# OFFICIAL MINUTES STATE BAR OF TEXAS BOARD OF DIRECTORS MEETING Doubletree Hotel El Paso Downtown El Paso, TX

Friday, September 16, 2011

The Board of Directors of the State Bar of Texas met in regular session on September 16, 2011 at the Doubletree Hotel El Paso Downtown. Chair of the Board Beverly Godbey called the meeting to order at 9:00am, and Executive Director Michelle Hunter called the roll. A quorum of voting Board members was present. Immediate Past President Terry Tottenham introduced Donald Williams, a local attorney from El Paso, who delivered the invocation and led the pledges to the U.S. and Texas flags. David Whittlesey was sworn in as the new District 9, Place 1 director, and Susan Nelson was sworn in as a new Section Representative to the Board.

#### Present:

**Board Members:** Immediate Past Chair Pablo Almaguer, Tim Belton, President Bob Black, Roy Brantley, Virginia Campbell, Sylvia Cardona, Christina Melton Crain, Allan DuBois, Greg Dykeman, Damon Edwards, President-elect Buck Files, Steve Fischer, Susan Fisher, Chair of the Board Beverly Godbey, Cori Harbour, Daniel Horowitz, Bert Jennings, John Kazen, Tim Kelly, TYLA President Natalie Cobb Koehler, Kyle Lewis, Mike McDonald, Jo Ann Merica, Toni Nguyen, Andrew Payne, Tommy Proctor, Annette Raggette, Barrett Reasoner, Judge Jo Ann Reyes, C.E. Rhodes, Ricky Richards, Dr. Eliseo Ruiz, Travis Sales, Steve Schechter, Frank Stevenson, Cindy Tisdale, Immediate Past President Terry Tottenham, David Whittlesey

Liaisons\*: Judge Fred Biery, Justice Phil Johnson, Judge Elizabeth Lang-Miers

**Section Representatives\*:** Stewart Gagnon, Luis Garcia, Steve James, Michele Wong Krause, Susan Nelson, Brian Webb

Excused Absences: David Copeland, Mark Daniel, Becky Baskin Ferguson, Christopher Gilbert, Scotty Holloman\*, Mark Kelly, TYLA Past President Jennifer Evans Morris, Yvette Ostolaza, John Trevino, Ike Vanden Eykel

(\* = nonvoting)

#### I. CONSENT AGENDA ITEMS

Upon motion properly made by Toni Nguyen and seconded by Christina Melton Crain, the following actions were taken regarding the Consent Agenda items:

# A. Approval of Minutes:

- a. Approval of minutes of Board meetings conducted on June 22-23, 2011 (with an amendment made by Justice Phil Johnson to reflect that he left the room for a portion of the June 22 meeting concerning the closed session).
- b. Ratification of actions taken at the following Executive Committee meeting:
  - 1) September 7, 2011: Approved minutes of the April 11, 2011 Executive Committee meeting

## **B.** Items from the President:

Approval of appointments to the following entities:

a. Delegates to the 2012 Fifth Circuit Judicial Conference:

President Bob Black Immediate Past President Terry Tottenham
President-elect Buck Files Chair of the Board Beverly Godbey
Executive Director Michelle Hunter TYLA President Natalie Cobb Koehler

b. **Texas Legal Services Center**, for a three-year term effective January 1, 2012 through December 31, 2014:

**Erica Krennerich (Houston)** 

c. **Texas RioGrande Legal Aid,** for two year terms effective January 1, 2012 through December 31, 2013:

Elizabeth Garcia (Edinburg) Ricardo Lara (Brownsville) Ron Walker (Victoria)

# C. <u>Items from Committees and Sections/Divisions</u>:

- a. Approval of request by the State Bar Labor and Employment Law Section to amend its bylaws [Exhibit A]<sup>1</sup>
- b. Approval of State Bar Committees, Chairs, Co-Chairs, Vice-Chairs, Co-Vice Chairs, and members to serve during the year 2011-12 per State Bar Rules, Art. VIII, Section 1 B [Exhibit B]
- c. Approval of members to serve on multiple standing committees:

Hon. Caroline Baker (Houston) Jury Service and PJC Malpractice Grace Weatherly (Denton) Lawyer Referral and PJC Malpractice Hon. George West, II (Dallas) MCLE and PJC Criminal Hon. Rebecca Simmons (San Antonio) Court Rules and PJC Business

- d. Approval of The Judge Merrill Hartman Pro Bono Judge Award, created by the Legal Services to the Poor in Civil Matters Standing Committee to recognize a judge for outstanding pro bono [Exhibit C]
- e. Approval of resolution honoring the work of the University of Texas at El Paso Pre-Law Program [Exhibit D]

#### II. REPORTS

# A. Report from the Chair of the Board:

Chair Godbey solicited candidates for the 2012-13 Chair of the Board. Per Board policy, second-year voting directors interested in running for chair shall notify the current Chair in writing before the January Board meeting of his or her intention to seek that position for the following Bar year. Directors shall also submit a one- to two-page statement of position prior to the January Board meeting.

