.6.4 Role and Responsibilities.** SLAC shall meet at least three times per year. SLAC shall advise the President and the Board of Governors concerning matters of interest to the section; coordinate information and activities among the sections; consult with the President and the Board of Governors or their designees regarding the amount and calculation of section administrative and lobbying fees; and generally assist the sections in providing service to their members.

**5.6.5 Reports to the Board of Governors.** SLAC shall submit a report of its activities to the Board of Governors, at such times and in such form as the Board of Governors may require.

**5.7 Administrative and Lobbying Support by the State Bar**

**5.7.1 Administrative Support.** The State Bar shall provide administrative support to the sections to carry out their respective functions. To defray the cost of such support, each section shall pay to the State Bar a fee, the amount of which shall be determined from time to time by the Board of Governors after consulting with the Section Leaders Advisory Council.

**5.7.2 Lobbying Support.** The State Bar shall provide lobbying support to sections that have elected to be lobbying sections and have complied with this section and with article VII. To defray the cost of such support, each such section shall pay to the State Bar a fee, the amount of which shall be determined from time to time by the Board of Governors after consulting with the Section Leaders Advisory Council. The amount of the section lobbying fees shall be sufficient so that the cost of section lobbying is borne by the lobbying sections and not by State Bar general membership dues. [Generally based on SCR 10.05(e)]

**5.7.3 Bylaws.** No section shall lobby unless its bylaws meet the requirements as set forth by the Board of Governors.

## Article VI. Divisions

**6.1 Establishment.** There are hereby established the following divisions:

- (a) Young Lawyers.
- (b) Government Lawyers.
- (c) Nonresident Lawyers.
- (d) Senior Lawyers.

**6.2 Membership.** Membership in each of the divisions shall be voluntary. Qualifications for membership in the respective divisions shall be as follows:

**6.2.1 Young Lawyers.** Any State Bar member under 36 years of age and any member, regardless of age, during the first five years following admission to the State Bar.

**6.2.2 Government Lawyers.** Any State Bar member who is an employee of any governmental entity or agency. [Removed: "salaried" employee]

**6.2.3 Nonresident Lawyers.** Any State Bar member whose designated address is outside of Wisconsin.

**6.2.4 Senior Lawyers.** Any State Bar member who is 60 years of age or older.

### 6.3 Governance.

**6.3.1 Bylaws.** Each division shall be governed by bylaws not inconsistent with the State Bar bylaws. The division bylaws and any amendments thereto shall become effective when the Board of Governors approves them.

**6.3.2 President, Board, and Officers.** Each division shall have a president and a board and such other officers as the division bylaws may provide, which shall be responsible

for the governance of the division. The board of a division shall consist of the officers ex officio and such other members as may be provided in the bylaws.

6.4 Dues. Division members may be required to pay division dues in such amount and for such purposes as the division, with the approval of the Board of Governors, may from time to time determine. Expenditures out of division dues shall be made only by direction of the division board. The State Bar shall pay out of such dues only such amounts as authorized by the division president.

6.5 Reports to the Board of Governors. Each division shall submit a report of the division's activities to the Board of Governors at least annually, at such time and in such form as the Board of Governors may require. [Entire section formerly at SCR 10.05(4)(h)-(k).

Removed: divisions' purposes and duties]

## **Article VII Public Policy Positions**

7.1 Applicability. Public policy positions include lobbying positions, legislative policy, proposed Supreme Court rule changes, proposed state agency rule changes, and other positions of public advocacy.

7.2 Public Policy Positions of the State Bar. Public policy positions of the State Bar as a whole shall be governed by procedures as adopted by the Board of Governors. Such positions shall meet the 60 percent requirement. The vote on whether to approve the taking of a public policy position shall be by roll call. Divisions and committees may not take public policy positions on behalf of themselves or the State Bar except as authorized by the Board of Governors. [Formerly at Art. III, sec. 9(b)]

7.3 Public Policy Positions of Sections.

**7.3.1 Criteria.** No section or State Bar member on behalf of a section may express a position on a matter involving an issue of public policy unless the following conditions are met: (a) the matter is one on which the section's views would have particular relevance; (b) the position is adopted in accordance with section bylaws; (c) the position is expressly stated to be taken only on behalf of the section; (d) the section charges annual dues at least equal to the cost of its public policy activities so that the cost need not be borne by section nonmembers; (e) the section public policy position is adopted in accordance with procedures for public policy positions adopted by the Board of Governors; and (f) the position is not contrary to an expressed State Bar position.

**7.3.2 Summaries of Positions.** Before a section or State Bar member on behalf of a section publicly expresses a position on a public policy, the Executive Committee or Board of Governors shall receive a summary of the section's position. Inaction by the Executive Committee or Board of Governors shall not be construed as support of such a position. The Executive Committee or Board of Governors reserves the right to disallow section public policy activity, based on the committee's or Board's consideration of the criteria in section 7.3.1.

## **Article VIII Amicus Curiae Briefs [Entire section formerly at Art. VII]**

**8.1 Applicability.** This article applies to all amicus curiae briefs prepared and filed by the State Bar and its committees, divisions, and sections. This article also applies to joinder in briefs by the State Bar and its committees, divisions, and sections.

### **8.2 State Bar Amicus Curiae Briefs.**

**8.2.1 Authorization.** The Board of Governors may authorize the preparation and filing of a State Bar amicus curiae brief by an affirmative vote of 60 percent of the total membership of the Board of Governors. This section shall also govern the proposed filing of amicus curiae briefs by State Bar divisions or committees. [Formerly at Art. VII, sec. 1(a).  
Previously, voting requirement was two-thirds]

**8.2.2 Appropriate Cases.** Amicus curiae briefs may be authorized only when consistent with the purposes of the State Bar, as expressed in SCR 10.02. [Formerly at Art. VII, sec. 1(b)]

**8.2.3 Role of Individual Members, Committees, Divisions, and Sections.**

(a) Whenever practicable, appropriate State Bar committees, divisions, and sections shall be consulted when authorization of an amicus curiae brief is being considered.

(b) Individual members, committees, divisions, and sections may recommend that an amicus curiae brief be filed in the name of the State Bar. Such a recommendation shall be directed to the President and the executive director and shall include: (i) a full statement of the facts of the controversy and the status of the litigation; (ii) a statement of the principles of law to be supported with a full explanation of the applicant's reasons for believing that the case is an appropriate one for State Bar involvement; (iii) when the recommendation is presented by a committee, division, or section, a statement advising when the recommendation was authorized and a description of any dissenting views; (iv) a full disclosure of any personal or professional interest in the matter of any proponent of the recommendation, or of any individual member of the section or committee or director or officer of the division that authorized the submission of the recommendation; (v) the name of

the person or persons who are proposed to prepare the amicus curiae brief; and (vi) the names of all interested parties to whom a copy of the recommendation has been furnished.

**8.2.4 Involvement by State Bar Members.** Before authorization to file an amicus curiae brief, notice of the proposed action, inviting comment and recommendations from State Bar members, shall be published in a State Bar official publication or by other means reasonably calculated to reach all State Bar members as quickly as possible. All comments and recommendations from State Bar members that are timely received shall be considered by the Board of Governors or Executive Committee before a vote is taken on the proposed action. [Removed: "whenever practicable"]

**8.2.5 Preparation and Filing of Briefs.**

(a) An amicus curiae brief may be filed only after review and approval by the President, who, in consultation with others as may be necessary and appropriate, shall ensure that the brief is of high professional quality and an accurate representation of State Bar policy.

(b) In addition to the person or persons actually preparing the brief, the President shall also appear as counsel on the brief, except when the State Bar is joining a brief.

(c) The State Bar shall pay the costs of printing and filing an amicus curiae brief but shall pay no legal fees for preparation or review of the brief.

**8.3 Section Amicus Curiae Briefs.** No section may file or join in filing an amicus curiae brief without the authorization provided herein.

**8.3.1 Section Authorization.** All section amicus curiae briefs shall require the approval of 60 percent of the entire section board at a duly called regular or special section board meeting at which a quorum is present.

**8.3.2 Role of Other State Bar Entities.** Any section wishing to file an amicus curie brief shall, as soon as practicable, give notice of such request, by telephone or electronic communication, to the President, the executive director, counsel for the opposing party in the court below, the Board of Governors, and all State Bar committees, sections, or divisions that reasonably would be expected to have an interest in the issue of the case and shall invite any timely comment to such request. Such notice shall include the following: (a) a full statement of the facts of the controversy and the status of the litigation; (b) a statement of the principles of law to be supported and a short explanation of the section's reasons for believing that the case is an appropriate one for section involvement; (c) a statement advising when and by what vote it was decided to request authorization to file an amicus curiae brief and a description of any dissenting views; (d) a full disclosure of any personal or professional interest in the matter of any individual section member, officer, or director; (e) the name of the person or persons who are proposed to prepare the amicus curiae brief; and (f) the names of all interested parties to whom a copy of the request for authorization has been furnished before submission of the request.

**8.3.3 Involvement by State Bar Members.** Before authorization to file an amicus curiae brief, notice of the proposed action, inviting comment and recommendations from State Bar members, shall be published in the *Wisconsin Lawyer* or the State Bar newsletter or by other means reasonably calculated to reach all members as quickly as possible. All comments and recommendations from State Bar members that are timely received shall be considered by the Executive Committee before a vote on the request is taken.

