

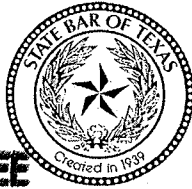
STATE BAR OF TEXAS

Michelle Hunter
Executive Director

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OPINION COMMITTEE



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October 2, 2012

RQ-1088-6A

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FILE # ML-47142-12
I.D. # 47142

The Honorable Greg Abbott
Attn. Jason E. Boatright
Office of the Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

RE: Request for opinion regarding Texas Government Code Section 81.019.

Dear General Abbott:

This is to request that the Attorney General of Texas issue an opinion pursuant to section 402.042 of the Texas Government Code.¹

SUMMARY OF REQUEST

Presidents-elect of the State Bar of Texas are elected in accordance with rules promulgated by the Supreme Court of Texas, with the exception that such rules must allow the inclusion of candidates if at least five percent of the members of the State Bar sign a petition that is filed at least 30 days before election ballots are distributed to the membership.

It has been suggested that section 81.019(c) removes membership write-in petitions and petition candidates from any and all regulation by the State Bar (through rules promulgated by the Supreme Court under section 81.024 and policies adopted by the State Bar Board of Directors through the State Bar Board Policy Manual).

The State Bar seeks your opinion on whether president-elect candidates nominated by petition under section 81.019(c) are subject to State Bar election rules and

¹ The State Bar of Texas is a "public corporation and an administrative agency of the judicial department of government." TEX. GOV'T CODE §81.011; *Goldberg v. Commission for Lawyer Discipline*, 265 S.W.3d 568 (Tex. App. – Houston [1st Dist.] 2008, pet. denied). Nothing in section 402.042, which lists those who may request opinions, limits authorized requestors to the executive department of government. See TEX. GOV'T CODE §402.042(b). The Attorney General has treated administrative agencies of the judicial branch, such as the Court Reporters Certification Board, as authorized requestors under section 402.042. See, e.g., Tex. Atty Gen. Op. Nos. GA-0928 (2012), JC-0573 (2002), JC-0096 (1999), DM-0142 (1992). The Attorney General has also treated the Office of Court Administration as an authorized requestor. See, e.g., Tex. Atty Gen. Op. Nos. GA-0491 (2006), GA-0220 (2004), JC-0563 (2002), JC-0456 (2002).

policies.

ARGUMENT AND AUTHORITIES

I. Section 81.019(c) petitioners are subject to State Bar rules

A. State Bar officers

Section 81.019 of the Texas Government Code provides that:

(a) The officers of the state bar are the president, president-elect, and immediate past president.

(b) *Except as provided by Subsection (c)*, the officers shall be elected in accordance with rules for the election of officers and directors prepared and proposed by the supreme court as provided by Section 81.024.

(c) *The election rules must permit* any member's name to be printed on the ballot as a candidate for president-elect if a written petition requesting that action and signed by at least five percent of the membership of the state bar is filed with the executive director at least 30 days before the election ballots are to be distributed to the membership.

TEX. GOV'T CODE §81.019 (Vernon 2005) (emphasis added).

B. State Bar rules regarding nominations for president-elect

The Supreme Court has adopted rules to give effect to section 81.019:

Section 11. President-Elect, Nominations and Elections

(A) At its regular meeting next following the first day of each calendar year, the board of directors shall nominate two (2) or more members of the State Bar of Texas to stand for election to the office of president-elect for the ensuing bar year. Such nomination shall be by majority vote of the board.

(B) Any other member of the State Bar of Texas shall also be privileged to stand for election to the office of president-elect when a written petition in form prescribed by the board of directors, signed by no fewer than five percent (5%) of the active members of the State Bar of Texas in good standing, is filed with the executive director on or before March 1 next preceding the election to be held for the office of president-elect for the ensuing year.²

² As a general rule, election ballots are distributed on April 1, making the rule consistent with the 30 day deadline in section 81.019(c).

TEX. GOV'T CODE, APPENDIX, Title 2, Subtitle G, Art. I, §11 (Vernon Supp. 2012).

As indicated, it has been suggested that section 81.019(c) removes membership write-in petitions and petition candidates from any and all regulation by the State Bar. The plain language of section 81.019(c), however, contemplates that such petitions and candidates shall be part of the State Bar rules because the subsection states that the "election rules must permit" write-in petitions. If the Texas Legislature had intended to remove such petitions and candidates from all regulation, it could have simply included words to the effect that that they "are not subject to" the State Bar election rules. It did not do so.

In addition, section 81.0242 of the Code expressly authorizes the State Bar, in the manner directed by the Supreme Court, to

- (1) promote and monitor participation of members of the state bar in elections under this chapter; and
- (2) report statistics regarding that participation to the supreme court and the editor of the Texas Bar Journal for publication.

TEX. GOV'T CODE §81.0242. This section must be read in harmony with section 81.019(c), giving effect to both.

