

DRAFT
OFFICIAL MINUTES
STATE BAR OF TEXAS
BOARD OF DIRECTORS MEETING
St. Anthony's Hotel
San Antonio, Texas
January 28-29, 2010

The Board of Directors of the State Bar of Texas met in a regular session on January 28 and 29, 2010 at St. Anthony's Hotel in San Antonio, Texas. Chair David Fisher called the meeting to order at 1:30pm on Thursday, January 28, and Executive Director Michelle Hunter called the roll. A quorum of voting Board members was present. Lisa Tatum introduced Greg Wilson from the New Creation Christian Fellowship, who delivered the invocation. Captain James Higdon led the pledges to the U.S. and Texas flags.

Present:

Board Members: J. Arnold Aguilar, Pablo Almaguer, Glenn Ballard, Jr., Timothy Belton, Stephen Benesh, Talmage Boston, TYLA Immediate Past President Sylvia Cardona, Theresa Chang, Guy Choate, Janna Clarke, Warren Cole, Jeanne C. (Cezy) Collins, David W. Copeland, Mark Daniel, Allan DuBois, Damon Edwards, Immediate Past President Harper Estes, Chair of the Board David Fisher, Susan M. Fisher, Deborah Gagliardi, Pamela Gilbert, Beverly Godbey, Mike Gregory, L. Bradley Hancock, TYLA President Cori Harbour, John Hatchel, Randy Howry, Bert Jennings, President Roland K. Johnson, Kyle Lewis, TYLA President-elect Jennifer Evans Morris, Timothy Mountz, William W. Ogden, Yvette Ostolaza, W. Thomas Proctor, Annette Raggette, Mark K. Sales, Travis Sales, Immediate Past Chair of the Board Joe Shannon, Jr., John D. Sloan, Jr., Lisa Tatum, President-elect Terry Tottenham, R. Patrick Wolter, Barbara S. Young

Liaisons*: Judge David Garcia, Scotty Holloman, Justice Phil Johnson, Judge Larry Meyers

Section Representatives*: Steve Bolden, Stewart Gagnon, John Jansonius, Dan Micciche, Brian Webb

Excused Absences: *Chad Baruch, Judge David Folsom, Lamont Jefferson, Sam Lovelady, Rob Roby*

(* = nonvoting)

I. CONSENT AGENDA ITEMS:

An amendment was made to the consent agenda concerning the terms of the Texas Bar Foundation appointments, and upon motion properly made by Warren Cole and seconded by Annette Raggette, the following items on the Consent Agenda were approved:

A. Approval of minutes of Board meeting conducted on *September 25, 2009*

B. Ratification of actions taken at the following Executive Committee meeting:

January 12, 2010: Approved minutes of the September 1, 2009 Executive Committee meeting

C. Approval of Presidential Appointments to the following Entities:

1. **Texas Legal Protection Plan**, for a one year unexpired term effective September 25, 2009 through May 31, 2010:

Robert D. Miller (Big Spring)

2. **Texas Rio Grande Legal Aid**, for a two year term effective January 1, 2010 through December 31, 2011:

Elizabeth M. Garcia (Edinburg)
Ricardo E. Lara (Brownsville)
Ronald B. Walker (Victoria)

3. 2009-2010 **Special Committee to Nominate ABA Delegates:**

Harper Estes, Chair (Midland)

Richard Pena (Austin)	Laura Livingston (Austin)
Kim Askew (Dallas)	Harriet Miers (Dallas)
Tony Patterson (Dallas)	Scott Partridge (Houston)
Eduardo R. Rodriguez (Brownsville)	Melody Wilkinson (Fort Worth)

D. Approval of President-elect Appointments to the **Texas Bar Foundation's Board of Trustees** (as amended):

For three-year terms, effective June 2010 to June 2013:

lawyers:

John D. Ellis (Houston)
Patricia Chamblin (Beaumont)

E. Items from Committees and Sections/Divisions:

1. Approval of request by the Workers' Compensation Section to amend its bylaws [**Exhibit A**]¹
2. Approval of a resolution by the Environmental Law Section to increase their dues from \$20 to \$30 [**Exhibit B**]

F. Other Items:

1. Approval of the 2010-11 Preliminary State Bar Calendar/Holiday Schedule
2. Approval of State Bar Legislative Timetable [**Exhibit C**]
3. Approval of adoption of the Pro Bono Coordinator Award [**Exhibit D**]
4. Approval of resolutions honoring: [**Exhibit E**]

San Antonio Bar Association

II. REPORTS:

A. Report from the Chair of the Board:

Chair David Fisher announced that Pablo Almaguer, Talmage Boston, and Warren Cole have announced their intention to run for Chair of the Board for 2010-11.

