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**RESOLUTION PROPOSED BY THE
TRANSITIONING LAWYERS COMMITTEE
OF THE LOUISIANA STATE BAR ASSOCIATION**

WHEREAS, the LSBA Transitioning Lawyers Committee (“Committee”) is charged as part of its mission, “to develop programs to assist those transitioning out of the practice of law...”; and

WHEREAS, the Committee is comprised of LSBA members from all geographic areas of the state and practice groups;

WHEREAS the Committee understands that there will be issues that may evolve concerning the aging of the LSBA attorney population, including but not limited to, deceased attorneys without a succession plan resulting in potential harm to the public and a potential rise in claims to the LSBA Client Assistance Fund which has limited funding to respond to such claims;

WHEREAS, the current provisions for ‘curators’ under Rule XIX, section 27 has proven to be inadequate for addressing the instances where attorneys (principally in solo practice) die, are transferred to disability inactive, or receive sanctions ending their practice such as disbarment, permanent disbarment and permanent resignation in lieu of discipline (and occasionally after suspensions);

WHEREAS, a Subcommittee was appointed to study and review the possibility of developing a LSBA system of Volunteer Receivership Teams to ensure protection of the public as recommended in the LSBA Receivership Teams Proposal (See Attached Exhibit A);

WHEREAS, the Subcommittee, through its review process, discussed the need for a Receivership Teams Program when there is no associate or partner left behind, where there is no ‘volunteer’ attorney left to assist, or when there is no estate administrator, which can result in a delay in recognizing the need for a Curator appointment and immediate action;

WHEREAS, the Subcommittee found that the profession, clients and the public would benefit from a Receivership Teams Program;

WHEREAS, the Subcommittee furnished its recommendations to the Committee and after careful consideration, the Transitioning Lawyers Committee recommended adoption of the LSBA Receivership Program as proposed in Exhibit A (Attached).

NOW THEREFORE BE IT RESOLVED THAT the LSBA House of Delegates approve the recommendations of the LSBA Transitioning Lawyers Committee as set forth above.

NOW THEREFORE BE IT FURTHER RESOLVED THAT the LSBA House of Delegates respectfully recommends approval of same by the Louisiana Supreme Court for future implementation by the LSBA Transitioning Lawyers Committee.

Respectfully submitted,
LSBA Transitioning Lawyers Committee



Richard K. Leefe, Chair
Adrianne L. Baumgartner
Thomas C. Cerullo
Hon. Elizabeth E. Foote
John H. Musser, IV
Michael A. Patterson
Freddie Pitcher, Jr.
Graham H. Ryan
Joseph L. Shea, Jr.
Edward J. Walters, Jr.

This 8th day of May, 2017.

APPROVED
HOUSE OF DELEGATES
JUNE 8, 2017
DESTIN, FL

APPROVED
BOARD OF GOVERNORS
JUNE 9, 2017
DESTIN, FL

LSBA “Receivership” Teams Proposal – Exhibit A

The current provisions for ‘curators’ under Rule XIX, section 27 has proven to be inadequate for addressing the instances where attorneys (principally in solo practice) die, are transferred to disability inactive, or receive sanctions ending their practice such as disbarment, permanent disbarment and permanent resignation in lieu of discipline (and occasionally after suspensions). While section 27 charge curators with the responsibility of inventorying files and “to take such action as seems indicated to protect the interests of the respondent and his or her clients”, the traditional role of the curator has been to simply inventory active files, communicate the attorney’s status and inability to continue with the representation, and coordinate the return of files so as to allow the client to secure new representation.

Because curators are typically appointed only when there is no associate or partner left behind, where there is no ‘volunteer’ attorney left to assist, or when there is no estate administrator (see section 26), there is often a delay in recognizing the need for the appointment and immediate action. Moreover, the chief judge of the judicial district where the subject practice is located is responsible for appointing ‘volunteer’ curators, a task none enjoy and many resent. While the attorney (individually or estate) is not typically at ‘risk’ during the short term, the interests of clients may well be adversely affected, and the courts efforts to move matters along are often disrupted. A better system has been needed for some time.

The current proposal before the Court again calls for the naming of successor lawyers to step in and carry out this function. While superficially appealing, practical concerns exist regarding the viability and success of that approach. Problems include a continued willingness of the successor lawyer to perform the task, malpractice exposure, competence of the successor lawyer, and the practical ability of the successor lawyer to engage in that effort given the demands of his/her own practice at the time of greatest need to name but a few drawbacks. Nonetheless, the Bar has endorsed that approach and perhaps in some instances it will be proven successful.