**8.3.4 Procedure for Review and Approval.**

(a) Upon receipt by the President and the executive director, the notice shall be forwarded to the Executive Committee for review. Review of the request shall take place not less than five nor more than 10 business days after the date the notice was received by the President and the executive director.

(b) The Executive Committee shall have the authority to approve or disapprove the request. Approval shall be by the affirmative vote of 60 percent of the entire Executive Committee. If approval is not given within the 10-day period, the request shall be deemed to be disapproved. In acting upon the request for approval of the amicus curiae brief, members of the Executive Committee shall not consider their personal views on the merits of the request, but only whether approval of the request shall be injurious to the State Bar.

(c) If the Executive Committee approves the request, the President shall so notify the section chairperson and the section may then proceed to prepare and file the amicus curiae brief in accordance with this article.

(d) If the Executive Committee disapproves the request, the section shall have the right to appeal that decision to the Board of Governors, which shall act upon the appeal within 10 business days of the filing of the appeal.

(e) Approval of the appealed request shall require the affirmative vote of 60 percent of the total membership of the Board of Governors. The vote may take place at a special meeting called for such purpose, which meeting may be by teleconference or other method of meeting approved for the Board of Governors. [Extensively revised]

### **8.3.5 Preparation and Filing of Amicus Curiae Briefs.**

(a) An amicus curiae brief may be filed only after review and approval by the section chairperson who, in consultation with others as may be necessary and appropriate, shall

ensure that the brief is of high professional quality and an accurate representation of section policy and in accordance with the authorization of the Board of Governors.

(b) In addition to the person or persons actually preparing the brief, the section chairperson shall also appear as counsel on the brief, except when the section is joining a brief.

(c) The section or division may pay the costs of printing and filing an amicus curiae brief but shall not pay legal fees for preparation or review of the brief.

(d) The brief must include a statement that it is filed only by the section, not by the Board of Governors or any other State Bar entity.

# **EXHIBIT C**



**STATE BAR OF WISCONSIN**  
*Your Practice. Our Purpose.®*

**MEMORANDUM**

**To:** Members, Board of Governors Committee on Governance  
**From:** Frederick (Fritz) Kaftan, Chair, Governance Committee  
**Date:** May 1, 2013  
**Re:** Bylaws and Rules related to Members of the Board of Governors and Officers

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The Board of Governors Committee on Governance has been reviewing Supreme Court Rules and State Bar of Wisconsin bylaws related to the service of officers and members of the Board of Governors. In particular, the committee has been reviewing the matter of succession should there be a vacancy in the office of president, the definition of a vacancy, and the terms under which an officer or member of the board could be removed. The committee requests this be placed as an action item for the June 12, 2013 meeting of the Board of Governors.

The committee has considered provisions of other state, local and national bar associations. The committee also reviewed the work of the 2010-11 Bylaws Revision Committee.

The Committee is recommending revised bylaws and rules as follows:

**Succession** – The committee is recommending that should the office of the president be vacated by resignation or removal that the president elect complete the remaining term. The president elect would also then serve the full term he/she was elected to serve. A vacancy of the position of president elect would be chosen by a majority vote of the total membership of the Board of Governors. A president elect so chosen would succeed to the office of President if necessary to fulfill a vacancy but would not serve an additional one year term as president unless elected at the next election.

The committee recommends the removal of the chair of the board from the line of succession since that person is not elected by the membership at large.

**Vacancy** – Vacancy is generally not defined in current rules or bylaws. The committee is proposing that a vacancy occur when there is a death, incapacity, inability to serve, revocation, suspension or relinquishment of law license, resignation or by removal of the Board.

**Removal** – In addition, the committee will be recommending a procedure for the removal of an officer or member of the board if conduct while in office is contrary to the best interest of the State Bar. A vote of 75% of the membership of the Board would be required and the officer or governor would be given an opportunity to be heard.

The Committee includes Governors Dall'Osto, Price, Gagan, Phillips, Steil, Miller, Fale, Gray, Dalton, Ragatz, Brennan, Levine, Wigg-Ninham, Barden, and Maddaleni. The Committee's draft rules and bylaws are attached to this memo.



1 member-at-large of the board of governors after his or her election. The chairperson shall  
2 be a member of the executive committee ex officio and shall preside at all meetings of the  
3 board of governors. ~~The chairperson shall perform the duties of the president in the~~  
4 ~~absence or disability of the president or in the event of a vacancy in the office of~~  
5 ~~president.~~

6 (d) *Secretary.* The secretary shall be a member-at-large of the board of  
7 governors. The secretary shall confer with and generally supervise the executive director  
8 and the administrative staff of the state bar as to the keeping of proper minutes and  
9 records, the maintenance of correct membership files and mailing lists and the general  
10 operation of the headquarters office and he or she shall make recommendations thereon  
11 to the board of governors as required.

12 (e) *Treasurer.* The treasurer shall be a member-at-large of the board of  
13 governors. The treasurer shall confer with and generally supervise the executive director  
14 and administrative staff of the state bar as to the methods and procedures used in the  
15 receipt, collection and safekeeping of all funds of the state bar and the procedures for  
16 disbursement and audit of the funds. The treasurer shall assist the executive committee in  
17 preparing the annual budget and in presenting it to the board of governors and shall make  
18 recommendations to the board of governors as to the association's financial affairs, as  
19 required.

20 (3) *Compensation.* The officers of the association shall receive no compensation  
21 for their services, but shall receive reimbursement of their expenses as authorized and  
22 directed by the board of governors.

23 (3m) *Term of Office.* The office of president and chairperson of the board of  
24 governors shall be for one term only. The offices of secretary and treasurer may be held  
25 for more than one term.

26 (4) Officers may be removed from office and vacancies filled in accordance with  
27 the bylaws.

28

1 **OFFICERS BYLAWS**

2 **Article II Officers**

3 *Section 1. Nominations.* The President-Elect, the Secretary and the Treasurer of  
4 the State Bar shall be elected from a list of candidates nominated in the following  
5 manner:

6 (a) The President of the Association with approval of the Board of Governors  
7 shall appoint a committee of five members to nominate candidates for said offices to be  
8 voted on at the next annual election. The nomination committee shall be approved at the  
9 first regularly scheduled Board meeting following the annual convention. The committee  
10 shall issue a report naming two or more nominees for the Office of President-Elect, two  
11 or more nominees for the Office of Secretary and two or more nominees for the Office of  
12 Treasurer. Before making its report, the committee shall solicit from the membership the  
13 names of members interested in seeking nomination to any office scheduled for election.  
14 The committee shall make its report no later than December 15 in each year.

15 (b) Other persons may be nominated for any of said offices by petition. Each  
16 nominee must provide a petition signed by not less than one hundred active members of  
17 the Association. The petition must be filed in the Office of the Executive Director on or  
18 before the first business day of February of the year of the election. Before such a  
19 petition may be filed, the nominee must consent in a written statement to nomination for  
20 the office designated in the petition.

21 *Section 2. Voting and Canvass of Ballots.* The provisions of Sections 4 to 8  
22 inclusive of Article III of these By-Laws relating to the election of members of the Board  
23 of Governors shall be applicable also to the election of officers.

24 *Section 3. Election of Chairperson of the Board of Governors.* The Board shall  
25 elect a Chairperson of the Board of Governors from its members at its last regular  
26 meeting each fiscal year. The President shall appoint a nominating committee from the  
27 governors at the second to last regular Board meeting of the fiscal year. The committee  
28 shall nominate one or more candidates for this office. Those eligible for nomination and  
29 election to this office are: all current Board members, including members whose second  
30 terms expire that June, except for the President and President-Elect. While serving as

1 Chairperson of the Board, the Chairperson of the Board shall be a governor at large and  
2 no longer a district governor.

3 Section 4. Commencement of Term of Office. The terms of all out-going officers  
4 of the Association and the Chairperson of the Board of Governors shall end, and the term  
5 of their successors shall commence, on the first day of July.

6 Section 5. Vacancies. A vacancy is created by the death, incapacity, inability to  
7 serve, revocation, suspension, or relinquishment of law licensure, or resignation of an  
8 officer, or by removal of an officer pursuant to section 7.

9 (a) President. If the office of President becomes vacant, the President-elect  
10 shall succeed to the office of President for the unexpired term of the President and shall  
11 serve a one-year term thereafter, if the President-elect was elected as President-elect at  
12 the previous annual election.

13 (b) President-elect. A vacancy in the office of President-elect shall be filled  
14 by a vote of a majority of the total membership of the Board of Governors. A President-  
15 elect so chosen shall succeed to the office of President only if necessary to fill a vacancy  
16 as provided for in this section and shall not serve an additional one-year term as President  
17 unless elected as such at the next annual election or at an earlier special election as the  
18 Board of Governors may require.

19 (c) Secretary. A vacancy in the office of Secretary shall be filled by a vote of  
20 a majority of the total membership of the Board of Governors. A Secretary so chosen  
21 shall not serve an additional term as Secretary unless elected as such at the next  
22 scheduled election for secretary, or at an earlier special election as the Board of  
23 Governors may require.

24 (d) Treasurer. A vacancy in the office of Treasurer shall be filled by a vote of  
25 a majority of the total membership of the Board of Governors. A Treasurer so chosen  
26 shall not serve an additional term as Treasurer unless elected as such at the next  
27 scheduled election for treasurer, or at an earlier special election as the Board of  
28 Governors may require.

29 Section 6. Temporary Vacancy. If an officer is temporarily unable to perform his or  
30 her duties, the Board may appoint a temporary replacement, who shall serve no longer

1 than the remainder of the officer's unexpired term, or until the inability to serve or license  
2 status issue is resolved, whichever occurs first.