Chair Fisher conducted a vote to determine the method of voting to be used for the election of Chair of the Board at the April Board meeting. One vote for the show-of-hands method was noted, and Chair Fisher declared that the method of voting to be used at the April meeting will be by written ballot.

Almaguer, Boston, and Cole each made brief comments. [**Exhibit F**]

B. Report from the President:

President Roland Johnson noted that it is great to be in San Antonio for this Board meeting, and thanked Michael Black for donating the gift baskets that were given to board members and staff. President Johnson reported that General Counsel Elizabeth Rogers started a new position in early January with Resources Global Professionals in Houston, and the Board will be looking at the language of our governing documents to make sure all positions are aligned prior to filling any new job positions. He reported on the process of redrafting the disciplinary rules, noting that the Board will be asked to provide the Court with comments and input after reviewing the proposed amendments, but that there is no set calendar as of the date of this Board meeting. President Johnson reported on Ethics Opinion 484 of the Texas Ethics Commission as it relates to judges' reimbursement for out-of-pocket expenses, and noted that outside counsel has been hired to advise the Judicial Section on this issue. The Cochran Law Firm Settlement agreement on lawyer advertising was signed on October 26, 2009 and the State Bar has been released and the lawsuit has been dismissed with prejudice. President Johnson also made remarks on the judicial preference poll, donations to the Haiti relief effort, and the YouTube contest, which are all listed on the Texasbar website.

C. Report from the President-elect:

President-elect Terry Tottenham discussed his initiatives – “Texas Lawyers for Texas Veterans”, chaired by Dick King; a DVD on alcohol, substance abuse and mental health issues to supplement the “*Practicing from the Shadows*” DVD on depression; and a project focusing on under-and-unemployed lawyers in Texas. Tottenham reported that the Budget Committee has approved the 2010-11 budget as presented. The committee is recommending that a contribution of \$250,000 be made from the undesignated fund balance to the Pat Sheeran Memorial Trust, established in 1995 by the nonprofit organization “Texas Lawyers Concerned for Lawyers, Inc.” to assist lawyers or law students recovering from alcohol or substance abuse or mental health issues. The trust is also in the process of a name change to the Pat Sheeran/Mike Crowley Trust. Cheryl Howell reported that, of the \$36,459,081 total revenue budget, \$40,000 will be designated to new programs, \$483,067 to the Law Center fund, \$400,000 to the technology fund, \$300,000 to the Client Security Fund, \$100,000 for a referendum, and \$250,000 for an Executive contingency.

On behalf of the Budget Committee, Tottenham moved for the following:

(1) Approval of the following allocations of the undesignated portion of the fund balance: \$897,989 to increase the Minimum Reserve to equal 2.3 months (\$6,911,262), an additional transfer of \$290,000 to the Tech Fund, a \$250,000 contribution to the Pat Sheeran Memorial Trust, \$250,000 to remain as undesignated/Unreserved Fund Balance, and

(2) Approval of the SBOT FY 2010-11 proposed budget as presented for publication in the *Texas Bar Journal*; no second needed. Motion carried. [Exhibit G]

At this time, David Fisher temporarily relinquished the Chair position to President Roland Johnson.

D. Nominations & Elections Subcommittee:

Immediate Past President Harper Estes reported on the work of the committee and briefly discussed the two President-elect candidates being presented for approval, noting that Policy Manual Section 1.10 prohibits current officers and Board members from endorsing any candidate for any elective office, including but not limited to candidates for SBOT offices. Estes also noted that there will be 10 district director vacancies this year in June, and asked the Board for help in finding replacement directors for the outgoing districts.

On behalf of the N&E subcommittee, Immediate Past President Harper Estes moved for approval of Bob Black (Beaumont) and Deborah J. Bullion (Sugarland) as the 2010-11 President-elect candidates; no second needed. Motion carried. [Exhibit H]

The two candidates were introduced – Bob Black by David Fisher, and Debbie Bullion by Janna Clarke – and both gave remarks.

David Fisher resumed his role as Chair of the Board.

