

**DRAFT
OFFICIAL MINUTES
STATE BAR OF TEXAS
BOARD OF DIRECTORS MEETING
San Luis Resort
Galveston, Texas
January 25, 2013**

The Board of Directors of the State Bar of Texas met in a regular session on January 25, 2013 at the San Luis Resort in Galveston, Texas. Chair Frank Stevenson called the meeting to order at 9:00a.m., and Executive Director Michelle Hunter called the roll. A quorum of voting Board members was present. Pastor Dr. Ray Meador from the First Baptist Church of Galveston delivered the invocation. Greg Dykeman led the pledges to the U.S. and Texas flags.

Present:

Board Members: David Alders, Robert Aldrich, Jaime Balli, Immediate Past President Bob Black, Lawrence Boyd, Roy Brantley, Virginia Campbell, Sylvia Cardona, Christina Melton Crain, Greg Dykeman, Sara Dysart, Becky Baskin Ferguson, President Buck Files, Steve Fischer, Laura Gibson, Immediate Past Chair of the Board Beverly Godbey*, Robert Guest, Cori Harbour-Valdez, Daniel Horowitz, Louis Iselin, John Kazen, Mark Kelly, Tim Kelly, Roger Key, TYLA Immediate Past President Natalie Cobb Koehler, Mike McDonald, Larry McDougal, Jo Ann Merica, Toni Nguyen, Barrett Reasoner, Judge Jo Ann Reyes, TYLA President C.E. Rhodes, Ricky Richards, Tom Riney, Dr. Eliseo Ruiz, Chair of the Board Frank Stevenson, President-elect Lisa Tatum, Dr. David Teuscher, Cindy Tisdale, John Trevino, Ike Vanden Eykel, David Whittlesey

Liaisons*: Judge Micaela Alvarez, Justice Phil Johnson, Judge Michael Keasler, Hap Weitzel

Section Representatives*: Luis Garcia, Steve James, Michele Wong Krause, Susan Nelson, Gary Nickelson, Scott Rothenberg

Excused Absences: Jaime Balli, TYLA President-elect Kristy Piazza Blanchard, Judge Alfonso Charles, Christopher Gilbert, Christina Melton Crain, Andy Payne, Steve Schechter, Denise Scofield

(* = nonvoting)

I. CONSENT AGENDA ITEMS:

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

- A. Approval of minutes of Board meeting conducted on *September 21, 2012*
- B. Ratification of actions taken at the following Executive Committee meeting:
 - 1) ***January 10, 2013:*** Approved minutes of the September 6, 2012 Executive Committee meeting
- C. Approval of appointments to the following entities:
 - 1) **State Bar Annual Meeting Committee**, for a one year term effective Annual Meeting 2012 through Annual Meeting 2013:

Sutton Alford (Dallas)

Kim Askew (Dallas)
Kristy Dawn Blanchard (Dallas)
Vicki Dawn Blanton (Dallas)
Paul Talmage Boston (Dallas)
William F. Carroll (Dallas)
Russell Dale Chapman (Dallas)
Victor N. Corpuz (Dallas)
Cameron J. Cox (Flower Mound)
Joseph M. Cox (Dallas)
Christina Melton Crain (Dallas)
Robert D. Crain (Dallas)
Sally Lynn Crawford (Dallas)
Scott D. Deatherage (Dallas)
Lacy L. Durham (Dallas)
James Bachman Greer (Dallas)
Orrin L. Harrison, III (Dallas)
Craig Haynes (Dallas)
Rhonda F. Hunter (Dallas)
Christina A. Jump (Dallas)
Robert M. Manley (Dallas)
Ernest Martin, Jr. (Dallas)
David R. McAtee, II (Dallas)
Mark Aaron Melton (Dallas)
Mary Goodrich Nix (Dallas)
Mandy Price (Dallas)
Kenneth Charles Riney (Dallas)
Russell H. Roden (Dallas)
Christopher Allen Rogers (Dallas)
Sarah Lynn Rogers (Dallas)
William L. Siegel (Dallas)
Paul K. Stafford (Dallas)
James Michael Stanton (Dallas)
Frank Earl Stevenson (Dallas)
Robert L. Tobey (Dallas)
Victor D. Vital (Dallas)
Mark S. Werbner (Dallas)
Valinda Barrett Wolfert (Dallas)

D. Approval of appointments to the **Texas Bar Foundation's Board of Trustees:**

- 1) for three-year terms, effective June 1, 2013 to May 31, 2016:

lawyers:

Jeanne “Cezy” Collins (El Paso)
Kyle Lewis (Dumas)
Jo Ann Merica (Austin)