3 Section 7. Removal. An officer may be removed from office as follows:

4 (a) Revocation, Suspension or Relinquishment of Law License. If an officer's  
5 license to practice law is revoked or relinquished during his or her term, the officer shall  
6 immediately be removed from office, without further notice. If the officer's license to  
7 practice law is suspended for a term less than the time remaining on his or her term, the  
8 officer's position will be considered temporarily vacant.

9 (b) Removal by Board of Governors. An officer shall be removed if the officer is  
10 unable or unwilling to fulfill his or her duties, or if the officer's conduct while in office is  
11 contrary to the best interest of the State Bar as determined by an affirmative vote of 75  
12 percent of the total membership of the Board of Governors (including the officer subject  
13 to the motion to remove). Before any vote on the motion, notice of the motion to remove  
14 and of the grounds alleged against the officer, and an opportunity to be heard by the  
15 Board must be given to the officer.

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16

1 **BOARD OF GOVERNORS RULES**

2 **SCR 10.05 Board of governors.** (1) Composition of board. The affairs of the  
3 association shall be managed and directed by a board of governors consisting of the 6  
4 officers of the association, all of whom shall be ex officio members-at-large of the board,  
5 not fewer than 34 members elected from the state bar districts established under sub. (2),  
6 one member selected by the young lawyers division pursuant to its bylaws, one member  
7 selected by the government lawyers division pursuant to its bylaws, five governors  
8 selected by the nonresident lawyers division pursuant to its bylaws, one governor selected  
9 by the senior lawyers division pursuant to its bylaws, and three nonlawyers appointed by  
10 the supreme court for staggered two-year terms. No person appointed by the supreme  
11 court shall serve more than two consecutive full terms. The rights and powers of the ex  
12 officio members of the board are the same as those of elected members. All  
13 past-presidents of the Wisconsin bar association or of the state bar of Wisconsin, the  
14 Wisconsin state delegate to the American Bar Association house of delegates and the  
15 deans of the Marquette university and university of Wisconsin law schools are entitled to  
16 floor privileges, but without voting privileges.

17 (2) State bar districts. (a) For the purpose of conducting elections of the  
18 members of the board of governors, the board of governors shall divide the state into 16  
19 state bar districts comprising specified counties and shall establish the number of  
20 members of the board of governors to be elected from each district.

21 (b) The number of members of the board of governors elected from each state bar  
22 district shall be in proportion to the number of active members entitled to vote residing in  
23 the district and shall take into consideration all of the following:

- 24 1. The composition of the judicial administrative districts established by sec.  
25 757.60, Stats.
- 26 2. The geographical area of each state bar district.
- 27 3. All existing multi-county bar associations.
- 28 4. The representation of members in each state bar district afforded by members  
29 of the board of governors selected by divisions of the association under sub. (1).

1 (c) Every 10 years, commencing January 1, 1995, the board of governors shall  
2 submit to the court a proposed redistricting map dividing the state bar into districts in  
3 accordance with the requirements in par. (b).

4 (d) Notice, filing, review, hearing and adoption of a redistricting proposal  
5 submitted under par. (c) shall be provided in SCR 10.13(2) for amendment of bylaws.

6 (3) Term; qualifications; nomination and election. The term of office of each  
7 elected member of the board of governors is 2 years, commencing on July 1 next  
8 following his or her election. No person is eligible to vote in a district for governor or to  
9 serve on the board of governors from a district unless he or she is an active member of  
10 the association and maintains in the district his or her principal office for the practice of  
11 law. No person is eligible for election to the board of governors for more than 2  
12 consecutive terms. The eligibility of any person to serve as a member of the board of  
13 governors from any state bar district ceases upon removal of the person's principal office  
14 for the practice of law from the district. Nominations, and elections, and filling of  
15 vacancies of members of the board of governors shall be conducted in accordance with  
16 the provisions of the bylaws. Governors may be removed from office and vacancies  
17 filled in accordance with the bylaws.

18 (4) Functions. (a) The board of governors has general charge of the affairs and  
19 activities of the association. It may:

- 20 1. Fix the time and place of the annual meeting of members of the association.
- 21 2. Make appropriations and authorize disbursements from the funds of the state  
22 bar in payment of the necessary expenses of the association.
- 23 3. Engage and define the duties of employees and fix their compensation.
- 24 4. Receive, consider and take action on reports and recommendations submitted  
25 by committees, sections and the assembly of members of the association at any annual or  
26 special meeting.
- 27 5. Arrange for publication of an official state bar bulletin or journal.
- 28 6. Conduct investigations of matters affecting the association or the practice of  
29 law or the discipline of members of the association.

1 7. Fill vacancies arising in the membership of the board of governors or in any office  
2 except the office of president. In each case the person appointed to fill the vacancy shall  
3 hold office for the unexpired term.

4 8. Adopt bylaws and regulations, not inconsistent with this chapter, for the  
5 orderly administration of the association's affairs and activities.

6 (b) The board of governors shall meet at least 4 times each year. Twenty-four  
7 members present at any meeting constitutes a quorum. Special meetings of the board of  
8 governors may be called in accordance with the bylaws.

9 (c) The board of governors shall establish and maintain standing committees  
10 having respectively the functions defined in the bylaws. The board of governors may  
11 create additional standing committees and special committees and may define the  
12 authority and functions of those standing and special committees.

13 (d) The board of governors shall establish and maintain sections for carrying on  
14 the work of the association, each within its proper field of study defined in its bylaws.  
15 Each section consists of members who voluntarily enroll in the section because of a  
16 special interest in the particular field of law to which the section is dedicated. New  
17 sections may be established and existing sections may be consolidated or discontinued by  
18 the board of governors. Each section shall be governed by bylaws not inconsistent with  
19 this chapter or state bar bylaws. Section bylaws and amendments thereto become  
20 effective upon approval of the board of governors.

21 (e) A section may express a position on a matter involving a substantial issue of  
22 public policy under the following conditions:

23 1. The matter is one on which the section's views would have particular  
24 relevance.

25 2. The position is adopted in accordance with section bylaws.

26 3. The position is clearly taken only on behalf of the section.

27 4. The section charges annual dues at least equal to the cost of its legislative  
28 program so that the cost need not be borne by section nonmembers.

29 The executive committee or board shall receive a summary of section positions on  
30 matters involving substantial issues of public policy prior to their publication but inaction  
31 by the executive committee or board shall not be construed as support of such positions.

1 No committee of the association may publicly express any conclusion or opinion  
2 respecting any substantial issue of public policy without having procured previous  
3 authorization from either the board of governors or the executive committee of the  
4 association. This prohibition is not applicable to the public release of reports made by  
5 committees to the board of governors prior to action thereon by the board, unless the  
6 board has otherwise ordered. If any committee or section of the association expresses  
7 publicly any conclusion or opinion on matters other than substantial issues of public  
8 policy, the expression shall indicate that the conclusion or opinion is that of the section of  
9 committee from which it emanates, rather than the conclusion or opinion of the state bar.

10 (f) The members of the board of governors shall receive no compensation for  
11 services to the association, but they and also the members of committees and the officers  
12 and directors of sections and of the young lawyers division, the government lawyers  
13 division, the nonresident lawyers division, and the senior lawyers division may be  
14 reimbursed for necessary expenses in the performance of their duties.

15 (g) A complete summary of the minutes of each meeting of the board of  
16 governors shall be promptly printed in the Wisconsin bar bulletin, with a notation that  
17 any interested person may obtain a copy of the minutes on request to the secretary.

18 (h) The board of governors shall establish and maintain a young lawyers division.  
19 Membership in the division shall be voluntary. Those eligible for membership in the  
20 young lawyers division shall be any member of the state bar under the age of 36 years or  
21 any member, irrespective of age, during the first 5 years following admission to the bar.  
22 This division shall be governed by bylaws not inconsistent with state bar rules and  
23 bylaws. The division bylaws and amendments thereto become effective upon approval of  
24 the board of governors. The young lawyers division shall stimulate the interest of young  
25 lawyers in the objectives and programs of the state bar and carry on projects which will  
26 be of assistance to young lawyers.

27 (i) The board of governors shall establish and maintain a government lawyers  
28 division. Membership in the division shall be voluntary. Those eligible for membership  
29 in the government lawyers division shall be any member of the state bar who is a salaried  
30 employee of any government. This division shall be governed by bylaws not inconsistent  
31 with state bar rules and bylaws. The division bylaws and amendments thereto become

1 effective upon approval of the board of governors. The government lawyers division  
2 shall promote effective collaboration between the private and public sectors of the bar  
3 and provide for the participation of publicly employed members in the governance of the  
4 state bar.

5 (j) The board of governors shall establish and maintain a non-resident lawyers  
6 division. Membership in the division shall be voluntary. Those eligible for membership  
7 in the non-resident lawyers division shall be any member of the state bar who has an  
8 address of record outside the state of Wisconsin. This division shall be governed by  
9 bylaws not inconsistent with state bar rules and bylaws. The division bylaws and  
10 amendments thereto become effective upon approval of the board of governors. The  
11 non-resident lawyers division shall carry on projects which will be of assistance to  
12 members outside the state of Wisconsin and provide for the participation of members  
13 outside Wisconsin in the governance of the state bar.

