

# **CONSTITUTION, BY-LAWS AND RULES AND REGULATIONS OF THE WEST VIRGINIA STATE BAR**

## **CONSTITUTION**

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# **CONSTITUTION**

## **ARTICLE I. NAME AND LOCATION OF OFFICE**

This agency of the supreme court of appeals of West Virginia shall be known as "The West Virginia State Bar." Its principal office shall be maintained in the capitol of the State of West Virginia, or at such other place as may be designated by the board of governors.

## **ARTICLE II. OBJECTS AND PURPOSES**

The objects of the West Virginia State Bar shall be to protect the interests of the public; to advance the administration of justice and the science of jurisprudence; to improve the relations between the public and the bench and the bar; to uphold and elevate the standards of honor, integrity, competency and courtesy in the legal profession; and to encourage cordial relations among its members.

It is the purpose of the West Virginia State Bar to give effect to pertinent rules of the supreme court of appeals of West Virginia, and to perform the functions expressed in this constitution and by-laws.

## **ARTICLE III. MEMBERSHIP**

The membership of the West Virginia State Bar shall consist of all persons lawfully admitted to the practice of the law in the State of West Virginia. No person shall practice law in the State of West Virginia unless he or she is an active member in good standing of the West Virginia State Bar.

## **ARTICLE IV. GOVERNMENT: BOARD OF GOVERNORS: OFFICERS AND COMMITTEES**

The West Virginia State Bar shall be governed by a board of governors. There shall be a lawyer disciplinary board and a committee on unlawful practice. There shall also be for each state bar district created by the by-laws a committee on grievances. Such board shall select a president, a president-elect, a vice president, a executive director, and the members of said committees. Such board may from time to time create, alter and terminate other offices and committees, with such powers, authority and duties as it may deem proper. All officers, except the executive director and administrative assistants, and the members of such committees shall be selected either from the membership of such board or from the West Virginia State Bar.

## **ARTICLE V. MEETINGS**

The members of the West Virginia State Bar shall convene in one general meeting each year except for the year 1977, which shall be known as the annual meeting, and in such special meetings as shall be called by the board of governors. Such meetings shall be held at times and places fixed by said board. The members present at an annual or a special meeting shall constitute a quorum.

## **ARTICLE VI. AMENDMENTS**

Subject to the approval of the supreme court of appeals of West Virginia, this constitution may be altered or amended at any annual meeting on recommendation of the board of governors by vote of a majority of the members present or, without such recommendation, by vote of two thirds of the members present.

# BY-LAWS

## ARTICLE I. DEFINITIONS

**§ 1. Definitions.** In these by-laws unless the context or subject matter otherwise requires:

"State bar" means the West Virginia State Bar;

"Board" and "board of governors" mean the board of governors of the West Virginia State Bar;

"Governor" means a governor of the West Virginia State Bar;

"Member" means a member of the West Virginia State Bar;

"Executive director" means the executive director of the West Virginia State Bar; and

The singular shall include the plural, and vice versa.

## ARTICLE II. MEMBERS

**§ 1. Classes of Membership.** The membership of the state bar shall be divided into three classes: (a) Active members; (b) active but not practicing members; and (c) inactive members.

In addition, the board may from time to time establish, alter and terminate such classes of contributing and sustaining members, composed of active and/or inactive members, as it may deem advisable, but no member of any such class shall by reason of such membership acquire or have any rights or privileges other than those of a member in good standing, active or inactive, whichever he or she may be.

**§ 2. Register and Enrollment of Members.** The executive director shall keep a register for the enrollment of members of the state bar. Each member shall enroll by signing and filing with the executive director a registration form containing such information as may be prescribed by the board.

**§ 3. Active Membership.** An active member in good standing shall be a person lawfully admitted to the practice of the law in the State of West Virginia, who is lawfully engaged in the practice of the law in this State, who is enrolled as an active member, who is not under suspension, and who shall each year duly pay the annual active membership fee to the state bar.

**§ 4. Enrollment as an Inactive Member.** Any member of the state bar not under suspension, who does not desire to engage in the practice of law in this State, may, upon written request to the executive director, be enrolled as an inactive member, so long as such member shall each year duly pay the annual inactive membership fee to the state bar. Every judge of a court of record of this State shall be enrolled as an inactive member during his or her continuance in such office, but shall not be required to pay the annual inactive membership fee to the state bar. A member of the faculty of the College of Law, West Virginia University who has not engaged in the practice of law in this State may be enrolled as an inactive member. No member of the state bar practicing law in this State, or occupying a position in the employ of or rendering any legal service for an active member, or occupying a position wherein he or she is called upon to or does give legal advice or counselor examine the law or pass upon the legal effect of any law, transaction, instrument (whether or not of record), or state of facts, except judges of courts of record, shall be enrolled as an inactive member.

**§ 5. Transfer From Inactive to Active Membership.** Any inactive member not under suspension may be enrolled as an active member upon written request to the executive director. Upon the filing of such request, and the payment of any unpaid fees and penalties for prior years and the full annual active membership fee for the current fiscal year, less any membership fee paid by the member as an inactive member for the current fiscal year, and upon a showing that the member is in compliance with the pertinent mandatory CLE rules and regulations, the member shall be immediately transferred from the inactive roll to the active.

**§ 6. Privileges of Inactive Members.** An inactive member shall not practice law, vote in any meeting, election or referendum of the state bar, or hold office in the state bar. He or she may attend meetings of the state bar, participate in the debates of such meetings, and be appointed upon a special committee but not upon a standing or administrative committee. He or she shall be entitled to receive the official publication of the state bar and such notices and publications as are mailed to the active members upon the payment of an annual fee fixed by the board, not in excess of the active membership fee.

**§ 7. Enrollment as an Active but Not Practicing Member.** Any member of the state bar not under suspension, who does not desire to engage in the practice of law in this State, may, upon written request to the executive director, be enrolled as an active but not practicing member. No member of the state bar practicing law in this State, or occupying a position in the employ of or rendering any legal service for an active member, or occupying a position wherein he or she is called upon to or does give legal advice or counselor examine the law or pass upon the legal effect of any law, transaction, instrument (whether or not of record), or state of facts, except judges of courts of record, shall be enrolled as an active but not practicing member.

**§ 8. Transfer From Active but Not Practicing to Active Memberships.** Any active but not practicing member not under suspension may be enrolled as an active member upon written request to the executive director, and upon a showing that the member has complied with pertinent mandatory CLE rules and regulations. Upon such request and showing, the member shall be immediately transferred to the active roll.

**§ 9. Privileges of Active but Not Practicing Members.** Any active but not practicing member shall not practice law, but may vote in any meeting, election or referendum of the state bar and hold office in the state bar. With the exception of the right to practice, an active but not practicing member shall enjoy the same rights and responsibilities as an active member. An active but not practicing member shall not be required to comply with mandatory continuing legal education rules and regulations.

**§ 10. Attorneys Licensed in Other Jurisdictions; Right to Appear** [Abrogated].

**§ 11. Emeritus Attorneys' Pro Bono Participation Program**

**(a) Purpose.** Individuals admitted to the practice of law in West Virginia have a responsibility to provide competent legal services for all persons, including those unable to pay for such services. As one means of meeting these legal needs, the following rule establishing the Emeritus Attorneys' Pro Bono Participation Program is adopted.

**(b) Definitions.**

(1) "The active practice of law" means that an attorney has been engaged in the practice of law, which includes, but is not limited to, private practice, house counsel, public employment or academic employment.

(2) An "emeritus attorney" is any active but not practicing member of the West Virginia state bar, any inactive member of the West Virginia state bar, or any person, retired from

the active practice of law, who has been admitted to practice before the highest court of any other state or territory of the United States of America or the District of Columbia, and

A. Has engaged in the active practice of law for a minimum of ten years at any time prior to applying to participate in the emeritus program; and

B. Has been a member in good standing of the State Bar of West Virginia or the entity governing the practice of law of any other state, territory, or the District of Columbia and has not been disciplined for professional misconduct by the bar or courts of any jurisdiction within the past fifteen years; and

C. Agrees to abide by the Rules of Professional Conduct and submit to the jurisdiction of the Supreme Court of West Virginia for disciplinary purposes; and

D. Neither asks for nor receives compensation of any kind for the legal services to be rendered hereunder; and

E. Is certified under paragraph (e) hereof.

(3) An "approved legal assistance organization" for the purposes of this article is a not-for-profit organization offering legal services to lower income individuals in West Virginia.

(4) A "supervising attorney" as used herein is an active member of the State Bar of West Virginia who directs and supervises an emeritus attorney engaged in activities permitted by this article. The supervising attorney must:

A. Be employed by or be a participating volunteer for an approved legal assistance organization; and

B. Assume personal professional responsibility for supervising the conduct of the litigation, administrative proceeding or other legal services in which the emeritus attorney participates.