Cori Harbour introduced Bruce Koehler, President of the El Paso Bar Association, who made remarks. Ashley Petry from the El Paso Convention and Visitors Bureau also made remarks about the services they offer and various El Paso annual events. Steve Fischer made remarks about holding an annual meeting in El Paso and whether the Bar has looked at it being a viable option according to attendance numbers and hotel capacity. Harbour reported that she worked with the CVB to research if it was feasible to have an annual meeting in El

Paso and the big issue was lack of meeting space, but that sometime in the future the city will be able to accommodate and be ready for that.

Cori Harbour moved that the State Bar of Texas commit to an ongoing effort to study the feasibility of holding the annual meeting and/or other major events in areas outside the major metropolitan areas, and furthermore that the State Bar of Texas periodically submit an RFP to El Paso regarding holding an annual meeting there; Steve Fischer seconded. Motion carried with one nay vote.

# B. Report from the President:

President Bob Black reported that the State Bar Act requires us to look at how our Bar districts are apportioned from time to time. President Black has appointed a Redistricting Task Force to look at how the Bar districts are apportioned and to study whether changes might be necessary, and report back to the Board with its findings and recommendations, if any. Former president Roland Johnson is chairing the task force. **[Exhibit E]** 

President Black reported that in the special session this past summer, the Legislature passed HB 79, the omnibus Court Reorganization Bill. Once piece of the bill pertains to the availability of additional resources to courts for complex civil cases, and the statute requires the Bar to create a task force to help with the development of the rules and also to promulgate the rules by May 1, 2012. President Black appointed a Task Force on Additional Resources for Complex Cases, which Dickie Hile is chairing. Greg Dykeman, a member of the task force, gave an update on the work of the task force. [Exhibit F]

President Black reported that the Court has asked the task force to submit its report to them by November 1, so in light of that deadline being in between Board meetings, we are asking the Board to cede authority to the Executive Committee to receive and take action on any recommendations made by the task force.

President Black moved for approval that the Board delegate authority to the Executive Committee to receive and take action on the recommendations from the Task Force on Additional Resources for Complex Cases; Christina Melton Crain seconded. Motion carried.

President Black reported that several members of State Bar staff volunteered at a legal clinic in Smithville to help with the wildfire disaster relief. The Austin Bar has also been conducting legal clinics in Bastrop and is organizing a training session in Austin for attorney volunteers. The Texas Supreme Court Records Preservation Task Force, chaired by Bill Kroger of Houston, will make a presentation to the Court during a hearing in Austin on September 26, and the State Bar is co-sponsoring a reception afterward. President Black discussed his *Oyez, Oyez, Oh Yay!* civics education project, noting that the website includes videos, case summaries, analysis, and curriculum materials. One of the videos about the independence of the judiciary and the role lawyers play, *Marbury v. Madison*, was shown.

## C. Report from the President-elect:

President-elect Buck Files reported on his initiatives for the 2012-13 year, including a project called "Working Together to Strengthen Our Profession". The budget process is underway and the budget subcommittees are scheduled to meet by teleconference on November 15 to review proposed departmental budgets, and the entire Budget Committee will meet again on December 1.

# D. Report from the Immediate Past President:

Immediate Past President Terry Tottenham reported that Texas Lawyers for Texas Veterans has received a lot of interest from across the country.

The Nominations and Elections subcommittee has begun the process of finding potential nominees to run for President-elect, and this year is a big city year, meaning that potential nominees may come from any of the

metropolitan counties of the state. Interviews of potential nominees will be conducted on December 9<sup>th</sup>, and the subcommittee will submit the names of two nominees to the Board in January for consideration.

Immediate Past President Tottenham reported on the proposed revisions to the Policy Manual concerning election guidelines during the President-elect and director campaigns. The overall purpose of the revisions is to reflect the concept that the Board's authority extends to the Candidate's behavior during the campaign (and not to the behavior of other entities or third parties). The revisions also begin to address social media in the campaigns, which will be an ongoing process, and they provide some clarification on Candidate's contacting individual attorneys and the definition of "professional acquaintance". Several comments were made as to what exactly is considered a professional acquaintance and how it relates to contact between two people on Facebook. Immediate Past Chair of the Board Pablo Almaguer reported on the revisions to Policy Manual 2.01.15 concerning online campaign activities, which authorizes the use of a personal campaign website or and/or campaign Facebook page.

On behalf of the Nominations & Elections subcommittee, Immediate Past President Terry Tottenham moved for approval of revisions to Board Policy Manual Sections 1.03.08, 2.01.02, 2.01.10 and 2.01.15; no second needed. Motion carried. [Exhibit G]

## E. Federal Judicial Liaison:

Judge Fred Biery reported on the budget for the courts and on the vacancies several districts, and stressed the importance of law.

#### F. Judicial Section Liaison:

Judge Liz Lang-Miers reported that the judiciary has serious funding issues and needs full fiscal support.