E. Court of Criminal Appeals Liaison:

Judge Larry Meyers reported that the Court has started back up, and the judicial education staff is working on the Keller issue, which is looking better.

F. MCLE Committee:

David Smith reported there have not been any substantive changes for some time to the MCLE Regulations and Accreditation Standards, yet there have been changes in technology. Smith introduced Hull Youngblood, chairman of the statewide MCLE referendum 25 years ago, who outlined the proposed changes regarding the elimination of the definitions and distinctions between “group participatory” and “interactive participatory”, and the addition of podcasts and other downloadable programs to the list of approved accredited formats for completing MCLE requirements. Dan Micciche discussed downloadable streaming MCLE programs and the ability of Sections, in the future, to receive CLE credit for podcasts not recorded in front of a live audience. Smith discussed the increase of the minimum requirement for accredited CLE from 10 hours to 12 hours and the decrease of allowable self-study credit from five to three hours per compliance year. Smith also noted that under the new regulations, attorneys will be able to complete all of their CLE by using accredited CLE materials, including downloadable programs.

John Sloan moved for approval of the proposed changes to the MCLE Regulations and Accreditation Standards as outlined; Brad Hancock seconded. Motion carried with one nay vote noted. [Exhibit I]

G. Administration Committee:

Tim Mountz echoed President Johnsons’ comments on the Cochran lawsuit settling, and reported that the Employment/Salary/Evaluation subcommittee has been reviewing the Employee Handbook policies in accordance with other agencies’ best practices. The Chief Disciplinary Counsel’s office in Dallas has relocated to the Princeton building, and the lobby remodel in the Law Center has been completed. Mountz reported on the F&E subcommittee and the five-year equipment replacement plan, explaining that the engineer consultants have reconsidered their recommendation that the backup chiller be replaced this winter and that the chiller has several more years left of use. Arnold Aguilar reported on the work of the Performance Measures/Strategic Planning subcommittee and highlighted the changes to the Performance Measures draft. The TCLEP lease is not up for action at this time.

On behalf of the Administration Committee, Mountz moved for approval of the following:

(1) Deferment of the backup chiller replacement plan at this time; no second needed. Motion carried. [Exhibit J]

(2) State Bar Performance Measures for FY 2010; no second needed. Motion carried. [Exhibit K]

H. Audit and Finance:

Warren Cole reported on the financials through November 30, 2009 and noted that revenues were over projected expenditures by \$1,742,387 and, therefore, there is a positive net overall variance of 108%. Beverly Godbey reported that both the financial audit and internal audit for FY ending May 31, 2009 received an *unqualified opinion*, which is the best rating they can receive. The committee presented an amendment to State Bar Policy Manual 3.05 on investment concentrations regarding an increase in the cap of money market mutual funds from

30% to 100% of the IP, and there was discussion on whether or not a lower percentage increase might be more reasonable.

On behalf of the Audit and Finance Committee, Warren Cole moved for approval of the following:

(1) Acceptance of financial audit for FY ending May 31, 2009; no second needed. Motion carried.

(2) Acceptance of internal audit for FY ending May 31, 2009; no second needed. Motion carried.

(3) Acceptance of PFM Asset Management quarterly investment report for quarter ending November 30, 2009; no second needed. Motion carried.

(4) Revision to State Bar Investment Policy 3.05.05 (E)(6); no second needed. Motion carried with 12 nay votes noted. [Exhibit L]

I. Report from the Executive Director:

Executive Director Michelle Hunter made remarks on the 2010-11 preliminary calendar, and presented Gene Major with the Employee of the Quarter award.

J. Discipline & Client Attorney Assistance Program Committee:

Janna Clarke reported that the Client Security Fund subcommittee has approved \$213,530 in grants so far in FY 2009-10. Lisa Tatum reported that the DCAAP Committee has started reviewing the proposed rule amendments and related comments to the Texas Disciplinary Rules of Professional Conduct in order to give the Board their input and recommendations.

K. Policy Manual Subcommittee:

Barbara Young reported on the proposed amendments to the Policy Manual provisions concerning the disciplinary rules of procedure, noting that the proposed changes bring them more in line with the disciplinary rules.

On behalf of the Policy Manual subcommittee, Young moved for approval of the proposed amendments to Policy Manual Part VI and related provisions to the disciplinary process; no second needed. Motion carried. [Exhibit M]

L. Ad Hoc Committee to Select Minority Directors:

Ad Hoc Committee to Select Minority Directors chair Lisa Tatum reported that the subcommittee conducted interviews on January 21, and submitted four candidates' names to President Johnson in order for him to select two for final approval by the Board at the April Board meeting.

