

BY-LAWS

THE COMMITTEE ON PROFESSIONAL ETHICS

ARTICLE I

Purpose

Section 1.01. The purpose of the Committee on Professional Ethics (the “Committee”) shall be: (i) to provide members of the Delaware State Bar Association (the “DSBA”) with timely analysis of topical issues relating to professional conduct of lawyers and ethics of the profession in the form of opinions either in response to a specific inquiry from a member of the DSBA or on its own initiative; (ii) to prepare and submit articles or opinions on the application of the Delaware Lawyers’ Rules of Professional Conduct (the “Delaware Rules”), the American Bar Association Model Rules of Professional Conduct (the “Model Rules”) or any proposed or anticipated revisions, additions or modifications to the Delaware Rules or Model Rules, or other legal ethics topics, for publication in legal journals or other publications or online fora, at least once per year; (iii) to maintain a record of its ethics opinions and articles as a resource to Delaware attorneys; (iv) to cooperate with the Office of Disciplinary Counsel (“ODC”), an arm of the Delaware Supreme Court, in providing resources to members of the DSBA regarding the application of the Delaware Rules, the Model Rules, and legal ethics issues generally; and (v) to perform such other duties as may from time to time be assigned to the Committee by the DSBA.

ARTICLE II

Membership

Section 2.01. Composition of the Committee. The Committee shall be composed of nine members, which will include two Co-Chairs and one Vice-Chair.

Section 2.02. Designation. The members of the Committee shall be selected by the President of the DSBA from among the members of the DSBA. To the extent practicable, the members shall be broadly representative of the DSBA. The President of the DSBA shall select two Co-Chairs and a Vice-Chairperson for the Committee in July of each calendar year. The selection of Co-Chairs and Vice-Chair may include a redesignation of any of or all of the three positions, at the discretion of the President of the DSBA.

Section 2.03. Term, Resignation, Removal and Filling Vacancies. Each member shall serve for a term of one or more years commencing on July 1. Any member may resign at any time by notifying the Committee and the President of the DSBA in writing. Such resignation shall take effect at the time therein specified and, unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective. Any member may be removed by the President of the DSBA upon recommendation by a Co-Chair or Vice-Chair of the Committee if the member to be removed has failed to carry out his or her responsibilities as a member of the Committee in the judgment of one of the Co-Chairs or the Vice-Chair. Any vacancy shall be filled by the President of the DSBA, and any such appointee shall serve the remainder of the term of the departing member. Any member of the Committee who is willing to continue serving on the Committee beyond his or her one year term may do so at the sole discretion of the President of the DSBA as part of the President of the DSBA's designation of the composition of the Committee. Each member, Co-Chair and Vice-Chair shall inform the President of the DSBA or the Executive Director of the DSBA of each of their willingness to continue to serve in their respective roles after June 30th and before July 10th of each calendar year.

Section 2.04. Regular and Special Meetings. Regular meetings of the Committee may be held at such places and times, but no less frequently than two times per year, as may be fixed from time to time by call of a Co-Chair. A Co-Chair may call or, upon written request by any two members, a Co-Chair shall call special meetings of the Committee. Members of the Committee may participate in a regular or special meeting, in person (if circumstances permit) or by means of telephone, video or similar communications which permit all persons participating in the meeting to hear each other. Participation in a meeting pursuant to this section shall constitute presence in person at the meeting.

Section 2.05. Notice of Meetings. Notice of meetings of the Committee shall be in writing, signed by a Co-Chair or Vice-Chair, and shall be sent to each member by email or by first class mail addressed to his or her last known address at least ten business days prior to the designated meeting time for regular meetings, and shall identify all known or intended business to be on the agenda of the meeting. Notice for special meetings must be provided at least three business days prior to the designated time for the meeting.

Section 2.06. Waiver of Notice. Any meeting of members held without due notice, and any action otherwise properly taken thereat, shall be valid if notice of the time, place, and purpose of such meeting is waived before, at, or after such meeting by all members to whom notices were not duly sent.

Section 2.07. Quorum. A quorum shall be five members of the Committee participating pursuant to Section 2.4 provided however, that the quorum must include at least one Co-Chair or the Vice-Chair.

Section 2.08. Action by Majority Vote. Except as otherwise expressly required by these By-Laws, the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the Committee.

Section 2.09. Proxies. Any member may vote by proxy given by any member to another member, Co-Chair or Vice-Chair, provided notice of the proxy and the specific question addressed is given to the members with notice of the meeting at or before the meeting. The proxy shall be in writing and shall be revocable at the will of the member executing the same any time before the proxy is voted by the transferee member, Co-Chair or Vice-Chair. A vote by proxy is not counted towards a quorum.