14 (k) The board of governors shall establish and maintain a senior lawyers division.  
15 Membership in the division shall be voluntary. Those eligible for membership in the  
16 senior lawyers division shall be any members of the state bar who are age 60 years or  
17 older. The division shall be governed by bylaws not inconsistent with state bar rules and  
18 bylaws. The division bylaws and amendments thereto become effective upon approval of  
19 the board of governors. The senior lawyers division shall carry on projects that will  
20 stimulate the interest of the senior lawyers in the objectives and programs of the state bar  
21 and carry on activities which will be of assistance to senior lawyers in the practice of law.

22 (m) 1. Establishment. The board of governors may provide assistance programs,  
23 including assistance in law office management, and assistance to judges, lawyers, law  
24 students, and their families in coping with alcoholism and other addictions, mental  
25 illness, physical disability, and other problems related to or affecting the practice of law.  
26 The board may establish committees, hire staff, and obtain volunteers as reasonably  
27 necessary to provide assistance. The board shall establish policies consistent with the  
28 purposes of the state bar and in furtherance of the public interest in the competence and  
29 integrity of the legal profession.

30 2. Privileges, immunity. Communications with an assistance committee member, staff,  
31 or volunteers by any person providing information in good faith are privileged; no

1 lawsuit based upon these communications may be instituted by any person. In providing  
2 assistance services, the board, members of assistance committees, staff, and volunteers  
3 designated by the board shall be immune from suit for any conduct in the course of their  
4 official duties.

5 3. Confidentiality. All communications with an assistance committee member, staff, or  
6 volunteer, and all records of program assistance to a person are confidential and shall not  
7 be disclosed, except in any of the following circumstances:

- 8 a. With the express consent of the person provided assistance.
- 9 b. When required as a condition for monitoring.
- 10 c. When reasonably necessary to prevent death or substantial bodily harm to the  
11 person assisted or to another.
- 12 d. When reasonably necessary to prevent child abuse or elder abuse.
- 13 e. When reporting is mandated by other law.

14

1 **BOARD OF GOVERNORS BYLAWS**

2 **Article III Board of Governors**

3 *Section 1. Qualifications of Electors.* Each member of the Board of Governors  
4 shall be elected by the active members of the State Bar eligible to vote in the State Bar  
5 District in which such member of the Board of Governors has his or her principal office  
6 for the practice of law.

7 *Section 2. Term.* At the annual election members of the Board of Governors shall  
8 be elected in the several State Bar districts by the members entitled to vote in each Bar  
9 district where there is a vacancy or vacancies for governor or governors whose terms  
10 expire.

11 *Section 3. Nomination Petitions.* Nominations for the Office of Governor shall  
12 be by petition signed in respect of each nominee by not less than ten persons entitled to  
13 vote for such candidate. Blank forms for that purpose shall be supplied by the Executive  
14 Director of the Association on request. Nomination petitions for candidates to be voted  
15 on at the annual election in any year shall be filed in the office of the Executive Director  
16 not later than the first business day of March of such year, provided that before the filing  
17 of such petition a statement shall be endorsed thereon by the nominee to the effect that  
18 the nominee consents to nomination for the office designated in the petition. No  
19 nominating petition for governor shall be filed on behalf of any member practicing in the  
20 same county in which another member is a governor whose term does not expire at the  
21 next annual meeting.

22 *Section 4. Voting List.* On the third Friday of March in each year the voting list  
23 shall close for the election in that year. Every active member of the Association in good  
24 standing on that date shall be entitled to vote in the State Bar District in which the  
25 member's principal office for the practice of law is located, for officers of the State Bar  
26 and for the governor or governors for such district to be elected that year.

27 *Section 5. Mailing of Ballots.* On or before the second Friday of April in each  
28 year the Executive Director shall prepare and mail required ballots to each active member  
29 of the State Bar entitled to vote at the annual election. One form of ballot sent to persons  
30 entitled to vote in each State Bar District shall contain the names of the nominees for the  
31 several offices of the State Bar to be filled at the annual election, and a separate form of

1 ballot shall contain the names of the nominees for the Office of Governor from such  
2 district. If any such person entitled to vote in such election fails to receive his or her  
3 ballots, or if it appears that any such ballot has been lost or destroyed, a new ballot shall  
4 be furnished to the person by the Executive Director. The fourth Friday of April in each  
5 year shall be the last day for voting in such election and no ballots received after that date  
6 shall be counted.

7         *Section 6. Voting of Ballots.* No ballot shall be counted unless returned to the  
8 Office of the Executive Director of the Association on or before the last day for voting, in  
9 an envelope furnished by the Executive Director marked "Ballot."

10         *Section 7. Checking and Custody of Ballots.* The Executive Director shall  
11 receive and have custody of the ballots after they are voted until they are canvassed. All  
12 such ballots shall be segregated as to State Bar districts from which they are received.  
13 The envelope containing the ballots shall be retained unopened until turned over to the  
14 certified public accountant for canvass.

15         *Section 8. Canvass of Ballots.* The ballots shall be canvassed by a certified  
16 public accountant selected by the Executive Committee. The candidate receiving the  
17 highest number of votes for each office shall be declared elected. In case of a tie vote the  
18 Executive Committee shall determine the successful candidate by lot drawn by the  
19 Committee. The certified public accountant shall certify the results to the Executive  
20 Director, who shall forthwith notify the candidates and announce the results. Upon  
21 completion of the canvass, the certified public accountant shall retain the ballots subject  
22 to the further order of the Board of Governors.

23         *Section 9. Vacancy.* A vacancy is created by the death, incapacity, inability to serve,  
24 revocation, suspension, or relinquishment of law license, or resignation of a governor, or  
25 by removal of a governor pursuant to section 10.

26         *(a) Governor.* Any vacancy in the office of an elected governor shall be filled by the  
27 Board for the remainder of the unexpired term. Any member appointed to fill such a  
28 vacancy shall be eligible for election to two consecutive full terms as a governor. Any  
29 vacancy in the office of an appointed public member shall be filled by the Supreme  
30 Court. Any vacancy in the office of a division representative shall be filled in accordance  
31 with the bylaws of the division.

1        (b) Temporary Vacancy. If a governor is temporarily unable to perform his or her  
2 duties, the Board may appoint a temporary replacement, who shall serve no longer than  
3 the remainder of the governor's unexpired term, or until the inability to serve or license  
4 status issue is resolved, whichever occurs first. The replacement shall be a member  
5 whose principal office, or residence, if the member has no principal office, is in the same  
6 district as that of the governor who is being temporarily replaced.

7 Section 10. Removal. A Governor may be removed from office as follows:

8        (a) Revocation, Suspension or Relinquishment of Law License. If a  
9 governor's license to practice law is revoked or relinquished during his or her term, he or  
10 she shall immediately be removed from the Board, without further notice. If the  
11 governor's license to practice law is suspended for a term less than the time remaining on  
12 his or her term, the Governor's position will be considered temporarily vacant.

13        (b) Removal by Board of Governors. A governor shall be removed if the  
14 governor is unable or unwilling to perform his or her duties, or if the governor engages in  
15 conduct which is contrary to the best interest of the State Bar as determined by the  
16 affirmative vote of 75 percent of the total membership of the Board (including the  
17 governor subject to the motion to remove). Before any vote on the motion to remove the  
18 governor, notice of the motion and of the grounds alleged against the governor, and an  
19 opportunity to be heard by the Board must be given to the governor.

20 Section 11. Meetings of Board of Governors. (a) There shall be a regular meeting of  
21 the Board of Governors in each year at the time of the annual meeting of members of the  
22 State Bar. There shall be at least three additional regular meetings in each year. The  
23 meetings shall be on the dates set by the President and announced no later than thirty  
24 days following the President's assumption of office on July 1. Special meetings of the  
25 Board of Governors may be held at any time upon call of the President, and shall be  
26 called by the President upon written request signed by seven members of the Board. (b)  
27 Notice of the time and place of regular and special meetings of the Board shall be given  
28 to each member by the Executive Director by mail or telephone at least five days before  
29 the meeting. At any regular meeting of the Board any business may be transacted which  
30 is within the power of the Board, whether or not specified in the call or notice of the  
31 meeting. At any special meeting of the Board, any business may be transacted which is

1 within the power of the Board if specified in the call or notice of the meeting. Members  
2 of the Board may participate and vote by telephone at any special meeting, but not at a  
3 regular meeting. Members appearing by telephone at a special meeting shall be deemed  
4 present for the purpose of determining a quorum. Action by the Board may be taken by a  
5 majority of members present at a meeting at which a quorum is present, except action  
6 upon legislative proposals, proposed supreme court rule changes and proposed executive  
7 agency rule changes shall require approval by a 60% majority of members present at a  
8 meeting at which a quorum is present. At any regular or special meeting, any business  
9 placed on a consent agenda that is part of the notice or call will be acted upon without  
10 debate. Business listed on the consent agenda may be removed by any one governor  
11 within a 72-hour notice to the Secretary of the State Bar.

12 *Section #12. Members of Judicial Council.* Upon expiration of the term of office of  
13 each member of the Judicial Council selected by the Wisconsin Bar Association pursuant  
14 to the provisions of sec. 758.13, Wisconsin Statutes, the successor in such office shall be  
15 elected from the active members of the State Bar in the manner provided for the election  
16 of officers.

17 *Section #12. American Bar Association Delegates.* (a) Upon expiration of the term  
18 of office of each State Bar delegate of the House of Delegates of the American Bar  
19 Association, the successor shall be elected by the Board of Governors and every vacancy  
20 thereafter occurring in such office shall be filled in the manner specified below.