M. Member Services and Education:

Kyle Lewis reported that the Appeals/Grants Review subcommittee received a request for authorization to submit a grant request to the Texas Bar Foundation for President-elect Terry Tottenham's initiative, "Texas Lawyers for Texas Veterans", and the subcommittee approved the request. Lewis also reported on an appeal of a decision made by TBLS to deny certification to an attorney in Estate Planning and Probate Law. The subcommittee voted to deny the appeal and uphold the decision made by TBLS.

On behalf of the Appeals-Grants Review subcommittee, Lewis moved for approval of the subcommittee's recommendation to deny the appeal submitted by Mr. Joe Fulwiler and uphold the decision of the TBLS; no second needed. Motion carried. [Exhibit N]

John Sloan reported that the PDP subcommittee and the CLE Committee met jointly in September, and recommended that the proposed changes to the MCLE Regulations and Accreditation Standards include a change that any downloadable CLE materials originate from a live CLE program. Randy Howry reported that the Insurance Trust subgroup of the Insurance/Member Benefits subcommittee will monitor the impact of the health care legislation on a national level, and the Non-Insurance Benefits subgroup is seeking proposals from potential vendors for additional member benefits and retaining third-party services for the marketing of our member benefits. Theresa Chang reported that the Technology Oversight subcommittee approved the acquisition of replacement network server systems for the State Bar, and the replacement backup system for backing up critical data that was approved in September has been installed and is operational.

N. Public Services and Education:

Guy Choate reported that voluntary Access to Justice contributions from the dues statement totaled \$618,869 from 4,769 contributors. The pro bono telephone survey will begin on February 22 with University of North Texas conducting the survey. Susan Fisher reported that the deadline for Sections to submit proposals for inclusion in the State Bar's Legislative package for the 2011 Session is July 2.

O. Commission for Lawyer Discipline/Chief Disciplinary Counsel:

Betty Blackwell, Chair of the CFLD, reported on the activities of the CFLD and CDC, and highlighted various other items including the grievance referral program, grievance statistics, district grievance committee appointments and considerations of diversity, particularly in areas of practice. **[Exhibit O]**

At 4:58pm, Chair Fisher made various announcements and recessed the meeting for continuation the next day, Friday, January 29, 2010, at 9:00am.

Friday, January 29, 2010:

Chair David Fisher called the meeting to order at 9:00am, and Executive Director Michelle Hunter conducted a roll call. A quorum of voting Board members was present.

P. Affordable Legal Services Subcommittee:

Glenn Ballard reported that we received \$14.4 million from the legislature for Access to Justice; \$10 million came from the General Fund and the rest from various filings. The TAJC gala will be held on May 4, 2010 and all the proceeds will be donated to the "Texas Lawyers for Texas Veterans" initiative.

Q. Section Representatives to the Board:

Steve Bolden discussed the role and the work of the Section Representatives, noting that a new Section is being proposed called the Collaborative Law Section, and that the SOGI Section is seeking to change its name to the LGBT Law Section, both of which will be presented to the Board for approval in the future.

R. Supreme Court Liaison:

Justice Phil Johnson reported that the Court has instituted a rule effective February 15 that filings in the court need to be accompanied by courtesy electronic copies of briefs and motions that are sent in, in an effort to move the Court into electronic filing statewide. Justice Johnson reported on the 290 public comments received on the changes to the disciplinary rules, which focused mostly on the conflict of interest and safekeeping of property rules, and noted that the Board will be asked to provide the Court with comments and input after reviewing the proposed amendments.

S. Judicial Section Liaison:

Judge David Garcia reported that the Judicial Section has been dealing almost exclusively with Ethics Advisory Opinion 484 of the Texas Ethics Commission, relating to reimbursement for office holders, and that it is a concern for every member of the judiciary.

T. Out-of-State Lawyer Liaison:

Scotty Holloman reported that he received many comments from out-of-state attorneys not in favor of PLI disclosure, especially from non-practicing attorneys.

U. TYLA:

TYLA President Cori Harbour noted that a quarterly written report was passed out highlighting the recent and upcoming projects of TYLA, and a video was shown of the public education project, "R U Safe: Protecting Yourself in Cyberspace", funded by a grant from the Texas Bar Foundation.

