

**OFFICIAL MINUTES
STATE BAR OF TEXAS
BOARD OF DIRECTORS MEETING
Baylor Law School
Waco, Texas
January 30, 2009**

The Board of Directors of the State Bar of Texas met in a regular session on January 30, 2009 at Baylor Law School in Waco, Texas. Chair Joe Shannon called the meeting to order at 9:00am, and Executive Director Michelle Hunter called the roll. A quorum of voting Board members was present. Dr. Clifton Howard, District Superintendent of the Waco district of the United Methodist Church, gave the invocation. James Higdon led the pledges to the U.S. and Texas flags. Baylor Law School Dean Brad Toben welcomed the Board and gave brief remarks.

Present:

Board Members: J. Arnold Aguilar, Pablo Almaguer, Glenn Ballard, Jr., Stephen Benesh, Talmage Boston, Deborah Bullion, TYLA President Sylvia Cardona, Theresa Chang, Michelle Cheng, Guy Choate, Janna Clarke, Warren Cole, Jeanne C. (Cezy) Collins, David W. Copeland, President Harper Estes, David Fisher, Susan M. Fisher, Deborah Gagliardi, Pamela Gilbert, Beverly Godbey, Mike Gregory, L. Bradley Hancock, TYLA President-elect Cori Harbour, John Hatchel, Van Hilley, Randy Howry, Lamont Jefferson, President-elect Roland K. Johnson, Rob Kyker, Kyle Lewis, Samuel B. Lovelady, TYLA Immediate Past President William W. Miller, Jr., Timothy Mountz, William W. Ogden, Goodwille Pierre, W. Thomas Proctor, Robert Roby, Mark K. Sales, Chair of the Board Joe Shannon, Jr., John D. Sloan, Jr., Randy O. Sorrels, Lisa Tatum, Immediate Past Chair of the Board Travis Vanderpool*, R. Patrick Wolter, Immediate Past President Gib Walton, Barbara S. Young

Liaisons*: Judge Vanessa Gilmore, Justice Phil Johnson, Judge Lawrence E. Meyers, Justice Dale Wainwright

Section Representatives*: Chad Baruch, James N. Higdon, John Jansonius, Dan Micciche

Ex Officio*: Executive Director Michelle Hunter, General Counsel Elizabeth Rogers, CDC John Neal

Excused Absences: Steve Bolden*, Curtis V. Flowers, Judge Suzanne Stovall*, R.E. Thompson*, Cheryl Wilson*

(* = nonvoting)

I. CONSENT AGENDA ITEMS:

A. An amendment to the October 3, 2008 Board meeting minutes was made relating to the action item of rebalancing the Board classes, and upon motion properly made by Deborah Bullion and seconded by Janna Clarke, the following items on the Consent Agenda were approved:

a. Approval of minutes of Board meetings conducted on *October 3, 2008* as amended

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

1) *January 8, 2009:* Approved minutes of the September 4, 2008 Executive Committee meeting

B. Items from the President-Elect:

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

1) for three-year terms, effective June 2009 to June 2012:

lawyers:

Gib Walton (Houston)
Randy Sorrels (Houston)
Judge Jennifer Rymell (Fort Worth)

public member:

Lucy Harrison (Longview)

C. Items from Committees and Sections/Divisions:

- a. Approval of request by the Workers' Compensation Section to amend its bylaws [**Exhibit A**]
- b. Approval of request by the Hispanic Issues Section to increase dues from \$10.00 to \$20.00 per year [**Exhibit B**]
- c. Approval of request by the Judicial Section to amend its bylaws [**Exhibit C**]

D. Other Items:

- a. Approval of the 2009-2010 Preliminary Calendar/Holiday Schedule
- b. Approval of resolutions honoring:
 - 1) **Jack Crews (Temple)**
 - 2) **Ryan C. Johnson (Waco)**
 - 3) **Rick Bostwick (Waco)**
 - 4) **Gibson Gayle (Houston)**
 - 5) **Justice Dale Wainwright (Austin)**

II. REPORTS:

A. Report from the Chair of the Board:

Chair Shannon announced that only David Fisher has announced his intention to run for Chair of the Board for 2009-10, and David gave brief remarks.

Chair Shannon 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 written ballot was noted, and Chair Shannon declared that the method of voting to be used at the April meeting will be by show of hands.

B. Report from the President:

President Estes thanked the Board for all their hard work, and made remarks on the legislature, the final report of the Court Administration Task Force, You Tube entries, and Access to Justice. The LeadershipSBOT Academy has been going well, and it is a great group of 19 young people dedicated to improving the profession. The Annual Meeting is approaching, and we have great speakers this year including Doris Kearns Goodwin, David Brooks, Morris Dees, and Bryan Garner, among others.