21 (b) The election of delegates shall be held at the meeting of the Board of Governors  
22 held in conjunction with the annual meeting of the State Bar of Wisconsin each year.

23 (c) Qualification for election as State Bar of Wisconsin delegate to the American Bar  
24 Association House of Delegates shall be membership in the State Bar of Wisconsin and  
25 the American Bar Association and shall be made by petition of nomination to such office  
26 endorsed by at least ten members of the State Bar of Wisconsin Board of Governors,  
27 except that a candidate for Young Lawyer delegate who is otherwise qualified under  
28 section 6.4 of the American Bar Association Constitution shall be nominated by petition  
29 endorsed by at least four members of the Young Lawyers Division Board of Directors.  
30 Members of the State Bar of Wisconsin Board of Governors or, in the case of nomination  
31 of the Young Lawyer delegate, members of the Young Lawyers Division Board of

1 Directors, may endorse any number of candidate petitions. Petitions for nomination shall  
2 be substantially in the form of petition for election to the State Bar of Wisconsin Board of  
3 Governors as prescribed in Article III, Section 3 of the State Bar of Wisconsin Bylaws  
4 with appropriate changes in order to make the petition germane to this purpose. Petitions  
5 for nominations shall be filed in the office of the Executive Director of the State Bar of  
6 Wisconsin no later than the 15th day of April in the year the election is to be held.

7 (d) Notice of election for terms of delegates expiring at the close of the American  
8 Bar Association Annual Meeting each year shall be substantially in the form as the notice  
9 attached hereto as Exhibit A. Said notice shall be published in the February and March  
10 issues of the *Wisconsin Lawyer* each year.

11 (e) Commencing with delegates elected at the meeting of the Board of Governors  
12 held in conjunction with the 1994 Annual Meeting of the State Bar of Wisconsin, no  
13 candidate shall be elected to more than three consecutive terms.

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14 *Exhibit A*

15 Notice of Election of State Bar of Wisconsin Delegates to the American Bar  
16 Association House of Delegates.

17 An election of two members or in odd numbered years, one member and one  
18 member of the Young Lawyers Division, of the State Bar of Wisconsin to the American  
19 Bar Association House of Delegates (House) will be held at the meeting of the Board of  
20 Governors on the \_\_\_\_ day of \_\_\_\_ 20 \_\_\_\_ . Those members interested in representing  
21 the State Bar of Wisconsin in such capacity are referred to Article III, Section 11 of the  
22 State Bar of Wisconsin Bylaws for qualifications for election and election procedure.  
23 Below is a brief description of the American Bar Association House of Delegates as well  
24 as the duties of said office.

25 The House has the ultimate responsibility for establishing Association policy,  
26 both as to the administration of the Association and its positions on professional and  
27 public issues. The House elects the officers of the Association and members of the Board  
28 of Governors upon nomination of the Nominating Committee. The House has sole  
29 authority to amend the Association's Bylaws and has authority to amend the Association's  
30 Constitution upon concurrence of the Association's Assembly of members. The House

1 authorizes committees and Sections of the Association and has the authority to  
2 discontinue them. The House sets the dues for membership upon recommendation of the  
3 Board of Governors.

4 A Delegate is responsible for attending each meeting of the House, participating  
5 fully in its proceedings and discharging the responsibilities of the House. The State Bar  
6 of Wisconsin reimburses the expenses incurred by its delegates for transportation and  
7 lodging for the meeting of the House held at the Annual Meeting of the American Bar  
8 Association. The American Bar Association reimburses the expenses, which conform to  
9 the American Bar Association policy, incurred by all delegates for transportation to the  
10 Mid-year meeting of the House. The State Bar reimburses its delegates for lodging  
11 expenses incurred by its delegates at the Mid-year meeting of the house.

12 It is the responsibility of each Delegate to keep his or her constituency fully  
13 apprised of the actions taken by the House, and, to the extent possible, matters pending  
14 before the House; and to assist constituent entities in presenting issues of concern for  
15 debate and action by the House.

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# **EXHIBIT D**

## Sample Bylaws

The examples which follow are designed simply to show typical clauses contained in bylaws and how those clauses might be worded. However, because nonprofit corporation laws vary from state to state (especially regarding notice, voting rights and similar provisions), it is important to check state law carefully before drafting any bylaws provisions. In addition, bylaws should be tailored to meet the needs of your particular organization and should be amended over time as the organization and its operating environment changes. Therefore, readers are cautioned not to simply copy the provisions below and assume they will provide adequate governance rules for their particular nonprofit entity.

There are three basic examples below. One is for a nonprofit (such as the typical charity) with a self-perpetuating board of directors and no voting membership. Another example is for a nonprofit organization (such as a trade or professional association) that typically would have one or more classes of voting members, in addition to a board of directors. The third example is for a nonprofit that wants have a controlled nonprofit subsidiary, such as when a charity or trade association forms a related charitable "supporting organization." Note that there is considerable overlap and similarity between these examples. This demonstrates a point made in the main monograph, which is that it is not necessary to draft completely different bylaws for each type of nonprofit entity. Rather, there is often a very large core of key operating rules that will be applicable to any well-run nonprofit organization.

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### **EXAMPLE 1: Basic bylaws for a typical charity with a self-perpetuating board of directors and no formal voting membership.**

BYLAWS  
OF THE  
[insert name of charity]

**ARTICLE I**  
**OFFICE AND REGISTERED AGENT**

Section 1. Principal Office. The principal office of the \_\_\_\_\_ shall be in the State of \_\_\_\_\_.

Section 2. Registered Office and Agent. The Corporation shall have and continuously maintain a registered office and a registered agent in the State of \_\_\_\_\_, as required by

the State of \_\_\_\_\_ Nonprofit Corporation Act. The registered agent shall be either an individual resident of the State or a corporation authorized to transact business in the State.

## ARTICLE II PURPOSES

The purposes for which the Corporation is formed are as set forth in the Articles of Incorporation. [NOTE: The purposes from the Articles of Incorporation may be reprinted here. However, it must be remembered that amending the purposes in the bylaws is not effective unless the purposes clause in the articles of incorporation is also amended. A "mission statement" interpreting and clarifying the purposes may be inserted here as well.]

## ARTICLE III MEMBERSHIP

The Corporation shall have no members.

## ARTICLE IV BOARD OF DIRECTORS

Section 1. Powers. There shall be a Board of Directors of the Corporation, which shall supervise and control the business, property and affairs of the Corporation, except as otherwise expressly provided by law, the Articles of Incorporation of the Corporation, or these Bylaws.

Section 2. Number and Qualifications. The members of the initial Board of Directors of the Corporation shall be those individuals named in the Articles of Incorporation and shall serve until their successors are elected and qualified. Thereafter, the Board of Directors of the Corporation shall be composed of no less than \_\_\_\_\_ nor more than \_\_\_\_\_ individuals. The number of directors may be decreased, but no decrease shall have the effect of shortening the term of any incumbent director.

Section 3. Election and Term of Office. The members of the Board of Directors shall be elected by the directors at the annual meeting of the Board of Directors. Members of the Board of Directors shall serve for a term of [one year].

**NOTE: If the board is quite large and staggered terms of office are desired, the following provision could be used in lieu of the one above. The example below divides the board members into three groups, but a greater or lesser division could also be used. When there are three groups of directors, it is usually easiest for each director to serve a 3-year term.**

**To begin the initial stagger in a new charity, some directors must serve only one year and some must serve only two years, as demonstrated in the example below]:**

Alternate Section 3. The members of the Board of Directors shall be elected by the directors at the annual meeting of the Board. At the time of his or her election, each director shall be assigned to Class A, Class B or Class C, and an effort shall be made to keep each class of directors of approximately equal size. Each director shall hold office for a term of three years, except that for the initial Board elected at the organizational meeting in 2002:

- a. Directors in Class A shall have their term expire in 2003 (and every three years thereafter);
- b. Directors in Class B shall have their term expire in 2004 (and every three years thereafter); and
- c. Directors in Class C shall have their term expire in 2005 (and every three years thereafter).

Section 4. Resignation. Any director may resign at any time by giving written notice to the President of the Corporation. Such resignation shall take effect at the time specified therein, or, if no time is specified, at the time of acceptance thereof as determined by the President of the Corporation.

Section 5. Removal. Any director may be removed from such office, with or without cause, by a [majority] [two-thirds] [three-fourths] vote of the directors at any regular or special meeting of the Board called expressly for that purpose.

Section 6. Vacancies. Vacancies shall be filled by majority vote of the remaining members of the Board of Directors for the unexpired term.

Section 7. Regular Meetings. A regular annual meeting of the Board of Directors of the Corporation shall be held each year, at such time, day and place as shall be designated by the Board of Directors.

Section 8. Special Meetings. Special meetings of the Board of Directors may be called at the direction of the Chair or by a majority of the voting directors then in office, to be held at such time, day and place as shall be designated in the notice of the meeting.

Section 9. Notice. Notice of the time, day and place of any meeting of the Board of Directors shall be given at least \_\_\_\_ days previous to the meeting and in the manner set forth in Section 2 of Article VII. The purpose for which a special meeting is called shall be stated in the notice. Any director may waive notice of any meeting by a written statement executed either before or after the meeting. Attendance and participation at a meeting without objection to notice shall also constitute a waiver of notice.

Section 10. Quorum. A majority of the directors then in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors.

Section 11. Manner of Acting. Except as otherwise expressly required by law, the Articles of Incorporation of the Corporation, or these Bylaws, the affirmative vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board of Directors. Each director shall have one vote. Voting by proxy shall not be permitted.

