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JP-4 (12/08)

## JUDGES' PROFESSIONAL LIABILITY INSURANCE POLICY

### NOTICE:

This is a "claims made and reported" policy. Subject to all terms, conditions, exclusions and limits of liability, the policy provides coverage only for Claims that are first made against the Insured and reported in writing to the Association during the policy period, regardless of when the acts, errors or omissions on which the Claim is based occurred. PLEASE CAREFULLY REVIEW THE POLICY.

FOR MORE INFORMATION, TO REPORT A CLAIM, OR TO FILE A COMPLAINT  
CALL: 1-800-252-9332

In consideration of the payment of the premium and, when applicable, the Deductible stated in the Declarations, and in reliance upon the statements in the application attached hereto and made a part hereof, and subject to all terms, conditions, exclusions and limits of liability of this policy, Texas Lawyers' Insurance Exchange (a reciprocal insurer, herein called the "Association") agrees with the Named Insured as follows:

### ARTICLE 1. DEFINITIONS

Whenever used in this policy the term

#### 1.1 "Business Enterprise" means:

any commercial or not-for-profit activity or entity, including any subsidiary and/or affiliated entities, in which the Insured is engaged other than the Insured's judicial service; provided however, that any bar-related or court-appointed service by the Insured will not be considered a "Business Enterprise."

#### 1.2 "Claim" means:

a demand, including service of suit or institution of arbitration proceedings, for money against the Insured. A Multiple Claim shall constitute one Claim for purposes of this policy.

#### 1.3 "Claim Expenses" means:

- (a) fees and expenses charged by attorneys engaged by the Association to represent the Insured in the defense of a Claim, and
- (b) all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a Claim, suit, arbitration, mediation or other proceeding arising in connection therewith, if incurred by the Association, or by the Insured with written consent of the Association; provided, however, that Claim Expenses does not include salaried charges of regular employees or officials of the Association, nor does Claim Expenses include any fees or costs incurred by the Insured without the prior written consent of the Association, including any fees and costs incurred prior to the date the Claim is first reported to the Association.

#### 1.4 "Court of Record" means:

any of the following courts, whether criminal and/or civil and including such special courts as family and probate courts. Courts of the State of Texas: County Courts, County Courts at Law, District Courts, Administrative Judicial Districts, Courts of Appeal, Court of Criminal Appeals and the Supreme Court of Texas. Courts of the United States of America: United States District Courts, United States Bankruptcy Courts and the United States Court of Appeals for the Fifth Circuit.

#### 1.5 "Damages" means:

a monetary judgment, award or settlement, but does not include:

(a) any fine, penalty, or other administrative or court-imposed monetary sanction of any nature against the Insured, or

(b) Claim Expenses.

#### 1.6 "Deductible" means:

the amount designated as such in the Declarations.

#### 1.7 "DTPA" means:

The Texas Deceptive Trade Practices and Consumer Protection Act, Texas Business and Commerce Code Sections 17.41 et seq.

#### 1.8 "Insured" means:

the Named Insured, defined as the individual designated in Item 1 of the Declarations.

#### 1.9 "Judge" means:

a duly elected, appointed, presiding or visiting Judge in a court of record. The term "Judge" includes federal magistrates.

#### 1.10 "Limit of Liability - Each Claim" means:

the limit of liability for each Claim as set forth in Article 4.1 of this policy.

#### 1.11 "Limit of Liability - Policy Aggregate" means:

the limit of liability for all Claims under the policy as set forth in Article 4.2 of this policy.

#### 1.12 "Multiple Claim" means:

two or more Claims, by one or more claimants, that arise out of a single act, error or omission, or out of a series of directly or indirectly related acts, errors or omissions.

#### 1.13 "Named Insured" means:

the individual designated in Item 1 of the Declarations.

#### 1.14 "Policy Period" means:

the period from the effective date and time of this policy, as set forth in the Declarations, to the policy expiration date and time, as set forth in the Declarations, unless the policy is canceled earlier by the Named Insured or the Association, in which event the Policy Period shall end on the date and time of such earlier cancellation.

