



HISPANIC NATIONAL BAR ASSOCIATION CONFIDENTIALITY AGREEMENT

This CONFIDENTIALITY AGREEMENT (the Agreement), made between the Hispanic National Bar Association (HNBA) and _____ (referenced as Board Member, including a Board Member’s agent per par. 6 and any HNBA Division, Section, Commission, or Committee Chair or member, or appointed Deputy) individually referenced as Party and collectively as Parties, is effective on the date of the Board Member’s signature.

RECITALS

WHEREAS, the Parties may have exchanged and expect to exchange confidential written and oral communications (Confidential Communications) relating to the business affairs of the HNBA;

WHEREAS, it is expected that Confidential Communications may involve the disclosure of HNBA information not in the public domain, including: (1) business and financial information, (2) membership lists, (3) personal information concerning candidates for judicial or other government office provided by the candidates or other third parties, (4) event planning, (5) proprietary information or novel features such as drawings, samples, devices, demonstrations, computer programs, analyses, studies, and compilations, (6) information relating to complaints of misconduct, (7) information related to investigations, (8) personnel information, and (9) communications that may be subject to Attorney-Client or Attorney Work Product Privileges (Confidential Information); and

WHEREAS, the Parties wish to define their rights with respect to Confidential Information communicated between them.

NOW THEREFORE, in consideration of the above premises, it is agreed as follows:

1. The term “Confidential Information” shall include:

(a) All information that is delivered by or on behalf of the HNBA to the Board Member in written, graphic or electronic form and that is marked “confidential” or “proprietary;”

(b) Any information, whether in oral, written, graphic, electronic, machine readable or any other form, that is provided to the Board Member by or on behalf of the HNBA in connection with the Board Member’s performance of HNBA duties and that is not otherwise available to the public, including, by way of examples, the categories of documents in the second paragraph of RECITALS above, and email and communications related to HNBA business—regardless of origin—and any matter that may be specifically designated confidential by HNBA;

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(c) Written and spoken information provided to the Board Member in the performance of the duty to evaluate a prospective nominee for judicial or executive office who has submitted an endorsement application (Candidate), including but not limited to (1) completed questionnaires and any other data furnished by the Candidate or third parties to the HNBA; (2) confidential information gathered by or conveyed to the Board Member during any investigation or evaluation of any Candidate being considered for endorsement; (3) oral communications concerning a prospective Candidate expressed during the evaluation or consideration of the Candidate's endorsement request; and (4) the decision of any committee or the Board of Governors concerning whether a prospective Candidate is qualified for appointment;

(d) Any information concerning a complaint of member misconduct such as harassment, corruption, violation of fiduciary duty, investigations into the same, or communications regarding the same subjects in litigation; and

(e) Any personally identifiable information including, name, address, telephone number, date of birth, social security number, e-mail address provided by or on behalf of the HNBA to the Board Member.

2. All Confidential Information shall be subject to the restrictions of this Agreement. Notwithstanding anything in this Agreement to the contrary, the amount, type, and items of Confidential Information disclosed by the HNBA shall be solely within its discretion and it may refuse to disclose information if it believes that it is not in its best interests to do so. The information may be redacted when a Candidate or third party places restrictions on further disclosure of the information.

3. While the HNBA will exercise its best effort to ensure that all Confidential Information it provides to Board Member is accurate and complete, the HNBA makes no representation or warranty as to the accuracy or completeness of the Confidential Information disclosed.

4. The Board Member agrees to use any Confidential Information received shall **solely** for the benefit of work for the HNBA, and that all rights to the proprietary and novel features contained in the Confidential Information are reserved by the disclosing Party. The Board Member will not use or disclose Confidential Information to any third party for any purpose other than the performance of HNBA duties unless the HNBA expressly authorizes the disclosure in writing.

5. Board Member agrees not to use any personally identifiable information provided by or on behalf of the HNBA, its contractors, affiliates, vendors, sponsors or employees, for any direct marketing and not to transfer such information to any third party.

6. The Board Member agrees to restrict disclosure of Confidential Information to the Board Member's employees (or employer) who require access to the Confidential Information so as to assist the Board Member in carrying out HNBA duties and then only if such personnel also agrees to maintain the confidentiality by signing a corresponding Confidentiality Agreement designating the person's status as an agent before any Confidential Information is disclosed.

7. The HNBA agrees that the Board Member shall not be liable for any disclosure or use of any Confidential Information if:

(a) Such Confidential Information is publicly available or later becomes publicly available other than through a breach by the Board Member of this Agreement;

(b) Such Confidential Information is lawfully obtained by the Board Member from a third party or parties independent of the HNBA prior to the Board Member's disclosure;

(c) The Board Member can demonstrate knowledge of such Confidential Information, by documentary evidence or otherwise, prior to its disclosure to the Board Member by the HNBA or was independently developed by the Board Member prior to such disclosure for purposes unrelated to service as a Board Member; or

(d) The Board Member was legally required to disclose the Confidential Information, provided that the Board Member (1) provides the HNBA or other disclosing party with written notice within five days of knowing of such legal requirement so that the HNBA has the opportunity to pursue its rights regarding such potential disclosure, and (2) utilizes reasonable efforts to obtain reliable assurances that the person receiving such Confidential Information will maintain the confidentiality of the same.

8. The Board Member agrees that no license under any patent, copyright or other intellectual property right is in any way granted to Board Members under this Agreement.

9. Once the purpose of the disclosure is achieved, the HNBA will instruct the Board Member to destroy all Confidential Information supplied to the Board Member by the HNBA. The HNBA will keep a copy in its files for a period of two years after the completion of a Candidate's specific request.

10. This Agreement embodies the understanding between the Parties regarding its subject, and merges all prior communications between them as to confidentiality of Confidential Information. Neither Party shall be bound by any conditions, warranties nor representations with respect to confidentiality of Confidential Information except as expressed in this Agreement.

11. This Agreement shall be governed by, and construed and interpreted in accordance with the laws of the District of Columbia, without regard to principles of conflicts of laws. This Agreement may be executed in separate counterparts, each of which shall be deemed an original and both of which together shall constitute a single instrument.

12. No failures of delay by the disclosing Party in exercising or partially exercising any right or privilege in this Agreement shall operate as a waiver, nor preclude any further exercise of any right or privilege. Both parties signify their agreement to the above terms by signing or causing their authorized representatives to sign this Agreement effective as of the date specified in the opening paragraph of this Agreement.

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13. In addition to all other legal rights and remedies the disclosing Party may have upon a breach of this Agreement by the receiving Party, the disclosing Party shall be entitled to specific performance or injunctive relief respecting the covenants in this Agreement, and the receiving Party expressly waives the defense that a remedy in damages will be adequate. Each of the Parties agrees that the prevailing party in any action to enforce this Agreement shall be entitled to recovery of its attorneys' fees.

14. CONFLICT OF INTEREST STATEMENT: Board Member acknowledges that Confidential Information shall not include any proposal before the Board covered by Article XVII of the HNBA Bylaws in which the Board Member or other covered person under Article XVII has an interest. The Board Member shall disclose the interest to the Board, which the Board in its discretion may treat as Confidential Information, and otherwise address the interest in accordance with Article XVII. By signing this Agreement, the Board Member executes the conflict of interest statement required by Article XVII.

**ON BEHALF OF THE HISPANIC
NATIONAL BAR ASSOCIATION**

HNBA MEMBER

Elia Diaz-Yaeger
HNBA National President

fSignature of:
 Board Member,
 Board Member Agent,
 HNBA Deputy, or
 Division, Section, or Committee
Chair or Member

DATE

Print Name

Board Position or Other Title