

## RESOLUTION

of the ASTC Foundation Board

Draft 11

The American Society of Trial Consultants Foundation by this action creates a non-voting membership category consistent with Article II of the By-Laws. This non-voting membership category will embody the following provisions:

1. **Name and Titles.** The name of the non-voting membership category will be “the College of Trial Consultants.” Non-voting members will be referred to as “Fellows of the College of Trial Consultants” or as having been “Inducted into the College of Trial Consultants.” For legal purposes, the College will be registered as a DBA of the ASTC Foundation and will be able to publicize itself, enter agreements, and raise money in that name.

2. **Purpose.** The goals of the College will be two-fold.

One, the College will serve as a way to identify and to honor the country’s pool of credible, experienced, visible and ethically committed litigation consultants. That list should serve as a resource to the broader legal community as well as a tool in making contacts and referrals. The visibility of a new membership category will also help move the field toward greater professionalism by communicating meaningfully to the legal community about the experience and excellence of the College Fellows.

Two, the College will help the ASTC Foundation over time to build a constituency of individuals who are able to contribute ideas and energy to the Foundation’s initiatives. The community of Fellows should serve as a natural talent pool for the Foundation, and the existence of the College will create a more reliable connection and sense of ownership for those individuals. While not requiring specific activity, the College will increase the *chances for* that activity by giving members a connection and a stake in the Foundation’s mission.

3. **Relationship to the ASTC .** The ASTC Foundation is a separate and independent legal entity, and the College will be wholly established and maintained by the ASTC Foundation. At the same time, we see a great potential for a complementary relationship, with the broader field of litigation consulting being represented by two organizations: A *Society* that remains committed to open membership and continuing education, and a *College* that is selective and designed to honor the excellence, experience, and visibility of its inductees. By building a new member category, the ASTC Foundation will neither seek to duplicate nor draw members away from the ASTC. We believe that many inductees will be members of both organizations. The new membership category will not be

focused on member services. Instead it will focus on connecting members to the Foundation's initiatives while communicating experience and excellence to the larger legal community.

4. **Coordination.** The College of Trial Consultants will be overseen by a steering committee ("Committee") that will be responsible for selection of Fellows, communication with Fellows and others seeking information, and for promotion and visibility for the College of Trial Consultants. The Committee will be formed by the ASTC Foundation Board, will be an Executive Committee of the ASTC Foundation (consistent with Article V Section 2 of the By-Laws), will include between five and seven members representing at least four different consulting practices, and will include two or more members of the Board of the ASTC Foundation. Following Phase Two of the selection process outlined below, all members of the Committee will be required to be Fellows of the College.
5. **Criteria for Induction.** Individuals will be inducted into the College of Trial Consultants based upon the Committee's application of the following criteria:

In the view of the Committee, an Inductee to the College of Trial Consultants demonstrates all of the following:

**A. Advanced Study.** Fellows have specialized knowledge, advanced study, and research experience in one or more fields related to the practice of litigation and trial consulting.

**B. Effective Experience.** Fellows have been actively engaged in providing services described in ASTC's Professional Standards and Practice Guidelines for a substantial period of time. "Substantial" is not strictly defined, but as a guideline it means a decade or more of consulting experience.

**C. Professional Voice.** Beyond serving clients, Fellows also have an excellent reputation based on their non-confidential communications, i.e., their professional voice. They are visible and active in the broader community of litigators and consultants. That professional voice can include, but not be limited to: books, articles, conference presentations, CLE's and professional association engagement and leadership.

**D. Ethical Commitment.** An inductee of the College upholds high standards, including but not limited to ASTC's Professional Code including its Statement of Ethical Principles and its Professional Standards and Practice Guidelines.

6. **Selection Process.** The initial rollout of the College will be led by the Committee and will proceed in two general parts: a 'Grandfathering'

phase, and an 'Application' phase

### **A. Grandfathering**

The College will proceed with the understanding that at its formation, the College will need the participation of long-term, experienced, and credible consultants far more than those long-term, and experienced consultants will need the College. It is neither fair nor strategic to expect these consultants to apply on the same terms as newer consultants. For that reason, the creation of the College will start with a distinct process that grandfathers in consultants who would have been inducted at an earlier phase in their careers if the College had existed at that point. Grandfathering will proceed in two steps.

**Step One: Initial Inductions.** The goal will be to identify the most self-evident choices among long-time and well-regarded consultants — perhaps just 15 or 20. The only goal in making these initial inductions is to provide an advisory body for the larger second phase of inductions. There will be no attempt to make this a complete list of long-time and well-regarded consultants. Instead, the goal will be just to provide a sufficient number to advise on the second step. These selections will be made by the Committee based on their own internal and external discussions. These initial inductees will be notified and informed of the College's goals and the overall selection process.