#### 1.15 "Judicial Services" means:

- (a) judicial duties performed as a duly elected, appointed, presiding or visiting judge in a court of record, or
- (b) administrative duties performed as a judge, provided that:

- (i) such administrative duties are required or permitted duties of judges under the laws of the State of Texas and/or the laws of the United States of America, and
- (ii) the acts or omissions of the Insured are within the scope of the Insured's authority to perform such duties.

**1.16 "Related Individual" means:**

a person currently related to the Insured within the third degree by consanguinity or affinity, and any trust or estate of which any such person is a beneficiary.

**1.17 "Retroactive Date" means:**

the date, if any, designated as such in the Declarations.

**ARTICLE 2. COVERAGE**

**2.1 Coverage for Judicial Liability.**

Subject to all terms, conditions, exclusions and limits of liability of this policy, and in reliance upon the representations made in the application attached to and made a part of this policy, the Association agrees to pay on behalf of the Insured all sums in excess of the Deductible which the Insured shall become legally obligated to pay as Damages, including actual and additional damages assessed under the DTPA, as a result of CLAIMS FIRST MADE AGAINST THE INSURED AND FIRST REPORTED IN WRITING TO THE ASSOCIATION DURING THE POLICY PERIOD based on or arising out of any act, error or omission:

- (a) occurring during or prior to the Policy Period, but subsequent to the Retroactive Date, if one is shown in the Declarations, and
- (b) arising out of Judicial Services rendered or that allegedly should have been rendered for others by the Insured or by any person for whose acts, errors or omissions the Insured is legally responsible.

**2.2 Defense and Settlement.**

For any Claim seeking Damages payable under this policy, the Association shall have the right to engage counsel and shall have the duty to defend such Claim, even if any or all of the allegations of the Claim are groundless, false or fraudulent. Unless extenuating circumstances exist, the Association will consult in advance with the Named Insured regarding selection of defense counsel. The Association may investigate and settle any Claim as it deems reasonable and appropriate. If a governmental body or agency provides the Insured with a defense to a Claim, the Association shall not be obligated to reimburse the governmental body or agency for such defense. However, if a governmental body or agency provides the Insured with a defense to a Claim, the Association may also defend the Claim at its option or at the written request of the Insured.

The Association shall not settle a claim without first consulting the Named Insured, but the Named Insured's consent to settle shall not be required. However, if a decision to settle is reached by the Association more than fifteen (15) days before a trial setting of such Claim, and if the Named Insured shall disagree with the Association's decision to settle, the Named Insured may within three (3) days after notification of this decision, appeal to the President of the Association. The President of the Association shall immediately appoint a Peer Review Committee composed of not less than three (3) members of the Association which shall review the matter (and in its discretion, may permit a personal presentation by the Named Insured). Upon completion of its review, the Peer Review Committee shall determine whether the proposed settlement is reasonable, and it shall immediately advise the Association and the Named Insured of its decision. Such decision of the Peer Review Committee shall be final.

The Association is not required to take an appeal in any suit but may do so if the Association, in its discretion, determines an appeal to be reasonable and appropriate.

**2.3 Payment of Claim Expenses.**

Subject to Article 4 of this policy entitled "Limits of Liability and Other Insurance," including, without limitation, Articles 4.1, 4.2, 4.4, 4.5, 4.6 and 4.7 thereof entitled respectively "Limit of Liability – Each Claim," "Limit of Liability – Policy Aggregate," "Damages and Claim Expenses Included in Limits of Liability," "Deductible," "Optional Claim Expense Allowance" and "Other Insurance," the Association shall pay Claim Expenses.

**2.4 Policy Territory.**

This policy applies to acts, errors or omissions occurring anywhere in the world, provided that the Association shall have no obligation to pay any amount as Damages pursuant to a judgment or award made in any suit or proceeding brought in a jurisdiction outside of the United States (including its territories and possessions) or Canada, or defend the Insured pursuant to Article 2.2 of this policy entitled "Defense and Settlement" in such suit or proceeding. However, the Association may, at its option, assume the defense of such a suit or proceeding. Even if the Association defends such a suit or proceeding, it shall have no obligation to pay any amount on behalf of the Insured with respect to any judgment or award of Damages in such proceeding.