Section 12. Unanimous Written Consent In Lieu of a Meeting. The Board may take action without a meeting if written consent to the action is signed by all of the directors.

Section 13. Telephone Meeting. Any one or more directors may participate in a meeting of the Board of Directors by means of a conference telephone or similar telecommunications device which allows all persons participating in the meeting to hear each other. Participation by telephone shall be equivalent to presence in person at the meeting for purposes of determining if a quorum is present.

Section 14. Conflicts of Interest. **[NOTE: This clause is optional, but may be useful in helping the board handle situations where a director cannot be impartial due to a financial or other conflict of interest. Alternatively, the Board could simply adopt by resolution a Conflicts of Interest policy that is not part of the bylaws. An example of a policy that has been approved by the IRS is at Appendix A of the monograph.]**

(a) In the event any director has a conflict of interest which might properly limit such director's fair and impartial participation in Board deliberations or decisions, such director shall inform the Board as to the circumstances of such conflict. If those circumstances require the nonparticipation of the affected director, the Board may nonetheless request from the director any appropriate nonconfidential information which might inform its decisions. "Conflict of interest," as referred to herein, shall include, but shall not be limited to, any transaction by or with the Corporation in which a director has a direct or indirect personal interest, or any transaction in which a director is unable to exercise impartial judgment or otherwise act in the best interests of the Corporation.

(b) No director shall cast a vote, nor take part in the final deliberation in any matter in which he or she, members of his or her immediate family or any organization to which such director has allegiance, has a personal interest that may be seen as competing with the interest of the Corporation. Any director who believes he or she may have such a conflict-of-interest shall so notify the Board prior to deliberation on the matter in question, and the Board shall make the final determination as to whether any director has a conflict-of-interest in any matter. The minutes of the Board meeting shall reflect disclosure of any conflict-of-interest and the recusal of the interested director.

## ARTICLE V OFFICERS

Section 1. Officers. The officers of the Corporation, shall consist of a President, a Secretary, and a Treasurer. The Corporation shall have such other assistant officers as the Board of Directors may deem necessary, and such officers shall have the authority prescribed by the Board. One person may hold more than one office, other than the offices of President and Secretary.

Section 2. Election of Officers. The officers of the Corporation shall be elected by the directors at the annual meeting of the Board of Directors.

Section 3. Term of Office. The officers of the Corporation shall be installed at the annual meeting at which they are elected and shall hold office for [one] year until the next annual meeting or until their respective successors shall have been duly elected.

Section 4. Resignation. Any officer may resign at any time by giving written notice to the Chair of the Board. Such resignation shall take effect at the time specified in the notice, or if no time is specified, then immediately.

Section 5. Removal. Any officer may be removed from such office, with or without cause, by a [majority] [two-thirds] [three-fourths] vote of the directors at any regular or special meeting of the Board called expressly for that purpose.

Section 6. Vacancies. A vacancy in any office shall be filled by the Board of Directors for the unexpired term.

Section 7. Chair. The Chair shall give active direction and have control of the business and affairs of the Corporation. He or she may sign contracts or other instruments which the Board of Directors has authorized to be executed, and shall perform all duties incident to the office of Chair as may be prescribed by the Board of Directors. **[NOTE: Some state laws require that there be an officer with the title of "president" rather than "Chair."]**

Section 8. Secretary. The Secretary shall keep the minutes of the meetings of the Board of Directors; see that all notices are duly given in accordance with the provisions of these Bylaws, ensure staff members keep corporate records; and in general perform all duties incident to the office of Secretary and such other duties as may be assigned by the Board of Directors.

Section 9. Treasurer. The Treasurer shall be responsible for all funds of the Corporation. The Treasurer shall ensure staff members properly receive and give receipts for moneys due and payable to the Corporation and deposit all such moneys in the name of the Corporation in

appropriate banks, and in general perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the Board of Directors.

Section 10. Bonding. If requested by the Board of Directors, any person entrusted with the handling of funds or valuable property of the Corporation shall furnish, at the expense of the Corporation, a fidelity bond, approved by the Board of Directors.

## ARTICLE VI COMMITTEES

**[NOTE: It is not necessary to designate committees in the bylaws, nor is it prudent to create an excessive number of committees. The clauses below are examples only, and state law may dictate a different composition and different limitations of powers for some committees.]**

Section 1. Committees of Directors. The Board of Directors, by resolution adopted by a majority of the directors in office, may designate and appoint one or more committees, each consisting of two or more directors, which committees shall have and exercise the authority of the Board of Directors in the governance of the Corporation. However, no committee shall have the authority to amend or repeal these Bylaws; elect or remove any officer or director; adopt a plan of merger; or authorize the voluntary dissolution of the Corporation.

Section 2. Executive Committee. Between meetings of the Board of Directors, the day-to-day affairs of the Corporation may be conducted by an Executive Committee, the membership of which shall be as set forth in a resolution of the Board.

Section 3. Other Committees and Task Forces. The Board of Directors may create and appoint members to such other committees and task forces as they shall deem appropriate. Such committees and task forces shall have the power and duties designated by the Board of Directors, and shall give advice and make non-binding recommendations to the Board.

Section 4. Term of Office. Each member of a committee shall serve for one year until the next annual meeting of the Board of Directors and until a successor is appointed, unless the committee is sooner dissolved.

Section 5. Vacancies. Vacancies in the membership of committees may be filled by the Chair of the Board.

Section 6. Rules. Each committee and task force may adopt rules for its meetings not inconsistent with these Bylaws or with any rules adopted by the Board of Directors.

**ARTICLE VII  
MISCELLANEOUS PROVISIONS**

**[NOTE: It is not necessary to state the fiscal year in the bylaws, although many charities do so.]**

Section 1. Fiscal Year. The fiscal year of the Corporation shall be [the calendar year] [insert any other period].

Section 2. Notice. Whenever under the provisions of these Bylaws notice is required to be given to a director, officer or committee member, such notice shall be given in writing by first-class mail or overnight delivery service with postage prepaid to such person at his or her address as it appears on the records of the Corporation. Such notice shall be deemed to have been given when deposited in the mail or the delivery service. Notice may also be given by facsimile, electronic mail, or hand delivery, and will be deemed given when received. **[NOTE: Be sure to check state corporate law to see if facsimile and electronic mail are authorized means of giving notice.]**

**ARTICLE VIII  
INDEMNIFICATION**

Unless otherwise prohibited by law, the Corporation [may] [shall] indemnify any director or officer or any former director or officer, and may by resolution of the Board of Directors indemnify any employee, against any and all expenses and liabilities incurred by him or her in connection with any claim, action, suit, or proceeding to which he or she is made a party by reason of being a director, officer, or employee. However, there shall be no indemnification in relation to matters as to which he or she shall be adjudged to be guilty of a criminal offense or liable to the Corporation for damages arising out of his own gross negligence in the performance of a duty to the Corporation.

Amounts paid in indemnification of expenses and liabilities may include, but shall not be limited to, counsel fees and other fees; costs and disbursements; and judgments, fines, and penalties against, and amounts paid in settlement by, such director, officer, or employee. The Corporation may advance expenses or where appropriate may itself undertake the defense of any director, officer or employee. However, such director, officer, or employee shall repay such expenses if it should be ultimately determined that he or she is not entitled to indemnification under this Article.

The Board of Directors [shall] [may] also authorize the purchase of insurance on behalf of any director, officer, employee, or other agent against any liability incurred by him which arises out of such person's status as a director, officer, employee, or agent, whether or not the Corporation would have the power to indemnify the person against that liability under law.

**ARTICLE IX**  
**AMENDMENTS TO BYLAWS**

These Bylaws may be amended or new Bylaws adopted upon the affirmative vote of [a majority] [two-thirds] [three-fourths] of [a quorum of the Board of Directors] [all the directors then in office] at any regular or special meeting of the Board. The notice of the meeting shall set forth a summary of the proposed amendments.

**[NOTE: Careful thought should be given to major decisions, such as amending the bylaws or removing directors or merging with another entity. In the absence of specific language to the contrary, the requirement of a "two-thirds vote," for example, simply means that there must be the approval of two-thirds of a quorum in order for the measure to pass. Thus, depending upon the number of directors who show up for the meeting, it is possible for bylaws to be amended by a relatively small percentage of the total board members. If it is desired that major decisions receive the approval of a very large percentage of the directors, consider requiring a two-thirds or three-fourths vote of "all of the directors then in office."]**

**EXAMPLE 2: Basic bylaws for a nonprofit organization (such as a trade association or professional association) with formal voting membership.**

BYLAWS  
OF THE  
[insert name of association]

**ARTICLE I  
OFFICE AND REGISTERED AGENT**

Section 1. Principal Office. The principal office of the \_\_\_\_\_ shall be in the State of \_\_\_\_\_.

Section 2. Registered Office and Agent. The Corporation shall have and continuously maintain a registered office and a registered agent in the State of \_\_\_\_\_, as required by the State of \_\_\_\_\_ Nonprofit Corporation Act. The registered agent shall be either an individual resident of the State or a corporation authorized to transact business in the State.

**ARTICLE II  
PURPOSES**

The purposes for which the Corporation is formed are as set forth in the Articles of Incorporation. [NOTE: The purposes from the Articles of Incorporation may be reprinted here. However, it must be remembered that amending the purposes in the bylaws is not effective unless the purposes clause in the articles of incorporation is also amended. A "mission statement" interpreting and clarifying the purposes may be inserted here as well.]

