

**TENNESSEE BAR ASSOCIATION  
BOARD OF GOVERNORS**

**RECOMMENDATION AND REPORT OF THE  
LGBT SECTION**

**RESOLVED**, that the Tennessee Bar Association should amend its Bylaws to delete Paragraph 7 in its entirety and to insert a new paragraph in its own section that states as follows:

**Non-Discrimination.** The Association shall encourage the participation and representation in its membership and leadership, and in the bar association and the legal profession generally, of the many diverse groups within the community that the Association serves. The Association shall not discriminate, and shall actively oppose discrimination, on the basis of ancestry, color, or race; cultural or ethnic background; economic disadvantage; ideological, philosophical, or political belief or affiliation; marital or parental status; age; national or regional origin; physical or mental ability; religion or religious or denominational affiliation; sex; sexual orientation; gender identity and expression; kind, size, and place of practice; and any other status or basis of which discrimination is prohibited by these bylaws, federal or state law (without regard to whether the law applies directly to the Association), or otherwise by the Association.

## REPORT

The Tennessee Bar Association (“Association”) is the largest, voluntary bar association in the State of Tennessee. The Association’s Bylaws proclaim that the Association’s purpose “shall be to foster legal education, maintain the honor, dignity and well-being of the members of the legal profession, enhance the performance of the legal profession, cultivate professional ethics and fellowship among its members and promote responsible relationships between the legal profession and the public.”

Unfortunately, discrimination remains a rampant problem generally in the legal profession. *See, e.g.,* Kim Elsesser, *Female Lawyers Face Widespread Gender Bias, According to New Study*, *Forbes* (Oct. 1, 2018); Liane Jackson, *Race and Gender Bias is Rampant in Law, Says New Report that Also Offers Tools to Fight It*, *A.B.A. J.* (Sept. 6, 2018); Lara Bazelon, *What it Takes to Be a Trial Lawyer If You’re Not a Man*, *The Atlantic* (Sept. 2018); Calla Wahlquist, *Gender Bias Still Rife in Legal Profession Despite Rhetoric, Says Kate Jenkins*, *The Guardian* (Jun. 1, 2017). Employment biases today often result from “patterns of interaction, informal norms, networking, . . . mentoring, and evaluation . . . .” Susan Strum, *Second-Generation Employment Discrimination: A Structural Approach*, 101 *COLUM. L. REV.* 458, 459-60 (2001).

With such rampant and devastating discrimination, the Association has a special responsibility to model and uphold the values of diversity and inclusion. Yet, the Association’s Bylaws current pronounces a limited and outdated non-discrimination policy:

**7. Non-Discrimination.** No person shall be denied membership in the Association because of race, creed, color, sex or national origin.

Although this language was surely well-intended when it was drafted, it falls short of contemporary needs in three critical ways. First, the current non-discrimination policy is limited only to decision associated with membership. It would not violate this policy to, for example, refuse to appoint African American members to leadership positions, exclude members from serving on a membership because of a physical disability, or permit members who identify as members of the LGBTQIA community from working on service projects. The scope of the non-discrimination policy must be expanded.

Second, the current non-discrimination policy imposes no affirmative obligation on the Association to promote and encourage diversity and inclusion. The Association should not merely undertake to refrain from engaging in discrimination, but alternatively, to actively pursue diversity and inclusion. The Association should be commended for what it has done in this area – for example, the support of the Young Lawyers Division’s Diversity Leadership Institute. In a significant way, the Bylaws need to be updated to intentionally reflect the Association’s work and values.

Finally, the currently enumerate classes identified in the non-discrimination policy are insufficient to cover all classes of underrepresented or historically marginalized groups. The non-discrimination policy should be extended to include prohibitions against discrimination on bases such as physical or mental disability, age, sexual orientation, and gender identity and expression.

Additionally, the non-discrimination policy should be expanded to include within its reach the various practice settings in which the Association's members exist.

Although updating the Association's non-discrimination policy will not, in and of itself, eliminate the problems of discrimination and marginalization, this action would send at least two important messages to the profession. First, to those lawyers and law students who fall into a diverse or historically marginalized classes, this non-discrimination policy will be an overt signal that they are welcome, valued, and celebrated within the mission and membership of the Association. Secondly, these revisions will send a clear message that the Association is committed to fairness and equal opportunity, and that discrimination and harassment will not be tolerated. These values reflect directly to the Association's commitment to civility and professionalism.

Specifically, this Recommendation and Report suggests that Paragraph 7 of the Bylaws be deleted in its entirety, and that a new paragraph be asserted in its own section that states as follows:

**Non-Discrimination.** The Association shall encourage the participation and representation in its membership and leadership, and in the bar association and the legal profession generally, of the many diverse groups within the community that the Association serves. The Association shall not discriminate, and shall actively oppose discrimination, on the basis of ancestry, color, or race; cultural or ethnic background; economic disadvantage; ideological, philosophical, or political belief or affiliation; marital or parental status; age; national or regional origin; physical or mental ability; religion or religious or denominational affiliation; sex; sexual orientation; gender identity and expression; kind, size, and place of practice; and any other status or basis of which discrimination is prohibited by these bylaws, federal or state law (without regard to whether the law applies directly to the Association), or otherwise by the Association.

This iteration of a non-discrimination policy will more fully encapsulate the values of diversity and inclusion and will more appropriate support the full inclusion of all the diverse communities that this Association serves.

**Respectfully submitted,**

**LGBT SECTION EXECUTIVE COUNCIL**