

**OFFICIAL MINUTES
STATE BAR OF TEXAS
BOARD OF DIRECTORS MEETING
Hilton Houston NASA Clear Lake
Houston, Texas
October 1, 2010**

The Board of Directors of the State Bar of Texas met in regular session on October 1, 2010 at the Hilton Houston NASA Clear Lake in Houston, Texas. Chair of the Board Pablo Almaguer called the meeting to order at 9:00am, and Executive Director Michelle Hunter called the roll. A quorum of voting Board members was present. Warren Cole delivered the invocation. Allan DuBois, Jo Ann Merica and Travis Sales led the pledges to the U.S. and Texas flags. Sylvia Cardona was sworn in as the new District 10, Place 2 director to replace Victor Negron, who was appointed to the newly created 438th District Court by Gov. Rick Perry.

Present:

Board Members: J. Arnold Aguilar, Pablo Almaguer, Becky Baskin Ferguson, Steve Benesh, President-elect Bob Black, Talmage Boston, Roy Brantley, Virginia Campbell, Sylvia Cardona, Warren Cole, Jeanne C. (Cezy) Collins, Christina Melton Crain, Mark Daniel, Allan DuBois, Greg Dykeman, Damon Edwards, Susan Fisher, Pamela Gilbert, Beverly B. Godbey, Brad Hancock, TYLA Immediate Past President Cori Harbour, Bert Jennings, Immediate Past President Roland K. Johnson, TYLA President-elect Natalie Cobb Koehler, Kyle Lewis, Mike McDonald, Jo Ann Merica, TYLA President Jennifer Evans Morris, Toni Nguyen, William W. Ogden, Yvette Ostolaza, W. Thomas Proctor, Barrett Reasoner, Ricky Richards, Robert Roby, Travis Sales, Steve Schechter, President Terry Tottenham, John Trevino, Pat Wolter

Liaisons*: Scotty Holloman, Justice Phil Johnson, Judge Steve Smith

Section Representatives*: Stewart Gagnon, Luis Garcia, Steve James, John Jansonius, Dan Micciche, Brian Webb

Excused Absences: Tim Belton, David Copeland, Immediate Past Chair David Fisher*, Mike Gregory, John Hatchel, Judge Larry Meyers*, Annette Raggette, Judge Jorge Solis*, Frank Stevenson

(* = nonvoting)

I. CONSENT AGENDA ITEMS

Upon motion properly made by Yvette Ostolaza and seconded by Warren Cole, the following actions were taken regarding the Consent Agenda items:

A. Approval of Minutes:

- a. Approval of minutes of Board meetings conducted on *June 9-10, 2010*
- b. Ratification of actions taken at the following Executive Committee meeting:
 - 1) ***September 21, 2010:*** Approved minutes of the April 6, 2010 Executive Committee meeting

B. Items from the President:

Approval of appointments to the following entities:

- a. **Delegates to the 2011 Fifth Circuit Judicial Conference:**

President Terry Tottenham
President-elect Bob Black
Executive Director Michelle Hunter

Immediate Past President Roland Johnson
Chair of the Board Pablo Almaguer
TYLA President Jennifer Evans Morris

- b. **Texas Legal Services Center**, for a three-year term effective January 1, 2010 through December 31, 2012:

Mario Lewis (Austin)

- c. **Texas Access to Justice Foundation**, for a three year term effective September 1, 2010 through August 31, 2013:

Andy Kerr (San Antonio)

- d. State Bar President Standing Committee Appointments [**Exhibit A**]¹

C. Items from Committees and Sections/Divisions:

- a. Approval of request by the State Bar Military Law Section to amend its bylaws [**Exhibit B**]
- b. Approval of request by the State Bar International Law Section to amend its bylaws [**Exhibit C**]

II. REPORTS

A. Report from the Chair of the Board:

Chair Almaguer solicited candidates for the 2011-12 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.

B. Report from the President:

President Terry Tottenham reported that each member of the TYLA board has signed a pledge that they will participate in a veteran's clinic, and President Tottenham urged the Board to sign the commitment card to attend a veteran's clinic in their area. President Tottenham also discussed the positive feedback received from the public on the veterans' initiative and the wellness initiative, the webinars for under- and unemployed lawyers, and the public hearings that were conducted on the proposed changes to the disciplinary rules.

President Tottenham reported on the open records request that was received for the email addresses of attorneys who had not yet opted out of keeping their information confidential. There are two statutes in the Public Information Act, one which states that email addresses from members of the public who give the address to a governmental body can have those email addresses kept confidential unless the member of the public consents to disclosure, and the other statute, which was taken to the legislature by the State Bar, allows attorneys to designate certain information including email addresses confidential. In 2007 the State Bar communicated with the membership asking them to designate whether they wanted email addresses and other information kept confidential. The State Bar has taken aggressive efforts to encourage attorneys who want to to designate their information confidential, and has asked for an Attorney General's opinion for clarification of the inconsistency between the two statutes.