- 2) For one year term effective June 1, 2013 to May 31, 2014:

Board liaison:

Ike Vanden Eykel (Dallas)

Denise Scofield (Houston)

- E. Approval of request by the Intellectual Property Section to amend its bylaws **[Exhibit A]**¹
- F. Approval of request by the Administrative and Public Law Section to amend its bylaws **[Exhibit B]**
- G. Approval of request by the Corporate Counsel Section to amend its bylaws **[Exhibit C]**
- H. Approval of request by the Government Law Section to increase its dues from \$10 to \$20
- I. Approval of the 2013-14 Preliminary Calendar/Holiday Schedule **[Exhibit D]**
- J. Approval of 2013 General and Run-off Election Timetable for President-elect and District Director **[Exhibit E]**
- K. Approval of adoption of the Paralegal's Creed **[Exhibit F]**
- L. Approval of resolution for statement of support for the judiciary **[Exhibit G]**
- M. Approval of resolutions honoring: **[Exhibit H]**

- 1) **Mike Guarino**
- 2) **Kelley Jones King**

II. REPORTS:

A. Remarks from the General Public:

Chair Frank Stevenson welcomed any members of the public that were present and asked that any of those who are not voting or advisory members of the Board to sign in if they want to address the Board, and they will be given five minutes to speak. Chair Stevenson noted that he would like to advance agenda item 17B concerning the Legislative Policy Subcommittee action to have it follow agenda item 8.

B. Report from the Chair of the Board:

Chair Stevenson reported that district letters from Board members were sent in November and the response has been first-rate. Numerous directors and staff members have received inquiries and requests for additional information. The next correspondence from the Board to their districts will be an e-blast, projected to be sent in late February. Chair Stevenson noted that many directors have made presentations to local bars, and reminded the Board to keep the State Bar communications team updated on their presentations in order to be able to coordinate with MCLE to ensure proper credit is given to attorneys.

Chair Stevenson reported that Cindy Tisdale announced her intention to run for Chair of the Board for 2013-14, and with her being the only candidate running, Chair Stevenson remarked that there will merely be a motion and second with a voice vote at the April Board meeting to elect Cindy as chair. Cindy made brief remarks. **[Exhibit I]**

C. Report from the President:

President Buck Files reported that he has been on the road and has talked to more than 166 judges and visited 18 courthouses. President Files participated in a criminal law symposium at Austin College, where he invited the Court of Criminal Appeals and they heard oral arguments. More than 200 students, alumni, and members of the public

attended the event. President Files reported that he has upcoming visits to various local bar associations and visits to courthouses in Houston, Dallas, Austin and Georgetown. In February, *The Voice of the Defense*, a publication of the Texas Criminal Defense Lawyers Association, will feature a column written by President Files and an ad publicizing what the State Bar does for members. The American Bar Association will hold their mid-year meeting in Dallas in February. President Files will participate in the 8th Annual Indigent Defense Summit, with this year's theme being Gideon at Fifty: The Way Forward. The 50th anniversary of Gideon will take place in March, and the Texas Indigent Defense Commission has a great program lined up to commemorate it on March 18th at the Texas Capitol. The State Bar is also filming the last 11 high school videos for *Oyez, Oyez, Oh Yay!*, and a Gideon v. Wainwright video will be completed by the 50th anniversary.

John Sirman reported on a request to file an amicus curiae brief in the U.S. Supreme Court regarding guidelines for Texas Capital Counsel. Sirman noted that former State Bar director Ralph Brock wrote the brief and served as counsel of record for the Bar. President Files reported that he had presented it to the Ad Hoc Submission Committee, and they approved the request. The brief was filed as a neutral amicus brief on behalf of neither party.

Robert Aldrich moved for approval of ratifying the Ad Hoc Submission Committee's approval of the request to file an Amicus Brief on behalf of neither party with the U.S. Supreme Court pursuant to Policy Manual Section 8.02.04(C); Larry Boyd seconded. Motion carried. [Exhibit J]

D. Report from the President-elect:

President-elect Tatum also reported that speaking engagements have picked up after the new year, and she attended the Rocky Mountain Region of the National Black Law Students Association convention last weekend, and in February, she will be speaking at a Hispanic Issues Section event. Also in February, she will have the special opportunity to meet with teachers at the Law Related Education Conference, where she will introduce a new civics education program, *I was the First. Vote for Me!* The project complements *Oyez, Oyez, Oh Yay!* and is designed to teach elementary school students about the important firsts in American and Texas history included in the TEKS standards. In the upcoming months, President-elect Tatum will be working with the Legal Services Support and Communications divisions on a presidential initiative focusing on access to justice.