C. Assist the emeritus attorney in his preparation to the extent that the supervisory attorney considers it necessary.

**(e) Activities.**

(1) An emeritus attorney, in association with an approved legal assistance organization and under the supervision of a supervising attorney, may perform the following activities:

A. The emeritus attorney may appear in any court or before any administrative tribunal in this state on behalf of a client of an approved legal assistance organization if the person on whose behalf the emeritus attorney is appearing has consented in writing to that appearance and a supervising attorney has given written approval for that appearance. The written consent and approval shall be filed in the record of each case and shall be brought to the attention of a judge of the court or the presiding officer of the administrative tribunal.

B. The emeritus attorney may prepare pleadings and other documents to be filed in any court or before any administrative tribunal or arbitrator in this state in any matter in which the emeritus attorney is involved. Such pleadings also shall be signed by the supervising attorney.

C. The emeritus attorney may render legal advice and perform other appropriate legal services unless the supervising lawyer directs otherwise, either generally or on an ad hoc basis.

D. The emeritus attorney may engage in such other preparatory activities as are necessary for any matter in which he or she is involved.

(2) The presiding judge or hearing officer may, in his or her discretion, determine the extent of the emeritus attorney's participation in any proceeding.

**(d) Supervision and Limitations.**

(1) An emeritus attorney must perform all activities authorized by this article under the supervision of a supervising attorney.

(2) Emeritus attorneys permitted to perform services under this article are not, and shall not represent themselves to be, active members of the State Bar of West Virginia licensed to practice law in this state.

(3) The prohibition against compensation for the emeritus attorney contained in paragraph (b)(2)D shall not prevent the approved legal assistance organization from reimbursing the emeritus attorney for actual expenses incurred while rendering services hereunder nor shall it prevent the approved legal assistance organization from making such charges for its services as it may otherwise properly charge. The approved legal assistance organization shall be entitled to receive all court-awarded attorneys' fees for any representation rendered by the emeritus attorney.

(e) Certification. Permission for an emeritus attorney to perform services under this article shall become effective upon filing with and approval by the clerk of the Supreme Court of Appeals of West Virginia and the State Bar of West Virginia of:

(1) A certificate by an approved legal assistance organization stating that the emeritus attorney is currently associated with that legal assistance organization and that an attorney employed by or participating as a volunteer with that organization will assume the duties of the supervising attorney required hereunder;

(2) A certification from the highest court or agency in the state, territory, or district in which the emeritus attorney previously has been licensed to practice law, certifying that the emeritus attorney has fulfilled the requirements of active bar membership and has a clear disciplinary record as required by paragraph (b)(2)B hereof; and

(3) A sworn statement by the emeritus attorney that he or she:

A. Has read and is familiar with the Rules of Professional Conduct and the Rules of the Supreme Court of West Virginia and statutes of the State of West Virginia relating to the conduct of lawyers, and will abide by the provisions thereof; and

B. Submits to the jurisdiction of the Supreme Court of West Virginia for disciplinary purposes, as defined by the Rules of Professional Conduct.

C. Will neither ask for nor receive compensation of any kind for the legal services authorized hereunder.

**(f) Withdrawal of Certification.**

(1) Permission to perform services under this article shall cease immediately upon the filing with the Clerk of the Supreme Court of West Virginia and the State Bar of West Virginia of a notice either:



A. By the approved legal assistance organization stating that:

i. The emeritus attorney has ceased to be associated with the organization, which notice must be filed within five days after such association has ceased; or

ii. That certification of such attorney is withdrawn. An approved legal assistance organization may withdraw certification at any time, and it is not necessary that the notice state the cause for such withdrawal. A copy of the notice filed with the Clerk of the Supreme Court of West Virginia and with the State Bar of West Virginia and shall be mailed by the organization to the emeritus attorney concerned.

B. By the Supreme Court of West Virginia, in its discretion, at any time, stating that permission to perform services under this article has been revoked. A copy of such notice shall be delivered by the Clerk of the Supreme Court of West Virginia to the emeritus attorney involved and to the approved legal assistance organization to which he or she had been certified and to the State Bar of West Virginia.

(2) If an emeritus attorney's certification is withdrawn for any reason, the supervising attorney shall immediately file a notice of such action before any court or tribunal in which the emeritus attorney was involved.

**(g) Discipline.** The emeritus attorney shall be bound by the West Virginia Rules of Professional Conduct and subject to discipline under the West Virginia Rules of Lawyer Disciplinary Procedure.

**(h) Mandatory Continuing Legal Education.** Emeritus attorneys certified under paragraph (e) hereof shall be exempt from the requirements of Mandatory Continuing Legal Education and from the payment of any bar membership dues or fees.

### **ARTICLE III. ACTIVE MEMBERSHIP FEES**

**§ 1. Amount.** The annual membership fees for members shall be fixed by the board. Any time the board shall desire to increase the annual membership fee, it shall choose either of the two following procedures:

1. Approval by two-thirds (71) of the entire authorized board.
2. The submission of the proposed increase to all the active members, by mail, with a majority of the members being required to vote in favor of the proposed increase.

The board may put such increased fees into effect upon securing the approval of the supreme court of appeals.

The annual membership fee for active members shall be as follows:

Less than one year	\$ 100
One to three years	\$ 200
Over three years	\$ 250
Inactive members	\$ 100

The fee for an active but not practicing member shall be the same as the fee for an active member.

Any active member first admitted to practice after the 2nd day of July and before the 1st day of May of a fiscal year shall pay an active membership fee of fifty dollars (\$50.00) for said fiscal year in which admission takes place. The next active membership fee for any such member shall be considered the first annual membership fee payment.

Any active member admitted to practice in accordance with the Rule 4.0 of the supreme court of appeals respecting Admission of Attorneys From Other States shall be considered an active member who has made four or more annual membership fee payments, but if any such member is first admitted to practice after December 31st and before June 30 of the fiscal year shall be an active membership fee of seventy-five dollars (\$75.00) for said fiscal year in which admission takes place.

## **§ 2. Payment.**

(a) Each member shall pay the applicable fee to the executive director on or before the 1st day of July of each year for the ensuing fiscal year.

(b) Any person first admitted to practice law after the 1st day of May of any year shall not be liable for the payment of membership fees until the 1st day of the next July, but such person shall nevertheless register as an active member before engaging in the practice of law.

(c) A member of the state bar who is suspended during the entire fiscal year as a result of disciplinary proceedings shall not be required to pay the annual membership fee for that year. Upon the expiration of any suspension resulting from disciplinary proceedings, a member of the state bar shall be required to pay full membership fees for the current year before reinstatement as an active member.

(d) The board may waive the payment of annual membership fees of members engaged in the active military service of the United States.

(e) No part of any annual active or inactive membership fee shall be refunded by reason of death, resignation, entering office as judge of a court of record, removal from the State, suspension, or disbarment, or for any other reason.

(f) Judges are not required to, but may voluntarily, pay active membership fees.

**§ 3. Penalty for Nonpayment of Membership Fees.** On the 1st day of September of each year, a penalty of \$25.00 shall be added to all delinquent active membership fees. On or after this date, the executive director shall notify all members in default in the payment of membership fees of their delinquency and that the penalty has attached. Such notice may be given by United States mail, addressed to such member at his or her last known post-office address.

**§ 4. Suspension for Nonpayment of Membership Fees.** If an active member remains in default for sixty days after the date of mailing the notice provided by the preceding section [3J], he or she shall be automatically suspended from active membership in the state bar and shall not further engage in the practice of law until he or she has been reinstated. The executive director shall give notice of such suspension to the judges of the courts of record of the judicial circuit in which such delinquent member principally practices, the clerk of the supreme court of appeals and such other courts, clerks, tribunals or bodies-judicial, administrative or executive-as the board of governors may designate, and it shall be the duty of said judges, courts, clerks, tribunals, and bodies as are so notified to refuse and deny to such member the privilege of appearing and practicing in said courts, tribunals, and bodies until such time as such member shall have been reinstated as an active member. Written notice of such suspension shall be given to such suspended member and service thereof shall be complete upon mailing the same addressed to such suspended member at his or her last address appearing upon the records of the state bar. It is the duty of every member of the state bar to keep informed relative to the payment of his or her dues, and failure to receive notice of nonpayment or of suspension shall not affect the operation of such suspension.

**§ 5. Reinstatement of Members Suspended for Nonpayment of Membership Fees.** Whenever a member suspended solely for nonpayment of membership fees shall have paid all accrued fees and penalties, and shall have shown that the member is in compliance with the pertinent CLE rules and requirements, he or she shall be automatically reinstated and the executive director shall thereupon give notice thereof to the judges, courts, tribunals, clerks, and bodies to which notice has been given of the suspension of such member for the nonpayment of membership fees. In addition to the twenty-five dollars (\$25.00) penalty authorized by Article 3, Section III, a penalty of seventy-five dollars (\$75.00) shall be added to the fees owed by all members who are suspended for the non-payment of membership fees.

#### **ARTICLE III(A). FINANCIAL RESPONSIBILITY DISCLOSURE**

**§ 1. Purpose.** The purpose of this By-Law is to require disclosure about the financial responsibility for professional liability claims of each active lawyer admitted to practice law in West Virginia. Each lawyer, upon admission to practice law in West Virginia, and with each subsequent annual membership dues payment, shall submit the disclosure required by this By-Law.