President Estes introduced Orrin Harrison, chair of the Grievance Committee Task Force, who reported on its members and their charge to review the viability of the current grievance system. The task force will study ways to make the grievance committees more streamlined and efficient by cutting down the number of grievance committees. The task force will work through the DCAAP committee. [**Exhibit D**]

Estes reported that John Neal has been hired as first assistant to the Travis County District Attorney, and the Commission for Lawyer Discipline voted unanimously to hire Linda Acevedo to replace him as Chief Disciplinary Counsel.

Closed Session: At 9:55a.m., Chair Shannon announced that the Board of Directors would meet in closed session as authorized by Texas Government Code, Section 551.074 for the purpose of discussing recommendations concerning the appointment of a new Chief Disciplinary Counsel.

Open Session: Upon return to open session at 10:00a.m., Chair Shannon announced that during the closed session, only matters relating to the selection of a new Chief Disciplinary Counsel were discussed. No action was taken in closed session.

In open session, Lisa Tatum moved for the selection and hiring of Linda Acevedo for the position of Chief Disciplinary Counsel; Janna Clarke seconded. Motion carried.

C. Report from the Supreme Court Liaison:

Justice Dale Wainwright reported on his experience serving as the Supreme Court liaison to the Board and on the new Court liaison roles. Justice Wainwright introduced Justice Phil Johnson as the new Supreme Court liaison to the Board, who made remarks, and Wainwright was presented with a resolution. Wainwright reported that he will continue to act as a liaison to the Commission for Lawyer Discipline and BODA; Justice Medina will act as liaison to the Grievance Oversight Committee; the Board of Law Examiners, Judicial Conduct Commission, and TBLS will be under Justice Brister; Justice O'Neill is liaison for Access to Justice and the Permanent Judicial Commission for Children, Youth & Families; and Justice Green will be liaison to the TYLA. Justice Johnson reported on the legislative bills that have been passed, the House reorganization, and the revision of TBLS rules.

D. Report from the President-elect:

President-elect Roland Johnson reported that he has been working on appointing chairs, vice chairs and members of Standing Committees. Johnson reported on the budget process, summarizing various items including the general fund, the book fund, and the special revenue fund, and noted that we are following through with presidential initiatives from last year, and Johnson's initiative will focus on mentoring.

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

- (1) Acceptance of a total minimum operating reserve designation of \$5,903,075 and a total designation of \$7,384,866 for the Texas Law Center building fund; no second needed. Motion carried.**
- (2) Approval of the SBOT FY 2009-10 proposed budget as presented and for publication in the *Texas Bar Journal*; no second needed. Motion carried. [Exhibit E]**

Roland reported on the history of the Committee Review Task Force and its creation as a result of Sunset Review in 2001. The recommendations in the task force report include amending the purpose clause of two committees, eliminating the Judiciary Relations Committee, and monitoring the relationship between the Immigration Committee and the proposed new Immigration and Nationality Law Section.

President elect Johnson moved for approval of the recommendations of the Committee Review Task Force; Pablo Almaguer seconded. Motion carried. [Exhibit F]

E. Court of Criminal Appeals Liaison:

Judge Larry Meyers reported that the Court is facing a tight budget, and they are working on reducing it by 10%.

F. Report from the Texas Legal Protection Plan:

Texas Legal Protection Plan Executive Director Jim Buck reported on his background prior to joining TLPP. TLPP has undergone changes in staffing and leadership, and a consultant was brought in to help develop a

strategic planning to overhaul several areas of the organization, including the website, benefits, expanding business, and membership. Buck noted that there should be synergy between SBOT and TLPP, and they would like to work on building that relationship.

G. Nominations & Elections Subcommittee:

Immediate Past President Gib Walton reported on the work and process of the Nominations & Elections committee and briefly discussed the two President-elect candidates being presented for approval. Co-chair Travis Vanderpool reported on Policy Manual Section 1.15 and 2.01 concerning campaign activities and endorsement of candidates, and the language being eliminated and amended to further clarify the role of members of the Board and State Bar staff in President-elect campaigns.

On behalf of the Policy Manual subcommittee, Barbara Young moved for approval of the revisions to Policy Manual Sections 1.15.07 and 2.01.10; no second needed. Motion carried. [Exhibit G]

Several suggestions were made to change the wording to use the term “preference” or “advocate” instead of support but no amendment was formally made.

On behalf of the N&E subcommittee, Immediate Past President Walton moved for approval of Rhonda Hunter (Dallas) and Terry Tottenham (Austin) as the 2009-10 President-elect candidates; no second needed. Motion carried. [Exhibit H]

The two candidates were introduced – Rhonda Hunter by Lisa Tatum, and Terry Tottenham by Lamont Jefferson – and both gave remarks.

