

Report from the Executive Director

AS USUAL, LAWYERS ARE RISING TO THE CHALLENGE



We've seen it many times before. A crisis hits and lawyers step up to meet it head-on. I'm thinking of the rush of unaccompanied minor cases in 2014, when I was State Bar president; Hurricane Harvey in 2017; and a number of other natural disasters since. In every case, Texas lawyers have been there to solve problems, to help each other, and to serve their fellow Texans.

Today, even amid the COVID-19 pandemic, lawyers who are busy managing their own lives and practices are still selflessly volunteering their services. The Texas Bar Blog recently highlighted some of these efforts—firms offering pro bono help for small-business owners applying for disaster loans or laid off workers seeking unemployment benefits. Meanwhile, local bar associations are helping organize virtual legal clinics, virtual food drives for community pantries, and virtual supply drives for senior centers.

Texas' legal services and access to justice organizations have joined with the State Bar to help low-income Texans with civil legal problems resulting from the pandemic. These partners are promoting the State Bar's statewide disaster legal assistance hotline—800-504-7030—which connects callers with local legal aid lawyers who can advise them on issues including bankruptcy and debt collection, unemployment applications and appeals, mortgage or foreclosure issues, and landlord-tenant problems.

Many individual lawyers have stepped up to serve through the State Bar and its sections and committees. Claude Ducloux, Adam Schramek, Blair Dancy, Jett Hanna, Chris Ritter, Jefferson Fisher, and Scott Rothenberg quickly worked with Hedy Bower and the TexasBarCLE team to produce two free CLE webcasts in March that focused on how to practice law amid the unique challenges posed by the coronavirus. More than 10,000 attorneys have benefited from these webcasts, which remain available on the TexasBarCLE website. And as I write this, a third CLE is in the works featuring Larry Weinstein, CPA, and D. Todd Smith.

The Texas Lawyers' Assistance Program team—Chris Ritter, Shawna Storey-Lovin, Erica Grigg, and Penni Wood—have worked overtime to make sure lawyers have the emotional support and well-being resources they need. From hosting Remote Well-Being Wednesdays on Zoom to collecting remote living resources at texasbar.com/coronavirus, the TLAP team is providing a vital service to our profession.

And the State Bar's entire Austin-based staff and regional disciplinary counsel employees are working hard—all remotely, through telework—to help ensure the administration of the legal system continues and that Texas lawyers have the tools and guidance they need to carry on their practices. I thank them for their dedication.

To all State Bar members, I offer my gratitude as you continue to diligently serve your clients and defend the rule of law amid this crisis. Remember to be kind to each other and to take care of yourselves, and we will meet these new challenges together.

Sincerely,

TREY APFFEL

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Timeline of *McDonald* Litigation

• March 6, 2019	Plaintiffs filed complaint
• March 25	Plaintiffs filed motion for preliminary injunction and motion for partial summary judgment on liability
• April 25 – July 22	<p>Amicus briefs filed in support of Plaintiffs: (1) Texas Attorney General Ken Paxton; and (2) Goldwater Institute</p> <p>Amicus briefs filed in support of the State Bar:</p> <ul style="list-style-type: none"> • Texas Legal Ethics Counsel • Former Presidents of the State Bar of Texas, Former Chairs of the Texas Bar College, and Former Chairs of the State Bar of Texas Council of Chairs • Texas Access to Justice Commission • Concerned Lawyers of Color
• May 13	State Bar filed responsive briefs, cross-motion for summary judgment, and motion to dismiss for lack of subject-matter jurisdiction
• May 23	Status conference held; Court scheduled summary-judgment merits hearing for August 1. Plaintiffs agreed to pay their 2019-2020 State Bar dues.
• May 31	Plaintiffs filed responses and replies. Plaintiffs amended the complaint in response to the State Bar’s motion to dismiss, and added the Chief Disciplinary Counsel of the State Bar and the members of the State Bar Commission for Lawyer Discipline as defendants to the case
• June 4	Court dismissed without prejudice the State Bar’s motion to dismiss
• June 18	State Bar filed reply in support of cross-motion for summary judgment
• July 15	Plaintiffs and Defendants filed a joint stipulation regarding the defendants in the action
• August 1	Summary-judgment merits hearing held; motion for preliminary injunction dismissed
• August 30 & September 4	State Bar filed notice of supplemental authority informing the Court of the Eighth Circuit’s favorable decision in <i>Fleck v. Wetch</i> , and Plaintiffs filed response
• January 15, & 21 2020	State Bar filed notice of supplemental authority informing the Court of the E.D. Louisiana’s favorable decision in <i>Boudreaux v. La. State Bar Ass’n</i> and the Seventh Circuit’s favorable decision in <i>Jarchow v. State Bar of Wis.</i> , and Plaintiffs filed response
• March 9, 2020	State Bar filed notice of supplemental authority informing the Court of the Supreme Court’s denial of certiorari in <i>Fleck v. Wetch</i>

State Bar Arguments on Cross-Motion for Summary Judgment

Count I

The State Bar argues that Plaintiffs' facial challenge to membership in the State Bar is clearly foreclosed by binding Supreme Court precedent in *Keller* and *Lathrop*.

Count II

The State Bar argues that Plaintiffs' challenge to specific State Bar expenditures fails because all of the State Bar's expenditures are consistent with *Keller* as they relate to regulating the legal profession and improving the quality of legal services.