V. Professional Liability Insurance Disclosure:

President Roland Johnson reported that the State Bar website is continuing to be updated with the latest information and materials received on the PLID issue. President Johnson gave background information on the process, the letters sent from directors to lawyers across Texas, the articles published in the *Texas Bar Journal*, the seven public hearings across Texas, the telephone survey, and the focus groups held in Houston, San Antonio, Dallas and Lubbock. President Johnson outlined the procedure of voting and presented the language of the two separate motions, specifically the two issues (or questions) raised, which were read as follows:

- 1) on the issue of whether Texas lawyers should be required to disclose the existence or non-existence of professional liability insurance: yes, disclosure should be required; or no, disclosure should not be required; and
- 2) *if* professional liability insurance disclosure were to be required, to recommend disclosure be made through either an administrative rule (not a disciplinary rule) that requires each Texas lawyer to disclose the existence or non-existence of professional liability insurance and that this information be made available on the State Bar of Texas website, or through a disciplinary rule (not a administrative rule) and that each Texas lawyer practicing in the public, who does not carry professional liability insurance, be required to inform clients in writing of that fact.

Several suggestions and changes were made to the language, including the removal of the phrase "and that this information be made available" from the second question, and adding the phrase "(absent a request from a client or prospective client)" after the word "disclose" in the first question and also adding "prospective" before the word "clients" in the second question. Discussion was had on recording the votes so that it is known who voted for what, whether or not the Board would have to answer both questions if the answer to the first question is no, and if it is possible to abstain from voting for either issue. It was decided that both issues do need to be answered out of respect for the Court and at its request of the Board.

President Johnson moved to adopt the procedure of voting for the two separate issues, to first vote yes or no to the first issue, and second to vote on whether disclosure should be required through an administrative or a disciplinary rule; Immediate Past President Harper Estes seconded. Motion carried with two nay votes noted.

Guy Choate moved for a roll call vote for each of the two issues; John Sloan seconded. Motion carried.

Arnold Aguilar moved to vote on the two issues separately so that the pros and cons of each issue are taken up and discussed independently; Brad Hancock seconded. Motion carried.

Arnold Aguilar moved to postpone consideration to vote on the second issue until after a roll call vote of the first issue is taken; Brad Hancock seconded. Motion carried.

Various district directors, minority directors, Section Representatives and public member directors gave feedback on the issue, as well as Betty Blackwell from CFLD and Gaines West from the Grievance Oversight Committee, and two members from the public, Ron Bunch (Waxahachie) and Stephen Schechter (Boerne).

President Roland Johnson moved to adopt and submit a recommendation to the Texas Supreme Court on the following, Immediate Past President Harper Estes seconded:

(1) The State Bar Board of Directors recommends to the Supreme Court of Texas that on the issue of whether Texas lawyers should be required to disclose (absent a request from a client or prospective client) the existence or non-existence of professional liability insurance that:

Option 1: Yes, disclosure should be required

Option 2: No, disclosure should not be required

After a roll call vote was taken, 39 votes were recorded for Option 2, disclosure should not be required, and one vote for Option 1 was made by William W. Ogden.

(2) After having voted 39 against disclosure, and one for disclosure, the Board of Directors further responds to its understanding of the Courts' inquiry, that *if* professional liability insurance disclosure were to be required, the Board of Directors recommends to the Supreme Court of Texas that such disclosure be made through:

Option 1: An administrative rule (not a disciplinary rule) that requires each Texas lawyer to disclose the existence or non-existence of professional liability insurance on the State Bar of Texas website

Option 2: A disciplinary rule (not an administrative rule) and that each Texas lawyer practicing in the public, who does not carry professional liability insurance, be required to inform prospective clients in writing of that fact.

After a roll call vote was taken, 39 votes were recorded for Option 1, none for Option 2. Yvette Ostolaza abstained from voting.

(3) To instruct President Johnson in his forwarding letter to the Supreme Court to include a sentence that states that the Board of Directors respectfully recommends that if the Court determines that disclosure should be required, that it seek the Board's recommendation as to the details of the implementation of such requirement. Motion carried.²

President Johnson thanked the Board for being true to the process. There being no further business, the meeting was adjourned at 1:37pm.

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

² A full recorded transcription of the proceedings is available. Please contact the State Bar of Texas for further information.