**ARTICLE 3. EXCLUSIONS**

**This policy does not apply:**

**3.1 To any Claim based on or arising out of:**

- (a) any allegedly criminal act, error or omission,
- (b) any allegedly dishonest or fraudulent act, error or omission, including conspiracy, or
- (c) any allegedly malicious or deliberately wrongful act, error or omission, except that the Association will provide a defense to a Claim for malicious prosecution.

However, this exclusion will not apply to any Insured who did not participate in, acquiesce to or remain passive after becoming aware of the act, error or omission which forms the basis of the Claim excluded by this provision, but only with respect to actual or compensatory Damages.

**3.2 To any Claim based on or arising out of any fine, penalty, or any other court-imposed or administrative monetary sanctions of any nature assessed against any Insured or any Insured's client.**

**3.3 To any Claim by, against or relating to, in whole or in part, any Business Enterprise:**

- (a) owned in whole or in part by any Insured or Related Individual at the time of the Professional Services, except that ownership of less than 5% of the total issued and outstanding shares in a publicly traded corporation shall not be considered an ownership interest for the purposes of this exclusion,
- (b) in which any Insured or Related Individual served as an officer, director, partner, trustee or employee at the time of the Professional Services, except that the service of any Insured or Related Individual as Secretary or Assistant Secretary to a corporation shall not be considered to be service as an officer of a Business Enterprise if the functions performed as Secretary or Assistant Secretary are limited to ministerial acts, or
- (c) controlled, operated or managed, directly or indirectly, by any Insured or Related Individual at the time of the Professional Services.

**3.4 To any Claim based on or arising out of any Insured's services and/or capacity as:**

- (a) an owner, officer, director, partner, trustee, or employee of a Business Enterprise or charitable organization or pension, welfare, profit sharing, mutual or investment fund or trust,
- (b) a public official, or an employee of a governmental or quasi-governmental body, subdivision, or agency (other than a duly elected or appointed judge), or
- (c) a fiduciary under the Employee Retirement Income Security Act of 1974 and its amendments or any regulation or order issued pursuant thereto, except if the Insured is deemed to be a fiduciary solely by reason of legal advice rendered with respect to an employee benefit plan.

**3.5 To any loss sustained by any Insured as the beneficiary or distributee of any trust or estate.**

**3.6 To any Claim by any current or former Insured or Related Individual.**

**3.7 To any Claim based on or arising out of any sickness, disease or physical injury to any person, or death resulting from any such sickness, disease or injury. However, this exclusion will not apply to a Claim for mental anguish or emotional distress**

based on or arising out of Judicial Services that were rendered, or that allegedly should have been rendered, by the Insured.

- 3.8** To any Claim based on or arising out of any injury to or destruction of any property, including the loss of use of such property.
- 3.9** To any Claim or proceeding which does not seek money damages including, without limitation, removal actions, mandamus proceedings and hearings before the Judicial Qualifications Commissions.
- 3.10** To any Claim based on or arising out of any circumstance, act, error or omission that occurred prior to the date on which the Named Insured was first insured and continually renewed by the Association, if on such date any Insured knew, or reasonably should have known, that such circumstance, act, error or omission might form the basis of a Claim against the Insured, including any circumstance, act, error or omission that was previously reported to another insurance carrier.

#### **ARTICLE 4. LIMITS OF LIABILITY AND OTHER INSURANCE**

##### **4.1 Limit of Liability – Each Claim.**

Subject to the provisions of Articles 4.4 and 4.5 of this policy, entitled "Damages and Claim Expenses Included in Limits of Liability" and "Deductible," the liability of the Association for each Claim shall not exceed the amount stated in the Declarations for each Claim.

##### **4.2 Limit of Liability – Policy Aggregate.**

Subject to the Limit of Liability – Each Claim and the provisions of Articles 4.4 and 4.5 of this policy, entitled "Damages and Claim Expenses Included in Limits of Liability" and "Deductible," liability of the Association for all claims shall not exceed the amount stated in the Declarations as "Aggregate."

##### **4.3 Multiple Claims or Claimants.**

A Multiple Claim shall be one Claim for all purposes of this policy. The making of demands by more than one person or organization shall not operate to increase the Association's limit of liability.