A complementary system should be considered that may provide an alternative to successor counsel, allow for a team approach manned by lawyers willing to assist and who have been trained in the specific tasks needed in each instance. One model may be to have the LSBA initiate a program of “Receivership Counsel” with teams of lawyers designated in each court of appeal district that may be called upon to immediately engage to more fully protect the interests of the lawyer and the clients. This effort would also bolster the LSBA’s role in the disciplinary/regulatory system in addition to managing the diversion program, ethics advisory opinions, the Rules of Professional Conduct committee and other programming.

1. How often are curator efforts needed on an annual basis?

- Each year presents unpredictable instances of need. It is not unusual, however, to call for this type of assistance 10-12 times per year.

2. How would ‘receivership teams’ be selected?

- Because the work involved can be time-consuming and needed on short notice, it would be recommended that volunteers be sought after a full disclosure of the duties involved. A mix of experience is helpful with some

reliance perhaps on more seasoned members of the bar to head the local efforts in organizing and executing the receivership team plan. The ultimate criteria for selection could be left to the Bar's leadership or as delegated to Bar staff.

3. How many members should be on each 'receivership' team?

- The best estimate is that a minimum of five (5) bar members in good standing should be on each team but staffing the team could include perhaps as many as ten (10) to allow for particularly large projects or to accommodate the unavailability of certain team members when the alert for need is issued. There would be one team from each Court of Appeal District.

4. What would be the extent of their duties?

- At a minimum, the duties should include:
 - Accessing all client files in 'open and active' representations so as to allow for timely notification to clients of their attorney's inability to continue representation.
 - Notification of courts in litigation matters of the attorney's inability to practice and securing continuances of sufficient length to allow clients to secure new representation.
 - Notification of opposing counsel and/or parties of the change in status of the attorney.
 - Examination of each file to document reasonable estimates of work performed by the attorney so as to assist in unearned fee issues; determine the need for file copying should future fee disputes be reasonably foreseeable; the recording of contingency fee contracts to protect the interests of the attorney/estate in future outcomes as regards fees and costs.
 - Other duties that, in the considered view of the Bar leadership, the receivership teams should be obligated to perform (such as petitioning the Court for an order directing the trust account bank to allow access for distribution of client and/or third party funds, etc.)
 - It is highly recommended that the LSBA develop a 'receivership team handbook' to more fully flesh out the nature and extent of the actual duties involved and how best to carry out those efforts.

5. What would the liability exposure of the 'receivership team' members be to clients?

- The Court has been reluctant to grant blanket 'immunity' to those who assist in curatorship type duties, some legislative work might be best to provide a measure of protection for the 'good faith' efforts of successor and/or receivership team members. Volunteers would be required to maintain professional liability coverage, which usually covers participation in Bar activities.

6. How might the LSBA encourage volunteer participation on ‘receivership teams’?

- Generally, the experience of the LADB/ODC is that lawyers in good standing in this state have been overwhelmingly willing to volunteer and assist in our discipline/regulatory system. One would expect that same commitment to our system to carry over to ‘receivership teams’. Support for the program from the Supreme Court justices, the LSBA leadership, the LADB Board members, and the ODC would likely generate enough volunteer participants to develop needed pools of candidates. Service may qualify for annual CLE credits, recognition by the LSBA, and other opportunities for encouragement.

7. How long would service on a ‘receivership team’ last?

- Consideration could be given to setting term limits such as is accomplished in the discipline/regulatory system—two (2) three (3) year terms. That would ensure that those willing to volunteer would recognize the commitment expected and plan accordingly. This issue would be yet another area where the LSBA leadership could weigh the merits of length of service and adjust as needed or as deemed appropriate.

8. Would training be a component of the program?

- The development of a comprehensive training program should be an integral part of the program so that volunteers recognize the size and scope of the tasks they are being asked to undertake. The design and contours of the training can be modified and adjusted with the benefit of experience guiding the effort.

9. Would ‘receivership team’ members be permitted to undertake the representation of clients from the attorney’s practice?

- To insure the integrity of the program, it is suggested that team members be disqualified from accepting the representation of the clients of the attorney’s prior practice. If an attorney team member is uniquely qualified to take on those representations, the problem could be avoided by assigning other team members whose disqualification would not deprive local clients of the services of competent counsel in their area of need.