**Step Two: General Grandfathering.** After receiving and reacting to feedback from the phase one Fellows, the process will move to the general phase aiming to include all other consultants who, based on the criteria, should be included. The first step will involve compiling a list of all consultants who would potentially qualify for induction. That list would be drawn from the current ASTC membership roster as well as from the Committee members' collective knowledge of active non-member consultants. A vehicle will be developed (e.g., a shared Excel spreadsheet or an online survey) that will allow Phase One Fellows to provide an advisory nomination on induction in the form of "yes," or "no" answers to each of the four criteria (see Section 5 above), while also allowing for the submission of additional names. All phase one inductees will be invited and encouraged (but not required) to participate in this process along with the Committee. Advisory nominations will be kept open for a period of no less than two weeks with a clearly communicated cutoff time and date. Individuals should abstain on providing nominations for consultants within their own company, or with whom they have had a long-term substantive consulting relationship.

**Step Three: Omissions.** Acknowledging that collective knowledge of those on the Committee as well as the initial inductees will be imperfect, there will be a process for individuals who feel that they have been overlooked. In a general announcement via public channels (e.g., Linked-In discussion groups related to litigation consultants), the Committee will announce the formation of the College, including a description of its mission and criteria for inclusion, and note that individuals can request induction by sending a letter along with any attachments or nominations they would like to include. Decisions will be made by the Committee, drawing as much as possible at the Committee's discretion from voluntary advisory opinions provided by current fellows. In addition, on at least an annual basis, the Committee will confer in order to decide which consultants, if any, should be recommended for induction to the College.

## **B. Applications**

Following the close of the Grandfathering Phase, all inductions will be made by application to the Committee. As a going-forward requirement, induction will be based upon the general criteria, to be supplemented with the following evidence as part of the application process:

1. Applicant's narrative of consulting experience
2. Two or more letters to be provided by the applicant's clients
3. A listing of the applicant's publications and presentations
4. A summary of the applicant's professional service

Note that all Fellows will be viewed as being in the same category regardless of the phase in which they were inducted.

- 7. Term and Requirements.** Once inducted, there are no conditions or requirements for remaining a Fellow. There will be no dues and no other required performance from Fellows of the College. Inductees will be members for life, and the only exception will be the extreme and rare event in which a Fellow becomes the subject of public notoriety in a way that reflects negatively on College. Should that occur, the Committee will be guided by ASTC's Grievance Procedure in making its own determination of whether to remove a Fellow. Fellows who have fully left the field of litigation consulting will be simply removed from the active directory.
- 8. Notification.** The letter letting an individual know they have been inducted into the College will contain the following:

- a) A broad explanation of the goals and the structure of the College
- b) A reassurance that there are no dues or other continuing requirements
- c) A request for affirmative consent to include that person's name in the directory of the College

An invitation but not a requirement for the following

- d) Advertise "Inducted into the College of Trial Consultants" or "Fellow of the College of Trial Consultants" on that person's signature line, website, publications, expert reports;
- e) Use the College as a referral resource;
- f) Join the College's members-only LinkedIn group;
- g) Join a 'Speaker's Bureau' for the College that would initiate contacts with legal organizations and CLE hosts, and
- h) Attend future potential social events (e.g., scheduled adjacent in time to the ASTC conference).

9. **Licensing of Name and Logo.** Fellows will be granted a limited license to use the name and the logo of the College of Trial Consultants in a manner consistent with the uses identified in the "Notification" section above.
10. **Disclaimer.** The website and similarly broad public communications on the College of Trial Consultants will carry a disclaimer in order to prevent the misperception that induction conveys a guarantee of competence. The specific disclaimer will be reviewed by counsel, but will be along the lines of the following: "No professional honor conveys a guarantee of competence in every specific situation. Before engaging any consultants, including those who are Fellows of the College of Trial Consultants, potential clients have a responsibility to vet them as individuals by checking on their skills, specializations, and experience using resources that are specific to these consultants (e.g., websites, articles, referrals)." In addition, the online directory for the College will not list specializations or services provided, but should instead simply include the individual's name, company, geographic location, and a link to their website.
11. **Visibility.** Promotion of the existence, goals and activities of the College will be ongoing once it is established. As of launch, however, three features of visibility will be particularly important:
  - a. **Website.** We will need a simple website that features the goals and

general selection criteria for the College. That website will also include a searchable directory of all Fellows by name and geographic area.

**b. Social Media.** We will share free announcements in all available social media vehicles that are visible to the community of litigators. This will include Linked-In groups as well as available Listservs.

**c. Announcement to legal community.** Depending on fundraising, at least one, but ideally more, high-profile advertisements should announce the creation of the College and list the inducted members so far.

12. **Website.** As part of this resolution, the Foundation will update its current site adding the label “College of Trial Consultants” as a category within the ASTC Foundation. The website will also be modified in order to include a database feature that hosts the directory of the College of Trial Consultants.
13. **Costs.** Apart from specific educational, reform, or visibility initiatives which would be separately funded, the College foresees modest continuing expenses or printing and mailing of certificates as well as maintenance and updating of the website. Start up expenses, however, will be more substantial and will include the cost to update the current website and add a directory feature.