**§ 2. Disclosure.** Every active lawyer shall disclose to the West Virginia State Bar on or before September 1 of each year: (1) whether the lawyer is engaged in the private practice of law; (2) if so engaged, whether the lawyer is currently covered by professional liability insurance with limits of not less than \$100,000 per claim and \$300,000 policy aggregate covering generally insurable acts, errors and omissions occurring in the practice of law, other than an extended reporting endorsement; (3) if the lawyer is so engaged and not covered by professional liability insurance in the above minimum amounts, whether the lawyer has another form of adequate financial responsibility which means funds, in an amount not less than \$100,000, available to satisfy any liability of the lawyer arising from acts or omissions by the lawyer or other persons employed or otherwise retained by the lawyer and that these funds shall be available in the form of a deposit in a financial institution of cash, bank certificate of deposit or United States Treasury obligation, a bank letter of credit or a surety or insurance company bond and describing same with reasonable particularity; (4) whether there is any unsatisfied final judgment(s) after appeal against either the lawyer, or any firm or any professional corporation in which the lawyer has practiced, for acts, errors or omissions, including, but not limited to, acts of dishonesty, fraud or intentional wrongdoing, arising out of the performance of legal services by the lawyer, including the date, amount and court where the judgements(s) rendered; and (5) whether the lawyer is exempt from the provisions of this Rule because the lawyer is engaged in the practice of law as a full-time government lawyer or in-house counsel and does not represent clients outside that capacity. It is the duty of every active lawyer to report any changes which occur.

**§ 3. Form and Availability to Public.** The foregoing shall be certified by each active lawyer admitted to practice law in West Virginia on the State Bar's Active Membership Fee Notice and shall be made available to the public by such means as may be designated by the West Virginia State Bar.

**§ 4. Non-Compliance.** After the first day of September of each year, a penalty of \$25 shall be assessed to any active lawyer who has not complied with this By-Law. On or after this date, the Executive Director shall notify all members in non-compliance of their delinquency and that the penalty has attached. Such notice shall be given by United States mail addressed to such member at his or her last known post office address.

**§ 5. Suspension For Non-Disclosure.** If an active member fails to disclose by sixty days after the date of mailing the notice provided in the preceding Section (4), he or she shall be automatically suspended from active membership in the State Bar and shall not further engage in the practice of law until he or she has been reinstated. The Executive Director shall give notice of such suspension to the judges of the courts of record of the judicial circuit in which such non-compliant member principally practices, the Clerk of the Supreme Court of Appeals and such other courts, clerks, tribunals or bodies-judicial, administrative or executive-as the Board of Governors may designate, and it shall be the duty of said judges, courts, clerks, tribunals and bodies as are so notified to refuse and deny to such member the privilege of appearing and practicing in said courts, tribunals and bodies until such time as such member shall have been reinstated as an active member. Written notice of such suspension shall be given to such non-compliant member and

service thereof shall be completed upon mailing the same addressed to such non-compliant member at his or her last address appearing upon the records of the State Bar.

**§ 6. Reinstatement of Members Suspended for Non-Compliance With Disclosure.**

Whenever a member suspended solely for non-compliance with disclosure shall have paid all penalties and shall have shown that the member is in compliance with the disclosure requirements and pertinent CLE rules and requirements, he or she shall be automatically reinstated and the Executive Director shall thereupon give notice thereof to the judges, courts, clerks, tribunals and bodies to which notice has been given of the suspension of such member for the non-compliance with disclosure. In addition to the \$25 penalty authorized by Article III (A) Section 4, a penalty of \$75 shall be added to the fees owed by all members who are suspended for the non-compliance with disclosure.

**ARTICLE IV. BOARD OF GOVERNORS**

**§ 1. Powers and Duties.** The powers of the state bar shall be exercised by the board of governors.

The board shall have general charge of the administration of the affairs of the state bar and it shall diligently and vigilantly formulate such policies and do such things as and when in its judgment may be necessary and proper for the accomplishment of the objects and purposes of the state bar.

The board may establish, and may combine and terminate, standing, administrative and special committees as it may deem advisable, and may vest in and delegate to such committees such of its jurisdiction, functions, powers and authority as it may deem proper. Such committees may be composed of its own members or of members of the state bar. The members of such committees shall hold office at the pleasure of the board.

The board may establish, and may combine and terminate, sections of the state bar, and may establish foundations and special funds for the furtherance of the objects and purposes of the state bar and receive contributions to such foundations and special funds from members and others.

The board may promulgate, and may amend and revoke, rules and regulations for the transaction of its business, for the procedure in meetings of members of the state bar, for the procedure and reports of committees and sections, and for the general administrative conduct of the state bar.

The board shall fix salaries and provide for the payment thereof and of other necessary expenses of the state bar. It shall cause proper books of account to be kept, have them audited at least annually, and have presented to each annual meeting a statement of the receipts and expenditures of the state bar.

The enumeration above and elsewhere in these by-laws of particular powers or duties of the board, or of officers or committees, shall not be deemed to imply any denial of, or any restriction or limitation upon, the general and plenary powers of the board to govern and administer the state bar and to exercise all its powers.

**§ 2. Membership.** The Board of Governors shall consist of 24 members as follows:

- (a) The president; president-elect, vice-president;
- (b) [Deleted];
- (c) One governor from each of the state bar districts herein established;
- (d) The Chairperson of the Young Lawyers Section;
- (e) One African-American lawyer elected by the method described herein; and
- (f) Three additional governors from district 8.

**§ 3. Election and Term.** In the year 1951, an election shall be conducted for governors in all the state bar districts, for terms as follows:

- (a) One member each from state bar districts 1, 2, 3, 4 and 5 for a term of one year;
- (b) One member each from state bar districts 6, 7, 8, 9 and 10 for a term of two years; and,
- (c) One member each from state bar districts 11, 12, 13, 14, 15 and 16 for a term of three years.

In each year thereafter except for the year 1977, governors shall be elected, each for three-year terms, from the state bar districts in which vacancies occur in that year by reason of the expiration of the term of office of a governor theretofore elected. No governor who has served three years shall be eligible to succeed himself or herself.

Three additional governors shall be elected from district 8 in the manner described in this paragraph. In each of the years 1985 and 1986, one governor shall be elected from district 8, and each governor so elected shall serve until the conclusion of the 1987 annual meeting. In 1987, and each third year thereafter, three governors shall be elected from district 8, and each governor so elected shall serve a three-year term, serving until the conclusion of the annual meeting three years hence. No governor who has served three successive years shall be eligible to succeed himself or herself. The procedures described in this paragraph shall not affect the election of a governor from district 8 as described in subsection (b) above.

In any year in which there is more than one office to fill in the same district, those voting shall be entitled to vote for as many candidates as the number of positions to be filled. All such candidates shall run at large.

The term of office of each governor shall commence at the conclusion of the annual meeting next succeeding his or her election, and he or she shall hold office until his or her successor is elected and qualified. Assuming that it is not possible for the first additional district 8 governor to take office at the conclusion of the 1985 annual meeting, that governor shall take office as soon as he or she is elected and qualified, and shall serve until the conclusion of the 1987 annual meeting. The election for this district 8 governor shall be conducted in accordance with Article IV, Section 7 of these By-Laws. The governor so elected shall not be eligible to succeed himself or herself.

**§ 4. State Bar Districts.** For the purpose of election of governors, the State is divided into state bar districts as follows:

- (a) State bar district no. 1: Brooke, Hancock and Ohio counties.
- (b) State bar district no. 2: Marshall, Pleasants, Tyler and Wetzel counties.
- (c) State bar district no. 3: Calhoun, Gilmer, Ritchie, Wirt and Wood counties.
- (d) State bar district no. 4: Clay, Jackson, Mason, Putnam and Roane counties.
- (e) State bar district no. 5: Cabell and Wayne counties.
- (f) State bar district no. 6: McDowell and Mingo counties.
- (g) State bar district no. 7: Boone, Lincoln and Logan counties.
- (h) State bar district no. 8: Kanawha County.
- (i) State bar district no. 9: Raleigh and Wyoming counties.
- (j) State bar district no. 10: Mercer, Monroe and Summers counties.
- (k) State bar district no. 11: Fayette, Greenbrier and Nicholas counties.
- (l) State bar district no. 12: Braxton, Pendleton, Pocahontas, Randolph, Upshur and Webster counties.
- (m) State bar district no. 13: Doddridge, Harrison and Lewis counties.
- (n) State bar district no. 14: Marion and Monongalia counties.
- (o) State bar district no. 15: Barbour, Preston, Taylor and Tucker counties.
- (p) State bar district no. 16: Berkeley, Grant, Hampshire, Hardy, Jefferson, Mineral and Morgan counties.