**ARTICLE III  
MEMBERSHIP**

[NOTE: There are a wide variety of membership provisions that could be added to bylaws. In general, the bylaws should specify the categories of membership, which categories have voting power, what types of actions members are allowed to vote on, and how member meetings are called and votes are cast. The example below contains three very simple classes of members. The fine details of membership qualification, removal, payment of dues, etc. are often set forth in separate documents, rather than cluttering the bylaws.]

**Section 1. Classes and Qualifications.** The Board of Directors shall determine and set forth in separate documents the qualifications, dues, terms and other conditions of each class of member. There shall be the following classes of members:

a. **Individuals:** Individual members shall consist of those individuals [insert criteria] and who meet any additional requirements for individual membership as may be imposed by the Board of Directors from time to time.

b. **Corporate (or "Associate"):** Corporate members shall consist of any corporation that [insert criteria] and that meets any additional requirements for corporate membership as may be imposed by the Board of Directors from time to time.

c. **Honorary Members:** The Board of Directors may designate individuals who do not qualify under the foregoing categories as honorary members, using such criteria as the Board may develop.

**Section 2. Voting Rights.** Only individual members in good standing shall have the right to vote at the annual meeting of the members on those items specified in Section 3 below, as well as to vote on such other issues as the Board may choose to bring before the members. Other classes of members may attend meetings, but may not vote.

**Section 3. Membership Meetings.**

a. There shall be an annual meeting of the members upon such date, time and place as the Board shall determine. During the annual meeting, voting members shall have the right to vote on the following matters only: election of the Board of Directors and officers, approval of the annual budget proposed by the Board, approval of any amendments to the bylaws that may be proposed by the Board, and [insert any other voting rights here]. Voting on all other matters is expressly reserved for the Board of Directors.

b. Special meetings of the members may be called by the Chair of the Board or upon the request of \_\_\_% of the voting members. Members shall receive not less than \_\_\_ days prior written notice of special meetings. Notice shall be given in the manner specified in Section 2 of Article VII of these bylaws, and the notice shall state the purposes of the special meeting.

**Section 4. Quorum and Voting.** Each voting member in good standing shall have one vote at any meeting of the members. A quorum shall consist of \_\_\_% of the total voting members present either in person or by proxy. A majority of the votes cast at a meeting at which a quorum is present shall constitute the action of the members.

Section 5. Removal. Any member may be removed from membership by a [majority] [two-thirds] vote of the [Board of Directors] [other voting members] only for cause, which is defined as [insert grounds, such as failure to pay dues, etc.].

**[NOTE: Because calling a meeting of members is slow and cumbersome, many states allow members to vote by written ballot (which can sometimes include a ballot submitted electronically) in lieu of a meeting. If voting by written ballot is allowed by state law, it is definitely something that should be added to the bylaws to facilitate relatively quick decision-making for those items that are to be approved by dues-paying members. Set forth below is an example of how written ballot language might read, but state law should be consulted.]**

Section 6. Voting By Written Ballot. Any action which may be taken at any annual or special meeting of the members (including the election of officers and directors and the amendment of the bylaws) may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter. Voting by written ballot shall be permitted to the fullest extent allowed by law, and shall be conducted as follows:

- a. The ballot shall set forth each proposed action and shall provide an opportunity to vote either for or against each proposed action.
- b. The number of ballots received by the Corporation must equal or exceed the quorum that would have been required had their been a meeting (i.e., Corporation must receive a valid ballot from \_\_\_\_ percent or more of its voting members.)
- c. Unless otherwise indicated in these bylaws, a majority of the affirmative votes cast by ballot shall constitute the action of the members with respect to each matter on the ballot.
- d. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirement, state the percentage of approvals necessary to approve each matter, and specify the time by which a ballot must be received by the corporation in order to be counted.
- e. To the fullest extent allowed by state law, written ballots may be delivered to members and received from members by electronic mail.

#### ARTICLE IV BOARD OF DIRECTORS

Section 1. Powers. There shall be a Board of Directors of the Corporation, which shall supervise and control the business, property and affairs of the Corporation, except as otherwise expressly provided by law, the Articles of Incorporation of the Corporation, or these Bylaws.

Section 2. Number and Qualifications. The members of the initial Board of Directors of the Corporation shall be those individuals named in the Articles of Incorporation and shall serve until their successors are elected and qualified. Thereafter, the Board of Directors of the Corporation shall be composed of no less than \_\_\_\_\_ nor more than \_\_\_\_\_ individuals. The number of directors may be decreased, but no decrease shall have the effect of shortening the term of any incumbent director.

Section 3. Election and Term of Office. The members of the Board of Directors shall be elected by the voting members at the annual meeting of the members. Directors on the Board of Directors shall serve for a term of [one year].

Section 4. Resignation. Any director may resign at any time by giving written notice to the President of the Corporation. Such resignation shall take effect at the time specified therein, or, if no time is specified, at the time of acceptance thereof as determined by the President of the Corporation.

Section 5. Removal. Any director may be removed from such office, with or without cause, by a [majority] [two-thirds] [three-fourths] vote of the voting members at any regular or special meeting of the members called expressly for that purpose.

Section 6. Vacancies. Vacancies shall be filled by majority vote of the remaining members of the Board of Directors for the unexpired term.

Section 7. Regular Meetings. A regular annual meeting of the Board of Directors of the Corporation shall be held each year, at such time, day and place as shall be designated by the Board of Directors.

Section 8. Special Meetings. Special meetings of the Board of Directors may be called at the direction of the Chair or by a majority of the voting directors then in office, to be held at such time, day and place as shall be designated in the notice of the meeting.

Section 9. Notice. Notice of the time, day and place of any meeting of the Board of Directors shall be given at least \_\_\_\_ days previous to the meeting and in the manner set forth in Section 2 of Article VII. The purpose for which a special meeting is called shall be stated in the notice. Any director may waive notice of any meeting by a written statement executed either before or after the meeting. Attendance and participation at a meeting without objection to notice shall also constitute a waiver of notice.

Section 10. Quorum. A majority of the directors then in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors.

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Section 11. Manner of Acting. Except as otherwise expressly required by law, the Articles of Incorporation of the Corporation, or these Bylaws, the affirmative vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board of Directors. Each director shall have one vote. Voting by proxy shall not be permitted.

Section 12. Unanimous Written Consent In Lieu of a Meeting. The Board may take action without a meeting if written consent to the action is signed by all of the directors.

Section 13. Telephone Meeting. Any one or more directors may participate in a meeting of the Board of Directors by means of a conference telephone or similar telecommunications device which allows all persons participating in the meeting to hear each other. Participation by telephone shall be equivalent to presence in person at the meeting for purposes of determining if a quorum is present.

Section 14. Conflicts of Interest. **[NOTE: This clause is optional, but may be useful in helping the board handle situations where a director cannot be impartial due to a financial or other conflict of interest. Alternatively, the Board could simply adopt by resolution a Conflicts of Interest policy that is not part of the bylaws. An example of a policy that has been approved by the IRS is at Appendix A of the monograph.]**

(a) In the event any director has a conflict of interest which might properly limit such director's fair and impartial participation in Board deliberations or decisions, such director shall inform the Board as to the circumstances of such conflict. If those circumstances require the nonparticipation of the affected director, the Board may nonetheless request from the director any appropriate nonconfidential information which might inform its decisions. "Conflict of interest," as referred to herein, shall include, but shall not be limited to, any transaction by or with the Corporation in which a director has a direct or indirect personal interest, or any transaction in which a director is unable to exercise impartial judgment or otherwise act in the best interests of the Corporation.

(b) No director shall cast a vote, nor take part in the final deliberation in any matter in which he or she, members of his or her immediate family or any organization to which such director has allegiance, has a personal interest that may be seen as competing with the interest of the Corporation. Any director who believes he or she may have such a conflict-of-interest shall so notify the Board prior to deliberation on the matter in question, and the Board shall make the final determination as to whether any director has a conflict-of-interest in any matter. The minutes of the Board meeting shall reflect disclosure of any conflict-of-interest and the recusal of the interested director.

## ARTICLE V OFFICERS

Section 1. Officers. The officers of the Corporation, shall consist of a President, a Secretary, and a Treasurer. The Corporation shall have such other assistant officers as the Board of Directors may deem necessary, and such officers shall have the authority prescribed by the Board. One person may hold more than one office, other than the offices of President and Secretary.

Section 2. Election of Officers. The officers of the Corporation shall be elected by the voting members at the annual meeting of the members.

Section 3. Term of Office. The officers of the Corporation shall be installed at the annual meeting at which they are elected and shall hold office for [one] year until the next annual meeting or until their respective successors shall have been duly elected.

Section 4. Resignation. Any officer may resign at any time by giving written notice to the Chair of the Board. Such resignation shall take effect at the time specified in the notice, or if no time is specified, then immediately.

Section 5. Removal. Any officer may be removed from such office, with or without cause, by a [majority] [two-thirds] [three-fourths] vote of the voting members at any regular or special meeting of the members called expressly for that purpose.

Section 6. Vacancies. A vacancy in any office shall be filled by the Board of Directors for the unexpired term.