H. Commission for Lawyer Discipline/Chief Disciplinary Counsel:

Betty Blackwell reported on the staff of the CDC office, and highlighted various other items including the proposed budget, centralized compliance, the work of the appellate team, the grievance referral program, and grievance statistics. [Exhibit I]

I. Administration Committee:

Randy Sorrels gave a building update, reported on the compensation study and on the second floor window replacement, noting that several options were considered in order to match the second floor windows with the windows on other floors.

On behalf of the Administration Committee, Randy Sorrels moved for approval to replace all second story windows with the same tinted low emissivity windows that have been installed on floors 3-6 at a cost of \$137,780; no second needed. Motion carried.

Sorrels reported on the new parking policy, which would include converting 21 visitor spaces on P1 to badge-only access, converting P3 storage to 11 badge-only access spaces, and arranging off-site parking for meetings.

On behalf of the Policy Manual subcommittee, Barbara Young moved for approval of the revisions to Policy Manual Section 3.12.04 concerning parking; no second needed. Motion carried. [Exhibit J]

J. Audit and Finance:

Warren Cole reported on the financial highlights, including the investment income and TexasBarCLE. Mark Sales noted that we received an unqualified opinion from Maxwell, Locke & Ritter, also referred to as a “clean” opinion, which is the best audit opinion the Bar can receive. The audited fund balance as of May 31, 2008 is \$14,066,136. Padgett, Stratemann & Co. LLP conducted the internal audit and had “no comments or recommendations”.

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, 2008; no second needed. Motion carried.

(2) Acceptance of internal audit for FY ending May 31, 2008; no second needed. Motion carried.

(3) Acceptance of quarterly investment report for quarter ending November 30, 2008; no second needed. Motion carried. [Exhibit K]

K. Discipline & Client Attorney Assistance Program Committee:

Michelle Cheng reported that the Client Security Fund has approximately 80-100 applications pending, and they are working on overhauling the rules. Chair Lisa Tatum reported that the DCAAP committee has been working on a Payee Notification requirement in Texas, which would require insurance companies to provide written notice to the client at the same time payment is made to the client's attorney. Tatum noted that the experience in 13 other states that have such a requirement has been that it has helped reduce lawyer theft of personal injury settlements. The DCAAP Committee worked with the CDC to draft a resolution, which was approved by DCAAP. The proposed resolution would request the Texas Insurance Board to consider adopting such a requirement.

On behalf of the DCAAP Committee, Tatum moved for approval of the resolution pertaining to payee notification; no second needed. Motion carried. [Exhibit L]

L. Policy Manual Subcommittee:

Barbara Young reported on the Policy Manual revisions regarding organizational year, Board members, Court Liaisons, Board committees, "names" of Board meetings, building fund, MCLE appeals, and various other pertinent Policy Manual provisions revised to reflect these changes, including re-numbering and non-substantive clean up.

On behalf of the Policy Manual subcommittee, Young moved for approval of the following Policy Manual revisions:

(1) Policy Manual definitions; no second needed. Motion carried.

(2) Section 1.02.01 concerning the Board members to reflect the changes in the policy manual definitions; no second needed. Motion carried.

(3) Section 1.05 concerning Liaisons to the Board; no second needed. Motion carried.

(4) Section 1.12 concerning meetings of the Board; no second needed. Motion carried.

(5) Section 3.08.03 concerning the Building Fund; no second needed. Motion carried.

(6) Section 7.08 concerning the appeals of MCLE decisions to the Board; no second needed. Motion carried.

(7) Such other Sections as necessary to reflect the above changes; no second needed. Motion carried.

Gib Walton moved to postpone action on Policy Manual Section 1.14.01 concerning descriptions of Board committees; Debbie Bullion seconded. Motion carried, with 8 nay votes noted. [Exhibit M]

M. Ad Hoc Committee to Select Minority Directors:

Michelle Cheng reported that the Ad Hoc Committee received 27 applications for the one available position in June 2009, and ten outstanding candidates were interviewed. The two nominees being presented to President Estes for selection are Frederick Barrow (Dallas) and Yvette Oztolaza (Dallas), and Estes will make his selection by March 1.

N. Member Services and Education:

Goodwille Pierre reported that the Appeals-Grants Review subcommittee met to discuss the two appeals of decisions made by TBLS and one decision made by the MCLE Committee. The subcommittee is still reviewing the merits of the appeal submitted by Dean Hawkins, which will be presented at the April Board meeting.

On behalf of the Appeals-Grants Review subcommittee, Pierre moved for approval of the following recommendations:

(1) To deny the appeal submitted by Mr. James Lynn and uphold the decision of the TBLS; no second needed. Motion carried.

