



Staff Memorandum

HOUSE OF DELEGATES Agenda Item #4

REQUESTED ACTION: Subscription to the Bylaws amendments proposed by the Committee on Bylaws to allow for their consideration at the Annual Meeting of the Association.

At its June 2019 meeting, the House of Delegates approved the report and recommendations of the Task Force on the Role of the Paralegal. Among the recommendations approved was that the Association create a membership category for paralegals. The Committee on Bylaws was charged with developing appropriate Bylaws amendments to implement this recommendation, and the committee's report with proposed amendments is attached.

The committee recommends that Article III of the Bylaws be restructured to provide for a class of Non-Attorney Affiliates, which would include paralegals as well as the current law school graduates who are not admitted to practice in any jurisdiction and who are employed by a law school or bar association. The committee also recommends that for purposes of the Bylaws, "paralegal" be defined in accordance with the definition contained in the Association's Guidelines for the Utilization by Lawyers of the Services of Paralegals.

The committee's report also contains several recommendations related to the Non-Attorney Affiliate category:

- Sections that involve Non-Attorney Affiliates in section activities should consider what rights, if any, such affiliates should have within the section.
- Membership applications for Non-Attorney affiliates should contain a disclaimer that status as an affiliate does not entitle a person to engage in the practice of law.
- The application should include a question as to whether the applicant has been convicted of a felony or misdemeanor; if so, the application should request an attestation from an attorney regarding the applicant's character and fitness.
- Any identification card issued to a Non-Attorney Affiliate should be distinguishable from cards issued to members.

- The Membership Committee should be tasked with recommending dues and benefits for Non-Attorney Affiliates.

Under procedures established in the Bylaws, the proposed amendments must be subscribed to by a majority of all members of the House of Delegates in order to be considered at a meeting of the Association. Subscription can take place at this meeting to allow for consideration of these proposed amendments at the Annual Meeting of the Association on January 31, 2020.

The report will be presented at the November 2 meeting by Robert T. Schofield, IV, Chair of the Committee on Bylaws.



COMMITTEE ON BYLAWS

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September 23, 2019

To: Members of the House of Delegates

**Re: Report on Proposed Bylaws Amendment to include Paralegals as Non-voting
Affiliates of the Association**

INTRODUCTION

At its June 15, 2019 meeting, the House of Delegates approved a recommendation from the Task Force on the Role of Paralegals that the Association create a category of membership for paralegals. The Task Force’s recommendation is attached is Exhibit “A.” As envisioned by the Task Force, paralegals would be able to participate in Association activities, particularly programs aimed at improving the paralegal profession.

This committee subsequently was asked by leadership to develop Bylaws amendments to implement this House action. The co-chairs of the Membership Committee, together with a designated committee representative, worked with our committee to review materials and develop this report.

After considering the issues, the committee recommends that Article III be restructured to provide for a class of Non-attorney Affiliates, of which paralegals would be one,¹ in addition to the existing membership classes. The committee also recommends that the Association’s current definition of paralegal be used to describe the qualifications needed to join the Association as a paralegal Non-attorney Affiliate.

STUDY OF ISSUES

As set forth in the report of the Task Force on the Role of the Paralegal, a membership category for paralegals “would provide a means for paralegals to learn from and contribute to the organized bar[and] provide guidance for paralegals who are considering law school attendance and the practice of law. In addition, [paralegal members] could focus on researching some of the open questions presented in this Report regarding the need for further regulation or certification of

¹ The other class on Non-attorney Affiliates would be law school graduates not admitted to any bar who work for a New York law school or a bar association; these people are currently called “Affiliate Members” under the bylaws.

paralegals.” Our committee observed several other benefits to the Association from creating a category for paralegals:

- Greater distribution of Association publications and programming.
- Increased dues revenue.
- Increased Association visibility.

This category would not permit paralegals to vote or hold office, as is currently the case with the affiliate members who hold a law degree but are not admitted to practice in any jurisdiction.