Section 2.10. Sub-committee. The Co-Chairs or the Committee may from time to time appoint sub-committees to perform such duties and make such reports and recommendations as the Committee or the Co-Chairs may request. The Co-Chairs or Committee shall appoint chairs of such sub-committees.

ARTICLE III

Officers

Section 3.01. Officers. The officers of the Committee shall be two Co-Chairs and a Vice-Chair to be selected by the President of the DSBA. Each officer shall have such duties or functions as are provided in these By- Laws or as the Committee may from time to time determine and shall have the right to vote.

Section 3.02. Term, Resignation, Removal, and Filling Vacancies. Any duly selected officers shall remain in office for one year commencing July 1, or until resignation or removal as provided herein. Any officer may resign at any time by notifying the Committee or a Co-Chair in writing. Such resignation shall take effect at the time therein

specified and, unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective. An officer may be removed from office by the DSBA's Executive Committee upon recommendation by the President of the DSBA. Any vacancy shall be filled as soon as practicable by the President of the DSBA.

Section 3.03. The Co-Chairs. The Co-Chairs shall be the chief executive officers of the Committee and shall have general supervision over its affairs. One or both Co-Chairs or the Vice-Chair shall preside at all meetings of the Committee. The Co-Chairs and Vice Chair shall be ex officio members of all subcommittees. One of the Co-Chairs, the Vice-Chair, or a designee shall act as secretary of all meetings of the Committee and shall keep the minutes thereof in the proper book, books or appropriate electronic format. Either or both of the Co-Chairs shall provide all notices required to be given to or by the Committee in accordance with these By-Laws or in such manner as shall be deemed appropriate and determined with respect to any specific notice. The Co-Chairs shall have charge of the other books, records and papers of the Committee, in whatever format such records are maintained. The Co-Chairs shall maintain the Official Index of all opinions issued by the Committee and shall act as custodian of such opinions, or shall coordinate with the Executive Director of the DSBA to delegate the maintenance of the Official Index and all opinions issued by the Committee to the DSBA for the benefit of all members of the DSBA. The Co-Chairs shall maintain a list of all current members of the Committee and of the dates of each member's appointment to the Committee and the date that each member's term expires, unless renewed, which action shall also be documented.

Section 3.04. The Vice-Chair. The Vice-Chair shall generally assist the Co-Chairs in performing any duties assigned to the Co-Chairs and shall perform such other

duties as may from time to time be designated to the Vice-Chair by the Co-Chairs. In the absence of a Co- Chair, the Vice-Chair shall preside at meetings of the Committee.

ARTICLE IV

Ethics Opinions and Articles

Section 4.01. Ethics Opinions and Articles. It is the goal of the Committee to prepare one or more legal ethics opinions (“Opinions”) or articles on legal ethics topics (“Articles”) for publication by the Committee or a subcommittee between July 1 and June 30 of the following year. The goal of each Opinion or Article is to address either (i) a specific question or issue regarding the application of the Delaware Rules or the Model Rules presented to the Committee by a member or members of the DSBA as described in these By-Laws; (ii) topical or timely issues of professional conduct related to the Delaware Rules or the Model Rules or any anticipated or actual amendment thereto; or (iii) any other legal ethics-related or professionalism-related topic. Section 4.02. Requests from DSBA Membership for Opinions or Articles. The Committee may accept requests for an Opinion or Article made directly by members of the DSBA to the Committee. The Committee will distinguish an Opinion or Article written in response to a specific request from a member of the DSBA as falling under one of two categories:

A. Requests for Opinions Regarding Actual Prospective Conduct.

Members of the DSBA may request an Opinion that relates specifically to **actual prospective conduct of the requesting member**. A request for an Opinion by a member of the DSBA shall specifically identify such request as a “**Request for an Opinion Regarding Prospective Conduct**” and shall include the reason for the request; a succinct statement of the relevant facts prompting the inquiry; citations to any

known applicable legal authority, including the Delaware Rules or the Model Rules; the specific legal questions that the inquiry seeks to have addressed; efforts made by the attorney to resolve the issue presented; and the time frame in which an Opinion is needed by the requesting member of the DSBA.

B. Requests for Articles. Members of the DSBA may request, in writing, that the Committee write an Article regarding the Delaware Rules or Model Rules. A request for an Article based on the Delaware Rules or Model Rules shall succinctly set forth the specific questions that the inquiry seeks to have addressed and the reasons why an Article responding to the question would be of benefit to the members of the DSBA.

Section 4.03. Nature of Opinions or Articles.

All Opinions or Articles issued by the Committee shall be advisory and nonbinding and shall be for the education of and benefit of the members of the DSBA. .