**§ 5. Governors.** A governor shall have his or her principal office for the practice of the law in the state bar district which he or she represents, and his or her removal thereof from such district shall forthwith terminate his or her governorship. A governor shall be an active member of the state bar in good standing, and his or her loss of that status in any manner shall forthwith terminate his or her governorship.

**§ 6. Nomination of Governors.** Nomination for the office of governor shall be by written petition signed by not less than ten members of the bar in the district where such nominee has his or her office, except that where there are fewer than ninety members in such district, the signatures of ten percent of the members shall be sufficient. No member shall sign more than one nominating petition in any year. If in any year the executive director does not receive within the time fixed by the board, from any state bar district for which a governor is to be elected in that year, a petition nominating an eligible person for governor, the president shall appoint a committee from the board, and that committee shall nominate at least two eligible persons.

**§ 7. Election of Governors.** Each governor shall be elected by a secret mail vote of the active members of the state bar having their principal offices for the practice of the law in the state bar district in question. Such elections shall be conducted and canvassed, and any tie votes determined by lot, in accordance with such rules and regulations as the board may promulgate from time to time. In every such election the ballots shall be returned to the clerk of the supreme court of appeals and remain in his or her custody until canvassed.

**§ 8. Vacancies; Removals.** 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.

**§ 9. Meetings; Quorum.** The board may meet at any place in the State of West Virginia. The board shall meet on the day preceding the opening day of each annual meeting, and shall meet immediately following the adjournment of each annual meeting. The president may call other meetings of the board. Upon written request of five governors the president or the executive director shall within five days hereafter call a meeting of the board. Attendance at and participation in any such meeting by means of conference telephone or similar electronic communications equipment by which all persons participating in the meeting can hear and speak to each other is expressly permitted.

One half of the membership of the board shall constitute a quorum of the board. Members of the board shall be considered present at a meeting if they attend in person or by means of conference telephone or other electronic communications equipment as permitted in the previous paragraph.

**§ 10. Election of a African-American Lawyer to the Board of Governors.** Beginning the year 1985, an African-American lawyer will be elected by African-American lawyers to serve a 3 year term on the board of governors. In order to identify African-American lawyers desiring to vote for such African-American lawyer position, the executive director shall in 1985, and every 3rd year afterward, identify African-American lawyers and send them a notice regarding the nomination for the position on the board of governors. Nomination for this position shall be by written petition signed by not less than 10 African-American lawyers of the bar, except that if there are fewer than 90 African American lawyers in the state, the signatures of 10% of the African-American lawyers shall be sufficient. No African-American lawyer should sign more than 1 nominating petition in



any year. If in any year, the executive director does not receive within the time fixed by the board, a petition nominating an African-American lawyer for governor, the president shall appoint a committee from the board, and that committee shall nominate at least 2 eligible African-American lawyers.

## **ARTICLE V. OFFICERS**

**§ 1. Selection of President; Term.** Each year, at its meeting on the day preceding the opening day of the annual meeting, the board shall select a president of the state bar, who shall serve for the year beginning with the adjournment of such annual meeting and continuing until the beginning of the term of his or her successor, and who shall not be eligible to succeed himself or herself.

**§ 2. Selection of President-Elect and Vice President Term.** Each year, at its meeting on the day preceding the opening day of the annual meeting, the board shall select a president-elect and a vice president of the state bar, each of whom shall serve for the year beginning with the adjournment of such annual meeting and continuing until the beginning of the term of his or her successor.

**§ 3. Selection of Executive Director; Term.** The board shall from time to time select an executive director, who shall hold office at the pleasure of the board.

**§ 4. Selection of Other Officers; Terms.** The board may from time to time create such other offices, with such powers and duties, as it may deem advisable, and may at any time terminate the same. The board shall select the persons to fill such offices at such times and for such terms as it may determine.

**§ 5. Qualifications of Officers.** The president, president-elect and vice president and all other officers, except the executive director and administrative assistants, shall be active members in good standing of the state bar. The executive director and administrative assistants may or may not be members of the state bar, as the board may prescribe. When active membership in good standing is required of any officer, his or her loss of that status in any manner shall forthwith terminate his or her term of office.

**§ 6. Nomination of Officers.** The board shall each year select a committee on nominations, consisting of such number of its own members as it may then determine, which shall report to the board at its meeting on the day preceding the annual meeting.

Such report shall name a nominee or nominees for each of the offices of president, president-elect and vice president. Additional nominations may be made from the floor following the report of the committee.

**§ 7. Vacancies; Removals.** Vacancies in any office shall be filled by the board for the unexpired term. If any officer be determined by the board to have become incapacitated from performing his or her duties as such officer, he or she may be removed by the board.

**§ 8. President; Duties and Authorities.** The president shall be the chief executive officer of the state bar and he or she shall faithfully endeavor to accomplish a successful prosecuting of its objects, aims and purposes. The president shall preside at all meetings of the state bar, or in lieu thereof, the president or the board may designate a presiding officer. The presiding officer shall further perform those duties which usually devolve upon such officer, and such duties as may be prescribed from time to time by the board.

**§ 9. President-Elect and Vice President; Duties and Authority.** The president-elect and the vice president shall perform such duties and have such authority as may be prescribed from time to time by the board.

**§ 10. Executive Director; Duties and Authorities.** The executive director of the state bar shall attend all meetings of the state bar and of the board and shall record the proceedings of all such meetings. He or she shall take charge of all funds of the state bar and deposit them in depositories selected by the board. He or she shall cause books of account to be kept, which shall be the property of the state bar and which shall be open to the inspection of the president or of any governor or fully authorized committee of the state bar. At each annual meeting of the state bar he or she shall report upon the activities of the state bar during the past year and make such recommendations as he or she shall deem proper. He or she shall make to each meeting of the board such financial and other reports as it may require. He or she shall prepare a financial report, which shall be filed with the supreme court of appeals of West Virginia no later than November 1 st of each year, which shall contain a copy of the annual independent audit report for the immediately preceding fiscal year, a statement of income and expenses for the immediately preceding fiscal year, a copy of projected income and expenses for the current fiscal year, and such other information as requested by the chief justice of the supreme court of appeals of West Virginia. He or she shall attend generally to the correspondence of the state bar and perform such other duties as are directed by the board. The executive director, with the approval of the board, may employ such assistants as the work of his or her office may require. The executive director shall give such bond as may be required by the board, the premium of which shall be paid by the state bar.

**§ 11. Compensation; Expenses.** No governor nor officer, except the executive director and administrative assistants, and no member of any committee shall receive compensation for services, but any such person may be reimbursed for necessary and actual traveling and subsistence expenses when authorized by the board.

## **ARTICLE VI. PROCEDURE FOR DISCIPLINING, SUSPENDING AND DISBARRING ATTORNEYS AT LAW [VACANT]**

## **ARTICLE VII. COMMITTEE ON UNLAWFUL PRACTICE**

**§ 1. Jurisdiction.** The committee on unlawful practice shall have jurisdiction over all matters and questions which may be considered as constituting the unlawful practice of law

under the definition of the practice of law adopted by the supreme court of appeals of West Virginia by rule effective May 1, 1947, and any amendments or changes thereto, and in accordance with other applicable principles of law governing and defining the practice of law in this and other jurisdictions.

**§ 2. Powers.** Such committee shall investigate, on its own initiative or upon request of any court or judge or upon the verified complaint of any person, any matter involving the alleged unlawful practice of law. Such committee is empowered to dismiss any complaint, to enter into an agreement to desist from unlawful practices, or, when the facts warrant, to institute appropriate proceedings in the name of the West Virginia State Bar, or in the name of any authorized committee or of any member thereof, in any court having jurisdiction, for the purpose of securing appropriate relief.

Such committee may act as a committee, or through any subcommittee thereof, or may refer any matter under consideration to any grievance committee for investigation.

**§ 3. Members; Terms; Vacancies; Removals.** The committee on unlawful practice shall consist of seven members, selected by the board from the active members of the state bar. When first constituted, three members shall be selected for terms of one year, two for terms of two years, and two for terms of three years. Thereafter, in each year, members shall be selected, each for three-year terms, to fill vacancies occurring in that year by reason of the expiration of the terms of office of members theretofore selected. Vacancies occurring for other reasons shall be filled by the board for the unexpired terms. If a member of such committee be determined by the board to have become incapacitated from performing his or her duties as such member, or be absent from any two consecutive meetings of such committee, without cause deemed adequate by the board, he or she may be removed by the board. The term of office of each member shall commence at the conclusion of the annual meeting designated by the board in making his or her appointment.

**§ 4. Officers; Subcommittees.** For such committee a chairperson and vice chairperson shall be designated annually by the board from the members of such committee. Such committee may designate other officers and subcommittees, from its own members, with such of its powers and responsibilities as it may deem proper.

**§ 5. Meetings; Quorum.** Such committee shall meet, at any place in the State of West Virginia, upon call of its chairperson or vice chairperson, or upon call of the president of the state bar. Upon written request of five governors the president or executive director shall call a meeting of such committee.

Three members of such committee shall constitute a quorum.