President-elect Tatum reported that the Committee Review Task Force has been working on reviewing all the standing committees of the State Bar. The task force has been looking at whether there is a continued need for each committee, and whether there is an unnecessary overlap of committee activities. The task force has been meeting with the committee chairs and reviewing the activities of each committee over the past two years. The goal is to complete their final report by April and they will present their recommendations to the Executive Committee and to the Board at that time.

President-elect Tatum reported that the Budget Committee approved the FY13-14 proposed budget at their meeting on December 3rd. Some highlights of the proposed budget include a \$483,067 annual transfer from the general fund to the Capital Equipment Replacement plan; \$400,000 annual transfer to the technology fund; \$300,000 annual transfer to the Client Security Fund; a \$350,000 prior commitment for the Student Loan Repayment Assistance Program, and a 4% merit raise for staff. One of the Budget Committee's duties each year is to make a recommendation to the Board regarding the commitment of any increase in the fund balance, and the audit report shows the total amount available for Board commitment is \$2,572,706. The Budget Committee is making the following recommendations to the Board for commitment of the available funds; \$832,456 to increase the minimum reserve from \$8.2 million to \$9 million; \$200,000 for funds for presidential initiatives for FY13-14; \$500,000 to the Client Security Fund; a \$794,250 transfer to the Legal Services Support Division to fund a statewide pro bono recruitment campaign; \$115,000 for a one year pilot program for a career counselor; \$76,000 to fund the update of the Law Related Education Website; \$30,000 to fund an ethics and professionalism initiative for attorneys; and \$25,000 to conduct a readership survey about the Texas Bar Journal.

James Mosley and Kevin Mutscher made remarks from the public on their concerns for funding of legal services, and various discussion ensued.

On behalf of the Budget Committee, President-elect Tatum moved for approval of the following:

- (1) Commitments of the excess fund balance as outlined above; no second needed. Motion carried.**
- (2) SBOT FY 2013-14 proposed budget for publication in the March 2013 issue of the *Texas Bar Journal*; no second needed. Motion carried. [Exhibit K]**

E. Legislative Policy Subcommittee:

Becky Baskin Ferguson reported that the State Bar legislative submission and review process is set forth in Board policy, and that section of the policy also applies to Sections wishing to submit comments to other governmental entities. The subcommittee met on January 11 to consider the requests of four Sections wishing to comment to the Supreme Court, and the proposed comments have been circulated to all other Sections and Committees for review and comment, per Board policy. The Alternative Dispute Resolution, Litigation, and Family Law Sections had all requested approval to submit comments to the Supreme Court responding to the Rules published in the December *Texas Bar Journal*. The Family Law and Military Law Sections have requested approval to submit comments on the Uniform Forms also published in the *Texas Bar Journal*. The Legislative Policy Subcommittee recommends approval of all five proposals.

Mike Amis made remarks from the public concerning Rule 169 dealing with expedited actions, several other Board members spoke in support of or opposition to the proposals. Chair Stevenson clarified that the State Bar is not approving or supporting any of these issues, just allowing the Section to take a position on their own, not on behalf of the State Bar of Texas.

On behalf of the Legislative Policy Subcommittee, Becky Baskin Ferguson moved for approval of the following:

- (1) Adopt the subcommittee's recommendation that the five submissions comply with the criteria set forth in Section 8.01.03 of the Board policy; no second needed. Motion carried.**
- (2) Adopt the subcommittee's recommendation to approve the Sections' request to comment; no second needed. Motion carried with one nay vote noted. [Exhibit L]**

F. Nominations & Elections Subcommittee:

Immediate Past President Bob Black expressed his appreciation for continuing to fund *Oyez, Oyez, Oh Yay!* and noted that he will be speaking at a panel titled "Cowboy Skills Bar Leaders Need" at the ABA mid-year meeting in February in Dallas.

Immediate Past President Black reported that the subcommittee interviewed six highly qualified individuals to be considered as potential nominees for President-elect for this small-county year. After much deliberation, the subcommittee unanimously voted to select Trey Apffel of League City and Larry Hicks of El Paso.

On behalf of the N&E subcommittee, Immediate Past President Black moved for approval of Trey Apffel (League City) and Larry Hicks (El Paso) as the 2013-14 President-elect candidates; no second needed. Motion carried. [Exhibit M]

The two candidates were introduced – Trey Apffel by Larry McDougal, and Larry Hicks by Steve James – and both gave remarks. Steve Fischer also asked to address the Board, and he gave remarks about his petition signatures and running a clean President-elect election.

