



Via E-mail to: boardofdirectors@texasbar.com and amystarnes@texasbar.com
State Bar of Texas
Board of Directors
1414 Colorado Street
Austin, Texas 78701

***RE:** Denouncing the Social Media Activities of State Bar President Larry McDougal, and Requesting Action from the State Bar.*

To the State Bar of Texas Board of Directors:

The Texas Employment Lawyers Association (“TELA”) writes to address the discriminatory statements publicly disseminated on Facebook and Twitter by State Bar President, Larry McDougal.

I. TELA’s Purpose and Our Interest in the Issue:

TELA’s stated mission is “to promote and protect the legal rights of employees in the State of Texas.” TELA’s parent organization, the National Employment Lawyers Association (“NELA”)’s mission states that: “Diversity, equity, and inclusion are core values of the National Employment Lawyers Association and essential to the achievement of our mission.” Many of TELA’s members are experts who are passionately steeped in the cause of dismantling and stamping out discrimination.

Members of TELA daily represent employees in workplace disputes, often involving discrimination. TELA’s members collectively possess the knowledge and experience of thousands of discrimination cases.

Unfortunately, these often include cases from the legal world – from paralegals and legal secretaries, to associates, and even partner-track attorneys - asserting claims of gender, pregnancy, race, age, or disability discrimination, and overt sexual and racial harassment. Discrimination in the legal profession in Texas, at both small and large firms, is very real.

We write to you now because it is well past time for Texas lawyers to acknowledge this is a problem in our profession. We hope that the State Bar will take an active role in addressing it. While Mr. McDougal's comments are the current issue before the Board, we encourage the Board to take a more expansive view of this problem.

II. TELA's Position on Mr. McDougal's Social Media Activities.

The board is well aware of the nature of Mr. McDougal's comments, so we will not recite them again here. It is the position of TELA that Mr. McDougal's social media activities were deeply offensive to people of color, women, and disabled individuals. It was careless and unprofessional. This type of behavior is harmful to the clients we represent on a daily basis, and fundamentally contrary to the values that we, as an organization, espouse.

Mr. McDougal did not retract or explain his discriminatory statements until called to account by another lawyer. Only then did Mr. McDougal articulate a hollow "apology" and offer to launch a "listening campaign" to better understand concerns over racial injustice.

To date, Mr. McDougal has not yet acknowledged, much less apologized for, his crude and sexist comments on Facebook about a disabled female colleague. Comments that he apparently made while chairing the Texas Criminal Defense Lawyers Association Ethics Committee. This is an outrage to the members of our organization—of all genders.

Similarly, Mr. McDougal has not addressed the meme he posted on Facebook depicting a police officer kneeling on a person's neck, with the caption: "Justice happens before the trial." The apparent disdain for the rule of law and due process that this demonstrates is disturbing. This is even more shocking because as a criminal defense attorney, Mr. McDougal represents clients who experience police abuses.

III. Mr. McDougal's Activities Harm the Profession as a Whole, and Specifically Harm the Clients Represented by Members of our Organization.

The Houston Chronicle, as well as several other media outlets, has carried stories about Mr. McDougal's discriminatory behavior. This issue has become an embarrassment to our profession. Having the public attention focused on these repugnant statements made by Mr. McDougal has several negative effects.

First, careless public statements such as this by members of the State Bar leadership damage our State Bar's reputation amongst colleagues in other states. It also damages our reputation among the the Texas citizens who become our jurors, clients, witnesses, and opposing parties. It breeds a mistrust in the legal system among already underrepresented communities. It means that lawyers (like our members) who regularly represent victims of discrimination have to work that much harder to earn the trust of their clients. It causes many victims to turn away from the legal system - allowing discriminatory actions to continue unchecked.

Second, it has emboldened other attorneys to feel entitled to launch their own personal attacks on social media sites.

Mr. McDougal's actions reflect quite poorly on the supposedly high standards of civility, professionalism, and ethics to which Texas attorneys are supposed to hold themselves in exchange for their license to practice law. There are so many Texas lawyers who, on a daily basis, work hard to maintain a high level of ethics, professionalism, and kindness. They think twice about what they say in public forums. They aim to treat others with dignity and respect, and they consider how their words might affect people. If rank-and-file lawyers can manage to maintain these standards, we believe our leaders should too.

IV. Recommendations from TELA:

The State Bar can repair this damage only by taking bold actions to demonstrate to society, and to the members of the State Bar, that discriminatory behavior will not be tolerated from lawyers, and that lawyers are and must be held to a higher standard of professionalism.

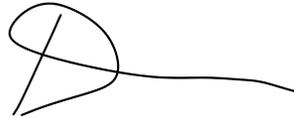
Accordingly, TELA recommends that the State Bar consider the following actions to demonstrate its commitment to change:

- 1) Have Mr. McDougal create a written plan that: (a) acknowledges the problems that he has created; and (b) proposes concrete steps he can take to cure the damage that he has caused, with that plan to be submitted to the Board within thirty (30) days.
- 2) Have Mr. McDougal prepare a written apology to his fellow colleagues around the State of Texas, acknowledging the problems that he has created by his behavior, along with his plan for curing the damages that he has caused, with this letter to be published in the State Bar Journal.
- 3) Issue rules requiring that at least 1 hour of each attorney's annual ethics credits be fulfilled by a CLE course on Elimination of Bias (this could include, but should not

be limited to, the subject of implicit bias), and that qualifying CLE courses be specifically defined to include courses on topics of (1) Federal, state, and local laws prohibiting discrimination or harassment based on race, national origin, gender, disability, religious, sexual orientation, or immigration status; and/or (2) the impact of biases in the legal profession and in the criminal and civil justice system.

To repeat one of the true giants of our era, who we just lost this past week, “If you see something that is not right, not fair, not just, you have to speak up. You have to say something; you have to do something.” We want the State Bar to do something.

Thank you for considering our requests.

A handwritten signature in black ink, consisting of a stylized, looped initial 'D' followed by a long, horizontal, slightly wavy line extending to the right.

For and on behalf of the
Texas Employment Lawyers Association, by
its President, David L. Wiley