A reasonable reading of section 81.019(c) is that the State Bar election rules cannot prohibit write-in petitions, provided that they are signed by at least five percent of the membership of the State Bar and provided they are filed at least 30 days before the election ballots are to be distributed to the State Bar membership. In fact, subsection (c) is an affirmative direction to *include* such petitions in the State Bar election rules: "*election rules must permit any member's name to be printed on the ballot. . . .*" As a result, the petitions authorized under section 81.019(c) are subject to State Bar election rules -- provided that those regulations do not conflict with the five percent signature requirement or the 30 day timeline.

The State Bar policies do not conflict with those aspects of section 81.019(c):

2.01.05 Nominations. At its regularly scheduled second quarterly meeting each year, the Board, on recommendation by the Subcommittee, shall nominate by a majority vote two or more members of the State Bar to be Candidates and to stand for election to the office of President-elect for the next Organizational Year. *Any other qualified member shall also be privileged to stand for election to that office as a Candidate when a written petition, in a form prescribed by the Board and signed by no less than five percent of the active members of the State Bar who are in good standing, is filed by or on behalf of such member with the Executive Director on or before March 1 preceding the election for the ensuing*

Organizational Year and such petition is certified by the Executive Director. The Executive Director shall either certify or reject such petition within five (5) business days following receipt of the petition by the Executive Director. [...]

See State Bar Board Policy Manual §2.01.05 (emphasis added).

The State Bar policy gives effect to section 81.019(c). It does not change the five percent membership requirement or the 30-day timeline set forth in section 81.019(c). It simply authorizes the State Bar to promulgate the form that must be used for the petition, as authorized by the Supreme Court in Article I, section 11 of the State Bar rules, *see* TEX. GOV'T CODE, APPENDIX, Title 2, Subtitle G, Art. I, §11 (Vernon Supp. 2012), and authorizes the monitoring of the election process as authorized by that rule and by section 81.0242 of the Government Code. TEX. GOV'T CODE §81.0242.

A conclusion that the State Bar cannot monitor the nomination process in this manner would leave a vacuum that would render those provisions a nullity.

II. Section 81.019(c) does not apply to other election-related requirements

A. Section 81.019(c) applies only to the nomination process

There is no basis in the language or history of section 81.019(c) for concluding that president-elect candidates nominated by means of the petitions authorized under section 81.019(c) are exempt from *other* provisions that govern such candidates – i.e. those that govern aspects of the election other than the nomination process.

Subsection (c) by its plain terms governs the *nomination* of officers. It does not govern other aspects of elections such as the *qualification* of officers. A number of other provisions of the Government Code apply to State Bar officers. For example, the office of State Bar president-elect can only be held by an active member of the State Bar. TEX. GOV'T CODE §81.053(a),(c). In addition, only active and emeritus members of the State Bar may vote in State Bar elections. TEX. GOV'T CODE §81.053(a), (c). Those sections of Chapter 81 must be read in harmony with section 81.019(c), giving effect to all. To read section 81.019(c) as an absolute exemption would render those sections meaningless.

B. State Bar policies regarding the conduct of campaigns

As indicated, section 81.0242 of the Government Code expressly authorizes the State Bar, in the manner directed by the Supreme Court, to “promote and monitor participation of members of the state bar in elections under this chapter.” TEX. GOV'T CODE §81.0242(1). The Supreme Court has directed the State Bar board to exercise its power as follows:

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(D) The board shall take such action and adopt such regulations and policies, consistent with the Act or these Rules, as shall be necessary and proper for the administration and management of the affairs of the State Bar, for the protection of the property of the State Bar *and for the preservation of good order.*

TEX. GOV'T CODE, APPENDIX, Title 2, Subtitle G, Art. IV, §5 (Vernon Supp. 2012)

Pursuant to these directives, the State Bar has adopted policies to govern the conduct of campaigns. Those policies include general requirements for campaign activities, including, for example, reasonable restrictions on the content, target, and timing of certain solicitations for support, *see State Bar Board Policy Manual* §2.01.10 (A) –(R)(Campaign Activities); and limitations on campaign expenditures, *see State Bar Board Policy Manual* §2.01.14 (Campaign Expenditures). More important, the State Bar Nominations and Elections Subcommittee has the authority “to supervise the guidelines, eligibility, nominations, campaign, election, and election results to ensure compliance with the rules and shall resolve all such disputes and decide all penalties.” *See State Bar Board Policy Manual* §2.01.17 (Campaign Oversight). There is nothing in any of these provisions that is inconsistent with section 81.019(c). A conclusion that section 81.019(c) frees a candidate from complying with these provisions would make the election process a free-for-all and would be unfair to the candidates nominated in the ordinary process.

CONCLUSION

Section 81.019(c) was designed to allow a relatively small percentage of the members of the State Bar to directly nominate a candidate for president-elect of the State Bar. That petition process, however, is subject to reasonable State Bar regulations to assure compliance with section 81.019(c) -- provided that those regulations do not conflict with the five percent signature requirement or the 30-day timeline. Once nominated, however, that candidate is subject to the same qualification requirements and must comply with the same election rules and policies as other candidates.

Your attention to this request is greatly appreciated. Please let my office know if you need additional information.

Sincerely,

A handwritten signature in black ink that reads "Michelle Hunter". The signature is written in a cursive, flowing style.

Michelle Hunter