##### **4.4 Damages and Claim Expenses Included in Limits of Liability.**

The Association shall not be obligated to pay any Damages or Claim Expenses, or continue to undertake defense of any Claim after the Limit of Liability – Each Claim or the Limit of Liability – Policy Aggregate have been exhausted by payments of Damages and/or Claim Expenses or by deposit of the applicable available limit of liability in a court of competent jurisdiction; and that, in such a case, the Association shall have the right to withdraw from further defense thereof by tendering control of the defense to the Named Insured, and the Named Insured agrees, as a condition to the issuance of this policy, to accept such tender.

##### **4.5 Deductible.**

Unless otherwise stated in the Declarations, the Deductible is an aggregate amount for all Claims. The amount of the applicable Limit of Liability includes the amount of the Deductible. The Named Insured shall pay to the Association the amount paid by the Association on behalf of the Insured for Damages and/or Claim Expenses up to the amount of the Deductible. After any part of the Deductible has been incurred for Damages and/or Claim Expenses, the applicable Limit of Liability is reduced by that amount of the Deductible incurred.

##### **4.6 Other Insurance.**

If the Insured has any other insurance coverage that applies to a Claim made under this policy, the coverage provided by this policy shall be in excess to the Insured's other coverage, even if the Insured's other coverage is stated to be primary, contributory, excess, contingent or otherwise, unless the Insured's other coverage is specifically written as excess coverage over the coverage provided by this policy.

If more than one Association policy applies to a Claim under this policy against any Insured who is covered by more than one Association policy, then the Limit of Liability – Each Claim under each policy will apply to the Claim in proportion to the total Limits of Liability – Each Claim under all applicable Association policies.

If more than one Association policy applies to a Claim that arises out of a single act, error or omission, or out of a series of directly or indirectly related acts, errors or omissions, because the Insured under this Association policy and another Association policy(ies) were stockholders in, partners of, Of Counsel to or employees of the same firm at the time of the acts, errors or omissions which form the basis of the Claim, then the Limit of Liability – Each Claim under each policy will apply to the Claim in proportion to the total Limits of Liability – Each Claim under all applicable Association policies.

##### **4.7 Reimbursement.**

If the Association has paid any amounts as Damages or Claim Expenses in excess of the applicable limits of liability or within the amount of the applicable Deductible, the Insured shall be liable to the Association for any and all such amounts and upon written demand for interim and/or final payment, shall pay such amounts within 30 days to the Association. If any such amounts are not paid to the Association when due, the Association may deduct such amounts, plus accumulated interest at the rate of 10% APR from the date due, from any future distributions due to the Named Insured.

#### **ARTICLE 5. CLAIMS**

##### **5.1 Notice of Claim or Suit.**

As a condition precedent to coverage under this policy, the Insured shall, as soon as practicable, report to the Association, in writing and during the Policy Period:

- (a) any Claim made against the Insured which might be covered by this Policy, along with any demand, notice, summons or other process received by the Insured or its representative; and
- (b) any act, error or omission which could reasonably be expected to form the basis of a Claim, but upon which no Claim has yet been made, along with complete details regarding the act, error or omission, any injury or damage which could result from such act, error or omission; and how the Insured first became aware of such act, error or omission.

Provided the Insured strictly complies with this provision, any Claim subsequently made against the Insured based on or arising out of such act, error or omission shall be deemed to have been reported to the Association on the date the Association received notice of the act, error or omission.

##### **5.2 Assistance and Cooperation of the Insured.**

The Insured shall cooperate with the Association and, upon the Association's request, assist in making settlements, assist in the conduct of suits, and assist in enforcing any right of the Association under Article 5.6, entitled "Subrogation"; and specifically, but without limitation, the Insured shall provide copies of all pertinent documents to the Association, provide reasonable reports regarding the Claim to the Association, attend hearings, mediations, arbitrations and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The Insured shall not, except at the Insured's own expense, settle any Claim, make any payment, assume any obligation, admit any liability, stipulate to any judgment against the Insured or incur any expense, without the prior written consent of the Association.

##### **5.3 Arbitration.**

The Association shall be entitled to exercise all of the Insured's rights in the choice of arbitration, in the selection of a situs for arbitration and in the conduct of any arbitration proceeding involving a Claim covered by this policy.