The committee reviewed other bar associations’ bylaws relating to paralegal/non-lawyer members; a list of these provisions may be found in Exhibit “B.” These provisions range from very limited non-lawyer members (Pennsylvania) to paralegals (North Carolina) to law-related employee members (Connecticut) to persons interested in the Association’s work (American Bar Association). After reviewing these provisions, it was the committee’s view that for the present time, it would be appropriate to base our proposed provision on the definition contained in the report of the Task Force on the Role of the Paralegal, approved by the House:

“a person qualified through education, training or work experience who is employed or retained by a lawyer, law office, governmental agency, or other entity in a capacity or function which involves the performance, under the ultimate direction and supervision of, and/or accountability to, an attorney, of substantive legal work, which requires a sufficient knowledge of legal concepts that, absent such legal assistant/paralegal, the attorney would perform the task.”²

An issue raised by several committee members is whether a person with a criminal record should be permitted to become a paralegal affiliate of the Association. Our review of other bars’ provisions for non-lawyer members did not reveal any bars that have addressed the issue. However, the Denver Bar Association requires non-lawyer members to have an attorney sponsor their membership and renewals. The committee expressed concern that, paralegals, being unregulated paraprofessionals with no licensure or oversight by any regulatory body, might expose the Association to individuals with problematic professional histories joining through this new class. After study and discussion, the committee agreed to make several recommendations to address this situation.

An additional issue raised was whether non-attorneys might improperly use membership in an improper manner, including creating the appearance that they are attorneys. We believe this problem can be mitigated by including appropriate disclaimers in membership materials and prominently identifying these persons as non-attorneys. Accordingly, the committee agreed to make several recommendations on these points as well.

² This definition was adopted in the Association’s 1995 Guidelines for the Utilization by Lawyers of the Service of Legal Assistants, which were adopted by the NYSBA House of Delegates on June 28, 1997.

PROPOSED LANGUAGE

The committee proposes that Article III of the Association's bylaws be amended as follows:

III. MEMBERS AND AFFILIATES

Section 1. Membership. There shall be ~~five~~^{six} classes of membership in the Association: Active, Associate, ~~Affiliate~~, Honorary, Sustaining and Law Student, and the members shall be divided among such classes according to their eligibility.

A. Active Members. Any member of the legal profession in good standing admitted to practice in the State of New York may become an Active member by submitting any required application form and supporting documentation to the Executive Director. Upon payment of the applicable dues following such submission, the applicant shall immediately be entitled to all of the rights and subject to all responsibilities of membership.

B. Associate Members. Any member of the legal profession in good standing admitted to practice in any state, territory or possession of the United States or another country but not in New York may become an Associate member by submitting any required application form and supporting documentation to the Executive Director. Upon payment of the applicable dues following such submission, the applicant shall immediately be entitled to all of the rights and subject to all of the responsibilities of membership, with the exception of being an officer of the Association, being a member of the House of Delegates or Executive Committee, or serving as a Section Chair; provided, however, that upon the request of a Section Executive Committee and with the consent of the Association Executive Committee, an Associate member may serve as a Section Chair.

~~**C. Non-attorney Affiliates.** Any person holding a law degree but not admitted to practice in any state, territory or possession of the United States or another country who is employed by a law school approved under the rules of the Court of Appeals, or who is employed by a bar association, may become an Affiliate member by submitting any required application form and supporting documentation to the Executive Director. Upon payment of the applicable dues following such submission, the applicant shall immediately be entitled to all of the rights and subject to all of the responsibilities of membership except those of voting, being an officer of the Association, being a member of the House of Delegates or Executive Committee, or being Chair of a Section or Committee.~~

~~**D. Honorary Members.** Honorary members may be elected by the Association.~~

D.E. Law Student Members.

1. Any law student in good standing, if not otherwise eligible for membership in this Association, may become a Law Student member by written application to the Executive Director, endorsed as to the applicant's good standing as above prescribed on behalf of the applicant's law school, and by payment of the annual dues of the current year, provided that the law school is an approved law school under the Rules of the Court of Appeals. A Law Student member shall cease to be such at the end of any calendar year in which, for any reason other than graduation or service in the Armed Forces of the United

States or in any statutory substitute for such service, the law student ceases to be enrolled in good standing in an approved law school, provided that continuance of such membership because of service in the Armed Forces of the United States or in any statutory substitute for such service shall cease one year after the termination of such service if the Law Student member has not by that time again become a law student and met all qualifications for becoming a Law Student member. A Law Student member shall be exempt from dues while in service of the Armed Forces of the United States or in any statutory substitute for such service.