Immediate Past President Black reported that the subcommittee has developed rules for run-off elections for President-elect and district director, to clarify what candidates can do in the event of a runoff. A run-off election could occur in the event no candidate receives a majority of votes in races where there are more than two candidates.

On behalf of the N & E subcommittee, Immediate Past President Black moved for approval of the proposed amendments to Section 1.03 and Section 2.01 of Board policy pertaining to Elected Directors and President-elect; no second needed. Motion carried. [Exhibit N]

G. Commission for Lawyer Discipline/Chief Disciplinary Counsel Update:

Ron Bunch reported on the second quarter sanctions statistics and attorney’s fees collections, the grievance referral program, and district grievance committee appointments, including the process, composition, and considerations, stressing the importance of areas of practice. [Exhibit O]

H. Texas Young Lawyers Association:

TYLA President C.E. Rhodes reported on various activities of the Texas Young Lawyers Association, including Project SOS: Slavery Out of the Shadows, “What Do Lawyers Do?” an interactive project designed to inform college students about the legal profession, Vote America!, the Rule of Law panel and CLE luncheon, and various public service events in the spring.

I. Administration Committee:

Jo Ann Merica reported on the Employment/Salary/Evaluation Subcommittee’s review of affiliated entities. The SBOTIT and Insurance/Member Benefits has teamed up to offer a free webcast on January 30th. The Texas Bar Foundation was found to be well managed. TLPP is collaborating and receiving input from the State Bar on their own strategic plan. There will be some changes to the master agreement of TCLE, and the State Bar will continue to lease the building and employees to TCLE.

J. Audit and Finance Committee:

Barrett Reasoner reported that Stratemann & Co. has completed the FY 2011-12 financial audit of the State Bar, and it resulted in the Bar receiving an “unqualified opinion”, the best financial audit opinion the State Bar can receive. A presentation of the financial audit was made by Padgett, Stratemann & Co. during the Audit & Finance Committee’s meeting the day before. The CPA firm of Maxwell Locke & Ritter has completed the FY 2011-12 internal control audit, and found nothing of major concern. Several suggestions that will be implemented in the future as a result of the internal control audit are as follows: 1) a revision to the State Bar’s investment policy to include a procedure followed by the State Bar to monitor the State Bar’s investment rating requirements; 2) changing the way the State Bar’s payroll is processed, which includes a reduction in the “payroll authorizations” allowed; and 3) implementing changes to the State Bar’s purchasing card with regards to requiring original receipts and manager approval. As of November 30, the General Fund net revenues over expenditures and transfers totaled approximately \$1.9 million, which resulted in a positive budget to actual net variance for the general fund of almost \$1.4 million. Ken Couch, Senior Managing Consultant for PFM Asset Management LLC, presented the investment report to the Audit & Finance Committee the day before. The committee had three revisions to the investment policy; increasing the investment concentrations for certificates of deposits and commercial paper; eliminating the wording that sets out the actual dollar amount of the FDIC insurance limit; and monitoring investment rating changes.

On behalf of the Audit and Finance Committee, Barrett Reasoner moved for acceptance of the following:

- 1) Revisions to the State Bar's Investment Policy;**
 - 2) Financial Audit Report for FY2011-12;**
 - 3) FY 2011-2012 Internal Audit Report; and**
 - 4) November 2012 Quarterly Investment Report; no second needed. Motions carried.**
- [Exhibit P]**

Reasoner reported that staff is also considering adding an internal auditor position at the Bar and is moving towards listing and opening that position.

K. DCAAP/Client Security Fund Subcommittees:

Virginia Campbell reported that the Client Security Fund Subcommittee met the day before the Board meeting, and the fund has paid out approximately \$390,000 so far this fiscal year. Ricky Richards reported that the DCAAP Committee met yesterday to talk about flat fees and non-refundable fees. The committee talked about the need to educate members on what the parameters are for fee contracts and considerations for avoiding ethical pitfalls, and discussed ways to approach this issue.

L. Member Services and Education Committee:

Toni Nguyen reported that the Appeals/Grants Review Subcommittee received three requests for authorization to seek outside funding through the Texas Bar Foundation and through the Litigation Section. The first and second requests came from the State Bar Communications Division for submission to the Texas Bar Foundation seeking funding for the presidential initiative "Vote for Me, I was First", and for submission to the State Bar Litigation Section seeking funding for projects related to the LeadershipSBOT program. The third request comes from the State Bar Jury Service Committee to seek funding from the Litigation Section to develop an informational video to be made available to court clerks throughout the state to help make jurors aware of the consequences of utilizing internet research and social media while serving on a jury. Nguyen reported that the Appeals/Grants Review Subcommittee approved of these requests.