(2) To deny the appeals submitted by Ms. Moria Cue on behalf of the Help Center, LLC, and uphold the decision of the MCLE Committee; no second needed. Motion carried. [Exhibit N]

Van Hilley reported on the Professional Development subcommittee and noted that Merianne Gaston will be moving to the State Bar College. Guy Choate reported on Member Services, noting that the PLI subgroup will review a draft RFP, which will be sent to USI, Marsh, and other providers of professional liability insurance. Choate noted that the percentage of members insured by TLIE is going down. He also reported that several new benefits are being considered this year including phone service, payment software, and webpage design.

O. Public Services and Education:

Debbie Bullion reported that the Lawyer Referral and Information Services Standing Committee voted to recommend that the Board implement a professional liability insurance requirement for lawyers participating in the State Bar's Lawyer Referral Service. Currently there is no requirement. The proposal requires that members of the State Bar's Lawyer Referral Service maintain a minimum of \$100,000 of PLI.

Several questions were raised, including whether or not lawyers were surveyed, whether the insurance would be under Open Records, and how many lawyers would be participating. Board members Bill Miller and Goodwille Pierre spoke against implementing the requirement, while Jim Higdon and Arnold Aguilar spoke in favor of the requirement. Tim Mountz, Board advisor to the LRIS committee, noted that his feeling is that the State Bar is out of step in not having a requirement and that the mechanics of the proposal should be looked at after it is implemented.

On behalf of the Legal Services subcommittee, Debbie Bullion moved for approval of the recommendation of the Lawyer Referral Services Standing Committee requiring members of the State Bar's Lawyer Referral Service to have and maintain a minimum of \$100,000 of Professional Liability Insurance and that the requirement become effective as of January 2, 2010; no second needed. Members who have already paid memberships for the year as of January 1, 2010 will be grandfathered in until the expiration of their current membership term. TYLA Immediate Past President Bill Miller made a motion to recommit to the LRIS Committee for further study; Goodwille Pierre seconded. Motion to recommit failed. The original motion carried with a few nay votes noted. [Exhibit O]

Debbie Bullion noted that the Legislature is in session, and reported on the proposed additions to the Legislative package, including supporting a bill for the creation of an Office of Capital Writs and adopting a statement of support regarding judicial pay, and remaining neutral on HB 29 relating to the qualifications for office of justice of the peace in certain counties and SB 320 relating to the qualifications for office of justice of the peace.

On behalf of the Legislative Policy subcommittee, Bullion moved for approval of the following proposed additions to the 2009 Legislative Program:

- (1) Supporting a bill for the creation of an Office of Capital Writs; no second needed. Motion carried.**
- (2) Adopting a statement of support for judicial pay; no second needed. Motion carried.**
- (3) Remaining neutral on HB 29 and SB 320; no second needed. Motion carried. [Exhibit P]**

Barbara Young reported on Policy Manual Section 8.01 concerning the role of the Executive Committee, specifically that in the event a majority of the President, the President-Elect, the Chair, the Chair of the Legislative Policy Subcommittee and the Executive Director determine that a legislative matter must be acted upon immediately, and that there is insufficient time to convene the Executive Committee to act pursuant to Subsection 8.01.07, that they may convene as an Ad-hoc Emergency Legislative Response Committee to take such action as a majority deems necessary.

On behalf of the Policy Manual subcommittee, Young moved for approval of the revisions to Policy Manual Section 8.01 concerning the Ad-hoc Emergency Legislative Response Committee; no second needed. Motion carried. [Exhibit Q]

P. Section Representatives to the Board:

Chad Baruch reported that the Council of Chairs voted unanimously to support the proposed new Immigration & Nationality Law Section, and all State Bar requirements have been fulfilled.

Rob Kyker moved for approval of the recommendation regarding the proposed Immigration & Nationality Law Section; Brad Hancock seconded. Motion carried. [Exhibit R]

Q. Federal Judicial Liaison:

Judge Vanessa Gilmore reported that the federal judicial budget was \$6.2 million this year, and she is happy to see that the State Bar supports judicial pay raises. The number of appeals this year increased by 4%, bankruptcy filings rose 30%, and criminal filings rose 20%. There are 52 district judges in Texas, with the most in the Southern district, and Chief Justice Hayden Head will take senior status this year.

R. TYLA:

TYLA President Sylvia Cardona highlighted the recent activities of TYLA, including the "Healing the Wound" domestic violence video and Ten Minute Mentor. Two candidates have been nominated for TYLA President-elect – Jennifer Evans Morris and Clay B. Scheitzach – both from Dallas.

S. Executive Director:

Executive Director Michelle Hunter reported that Don Jones was promoted to Deputy Director of Operations, and Kelley Jones King has a new title of Deputy Director of Presidential Initiatives and Communication. Hunter noted that Linda Acevedo is also from McAllen and will do great work as the Chief Disciplinary Counsel. Tami Knoll was presented with the Employee of the Quarter award.

T. General Counsel:

General Counsel Elizabeth Rogers submitted a written report. **[Exhibit S]**

There being no further business, the meeting was adjourned at 3:12pm.