Section 4.04. Confidentiality. The identity of the attorney making an inquiry to the Committee under Section 4.02 of the By-Laws shall be held in strict confidence and shall not be disclosed outside of the drafting subCommittee except with the written consent of the inquiring attorney. All Opinions shall be drafted so far as possible to conceal the identity of the inquiring attorney.

Section 4.05. Selection and Assignment of Inquiries. The Co-Chairs and the Vice-Chair shall review all written inquiries and shall decide, by a majority vote, which inquiries shall be assigned to members for the research and preparation of an

Opinion or Article. The Committee shall not be required to take up any specific or individual question submitted by any member or members of the DSBA for an Opinion or Article. In the event that the Committee determines to issue an Opinion or Article regarding prospective, not hypothetical conduct, from a member of the DSBA, such request shall be addressed in accordance with Sections 4.01 and 4.02 of the By-Laws. Any attorney making a request for an Opinion under Section 4.02 of the By-Laws shall receive a response, by email or other appropriate format, similar in kind to the request, from one of the officers of the Committee, identifying whether or not the Committee under this Section of the By-Laws has determined to undertake the issuance of an Opinion or Article in response to such request.

Section 4.06. Opinions and Articles. The primary function of the Committee is to provide useful, timely and topical information and education to the members of the DSBA in the form of Opinions or Articles regarding the application of the Delaware Rules and the Model Rules, how they might be interpreted and applied as well as how members of the DSBA may be affected by planned or anticipated changes to the Delaware Rules and the Model Rules and the manner in which they have been interpreted by governing bodies with jurisdiction to interpret either or both sets of rules. Whether taking up a topic or answering a question, the method contemplated by these By-Laws is issuance of an Opinion or Article tailored for submission and potential acceptance by a publication contemplated by the By-Laws or deemed acceptable by the Committee.

A. Opinions and Articles of the Committee and shall be distributed as provided in Section 4.07 below.

B. All Opinions issued by the Committee shall be uniform in style and shall contain the following:

- (1) Caption at top: "DELAWARE STATE BAR ASSOCIATION COMMITTEE ON PROFESSIONAL ETHICS."
- (2) "OPINION [year] - [number] (directly underneath the caption.
- (3) Date of Opinion.
- (4) Standard Disclaimer - "This opinion is merely advisory and is not binding on the inquiring attorney or the Courts or any other tribunal."
- (5) Summary of necessary background facts.
- (6) Conclusion of Opinion.

C. Articles shall be in the format chosen by the drafting subcommittee.

D. It shall be the responsibility of the drafting subcommittee to provide the Committee with a succinct synopsis of any Opinion or Article, with reference to the applicable Delaware Rules or Model Rules, by submission through the Co-Chairs for subsequent inclusion in the Official Index maintained by the Committee or the DSBA.

Section 4.07. Procedure for Issuing Opinions or Articles. Should any member or members of the Committee disagree with the conclusion reached by the drafting subcommittee in an Opinion or Article, such members(s) will be given an opportunity to present their perspective with the Committee, both in writing and/or at a meeting of the Committee. However, if the Committee approves the conclusion of the drafting subcommittee, the Committee will not publish dissenting or concurring views.

Upon receipt by the Committee of a draft Opinion or Article, the Co-Chairs shall distribute copies to all members of the Committee together with a notice of a

deadline for comments. The Co-Chairs shall forward all comments to the drafting subcommittee, which may in its discretion prepare a new draft, incorporate the comments into their existing draft, or explain briefly why it chose not to adopt the comments. The Co-Chairs then shall distribute copies of the most recent draft to all members, with any comments, for approval. A draft Opinion or Article shall be deemed approved by the Committee when a majority of a quorum of the Committee present at a meeting has approved the draft Opinion or Article.

Section 4.08. Distribution of Opinions and Articles. After the Committee has approved an Opinion, the Co-Chairs shall distribute the Opinion to the inquiring attorney. After the Committee has approved an Opinion or Article, the Committee shall submit it to a target publication. Once the target publication has decided whether to accept the Opinion or Article for publication, the Co-Chairs will provide a copy to the DSBA for its publication if permitted by the target publication to which the Opinion Article was submitted.

ARTICLE V

Amendments of the By-Laws

Secton 5.01. The provisions of these By-Laws may be amended by changing, altering, suspending, supplementing, or repealing the same, at any duly constituted regular or special meeting of the Committee, upon notice to the Committee members, by a majority vote of the members present and entitled to vote at such meeting, except that no amendment will be final and made part of the By-Laws until submitted to and approved by the Executive Committee of the DSBA in accordance with the

requirements of the DSBA. The notice of such meeting shall set forth the language of the proposed amendment.

Committee Bylaws adopted by the Executive Committee of the Delaware State Bar Association, effective June 17, 2021.