President Tottenham also reported on a request from the New York State Bar Association that the State Bar join in an amicus brief filed in a lawsuit brought by the ABA against the FTC challenging the FTC's attempt to

regulate the legal profession under federal "Red Flag Rules". Because the deadline for filing the brief was August 31, prior to the September Executive Committee meeting, the Ad Hoc Submission Committee convened and approved the request, and the ABA was notified.

Immediate Past President Roland Johnson moved for ratification of the Ad Hoc Submission Committee's approval of the request to join in Amicus Brief pursuant to Policy Manual Section 8.02.04(C); Brad Hancock seconded. Motion carried. [Exhibit D]

Closed Session: At 9:28a.m., Chair Almaguer 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 and/or settlement in relation to changes to the organization and personnel of the State Bar History & Preservation Committee.

Open Session: Upon return to open session at 9:41a.m., Chair Almaguer announced that during the closed session, only matters relating to consultation with legal counsel concerning pending or contemplated litigation and/or settlement were discussed. No action was taken in closed session.

President Tottenham moved for approval of the changes to the organization and personnel of the State Bar History and Preservation Committee, with Francisco Valenzuela serving as co-chair and new additional members Terry Susan Fisher, Sarah Foster, Judi Ross, Darrick Eugene and Barry Macha; Bert Jennings seconded. Motion carried.

C. Report from the Immediate Past President:

Immediate Past President Johnson reported that the Nominations and Elections subcommittee has been busy contacting people to gauge interest in running for President-elect, and this year is an open year (potential nominees may come from any counties of the state). Interviews will be conducted in early December in order to present the two candidates at the January Board meeting.

D. Report from the President-elect:

President-elect Bob Black reported on his initiatives for the 2011-12 year, including a project using history to educate and illustrate the importance and independence of the judiciary and the roles that lawyers play in the American judicial system. His initiatives will also include improving health insurance options for lawyers, and continuing the TLTV and the wellness initiatives. The budget process is underway and the Committee Review Task Force is at work reviewing the Standing Committees of the State Bar in accordance with the requirements of the State Bar Act.

E. Commission for Lawyer Discipline/Chief Disciplinary Counsel:

Betty Blackwell reported that the Commission for Lawyer Discipline has three new members, Lisa Tatum, Nancy Powers and Kate McKenna. She also reported on the Grievance Referral Program, prevention efforts for lawyers dealing with mental health and substance abuse issues, and the grievance system. **[Exhibit E]**

F. Administration Committee:

Cezy Collins discussed the goals of the Employment/Salary/Evaluation subcommittee, one of which is to review the agreements with affiliated entities of the State Bar.

G. Audit and Finance Committee:

Warren Cole reported on the financial highlights, noting that the overall net excess for the General Fund was approximately \$2.9 million. The fund balance as of May 31, 2010 was \$11,301,674, which represents an overall

increase to the fund balance of \$1.3 million. TexasBarCLE revenues over expenditures resulted in a net excess of \$2.5 million, producing a favorable net revenue variance of almost \$152,000. The Budget Committee will be making a recommendation at the January Board meeting regarding the \$3 million Board designation resulting from FY09-10 financial activities. Ken Couch from PFM Asset Management gave an investment overview and reported on the state of the current market, retail sales, the housing market, and inflation.

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

(1) Acceptance of the quarterly investment reports for May 2010 and August 2010; 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 PFM broker/dealer list for investments for 2011-12; no second needed. Motion carried.

(4) Approval of the SBOT investment policy; no second needed. Motion carried. [Exhibit F]

H. Client Security Fund Subcommittee:

John Jansonius reported that the Client Security Fund subcommittee reviewed summaries of 33 applications from individuals who were seeking reimbursement from the fund, and approved 40% of the 33 applications.

I. DCAAP Committee:

Immediate Past President Johnson reported on the eight year process concerning the proposed amendments to the disciplinary rules. He then introduced Tom Watkins, who reported on the reasons changes were being made, including a move towards uniformity and technological advances. Pat Wolter reported on the public hearings as well as the education process of informing lawyers about the rule proposals. Wolter outlined the recommendations of the DCAAP Committee, including the changes and additions to those rules that had received the most comments, particularly Rules 1.00(p), 1.06(c), 1.08, 1.09, 1.10, 1.11, 1.13, 3.05, and 4.02.

On behalf of the DCAAP Committee, Wolter moved for approval of the DCAAP Committee's recommendations regarding the proposed amendments to the Texas Disciplinary Rules of Professional Conduct for submission to the Supreme Court of Texas, which include the following: the proposed amendments to the rules as issued by the Court with the changes made by the DCAAP Committee, the Board resolution, the ballot format, and the timeline for referendum. [Exhibit G]

Travis Sales reported on concerns he had received concerning the proposed conflicts rules from law firms and lawyers who have multi-state practices, and expressed the opinion that the concern is great enough that the proposals may be losing a large segment of support unless those specific rules were sent back to the committee for further review. President Tottenham also noted that he received short notice on a meeting that was held in Dallas the day before this Board meeting with representatives from firms who had concerns about the proposed conflicts rules. He suggested that the proposed conflicts rules be carved out from the current recommendation for further study and consideration by the DCAAP Committee and be taken up by the Board for discussion and approval at the January meeting. He then recommended that the Board continue to discuss and consider the approval of the remaining rules. Several Board members noted the amount of work that had been done by the task force and the committees involved over the past eight years. Others questioned whether the conflicts rules could be effectively carved out for later consideration, and some Board members raised the question of whether to defer consideration of all the proposed rules until January.