Becky Baskin Ferguson reported that the New Directors Orientation subcommittee met yesterday to plan the orientation for new board members, and this year's event will take place on June 18-19 in conjunction with the June Board meeting and Annual Meeting at the Hilton Anatole in Dallas.

Sylvia Cardona reported that the PDP Subcommittee will hold a joint meeting with the CLE Committee on April 5 in Austin, and the subcommittee will be reviewing policies on TexasBarBooks.

Luis Garcia reported that the Technology Oversight Subcommittee met on January 18th to receive a briefing on on-going projects. In December, the first phase of the Law Center telephone system upgrade was completed, and during the second week in January, the new CDC Case Management System went live across the state. Staff is also preparing to update the audio visual systems in the Hatton Summers Conference room, and the CLE video department has finalized its estimates for its planned high definition conversions, lighting and seminar improvements.

M. Insurance/Member Benefits Subcommittee:

Steve Fischer reported that health insurance is an important issue, and the subcommittee has been discussing how to provide low cost health insurance for State Bar members. A free webcast on the impact of the Affordable Health Care Act will be held on January 30th.

N. Affordable Legal Services Subcommittee:

Cindy Tisdale reported that the subcommittee met yesterday to consider two items, the first was a proposal from the Legal Services to the Poor in Criminal Matters Committee for supplementary guidelines for mitigation by defense teams in Texas death penalty cases. The subcommittee decided to leave this matter pending while additional input is gathered from stakeholders. The second was a proposal from the State Bar Legal Services to the Poor in Civil Matters regarding the creation of a pro bono college for law students, and the subcommittee approved this proposal.

On behalf of the Affordable Legal Services Subcommittee, Cindy Tisdale moved for adoption of the subcommittee's recommendation that it approve the creation of a pro bono college for law students; no second needed. Motion carried. [Exhibit Q]

O. Ad Hoc Committee to Select Minority Directors:

John Trevino reported on the selection process for the Ad Hoc Committee to Select Minority Directors. The committee will interview 8 nominees on January 31, and of that group, they will recommend four to President Files for consideration. He will choose two of those individuals to serve as minority directors beginning at the Annual Meeting in June to replace John Trevino and Toni Nguyen, whose terms are expiring. The Board will vote to confirm the two appointments at the April Board meeting.

P. Section Representatives to the Board Committee:

Steve James encouraged the Board to attend the Section meetings to which they are liaisons. Section membership is on the rise.

Q. Jury Service Committee:

Sylvia Cardona reported that the Jury Service Committee has embarked on a public relations campaign to remind the public about the importance of jury service. A public service announcement video has been recorded featuring Chief Justice Wallace Jefferson.

R. Access to Justice Commission:

Harry Reasoner, Chair of the Commission, reported on the work of the Access to Justice Commission, and thanked the State Bar for their continued support of access to justice.

S. Supreme Court Liaison:

Justice Phil Johnson reported on behalf of Judicial Section Liaison Judge Alfonso Charles. The Judicial Section's main focus has been preparing for the legislative session, and advancing the report from the Judicial Compensation Commission. The Judicial Section will also be focusing on bills affecting judicial education and judicial retirement.

Justice Johnson reported that the Supreme Court is also focusing on the current legislative session as well as legal services. In December, the Court adopted a schedule for mandatory e-filing, such that e-filing must be done through Tex File in order to reduce costs. Justice Johnson reported that two new justices have been appointed, Justice Jeffrey Boyd and Justice John Devine, and their investitures were held on January 14th. The State of the Judiciary address by Chief Justice Jefferson will be held on March 6th.

T. Court of Criminal Appeals Liaison:

Judge Michael Keasler reported that the State Bar produced a video for the Court recently.

U. Federal Judicial Liaison:

Judge Micaela Alvarez reported on the four federal districts, noting that numbers are on the rise but not judgeships.

V. Out-of-State Lawyer Liaison:

Hap Weitzel reported that out-of-state members of the Bar face unique issues, and he has reached out to other out-of-state members.

W. Executive Director:

Executive Director Michelle Hunter made remarks, and presented Alexandra Swast, Director of the State Bar Archives department, with the employee of the quarter award.

There being no further business, the meeting was adjourned at 12:25 p.m.

¹ Exhibits A through Q are available at www.texasbar.com/bodcentral under Meeting Agendas and Minutes.