2. A Law Student member shall have all the powers and privileges of an Active member of the Association except those of voting, being an officer of the Association, serving as a member of the Executive Committee or House of Delegates, or serving as Chair of a Section or Committee.

3. A Law Student member may become an Active or Associate member of the Association, as the case may be, without further application upon notice to the Association of admission to the bar of any state, territory or possession of the United States or another country within nine months after graduation from law school (exclusive of time spent in the Armed Forces of the United States or in any statutory substitute for such service) accompanied by payment of the annual dues for the current year.

E.F.—Sustaining Membership. The House of Delegates shall have the power to establish Sustaining memberships in the Association and to fix from time to time the amount of dues therefor. Sustaining membership shall be available to such members of any class as are willing, for the support of the general work of the Association, to pay such amount as annual dues in any year, in lieu of the dues prescribed pursuant to Section 2 of this Article. A member who elects to be a Sustaining member in any year shall not be obligated thereby to continue as such in any subsequent year. Sustaining members shall have the same rights and privileges as pertain to the class of which they are a member. Subject to the provisions of this Article, the House of Delegates shall have power to make appropriate regulations as to such Sustaining membership and the collection of sustaining dues therefrom.

Section 2. Non-attorney Affiliates.

A. Any Person:

1. holding a law degree but not admitted to practice in any state, territory or possession of the United States or another country who is employed by a law school approved under the rules of the Court of Appeals or who is employed by a bar association,
or

2. who is not admitted to practice law in any state, territory or possession of the United States or another country and is a legal assistant or paralegal, qualified by education, training or work experience, who is employed or retained by an attorney, law office, corporation, governmental agency or other entity, and who performs specifically delegated substantive legal work for which an attorney is responsible,

may become a Non-attorney Affiliate of the Association by submitting any required application form and supporting documentation to the Executive Director. Upon payment of the applicable dues following such submission, the applicant shall immediately be entitled to all of the rights and subject to all of the responsibilities as if such person were a member, except those of voting, being an officer of the Association, being a member of the House of Delegates or Executive Committee, or being Chair of a Section or Committee. Non-attorney Affiliates are not entitled to hold themselves out as members and their status as a Non-attorney Affiliate does not authorize them to practice law unless they otherwise have standing to do so.

RECOMMENDATIONS

The committee makes the following recommendations to the House of Delegates:

- **Recommendation #1:** That the House subscribe to the proposed amendment of the bylaws in the form set forth above that that proposed amendment can be put forth for a vote of the membership at the January 2020 Annual Meeting.
- **Recommendation #2:** That Sections which seek to involve Non-attorney Affiliates in their activities consider what, if any rights those persons may have within the Section. While the proposed amendment makes it clear that Non-attorney Affiliates are not eligible to vote or be Chair of the Section, the Committee did not reach any conclusion on whether a Non-attorney Affiliate should be allowed to chair a committee within the Section and, if they are so allowed, what rights to vote on Section issues the Non-attorney Affiliate should be given, if any. The committee recommends that each Section consider these issues and whether, as an associated inquiry, the Section's bylaws should be amended to address such issues.
- **Recommendation #3:** That a separate Non-attorney Affiliate membership application be developed by the Membership Committee and/or Staff. Such an application should carry the disclaimer "*NON-ATTORNEY AFFILIATES ARE NOT ENTITLED TO HOLD THEMSELVES OUT AS MEMBERS AND THEIR STATUS AS A NON-ATTORNEY AFFILIATE DOES NOT AUTHORIZE THEM TO PRACTICE LAW.*"
- **Recommendation #4:** That the application for Non-attorney Affiliates include a question about whether the applicant has ever been convicted of a felony or misdemeanor. If the answer is in the affirmative, the application should seek basic information about the conviction and require an attestation from an admitted attorney with whom the applicant works, attesting that the applicant possesses the requisite character and fitness to be affiliated with the Association.
- **Recommendation #5:** That a policy be implemented to revoke the affiliate status of any Non-attorney Affiliate who is convicted of a felony and to review the affiliate status of any Non-attorney Affiliate who is convicted of a misdemeanor.
- **Recommendation #6:** That any identification card that is issued to Non-attorney Affiliates be distinguished from the identification card issued to individuals in the

membership categories, and that any such card specifically state that the holder is a “Non-attorney Affiliate.”