##### **5.4 Date of Reporting.**

A Claim shall be considered reported to the Association on the date when it was first reported in writing to the Association. A Multiple Claim shall be considered reported to the Association on the date the first of the demands for money which constitute the Multiple Claim is reported in writing to the Association, or the date on which the Association first receives written notice under Article 5.1(b) of a specific act, error or omission which may constitute all or part of the Multiple Claim, whichever is earlier.

##### **5.5 Subrogation.**

In the event of any payment under this policy, the Association shall be subrogated to the Insured's rights of recovery against any person or organization, and the Insured shall execute and

deliver to the Association all necessary instruments and take whatever action is necessary to secure such rights. The Insured shall do nothing to prejudice such rights. The Association shall have the right to pursue subrogation in the name of the Insured or in its own name.

The Association shall not exercise any such rights against any persons, firms or entities included in the definition of "Insured," with the following exceptions. The Association reserves the right to exercise any rights of subrogation against the Insured if that Insured committed any acts for which the Insured's coverage is excluded by Article 3.1, and those acts caused, in whole or in part, any liability covered under this policy. The Association may pursue any subrogation rights or coverage claims which the Insured may have under any other insurance policy.

#### **5.6 Action Against the Association.**

No action shall lie against the Association unless, as a condition precedent thereto, the Insured shall have fully complied with all the terms of this policy, and until the amount of the Insured's obligations to pay shall have been finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the claimant and the Association.

Any person or organization not insured hereunder, or the legal representative thereof, who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Association as a party to any action against the Insured to determine the Insured's liability, nor shall the Association be impleaded by the Insured or its legal representative. Bankruptcy or insolvency of the Insured or of the Insured's estate shall not relieve the Association of its obligations hereunder.

### **ARTICLE 6. OTHER CONDITIONS**

#### **6.1 Changes.**

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the Association from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued as a part of this policy and signed by an officer of the Association.

#### **6.2 Assignment.**

The interest hereunder of any Insured is not assignable. If the Insured shall die or be adjudged incompetent, this policy shall cover the Insured's legal representative as the Insured with respect to liability previously incurred and covered by this policy.

#### **6.3 Cancellation/Nonrenewal.**

This policy may be cancelled by the Insured by surrender thereof to the Association or any of its authorized agents or by mailing to the Association written notice stating when thereafter the cancellation shall be effective. This policy may be cancelled upon 30 days' notice by the Association by mailing to the Named Insured at the address shown in this policy written notice stating when such cancellation shall be effective; provided, however, only 10 days' notice shall be required to cancel this policy for failure to pay premiums; and further provided that the Association's right to cancel this policy shall be subject to any statutory or regulatory restrictions.

The effective date of cancellation stated in the notice shall become the end of the Policy Period. The Association may in its discretion refuse to renew this policy upon 60 days' notice by the Association by mailing to the Named Insured at the address shown in this policy written notice of the nonrenewal and in accordance with the terms and provisions of any statutory or regulatory requirements.

The mailing of any notice as aforesaid shall be sufficient proof of notice. Delivery of such written notice either by the Insured or by the Association shall be equivalent to mailing. If the Insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedures. If the Association cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

#### **6.4 Entire Contract.**

By acceptance of this policy, the Insured agrees that all statements and provisions in the Declarations and in the Insured's application for this policy form a part of this policy and are true and correct and that this policy is issued in reliance upon the truth of such representations and embodies all agreements existing between the Insured and the Association relating to this insurance.

#### **6.5 Applicable Law.**

This policy shall be interpreted in accordance with the laws of the State of Texas. Venue of any litigation based on or arising out of this policy shall be Travis County, Texas.

#### **6.6 Reciprocal Association Policy Conditions.**

##### **(a) Member of the Association.**

Each Named Insured, by virtue of the issuance of this policy, is a member of the Association as long as this policy is in force. Each Named Insured shall be entitled to one vote at the time of meetings of members of the Association, either in person or by proxy at such meetings. Upon cancellation or upon other termination of the policy, the Named Insured ceases to be a member of the Association.

##### **(b) Policy Distributions.**

The Named Insured is a Member of the Association and shall receive distributions in accordance with the conditions determined by the Board of Directors.

##### **(c) Nonassessable.**

This policy is nonassessable. The Association shall not assess any Insured any additional premiums for any adverse expense or loss experienced by the Association.