**§ 6. Summons and Subpoena Powers.** In any investigation or hearing under this article, such committee, any grievance committee, or any authorized member of either thereof, or any governor or officer of the state bar shall have the power, by summons or subpoena issued under the hand of any authorized member of either committee or of any governor or such officer, to summon and examine witnesses under oath administered by

any member of said committees, any governor or such officer, and to compel their attendance and the production of any and all books, papers, letters and other documents necessary or material to the inquiry.

**§ 7. Effect of Summons or Subpoena.** Any such summons or subpoena issued as provided in the preceding section 6 shall have the same force and effect as a summons or subpoena issued by a circuit court of the State of West Virginia. If any witness or other person shall fail or refuse to appear, or to be sworn, or to testify, or to produce books, papers, letters or other documents demanded, upon application to a circuit court or the judge thereof within the congressional district in which any investigation or hearing is being conducted, a rule or an attachment shall be issued against such witness or other person as in cases of contempt.

**§ 8. Reports.** Such committee shall report to the executive director in writing immediately upon initiating any investigation or other action, and shall thereafter report to him or her from time to time the status thereof, and upon final disposition of any matter shall forward to him or her a report thereon with the complete file thereof.

## **ARTICLE VIII. GRIEVANCE COMMITTEES**

**§ 1. Duties.** The grievance committee in each state bar district shall investigate within such district all matters within the jurisdictions of the lawyer disciplinary board and committee on unlawful practice, and shall make report and recommendation thereon to the appropriate committee and to the executive director. It shall also perform such other functions and duties in its district as the board may prescribe from time to time, including, when authorized by the board, the exercise of all rights, powers and duties of every kind provided for the lawyer disciplinary board and committee on unlawful practice.

**§ 2. Members.** Such grievance committees shall consist of such number of members, appointed by the board for such terms, as the board may from time to time determine. Each such committee shall have a chairperson, selected annually by the board.

## **ARTICLE IX. MISCELLANEOUS PROVISIONS**

**§ 1. Seal.** The state bar shall have a seal having the words and figures "THE WEST VIRGINIA STATE BAR-May 1, 1947" and such other design as the board may prescribe, for the authentication of its proceedings and records. The courts in this State shall take judicial notice of such seal, and in all cases copies of resolutions, proceedings or records in the office of the state bar, certified by the executive director under such seal, shall be equal to the original in evidence. The seal shall remain in the custody of the executive director at the office of the state bar unless otherwise ordered by the board.

**§ 2. Service of Process.** Service of any notice or process upon the state bar may be had upon the president or executive director.

**§ 3. Nonliability of State Bar and Its Members.** The state bar, its members, officers, governors and committees shall not be liable to any member of the state bar, or to any other person, firm or corporation, for any damage incident to any investigation, complaint, charge, prosecution, proceeding or trial.

**§ 4. Representation.** Except as in these by-laws expressly otherwise provided, no section, committee or member shall assume to represent the state bar in any court or elsewhere unless authorized to do so by the board or by the president.

**§ 5. Limitation.** Except as in these by-laws expressly otherwise provided, no recommendation or report of a section, committee, or member shall become the recommendation or report of the state bar until approved by the board.

**§ 6. Official Publication.** The official publication of the state bar shall be "The West Virginia Lawyer", which shall be published under the supervision and direction of the board.

**§ 7. Fiscal Year.** The fiscal year of the state bar shall begin on July 1 of each year and end on June 30 of the next succeeding calendar year.

**§ 8. Parliamentary Rules.** The rules contained in "Robert's Rules of Order, Revised" shall govern the proceedings at all meetings of the state bar and of the board in all cases to which they are applicable, and in which they are not inconsistent or in conflict with the constitution of the state bar, these by-laws, and the rules and regulations adopted by the board.

**§ 9. Costs.** No costs shall be recoverable against the state bar, its members, officers, governors, or committees, and it shall be required to pay only such fees, costs and charges incident to any court proceeding as other departments of the state government are required to pay.

**§ 10. Privacy of Record.** Except to the extent otherwise in these by-laws expressly provided, no person shall have any right to see or inspect, or to have a copy of, any paper, document or other record relating to any matter at any time before the lawyer disciplinary board, the committee on unlawful practice, any grievance committee, any other committee, the board of governors, or in the possession of any officer, except a current member of the committee in question, as to its records, or a governor or officer of the state bar, as to any such record.

## **ARTICLE X. AMENDMENTS AND REFERENDA**

**§ 1. Amendments at Annual Meeting.** Subject to the approval of the supreme court of appeals, these by-laws may be altered or amended at any annual meeting on recommendation of the board by vote of a majority of the members present or, without such recommendation, by vote of two thirds of the members present.

For an amendment to be properly brought before an annual meeting by a member without a recommendation of the board, the member must have given timely notice thereof in writing to the executive director of the state bar. To be timely, a member's notice must be delivered to or mailed and received at the offices for the state bar, not less than 40 days prior to the meeting; provided, however, that in the event that less than 50 days' notice or prior public disclosure of the date of the meeting is given or made to members, notice by the member to be timely must be so received not later than the close of business on the 8th day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure was made. A member's notice to the executive director shall set forth as to each amendment the member proposes to bring before the annual meeting (a) a brief description of the amendment, (b) the reasons for the amendment, and (c) the name and address of the member proposing such amendment.

**§ 2. Amendments by Mail Vote.** The board may at any time submit to the members of the state bar, by mail, proposed alterations or amendments to the constitution and to the by-laws of the state bar, and such alterations or amendments shall become effective when approved by a majority of the members voting and by the supreme court of appeals.

**§ 3. Referenda.** For the purpose of ascertaining the opinion of the membership, the board may at any time, and when directed so to do at an annual meeting shall, refer and submit to the membership of the state bar, defined questions affecting the substance or administration of the law, or affecting the functions or policy of the state bar.

# **RULES AND REGULATIONS**

## **CHAPTER I. ELECTIONS AND REFERENDA**

### **1. Committee on Elections.**

(a) The president shall annually appoint a committee on elections, consisting of three active members in good standing, who shall not be members of the board of governors.

The nomination of a member of such committee for the office of governor shall automatically vacate his or her membership. Any vacancy in such committee shall be filled by the president. Failure to act shall create a vacancy.

(b) The president shall designate the chairperson of such committee. The executive director of the state bar shall act as the secretary of such committee and shall keep a record of its proceedings.

(c) Said committee shall have jurisdiction over, and shall supervise the conduct of, the election for governors, and, at the request of the board, other elections and referenda.

(d) Any question arising as to the regularity of a nomination, or the qualifications of any person nominated, or otherwise in connection with the nomination of candidates, or the conduct of an election or a referendum, shall be referred by the executive director to said committee. The committee shall promptly meet and determine any such question, and shall report its decision to the executive director and to the board. The executive director shall thereupon mail a copy of such decision to such persons affected thereby as the committee may direct.

(e) Any nominee or candidate, who is adversely affected by such a decision as to his or her nomination or as to the election, or any active member of the state bar, who is adversely affected by such a decision as to his or her right to vote in such election, may appeal therefrom to the board of governors. Such appeal shall be perfected by filing with the executive director a notice of appeal, containing a clear statement of the grounds on which the decision of the committee is alleged to be erroneous, within five days from the mailing of the copy of the decision as provided for in paragraph 1 (d).

### **2. Nominations for Governor.**

(a) In the year 1978, and in each year thereafter, on or before January 20th of each year the executive director shall mail to each active member in good standing of each state bar district from which a governor is to be elected, a notice of such fact and a form of nominating petition.

(b) All nominating petitions shall be filed with the executive director not later than the 10th day of February of the respective election year.

### **3. Preparation and Mailing of Ballots.**

(a) The executive director shall prepare a sufficient number of appropriate ballots for the voters of each district in which an election is to be held. Each ballot shall contain in alphabetical order the names of all qualified persons nominated for the district. On or before the 1 st day of March, an appropriate ballot shall be mailed to each active member in good standing of each such district, together with a ballot envelope and an addressed envelope for the return of the ballot.

(b) If a member shall change his or her principal office between the time the ballots are mailed and the date of the election, whereby he or she cannot vote for governor from his or her former place of maintaining his or her principal office, he or she shall, upon supplying the executive director, on or before five days preceding the date of the election, be entitled to vote for governor from his or her new place of maintaining his or her principal office, and the executive director shall, upon receipt of such satisfactory notice and proof of change, and upon surrender of the ballot, if any, previously mailed to such member, supply such member with a proper ballot for his or her new place of residence or principal office.

(c) When a member entitled to vote has not for any reason received his or her ballot, or when such ballot has been lost or destroyed, another ballot shall be supplied him or her by the executive director upon receipt of proof satisfactory to the executive director of such nonreceipt, loss of destruction. The outside envelope for such ballot shall be marked "duplicate. "

### **4. Voting of Ballots.**

(a) After the ballot has been marked by the member to whom it is mailed, such member shall enclose the ballot in the envelope furnished by the executive director marked "ballot," which envelope shall in turn be enclosed in an envelope addressed to the clerk of the supreme court of appeals of West Virginia, also furnished by the executive director, upon which there shall be a blank where the member shall typewrite or print his or her name and address and another blank on which he or she shall sign his or her name in ink.