- **Recommendation #7:** That the Membership Committee be tasked with recommending the dues and benefits level for the Non-attorney Affiliate category consistent with the amended bylaw and these recommendations.

CONCLUSION

Our committee proposes the foregoing amendment to provide an opportunity for growth of the Association and its revenues, in a manner consistent with expansions already in place in, or being considered by, other comparable Bar associations. We commend it to you for your consideration and subscription at the November 2, 2019 meeting of the House of Delegates. If subscribed, the above amendment will be presented for discussion and adoption at the 2020 Annual Meeting.

Respectfully submitted,

COMMITTEE ON BYLAWS

Robert T. Schofield, IV, Chair
Anita L. Pelletier, Vice Chair
Eileen E. Buholtz
Michael E. Getnick
LaMarr J. Jackson
A. Thomas Levin
Jay G. Safer
Oliver C. Young
Mitchell J. Katz, *ex officio*, Co-Chair of Membership Comm.
Hyun Choi, *ex officio*, Co-Chair of Membership Comm.
Rona Shamoan, *ex officio*, Member of Membership Comm.
Executive Committee liaison: Scott M. Karson
Staff liaison: Kathleen R. Mulligan Baxter
Staff reporter: Thomas Richards

APPENDIX A

D. The Task Force Recommends Creation of a Paralegal Division

The Task Force recommends that NYSBA create a Paralegal Division through which paralegals can become non-voting members of NYSBA and participate in NYSBA's activities, but particularly in programs aimed at the enhancement of the paralegal profession. The Task Force notes that the American Bar Association has such a division. The state bars of a number of states have paralegal membership categories and/or sections or divisions. These include, at least, Connecticut, Montana, New Mexico, Nevada, Texas, Florida, Indiana, Michigan, North Carolina, Utah, Vermont, Massachusetts, New Jersey, and Ohio.⁴⁴ Such a division would provide a means for paralegals to learn from and contribute to the organized bar. Moreover, a Paralegal Division could provide guidance for paralegals who are considering law school attendance and the practice of law. In addition, the Paralegal Division could focus on researching some of the open questions presented in this Report regarding the need for further regulation or certification of paralegals.

⁴⁴ New Mexico--

https://www.nmbar.org/nmstatebar/AboutUs/Divisions/Paralegal_Division/Nmstatebar/About_Us/Paralegal_Division/Paralegal_Division.aspx?hkey=7fea2437-2fa2-4acd-bef2-6d8e1d012f43

Nevada --https://www.nvbar.org/wp-content/uploads/NevadaLawyer_Jan2018_

Michigan -- <http://connect.michbar.org/paralegal/home> (Paralegal/Legal Assistant Section of the State Bar of Michigan provides education, information and analysis about issues of concern through meetings, seminars, this site, public service programs, and publication of a newsletter. Membership in the Section is open to qualified legal assistants and to all members of the State Bar of Michigan).

Ohio --The Ohio State Bar Association (OSBA) has established a credentialing program for paralegals. Paralegals interested in earning a certification good for four years must meet educational standards stipulated by the bar association, have sufficient experience and pass an examination. The first exam was offered in March 2007.

Montana -- <https://www.montanabar.org/store/ViewProduct.aspx?id=2102697>

Nevada -- <https://www.nvbar.org/member-services-3895/sections/paralegal-division/>

North Carolina --<https://www.ncbar.org/join-ncba/applications/>

Texas--

<https://www.texasbar.com/Content/NavigationMenu/ForLawyers/MembershipInformation/ParalegalDivision/default.htm>

Indiana -- <https://www.inbar.org/page/paralegals>

Utah--<http://paralegals.utahbar.org/index.php/Bylaws>

Connecticut--<https://members.ctbar.org/page/Paralegals>

Vermont --

[https://www.vtbar.org/UserFiles/files/About%20the%20VBA/JOIN%20THE%20VBA/Vermont%20Bar%20Association%20Dues%20Structure0717\(1\).pdf](https://www.vtbar.org/UserFiles/files/About%20the%20VBA/JOIN%20THE%20VBA/Vermont%20Bar%20Association%20Dues%20Structure0717(1).pdf)