## G. Policy Manual Subcommittee:

Jo Ann Merica reported that the Policy Manual subcommittee had discussed the revisions that the N & E subcommittee brought before the Board earlier, and also considered revisions to the policy manual presented by the Section Representatives to the Board Committee concerning the role and duties of that committee as well as the Council of Chairs.

# H. Commission for Lawyer Discipline/Chief Disciplinary Counsel:

Ron Bunch gave a general report on the make-up and role of the Commission for Lawyer Discipline and various 2010-2011 Annual Report highlights, as well as the grievance referral program and the district grievance committee appointments. [Exhibit H]

## I. Texas Young Lawyers Association:

TYLA President Natalie Cobb Koehler highlighted several projects of the TYLA, including Shelby's Story, the District Clerk's Conference, "Breaking the Silence" mental health podcasts, and the El Paso Student Diversity Summit.

# J. Audit and Finance Committee:

Bert Jennings reported on the financial highlights, noting that the overall net excess for the General Fund was approximately \$2.2 million compared to a budgeted net excess of \$-0-. TexasBarCLE's net excess for FY 2010-2011 was \$3.7 million compared to a budgeted net excess of approximately \$2.6 million. This produced a favorable variance for the fiscal year of \$1.1 million over and above the amount budgeted. The State Bar's fund balance as of May 31, 2011, was \$13,010,203. This represents an overall fund balance increase of \$1.7 million

from FY 2010-2011 financial activities. Jennings introduced Ken Couch from PFM Asset Management, who reported on the State Bar's investment portfolio, the state of the economy, and the housing market.

On behalf of the Audit and Finance Committee, Jennings moved for the following:

- (1) Acceptance of the quarterly investment reports for May 2011; no second needed. Motion carried.
- (2) Approval of PFM Group and University of North Texas Center for Public Management as the Public Funds Investment Act Trainers; no second needed. Motion carried.
- (3) Approval of the broker/dealer list for investments; no second needed. Motion carried.
- (4) Approval of the SBOT investment policy; no second needed. Motion carried. [Exhibit I]

# K. Administration Committee:

Travis Sales discussed the goals of the Employment/Salary/Evaluation subcommittee, which is to implement the recently revised affiliated entities Board Policy Section 1.17.03. It will be a lengthy review process that will take one year minimum to be implemented.

<u>Closed Session</u>: At 11:50 a.m., Chair Godbey announced that the Board of Directors would meet in closed session as authorized by Texas Government Code, Section 551.071 for the purpose of consultation with legal counsel concerning pending or contemplated litigation regarding employment matters and challenges of an Attorney General open records opinion concerning State Bar records.

<u>Open Session</u>: Upon return to open session at 11:57 a.m., Chair Godbey announced that during the closed session, only matters relating to consultation with legal counsel concerning pending or contemplated litigation regarding employment matters and challenges of an Attorney General open records opinion concerning State Bar records were discussed. No action was taken in closed session.

*Justice Johnson left the room during the closed session.* 

# L. <u>Client Security Fund Subcommittee:</u>

Ricky Richards reported that the Client Security Fund paid out \$704,000 last year.

#### M. Member Services and Education Committee:

Sylvia Cardona reported that the New Director's Orientation subcommittee will meet in January and the orientation is scheduled for June 12-13 in Houston in conjunction with the Annual Meeting.

Damon Edwards reported that the Technology Oversight subcommittee will meet in late September/early October in order to review and approve upcoming computer replacements for the Law Center.

Virginia Campbell reported that the Appeals/Grants Review subcommittee received four requests for authorization to seek outside funding through the Texas Bar Foundation, and the subcommittee approved all of these requests. [Exhibit J]

Steve Schechter reported on the preliminary objectives of the Insurance/Member Benefits subcommittee, which are to research and implement professional liability insurance options that members could utilize at competitive rates. Schechter introduced Brooks Davis from the SBOT Insurance Trust, who reported on the Trust and how the website can be used.

## N. Public Services & Education:

Susan Fisher reported in the current dues cycle, total contributions for voluntary access to justice are at \$886,158, which is an increase of \$200,000 from last year, and approximately 7000 attorneys have made contributions.

## O. Supreme Court Liaison:

Justice Phil Johnson reported that several statutes and rules that need to be modified. Justice Johnson stressed the importance and need for Board members to develop relationships with legislators when certain bills come up, as well as reaching out to local bars and lawyers to show what the State Bar can do for them.

# P. Report from the Executive Director:

Michelle Hunter let the Board know that flash drives have been passed out which include power points with information a director can use when speaking to local bar associations. Penny Carter from the Accounting department was presented with the Employee of the Quarter Award.

There being no further business, the meeting was adjourned at 12:43 p.m.

<sup>&</sup>lt;sup>1</sup> Exhibits A through J are available at <a href="www.texasbar.com/bodcentral">www.texasbar.com/bodcentral</a> under Meeting Agendas and Minutes.