(b) No ballot shall be accepted by said clerk nor counted by said committee unless it is enclosed in a properly signed outside envelope and unless it is received by said clerk not later than midnight of March 20th of the election year.

5. Checking and Custody of Ballots. Said clerk shall have the custody of the ballots after they are voted until such ballots are canvassed. They shall be safely kept by said clerk in the outside envelopes containing the ballots with the members' signatures thereon and with the seals thereof unbroken until the ballots are canvassed.



## **6. Canvassing of Ballots.**

(a) The ballots shall be canvassed by the committee on elections. On March 21st of each year, or within five days thereafter, said committee shall meet in the office of said clerk and receive from the clerk the ballot envelopes as he or she received them.

(b) Upon receipt of the ballots from said clerk, said committee shall segregate them as to districts and determine the genuineness of the signatures on the outside envelopes. In case an envelope marked "duplicate" and another envelope bearing the same signature is found, the ballots contained in the envelope marked "duplicate" shall not be counted. Said committee shall thereupon count the said envelopes and make record thereof, remove the inner ballot envelopes therefrom and destroy the outer envelopes before counting the ballots. They shall then count the ballots.

(c) The nominee who receives the plurality of the votes cast in his or her district shall be declared to be elected from that district. If for any district two or more nominees are found to have received an equal and the highest number of votes, said committee shall then and there determine the tie by lot, in such manner as it may select, and the one so determined shall be certified as elected.

(d) Said committee shall certify to the executive director of the state bar the results of the election, and shall deliver a copy of the certificate of results to said clerk, who shall preserve the same among the records of his or her office.

(e) The executive director shall forthwith publicly announce the result of the canvass and notify each candidate by mail of the results of the election. At the annual meeting following the election the executive director shall present the certificate of said committee and the president shall officially declare the result.

(f) Upon the completion of the canvass, said committee shall seal the ballots in an envelope and deliver them to the executive director, who shall keep them for one year and then destroy them, unless otherwise ordered by the board..

7. Other Elections and Referenda. The applicable provisions hereof shall apply to any election on the adoption of proposed amendments to the constitution and by-laws and to any referendum on any proposal submitted to the membership under the applicable provisions of article X of the by-laws.

## **CHAPTER II. OFFICERS**

**1. Offices Created.** The state bar shall have the following officers:

- (a) [Abrogated].
- (b) President.
- (c) President-elect.
- (d) Vice president.
- (e) Executive director.

## **2. Chairman of the Board.**

(a) Each president of the state bar shall be the chairperson of the board of the state bar, for the year commencing with the adjournment of the annual meeting at which his or her term of office as president terminates and continuing until the termination of the term of his or her successor as president.

(b) The chairperson of the board is hereby designated as the presiding officer of the board of governors, and shall preside at all meetings of the board during his or her term of office.

(c) The chairperson of the board shall also recommend to the appointing power, the president or the board, as the case may be, suitable members for appointment as members of standing and special committees and as chairperson of such committees: )i( At the beginning of the year; )ii( as vacancies occur during the year; and (iii) as such committees are created. He or she shall also from time to time recommend to the board such changes as may seem advisable in the scope and function of committees and in their personnel.

## **3. President.**

(a) Each president-elect of the state bar shall be the president of the State Bar, for the year commencing with the adjournment of the annual meeting at which his or her term of office as president-elect terminates and continuing until the termination of the term of his or her successor as president-elect.

(b) The president shall be the chief executive officer of the state bar and shall preside at all meetings of the state bar, or, in lieu thereof, the president or the board may designate a presiding officer. The presiding officer shall further perform those duties which usually devolve upon such officer, and such duties as may be prescribed from time to time by the board.

## **4. President-Elect and Vice President.**

(a) Each year, at its meeting on the day preceding the opening day of the annual meeting, the board shall select a president-elect and a vice president of the state bar, each of whom shall serve for the year beginning with the adjournment of such annual meeting and continuing until the beginning of the term of his or her successor.

(b) In the absence of the president, the president-elect (and in his or her absence, the vice president) shall preside at all meetings of the state bar, unless a temporary presiding

officer has been designated by the president, the president-elect, the vice president, or the board.

(c) [Abrogated].

(d) The president-elect shall be responsible for the advancement of public acceptance of

the state bar program and shall supervise and coordinate the activities of all state bar sections and committees engaging in the presentation of any part of such program to the public. The president-elect shall automatically succeed to the office of president as set forth in paragraph 3, above.

(e) The president-elect and vice president shall be responsible for the advancement of the state bar program through local bar association meetings and shall, during his or her term of office, arrange with each local bar association for the holding of at least one meeting on some phase of such program.

(f) The president-elect and vice president shall also assist the president in the execution of those duties which usually devolve upon such officers, and such other duties as may be prescribed from time to time by president or the board.

#### **5. Executive Director.**

(a) Each year, at its meeting on the day preceding the opening day of the annual meeting, the board shall select an executive director, who shall serve until the beginning of the term of his or her successor.

(b) The executive director of the state bar shall perform the duties set forth in Article 5, Section 10 of the by-laws of the state bar.

**6. Nomination of Officers.** The board shall each year select a committee on nominations, consisting of such number of its own members and it may then determine, which shall report to the board at its meeting on the day preceding the annual meeting. Such report shall name a nominee or nominees for each of the offices of president-elect and vice president.

### **CHAPTER III. PROCEDURE FOR COMMITTEES ON UNLAWFUL PRACTICE AND FOR GRIEVANCES**

**1. Origin of Cases.** A case before the lawyer disciplinary board or the committee on unlawful practice, may originate: In either such committee, or its counsel, or in any grievance committee, on the motion of such committee; or upon the request of the board or the president, the president-elect or a vice president; or upon the request of any court of record or judge thereof; or upon the verified complaint of any member of the state bar or any other person.

**2. Form of Complaint.** Each such request or complaint shall be in writing, and be filed with the bar counsel, and shall state facts sufficient to justify the exercise of the jurisdiction of the appropriate committee, and shall be accompanied by all pertinent documents.

**3. Filing Complaints.** All such complaints and requests within the jurisdiction of these committees, received or made by any member or committee of the state bar, whether or not such member is a member of one of said committees, shall be by such member

promptly filed with the bar counsel. Complaints against, or factually involving, the chairperson of either committee, bar counselor committee counsel shall be filed with the executive director and shall be immediately referred to the committee chairperson, vice-chairperson or other committee member, not conflicted or disqualified, for investigation.

**4. Record: Disposition by Bar Counsel.** Upon receipt of any such complaint or request alleged to be within the jurisdiction of any of said committees, bar counsel shall promptly

(a) acknowledge its receipt;

(b) give it a case number, and enter it in his her or records.

**5. Verification and Correction of Defects in Complaint.** If a complaint is not verified, or is not adequate in form or substance, the executive director, bar counselor the chairperson to whom it is transmitted, may call upon any member of the state bar to contact the complainant and endeavor to have it verified, or to remedy any deficiency in form or substance.

**6. Improper or Inadequate Complaint.** When it is evident on the face of a complaint or request that it is frivolous or patently unfounded or if, after investigation, the complaint is unfounded or does not state proper or sufficient grounds for the exercise of the jurisdiction of a bar committee, the Unauthorized Practice Committee, or the Grievance Committee may dismiss the complaint and bar counsel shall notify the complainant of the findings of fact and conclusions of law or, in the case of an unauthorized practice complaint or grievance, the reasons therefor.

**7. Reports to Committee Chairperson or Designated Reviewing Member by Bar Counsel.** Bar counsel shall promptly investigate each complaint received and, with his or her report of investigation, shall submit his or her recommendation of disposition to the chairperson of the appropriate committee or reviewing member of such committee selected under procedures established by such committee. Upon direction of the chairperson or designated reviewing member the matter shall be referred to the Unauthorized Practice or Grievance Committee or closed.

**8. Action Following Investigation and Recommendation.** When the report of investigation and recommendation is received by the Unauthorized Practice or Grievance Committee, it shall determine whether to

(a) close the case on the basis recommended;

(b) refer the case to a grievance committee for investigation; or

(c) retain the case before the Unauthorized Practice or Grievance Committee for further investigation.

**9. Institution of Proceedings.** When the committee on unlawful practice decides to institute proceedings in a matter of importance, it may, but shall not be required to, present the matter, and its recommendation, to the board of governors.

**10. File to Be Sent to Bar Counsel; Notice to Complainant.** In all instances, when a case is to be closed, the entire file shall be forwarded to the executive director or bar counsel for safekeeping and findings of fact and conclusions of law supporting such action shall be provided to the complainant in an ethics case or the reasons for a decision in an unauthorized practice or grievance matter.

**11. Committee to Furnish Statement for Official Reply by Bar Counsel.** When a case is closed, the report of the committee or its chairperson may include, as a separate item, a statement or order to be included verbatim by the bar counsel in his or her official reply.