Massachusetts --<https://www.massbar.org/membership/dues-structure-and-rates>

New Jersey --<https://community.njsba.com/paralegalspecialcommittee/home?ssopc=1>

APPENDIX B



NEW YORK STATE BAR ASSOCIATION

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Thomas J. Richards, Esq., *Deputy General Counsel • Director of Public Interest*
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MEMORANDUM

To: Robert Schofield, Esq.
Date: July 30, 2019
Re: Affiliate Membership Bylaws Provisions – ABA, State Bars, Major Local Bars

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Please find below references to the specific affiliate/paralegal member provisions in the bylaws of several other state bar associations, the American Bar Association, and three major metropolitan bar associations

American Bar Association – Bylaws Article 3.4 (Affiliated Professionals) –
https://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/constitution-and-bylaws/aba_constitution_and_bylaws_2018-2019.pdf

California Lawyers Association – Bylaws Article II.3. permits the House to establish non-voting member categories. These categories are not yet established. –
<https://calawyers.org/bylaws/>

The Colorado Bar Association – Bylaws 3.1.b (Associate CBA Members) –
<http://www.cobar.org/portals/cobar/repository/cbabylaws.pdf>

Connecticut Bar Association – Constitution Article III.1.B.iii. (Law-related Employee Members) –
https://www.ctbar.org/docs/default-source/resources/cba-constitution-bylaws-and-procedures_7-31-18.pdf

Illinois State Bar Association – Bylaws Section 1.1.i.1&2 (Associate (nonlawyer) members) –
<https://www.isba.org/sites/default/files/policy/Bylaws%20%28as%20amended%20120917%29.pdf>

Ohio State Bar Association – Constitution Article III.2 – <https://www.ohioabar.org/about-us/OSBA-constitution/>

New Jersey State Bar Association – Bylaws Article IV.B. (Associate Membership) –
https://tcms.njsba.com/personifyebusiness/Portals/0/NJSBA-PDF/miscellaneous/Bylaws_2016_revised.pdf

North Carolina Bar Association – Bylaws Article 2.10 (Paralegal Members); Article 2A (Affiliate Members); Article 8 (paralegal division) –
<https://www.ncbar.org/media/888020/north-carolina-bar-association-bylaws-6-24-17.pdf>

Pennsylvania Bar Association – Bylaws Section 201.8 (Affiliated Member) (n.b. this is a very limited definition, like our current affiliate membership class for JDs employed by bar association and law schools) – <http://www.pabar.org/site/About-PBA/Bylaws/Bylaws-200/Section-201>

Denver Bar Association – Article 2.1.7 (Associate) –
<https://www.denbar.org/About/Governance/Bylaws>

Los Angeles County Bar Association – Article II.8 (Associate Members) –
<https://www.lacba.org/docs/default-source/members-documents/lacba-bylaws-as-amended-5-22-19.pdf>

Philadelphia Bar Association – Article 2.1.3. (Nonvoting Members) –
<http://www.philadelphiabar.org/page/ByLawsArticle2?appNum=1>

**PROPOSED AMENDMENT OF NYSBA BYLAWS ARTICLE III
to add paralegals as Non-voting Affiliates of the Association**

III. MEMBERS AND AFFILIATES

Section 1. Membership. There shall be ~~six~~five classes of membership in the Association: Active, Associate, ~~Affiliate~~, Honorary, Sustaining and Law Student, and the members shall be divided among such classes according to their eligibility.

A. Active Members. Any member of the legal profession in good standing admitted to practice in the State of New York may become an Active member by submitting any required application form and supporting documentation to the Executive Director. Upon payment of the applicable dues following such submission, the applicant shall immediately be entitled to all of the rights and subject to all responsibilities of membership.

B. Associate Members. Any member of the legal profession in good standing admitted to practice in any state, territory or possession of the United States or another country but not in New York may become an Associate member by submitting any required application form and supporting documentation to the Executive Director. Upon payment of the applicable dues following such submission, the applicant shall immediately be entitled to all of the rights and subject to all of the responsibilities of membership, with the exception of being an officer of the Association, being a member of the House of Delegates or Executive Committee, or serving as a Section Chair; provided, however, that upon the request of a Section Executive Committee and with the consent of the Association Executive Committee, an Associate member may serve as a Section Chair.