Section 7. Chair. The Chair shall give active direction and have control of the business and affairs of the Corporation. He or she may sign contracts or other instruments which the Board of Directors has authorized to be executed, and shall perform all duties incident to the office of Chair as may be prescribed by the Board of Directors. **[NOTE: Some state laws require that there be an officer with the title of "president" rather than "Chair."]**

Section 8. Secretary. The Secretary shall keep the minutes of the meetings of the Board of Directors; see that all notices are duly given in accordance with the provisions of these Bylaws, ensure staff members keep corporate records; and in general perform all duties incident to the office of Secretary and such other duties as may be assigned by the Board of Directors.

Section 9. Treasurer. The Treasurer shall be responsible for all funds of the Corporation. The Treasurer shall ensure staff members properly receive and give receipts for moneys due and payable to the Corporation and deposit all such moneys in the name of the Corporation in appropriate banks, and in general perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the Board of Directors.

Section 10. Bonding. If requested by the Board of Directors, any person entrusted with the handling of funds or valuable property of the Corporation shall furnish, at the expense of the Corporation, a fidelity bond, approved by the Board of Directors.

## ARTICLE VI COMMITTEES

**[NOTE: It is not necessary to designate committees in the bylaws, nor is it prudent to create an excessive number of committees. The clauses below are examples only, and state law may dictate a different composition and different limitations of powers for some committees.]**

Section 1. Committees of Directors. The Board of Directors, by resolution adopted by a majority of the directors in office, may designate and appoint one or more committees, each consisting of two or more directors, which committees shall have and exercise the authority of the Board of Directors in the governance of the Corporation. However, no committee shall have the authority to amend or repeal these Bylaws; elect or remove any officer or director; adopt a plan of merger; or authorize the voluntary dissolution of the Corporation.

Section 2. Executive Committee. Between meetings of the Board of Directors, the day-to-day affairs of the Corporation may be conducted by an Executive Committee, the membership of which shall be as [set forth in a resolution of the Board] [determined by the voting members].

Section 3. Other Committees and Task Forces. The Board of Directors may create and appoint members to such other committees and task forces as they shall deem appropriate. Such committees and task forces shall have the power and duties designated by the Board of Directors, and shall give advice and make non-binding recommendations to the Board.

Section 4. Term of Office. Each member of a committee shall serve for one year until the next annual meeting of the Board of Directors and until a successor is appointed, unless the committee is sooner dissolved.

Section 5. Vacancies. Vacancies in the membership of committees may be filled by the Chair of the Board.

Section 6. Rules. Each committee and task force may adopt rules for its meetings not inconsistent with these Bylaws or with any rules adopted by the Board of Directors.

## ARTICLE VII MISCELLANEOUS PROVISIONS

[NOTE: It is not necessary to state the fiscal year in the bylaws, although many charities do so.]

Section 1. Fiscal Year. The fiscal year of the Corporation shall be [the calendar year] [insert any other period].

Section 2. Notice. Whenever under the provisions of these Bylaws notice is required to be given to a director, officer or committee member, such notice shall be given in writing by first-class mail or overnight delivery service with postage prepaid to such person at his or her address as it appears on the records of the Corporation. Such notice shall be deemed to have been given when deposited in the mail or the delivery service. Notice may also be given by facsimile, electronic mail, or hand delivery, and will be deemed given when received. [NOTE: Be sure to check state corporate law to see if facsimile and electronic mail are authorized means of giving notice.]

## ARTICLE VIII INDEMNIFICATION

Unless otherwise prohibited by law, the Corporation [may] [shall] indemnify any director or officer or any former director or officer, and may by resolution of the Board of Directors indemnify any employee, against any and all expenses and liabilities incurred by him or her in connection with any claim, action, suit, or proceeding to which he or she is made a party by reason of being a director, officer, or employee. However, there shall be no indemnification in relation to matters as to which he or she shall be adjudged to be guilty of a criminal offense or liable to the Corporation for damages arising out of his own gross negligence in the performance of a duty to the Corporation.

Amounts paid in indemnification of expenses and liabilities may include, but shall not be limited to, counsel fees and other fees; costs and disbursements; and judgments, fines, and penalties against, and amounts paid in settlement by, such director, officer, or employee. The Corporation may advance expenses or where appropriate may itself undertake the defense of any director, officer or employee. However, such director, officer, or employee shall repay such expenses if it should be ultimately determined that he or she is not entitled to indemnification under this Article.

The Board of Directors [shall] [may] also authorize the purchase of insurance on behalf of any director, officer, employee, or other agent against any liability incurred by him which arises out of such person's status as a director, officer, employee, or agent, whether or not the Corporation would have the power to indemnify the person against that liability under law.

## ARTICLE IX

## AMENDMENTS TO BYLAWS

These Bylaws may be amended or new Bylaws adopted upon the affirmative vote of [a majority] [two-thirds] [three-fourths] of the voting members at any regular or special meeting of the members. The notice of the meeting shall set forth a summary of the proposed amendments. **[NOTE: Careful thought should be given to major decisions, such as amending the bylaws or removing directors or merging with another entity. In the absence of specific language to the contrary, the requirement of a "two-thirds vote," for example, simply means that there must be the approval of two-thirds of a quorum in order for the measure to pass. Thus, depending upon the number of members who vote at a meeting in person or by proxy, it is possible for bylaws to be amended by a relatively small percentage of the total voting membership. If it is desired that major decisions receive the approval of a very large percentage of the voting members, consider requiring a two-thirds or three-fourths vote of "all of the votes entitled to be cast by the members."]**

### **EXAMPLE 3: Basic bylaws for a controlled nonprofit subsidiary organization (such as a charitable supporting organization).**

**NOTE:** There are a number of ways to control a nonprofit subsidiary, but one technique that works well is to have the "parent" nonprofit entity designated as the "sole member" of the subsidiary and then give the sole member the right to elect and remove the officers and directors and the right to amend the bylaws. By controlling the membership of the subsidiary board and any changes to the bylaws, the parent entity effectively controls the subsidiary. For simplicity, the subsidiary bylaws are not set forth in their entirety below. Instead, only those portions that differ from EXAMPLE 2 above are set forth below.]

#### **Article III** **MEMBERSHIP**

**Section 1. Identity and Powers of Sole Member.** The sole member of the Corporation shall be [insert name of Parent entity] (hereinafter the "Sole Member"). The Sole Member shall have the right to vote on those matters granted to members by the state Nonprofit Corporation Act, as well as any matters specified in these Bylaws, specifically including the following:

- A. The election and removal of all directors on the Board of Directors;
- B. The election and removal of all officers of the Corporation;
- C. The adoption, amendment and/or repeal of any provision of the Articles of Incorporation and these Bylaws;
- D. At its option, the adoption or ratification of the Corporation's capital budget, operating budget, mission statement, and strategic plan.

**Section 2. Manner of Acting.** The Sole Member may act through its Board of Directors, or between meetings of the Board, through its Executive Committee. Whenever possible, the President of the Sole Member shall communicate to this Corporation's Board of Directors in writing the decisions of the Sole Member.

#### **ARTICLE IV** **BOARD OF DIRECTORS**

**Section 5. Removal.** Any director may be removed from such office, with or without cause, by a [majority] [two-thirds] [three-fourths] vote of the Sole Member at any regular or special meeting of the Sole Member called expressly for that purpose.

**ARTICLE V  
OFFICERS**

Section 5. Removal. Any officer may be removed from such office, with or without cause, by a [majority] [two-thirds] [three-fourths] vote of the Sole Member at any regular or special meeting of the Sole Member called expressly for that purpose.

**ARTICLE IX  
AMENDMENTS TO BYLAWS**

These Bylaws may be amended or new Bylaws adopted upon the affirmative vote of [a majority] [two-thirds] [three-fourths] of the board of the Sole Member. This Corporation's board may also propose bylaws amendments, but all such proposals must be approved by the Sole Member.

# **EXHIBIT E**

# When Life Gives You Lemons

“Into each life some rain must fall,” or so the saying goes. Committee chairs get indicted. Sprinkler systems malfunction. Accounting clerks embezzle. Officers going MIA. Members peddle raffle tickets for their church at a CLE event. The president utters the phrase, “In my opinion the judge is wrong” live and on camera. Staff members party a little too hard at the Young Lawyer Section Happy Hours. The president-elect is incapacitated in an automobile accident. A key, beloved member of the staff is diagnosed with a terminal illness. A board member is stopped on a DUI after a bar event. We can’t have policies for every contingency of human action and reaction however, we can use the resources at hand and learn from experience.

These reminders will help you to make lemonade when bar work hands you lemons . . .

Depending on the situation look to these resources.

- . . . **Take** a deep, long cleansing breath and don’t panic. And, make Greek Lemon Soup.
- . . . **Look** at the bylaws and make lemon meringue pie.
- . . . **Read** your board and personnel policy and procedure manuals (an index with the date of adoption comes in handy) and make a lemon soufflé.
- . . . **Phone** a colleague—that includes the Bar Services staff—and make lemon squares.
- . . . **Put** a member between yourself and the leader; a trusted past president can be of great insight and support. And, make lemon pound cake.
- . . . **Trigger** your crisis communications plan (you have one don’t you?) and make lemon vinaigrette.
- . . . **Call** a lawyer. Seriously, who is your counsel? And make Limoncello.
- . . . **Communicate** with the staff, be as transparent as possible under the circumstances and make lemon ricotta pancakes.
- . . . **Debrief** once the crisis has passed —ask “what did we learn?,” “were our policies sufficient,” and “what could we have done differently”— and make grilled lemon chicken.
- . . . **Don’t** let your head rule your heart and vice-versa. And, make lemon linguine.
- . . . **Know** that this too shall pass and make a lemon drop.

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