**12. Payment of Expenses.** Duly authorized expenses, incurred in connection with legal ethics or unlawful practice activities, shall be paid or reimbursed by the executive director upon vouchers therefor approved by the chairperson of such committee, by bar counselor or the executive director.

**13. Prehearing Conferences.** [Abrogated].

**14. Subpoenas.** Service of all subpoenas must comply with the requirements of Rule 45(c) of the West Virginia Rules of Civil Procedure for Trial Courts of Record. All requests by parties other than The West Virginia State Bar for subpoenas and subpoenas duces tecum shall contain a statement acknowledging that the requesting party agrees to pay all costs associated with such service.

**15. Reopening.** [Abrogated].

**16. Reinstatement Questionnaire.** [Abrogated].

**17. Informal Advice of Committee Staff.** [Abrogated].

## CHAPTER IV. MEMBERSHIP FEES

**1. Fees of Members in the Armed Forces.** Members in good standing of the state bar shall not be required to pay membership fees for any fiscal year if in active service in the armed forces of the United States on July 1 of such year, provided that this paragraph shall not apply to members who have entered such service as a career or to members on temporary training duties.

**2. Contributing Members.** Any active or inactive member of the state bar desiring to contribute further to its support may in any year pay to the executive director, in addition to his or her annual membership fee, five or more dollars and such member shall

thereupon for that year be known as a contributing member, but no such member shall by reason of such membership acquire or have any rights or privileges other than those of a member in good standing, active or inactive, as the case may be.

**3. Inactive Membership Fees.** The annual membership fee for inactive members shall be fifty dollars (\$50.00), but said fee shall be voluntary for a judge of a court of record or a member seventy (70) or more years of age.

## **CHAPTER V. COMMITTEES**

**1. Creation of Committees.** The committees named in the succeeding paragraphs are hereby created, with the jurisdictions, functions, powers and authorities respectively specified.

### **2. Executive Committee.**

(a) The executive committee shall consist of the president, the president elect and the vice president, and four governors selected each year by the board.

(b) Between the meetings of the board the executive committee shall have and may exercise all of the jurisdiction, functions, powers and authorities of the board.

(c) The executive committee shall meet on the call of the president. Upon request of two members of the committee the executive director shall call a meeting of the committee. Attendance at and participation in meetings may be by means of conference telephone or similar two-way electronic communications equipment.

Four members of the executive committee shall constitute a quorum thereof.

## **CHAPTER VI. PROCEDURE FOR THE PRESENTATION OF ANNUAL MEETING RESOLUTIONS**

The annual meeting of the state bar provides the membership of the state bar with an opportunity to address issues of concern. So that the full membership may be notified adequately of pending issues to be discussed at the annual meeting and otherwise afforded the opportunity to vote with respect to such issues, the following procedural rules are adopted:

Any active member of the state bar may submit a resolution or motion for consideration at the annual meeting of the state bar. All annual meeting resolutions and motions, other than those previously approved by the board of governors for consideration at the annual meeting, must be received by the executive director of the bar at least forty-five (45) days prior to the commencement of the annual meeting state bar.

The executive director shall cause each resolution or motion, or a summary thereof, to be published in a state bar publication at least twenty (20) days prior to the commencement of the annual convention. A notice stating the time and place of the annual meeting shall accompany publication of the resolution or motion or summary.

The board of governors shall review all such proposed resolutions and motions prior to commencement of the annual meeting. The board may in its discretion endorse, oppose, recommend amendment of, or otherwise state its official position respecting such proposed resolutions and motion presented at the annual meeting.

## **CHAPTER VII. RULES TO GOVERN MANDATORY CONTINUING LEGAL EDUCATION**

**1. Purpose.** These rules establish minimum objective requirements, and the means by which such requirement shall be enforced, to satisfy every lawyer's obligation to continue his or her legal education throughout the period of his or her active practice.

**2. Continuing Legal Education Commission.** There is hereby established a Continuing Legal Education Commission ("Commission") to administer the program of mandatory continuing legal education established by these rules.

2.1 The Commission shall consist of nine members, at least seven of whom shall be active members of the state bar. It will elect its own chairperson.

2.2 Members of the Commission shall be appointed by the board of governors of the state bar and confirmed by the Supreme Court of Appeals. Any vacancy occurring on the Commission shall be filled by the same appointment procedure. Members shall continue to serve until their successors are appointed and confirmed notwithstanding any age restrictions.

2.3 At least three members of the Commission shall be under the age of 36 or admitted to The West Virginia State Bar for less than ten years.

2.4 Of the members first appointed, three shall be appointed for 1 year, three for 2 years and three for 3 years. Thereafter, appointments shall be for a 3-year term. No member may serve more than two consecutive 3-year terms. Terms shall expire on June 30 of the applicable year.

2.5 For any meeting of the Commission a majority of the duly appointed members shall constitute a quorum. Attendance of and participation in meetings may be by conference telephone or similar two-way electronic communications equipment.

2.6 The members of the Commission shall have judicial immunity from civil liability for acts or omissions occurring in the performance of their duties. Any member of the

Commission may be removed by the Supreme Court of Appeals for cause, which may include failure to attend Commission meetings, disability or misconduct.

2.7 Members of the Commission shall serve without compensation, but each member is entitled to reimbursement for his or her actual and necessary expenses in the performance of Commission duties.

**3. Powers and Duties of the Commission.** The Commission shall administer the program of mandatory continuing legal education established by these rules and shall have the following powers and duties:

3.1 To accredit, pursuant to its rules and regulations, individual courses and all or portions of the entire continuing legal education program of specific sponsors which, in the judgement of the Commission, will satisfy the educational objectives of these rules.

3.2 To determine the number of credit hours to be allowed for each accredited course.

3.3 To grant conditional, partial or complete exemptions from the education requirements of these rules on an individual basis in cases of extreme hardship or extenuating circumstances.

3.4 To seek appropriate disciplinary action by the Supreme Court of Appeals in the case of any active member of the state bar failing to comply with the requirements of these rules.

3.5 To meet, conduct hearings and make determinations as required to administer the program of mandatory continuing legal education established by these rules.

3.6 To recommend reinstatement to active status in the case of any member of the state bar attaining compliance with the requirements of these rules after having been suspended from active status for noncompliance.

3.7 To submit annually a written report to the Supreme Court of Appeals and to the board of governors of the state bar of the Commission's activities during the preceding year and including any recommendations for changes in these rules.

3.8 To report to the board of governors of the state bar any significant deficiency in the availability of continuing legal education courses or programs within the State of West Virginia, considering the educational requirements of these rules.

3.9 To adopt, publish and enforce rules and regulations pertaining to its powers and duties.

**4. Accreditation of Courses.** Only the Commission may accredit courses and programs for purposes of the mandatory continuing legal education requirements established by these rules.



4.1 Courses (including video and audio tapes) from the continuing legal education programs sponsored by the following organizations are presumptively accredited until and unless the Commission determines otherwise:

Contact MCLE Coordinator for current list.

4.2 Courses sponsored by other organizations may be accredited by the Commission upon the request of an individual lawyer in accordance with the procedures, rules and regulations of the Commission pertaining to accreditation.

4.3 Continuing legal education courses or programs sponsored by other organizations may be accredited by the Commission upon the request of the organization in accordance with the procedures, rules and regulations of the Commission pertaining to accreditations.

4.4 To be accredited, a course shall have significant intellectual or practical content; it shall deal primarily with matter directly related to the practice of law (which includes professional responsibility and office practice); it shall be taught by persons who are qualified by practical or academic experience in the subjects covered and preferably should include the distribution of good quality written materials pertaining to the subjects covered.

4.5 One hour of credit for purposes of the mandatory continuing legal education requirements established by these rules shall be given for each period of fifty minutes of instruction in an accredited course. Based upon this standard, sponsors of accredited courses given in West Virginia shall include with their course materials a statement that, "This course or program qualifies for \_\_\_ hours of credit under the West Virginia Rules for Mandatory Continuing Legal Education."

4.6 The Commission may refuse to accredit or change or remove the accredited status of any sponsor which misrepresents the extent to which a course or program is qualified under these rules.

4.7 In cases where accreditation could not be reasonably obtained in advance for a given course, an individual lawyer may request, in accordance with the procedures, rules and regulations of the Commission, accreditation for a course after he or she has attended such course.

4.8 All decisions of the Commission concerning accreditation shall be final.

**5. Minimum Continuing Legal Education Requirements.** As a condition of maintaining his or her license to practice law in the State of West Virginia, every active member of the state bar shall satisfy the following minimum continuing legal education requirements:

5.1 During each of the first two fiscal years (July 1-June 30) following the adoption of these rules, each active member of the state bar shall complete a minimum of six hours of continuing legal education as approved by these rules or accredited by the Commission. Completion of such activities should be reported by the attorney no later than July 31 of each phase-in year.