C. Honorary Members. Honorary members may be elected by the Association. ~~**Affiliate Members.** Any person holding a law degree but not admitted to practice in any state, territory or possession of the United States or another country who is employed by a law school approved under the rules of the Court of Appeals, or who is employed by a bar association, may become an Affiliate member by submitting any required application form and supporting documentation to the Executive Director. Upon payment of the applicable dues following such submission, the applicant shall immediately be entitled to all of the rights and subject to all of the responsibilities of membership except those of voting, being an officer of the Association, being a member of the House of Delegates or Executive Committee, or being Chair of a Section or Committee.~~

~~**D. Honorary Members.** Honorary members may be elected by the Association.~~

E. Law Student Members.

1. Any law student in good standing, if not otherwise eligible for membership in this Association, may become a Law Student member by written application to the Executive Director, endorsed as to the applicant's good standing as above prescribed on behalf of the applicant's law school, and by payment of the annual dues of the current year, provided that the law school is an approved law school under the Rules of the Court of Appeals. A Law Student member shall cease to be such at the end of any calendar year in which, for any reason other than graduation or service in the Armed Forces of the United States or in any

**PROPOSED AMENDMENT OF NYSBA BYLAWS ARTICLE III
to add paralegals as Non-voting Affiliates of the Association**

statutory substitute for such service, the law student ceases to be enrolled in good standing in an approved law school, provided that continuance of such membership because of service in the Armed Forces of the United States or in any statutory substitute for such service shall cease one year after the termination of such service if the Law Student member has not by that time again become a law student and met all qualifications for becoming a Law Student member. A Law Student member shall be exempt from dues while in service of the Armed Forces of the United States or in any statutory substitute for such service.

2. A Law Student member shall have all the powers and privileges of an Active member of the Association except those of voting, being an officer of the Association, serving as a member of the Executive Committee or House of Delegates, or serving as Chair of a Section or Committee.

3. A Law Student member may become an Active or Associate member of the Association, as the case may be, without further application upon notice to the Association of admission to the bar of any state, territory or possession of the United States or another country within nine months after graduation from law school (exclusive of time spent in the Armed Forces of the United States or in any statutory substitute for such service) accompanied by payment of the annual dues for the current year.

FE. Sustaining Membership. The House of Delegates shall have the power to establish Sustaining memberships in the Association and to fix from time to time the amount of dues therefor. Sustaining membership shall be available to such members of any class as are willing, for the support of the general work of the Association, to pay such amount as annual dues in any year, in lieu of the dues prescribed pursuant to Section 2 of this Article. A member who elects to be a Sustaining member in any year shall not be obligated thereby to continue as such in any subsequent year. Sustaining members shall have the same rights and privileges as pertain to the class of which they are a member. Subject to the provisions of this Article, the House of Delegates shall have power to make appropriate regulations as to such Sustaining membership and the collection of sustaining dues therefrom.

Section 2. Non-attorney Affiliates.

A. Any person:

1. holding a law degree but not admitted to practice in any state, territory or possession of the United States or another country who is employed by a law school approved under the rules of the Court of Appeals or who is employed by a bar association, or

2. who is not admitted to practice law in any state, territory or possession of the United States or another country and is a legal assistant or paralegal, qualified by education, training or work experience, who is employed or retained by an attorney, law office, corporation, governmental agency or other entity, and who performs specifically delegated substantive legal work for which an attorney is responsible,

**PROPOSED AMENDMENT OF NYSBA BYLAWS ARTICLE III
to add paralegals as Non-voting Affiliates of the Association**

may become a Non-attorney Affiliate of the Association by submitting any required application form and supporting documentation to the Executive Director. Upon payment of the applicable dues following such submission, the applicant shall immediately be entitled to all of the rights and subject to all of the responsibilities as if such person were a member, except those of voting, being an officer of the Association, being a member of the House of Delegates or Executive Committee, or being Chair of a Section or Committee. Non-attorney Affiliates are not entitled to hold themselves out as members and their status as a Non-attorney Affiliate does not authorize them to practice law unless they otherwise have standing to do so.

Proposed: September 23, 2019