Count III

The State Bar argues that Plaintiffs' challenge to the State Bar's procedures for providing members with a refund for expenditures with which they disagree fails because all of the State Bar's expenditures are germane under *Keller*.

Related Lawsuits Against State Bars

North Dakota

Fleck v. Wetch

- **April 2019** – Amicus briefs filed in support of the State Bar of North Dakota:
 - Chuck Herring for Texas Legal Ethics Counsel; State Bar of California; joint brief of several integrated state bars (Alaska, Michigan, etc.); Missouri Bar
- **August 30** – Eighth Circuit issued decision again affirming the district court’s grant of summary judgment for the defendants on remand from the Supreme Court
- **November 21** – Fleck filed a petition for writ of certiorari with the U.S. Supreme Court
- **December 2019** – Four amicus briefs filed in support of Fleck: Liberty Justice Center; Pacific Legal Foundation; joint brief of National Right to Work Legal Defense Foundation, Inc. and Reason Foundation; 1889 Institute
- **March 9, 2020** – U.S. Supreme Court denied Fleck’s cert. petition
- **April 3, 2020** – Fleck filed a petition for rehearing asking the Court to consider the petition at the same time as the cert. petition in *Jarchow*

Wisconsin

Jarchow v. State Bar of Wisconsin

- **April 8, 2019** – Complaint filed
- **May 21** – Defendants filed a motion to dismiss under 12(b)(1) and 12(b)(6), and a motion to stay the proceedings pending a resolution in *Fleck v. Wetch* (as an alternative to dismissal)
- **June** – All motion to dismiss briefing completed
- **December 2019** – District court granted 12(b)(6) motion to dismiss and plaintiffs appealed the decision to the Seventh Circuit. The plaintiffs moved for summary affirmance of the district court’s decision.
- **December 23** – Seventh Circuit affirmed district court’s dismissal of the case under *Keller*
- **December 31** – Plaintiffs filed a petition for writ of certiorari with the U.S. Supreme Court

- **April 3, 2020** – Wisconsin Bar filed response to plaintiffs’ cert. petition

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File v. Kastner et al.

- **July 25, 2019** – Complaint filed against State Bar officers, Wisconsin Supreme Court justices
- **November 2019** – Defendants filed motions to dismiss and a motion to stay the case pending resolution of the motions to dismiss
- **December 2019** – Briefing on defendants’ motions to dismiss and stay complete
- **March 2020** – Plaintiffs filed a motion to disqualify Judge Adelman

Oregon

Gruber v. Oregon State Bar

Crowe v. Oregon State Bar

- **April 1 and May 24, 2019** – Magistrate judge issued findings and recommendation. Magistrate judge recommended dismissal of the suits and rejected many of the same claims and legal arguments that the *McDonald* Plaintiffs assert. The district court adopted the magistrate judge’s findings and dismissed both cases
- **May 29-30** – Plaintiffs in both cases filed a notice of appeal to the Ninth Circuit. *Crowe* lawsuit sponsored by Goldwater Institute, the same organization that is sponsoring *Fleck*
- **September – November 2019** – Appellate briefs filed in both cases. Amicus briefs in support of Oregon Bar filed by Arizona Bar, California Bar, and the State of Oregon
- **May 11 & 12, 2020** – Oral argument for both cases is scheduled

Oklahoma

Schell v. Gurich
(Oklahoma Bar)

- **March 26, 2019** – Complaint filed; lawsuit sponsored by Goldwater Institute
- **April 24** – Defendant filed motion to dismiss under 12(b)(1) and 12(b)(6)
- **May 15** – Plaintiff amended the complaint to add justices of the Oklahoma Supreme Court and members of the Bar Board of Governors
- **May 21** – Judge Friot recused himself and Judge Heaton is now presiding over the case

- **June 21** – Board of Governors, Executive Director, individual Board of Governors defendant, and OK Supreme Court justices filed separate motions to dismiss
- **September 18** – Defendants’ motions to dismiss granted in part and denied in part; only plaintiff’s third claim (Bar procedures) remains
- **October 2** – Defendants filed answers to complaint
- **March 13 & 25, 2020** – Defendants filed unopposed motion to dismiss the remaining claim due to changes in the Oklahoma Bar’s objection procedures; case is dismissed
- **April 2020** – Plaintiff filed an appeal in the Tenth Circuit; opening brief is due by May 18, 2020

Louisiana

*Boudreaux v.
Louisiana State Bar
Ass’n et al.*

- **August 1, 2019** – Complaint filed against Louisiana Bar, the Louisiana Supreme Court and justices; lawsuit sponsored by Goldwater Institute
- **September 30** – Defendants filed motions to dismiss under 12(b)(6) and 12(b)(1)
- **November 2019** – Briefing on defendants’ motions to dismiss complete
- **January 13, 2020** – District court granted defendants’ 12(b)(2) and 12(b)(6) motions to dismiss, dismissing all three of plaintiff’s claims against all defendants
- **April 1, 2020** – Plaintiff filed opening brief in Fifth Circuit appeal

Michigan

*Taylor v. State Bar of
Michigan et al.*

- **August 22, 2019** – Complaint filed against the State Bar of Michigan, and President and other officers of the State Bar of Michigan Board of Commissioners
- **September 19** – Defendants filed answer to complaint
- **May 15, 2020** – Plaintiff’s opening brief in support of cross-motion for summary judgment is due (pursuant to a case management order entered February 2020)