5.2 After the above two-year phase-in period, each active member of the state bar shall complete a minimum of twenty-four hours of continuing legal education, as approved by these rules or accredited by the Commission, every two fiscal years. At least three of such twenty-four hours shall be taken in courses on legal ethics, office management, substance abuse and/or elimination of bias in the legal profession. On or before July 31, 1990, and every other July 31 thereafter, each attorney must file a report of completion of such activities. The Commission recommends that such report be completed on Form Certification of Completion of Approved MCLE Activity. Attorneys who exceed the minimum MCLE requirement may carry a maximum of six credit-hours forward to only the next reporting period, except that no carryover credits can be applied to the legal ethics, office management, substance abuse requirement and/or elimination of bias in the legal profession.

5.3A New graduates and new admittees, beginning July 1, 1999, are required to complete a mandatory Bridge-the-Gap seminar sponsored by the West Virginia State Bar within six months prior to admission or within twelve months after admission to the West Virginia State Bar. The mandatory Bridge-the-Gap seminar shall be recorded at least once per year. The Bridge-the-Gap course will be provided free of charge to new admittees as an audio tape or video tape or CD-Rom/DVD. MCLE credit shall be available for completing the mandatory Bridge-the-Gap seminar.

Any lawyer subject to this requirement who fails to complete the mandatory Bridge-the-Gap seminar within sixty days after written notice of noncompliance from the MCLE Commission shall have such lawyer's license to practice law in the State of West Virginia automatically suspended until such lawyer has complied with such requirement. Any member of the West Virginia State Bar otherwise in good standing who is suspended for failure to complete the mandatory Bridge-the-Gap program shall be reinstated as a member of the West Virginia State Bar upon completion of the mandatory course and fulfillment of other such administrative requirements.

Rule 5.3B Any lawyer not previously admitted to practice in West Virginia who is admitted during the first twelve months of any 24-month reporting period is required to complete 12 hours in approved MCLE activities including at least 3 hours in legal ethics, office management, or substance abuse before the end of the reporting period. Any lawyer not previously admitted during the second twelve months of any 24-month reporting period is exempt for that entire reporting period.

5.4 For good cause shown, the Commission may, in individual cases involving extreme hardship or extenuating circumstances, grant conditional, partial or complete exemptions of these minimum continuing legal education requirements. Any such exemption shall be reviewed by the Commission at least once during each reporting period, unless a lifetime conditional exemption has been granted.

5.5 Active but not practicing members, Justices of the Supreme Court of Appeals, Circuit Judges, Family Court Judges, Senior Status Justices, Senior Status Circuit Judges, the Clerk of the Supreme Court of Appeals, the Deputy Clerk of the Supreme Court of Appeals, and any other individuals as may hereafter, from time to time, be designated by the Supreme Court of Appeals, are not required to comply with these requirements.

5.6 [Transferred].

**6. Obtaining Credits to Satisfy Mandatory Continuing Legal Education Requirements.**

Members of the state bar may obtain credit for purposes of the mandatory continuing legal education requirements established by these rules as follows:

6.1 One hour of credit may be obtained for each period of fifty minutes of instruction attended in an accredited course.

6.2 One hour of credit may be obtained for each period of fifty minutes of video cassette, videotape, or audio cassette instructions, providing that such video/audio tape is accredited by the Commission.

6.3 No more than half of the mandatory continuing legal education requirements may be satisfied by video/audio tape instructions.

6.4 Six hours of credit may be obtained for the teaching of an accredited course when the period of teaching lasts for at least fifty minutes. If the teacher participates in a panel discussion or teaches for a period of less than fifty minutes, three hours of credit may be obtained.

6.5 The Commission may give credit for the following forms of publication, including, but not limited to, publishing an article in the law review of an ABA-accredited law school; publishing an article in the official publication of the state bar; authorship or co-authorship of a book; contribution of a paper published in a legal society's annual, hardbound collection; publication of an article in a bar journal in another state; and contribution through either editing or authorship to periodic newsletters designed to serve the interests of specialists.

6.6 The Commission has authority to allocate the amount of credits to be given for publication in Paragraph 6.5 above.

6.7 The Commission may by its rules and regulations establish additional methods or standards for obtaining credits to satisfy the mandatory continuing legal education requirement.

6.8 [Abrogated].

6.9 [Abrogated].

**7. Noncompliance and Sanctions.** Noncompliance with the reporting or minimum continuing education requirements of these rules may result in the suspension of a lawyer's license to practice law until such lawyer has complied with such requirements.

7.1 As soon as practicable after July 1, the Commission shall notify all active members of the state bar who are not in compliance with the reporting or minimum continuing education requirements of these rules of the specific manner in which such member has failed, or

appears to have failed, to comply with these rules. Any member of the state bar shall have until October 1 to correct such noncompliance or provide the Commission with proper and adequate information to establish that such member is in compliance with these rules. The following delinquency fee schedule for any lawyer requiring notice of noncompliance with reporting or minimum continuing legal education requirements is hereby established, effective July 1, 1990:

Form C, certificate of attendance or online submission not received by July 31 .....	\$50.00
Form C, certificate of attendance or online submission not received by October 1 .....	\$100.00
Form D or Form E (request for publication or teaching credit) not received by July 31 .....	\$50.00

An additional fee of \$100.00 shall be paid upon application for reinstatement by those attorneys whose licenses have been suspended for failure to comply with the MCLE requirement. This fee is in addition to the reinstatement fee charged for suspension for non-payment of membership fees. The attorney will not be reinstated unless all outstanding fees have been paid. MCLE credits, if reported on a delinquent Form C, will not be entered until all outstanding fees have been paid.

7.2 As soon as practicable after October 1, the Commission shall give notice, by certified or registered mail to the most recent address maintained on the records of the state bar, to any active member of the state bar who has still not established himself or herself to be in compliance with these rules for the preceding two year reporting period that after thirty days, the Commission will notify the Supreme Court of Appeals of such fact and request the Court to suspend such lawyer's license to practice law until such time as the lawyer has established that he or she has complied with the requirements of these rules for the preceding two year reporting period.

7.3 During such thirty day period, any lawyer having received a thirty day notice may demand a hearing before the Commission. Any such hearing shall be conducted within a reasonable period of time after receipt of the demand. At such hearing the lawyer shall have the burden of establishing either (a) that he or she is in fact in compliance with the requirements of these rules or (b) that he or she is entitled to an exemption. In the event such burden is not carried, the Commission shall by appropriate petition notify the Supreme Court of Appeals that the lawyer has failed to comply with the reporting or education requirements for the preceding two year reporting period and request the Court to enter an appropriate order suspending such lawyer's license to practice law in the State of West Virginia until such time as such lawyer has complied with such requirements. Any adverse decision by the Commission may be appealed to the Supreme Court of Appeals. In the event such lawyer does not prevail at such hearing or appeal, he or she shall be assessed with the costs thereof.

7.4 In the event no demand for a hearing is received within the thirty day period, the Commission shall by appropriate petition notify the Supreme Court of Appeals of the names of any members of the state bar who have failed to comply with the reporting or education requirements of these rules for the preceding two year reporting period and

request the Court to enter an appropriate order suspending each such lawyer's license to practice law in the State of West Virginia until such time as such lawyer has complied with such requirements.

7.5 A lawyer who has not complied with the mandatory continuing legal education requirements by June 30 may thereafter obtain credits to be carried back to meet the requirements of the preceding two year reporting period. However, any credit obtained may only be used to satisfy the mandatory continuing legal education requirements for one reporting period.

7.6 No lawyer shall be permitted to make use of a transfer from active to inactive or active but not practicing membership in the state bar as a means to circumvent the requirements of these rules.

7.7 During the two year phase-in period all references in this section 7 to "two year reporting period" shall be read as "one year reporting period."

**8. Confidentiality.** The files, records, and proceedings of the Commission, as they relate to or arise out of the compliance or noncompliance of an active member of the state bar with the requirements of these rules, shall be deemed confidential and shall not be disclosed, except in furtherance of the Commission's duties, or upon written request of the lawyer affected, or as directed by the Supreme Court of Appeals.

**9. Change to Active Status.** Any person previously enrolled as an active member of the state bar who has been an inactive member of the state bar, suspended for nonpayment of dues, or suspended or disbarred by the Supreme Court of Appeals, shall demonstrate that he or she has complied with a minimum of twelve hours of continuing legal education, as approved by these rules or accredited by the Commission, at least three hours of which shall be taken in courses in legal ethics, office management, or substance abuse, within twelve months immediately preceding the application to change to active status. Effective July 1, 1994, any person previously enrolled as an active member of the state bar who has served as a Justice of the Supreme Court of Appeals or a Judge of a Circuit Court shall be exempt from this requirement.

9.1 Any lawyer who was suspended solely for the nonpayment of dues and who is returned to active status within six months of the date of suspension may be reinstated to active status by bringing the dues current and will not be required to submit any additional information regarding mandatory continuing legal education provided that the attorney has otherwise been in compliance with the continuing legal education requirements.

**10. Judicial CLE.** Members of the state bar recommended that a mandatory education plan, similar to the one outlined in these rules, be adopted for West Virginia judges, justices and magistrates.