Brad Hancock called to previous question on the original motion; 19 yes votes were counted. Call to question failed.

The Board reconvened after lunch, and Pat Wolter noted that in light of the recent discussion, the DCAAP Committee met during lunch, and decided to withdraw its original motion and proposed a new motion as follows.

On behalf of the committee, Wolter moved for approval of the proposed amendments to the Texas Disciplinary Rules of Professional Conduct including the comments, with the exception of the conflicts rules 1.06, 1.07, 1.08 and 1.09 and their comments, the timeline, ballot and the resolution; no second needed. There was a call to vote by hand, with 27 yes votes and 8 no votes. Brad Hancock abstained. Motion carried.

Justice Johnson rose to refer back to the Court's letter to the Board dated July 7, 2010 in which the Court asked the Board to consider the proposed rules and make its recommendation to the Court by October 6, 2010, and to ask what the specific recommendation will be to the Court as a result of the Board's action today. President Tottenham stated the recommendation will be that the Board has approved all of the Rules as moved by DCAAP except the proposed conflicts rules, and that the latter will be discussed further with DCAAP for a final recommendation to be considered by the Board at its next meeting. He also stated that the recommendation would not include a referendum or ballot form until the board takes further action on the proposed conflicts rules. There was also discussion concerning a revised timeline, and a separate motion was made for a new timeline.

Steve Schechter moved for approval to delegate to the Executive Committee to come up with a timeline in order to report to the Supreme Court, to publish and to let the voting begin, and to delegate those timelines to the EC; seconded by Jo Ann Merica. Motion carried.

Allan DuBois moved to propose that anyone who wishes to make suggestions, corrections, or additions to the DCAAP committee's recommendations regarding the rules that have been deferred, commonly known as the conflicts rules, do so within seven days in writing, in the language that they propose to be adopted so that they can be compared side-by-side and make a rational decision as a Board as soon as possible what to recommend to the Supreme Court; seconded by Pat Wolter. An amendment was made by Travis Sales that the written comment should come to the DCAAP committee within 30 days of this meeting. Motion as amended carried.

J. Appeals/Grants Review Subcommittee:

Bert Jennings reported that the Appeals/Grants Review subcommittee received two requests for authorization to seek outside funding, both from TYLA for their Child Abuse Project and for their access to justice initiative "Partnering for Pro Bono". The subcommittee approved both of these requests to seek grants. **[Exhibit H]**

K. Member Benefits and Education Subcommittee:

Talmage Boston reported that TexasBarCLE is at an all-time high in revenue of \$5.19 million, which is \$46,000 above what was budgeted, and TexasBarBooks published three new books in the past fiscal year. Pamela Gilbert reported that the Insurance/Member Benefits subcommittee has approved Beneplace as the provider of new benefits to members, and 42 new vendors have been added to the 18 existing vendors in the State Bar Member Benefit program. Steve Benesh reported that the Technology Oversight subcommittee will be focusing on reviewing and approving upcoming computer replacements for the CDC offices, and establishing a project budget for the new CDC Case Management System and for technical and AV improvements to the Hatton Sumners Conference Room at the Law Center.

L. Public Services & Education:

Beverly Godbey turned it over to Travis Sales, who reported that IOLTA accounts were left off the Transaction Account Guarantee (TAG) Program, which provides for unlimited FDIC insurance on non-interest bearing accounts. This could have major consequences for IOLTA revenue; therefore the President has written to the Texas Congressional Delegation to educate them on this issue in an attempt to remedy this oversight and make sure that IOLTA funds will be protected. Sales also reported on the ATJ gala scheduled for April 26, 2011 in Austin.

Stewart Gagnon reported that the Legislative Policy subcommittee met in Austin on August 19-20 to consider 23 proposals submitted from six Sections and one submitted by a Board member as a committee liaison. The subcommittee recommended including 22 of the bills in the State Bar’s legislative package for the 2011 legislative session, and recommended that we remain neutral on the one remaining bill. The Section that proposed that bill did have the opportunity to appeal that recommendation, but have chosen not to.

On behalf of the Legislative Policy subcommittee, Beverly Godbey moved to accept and adopt the recommendations of the Legislative Policy subcommittee with regard to each proposal summarized in the book sent separate from the board packet, including the recommendation that each proposal conforms with the requirements of 8.01 and that the recommendations listed in column 3 of the report should be adopted as a group; no second needed. Motion carried. The following is the summary of actions taken by the Board. [The full text of the Legislative Program is included in the report submitted by the Legislative Policy subcommittee.]

2011 LEGISLATIVE PROGRAM – PROPOSED LEGISLATION		
TABLE OF CONTENTS		
TAB	PROPOSAL	COMMITTEE RECOMMENDATION
BOARD PROPOSED (TAB 1)		
1	<i>Relating to the use of unsworn declarations.</i> Proposed Amendments to Section 132.001 (Use by Inmates in Lieu of Sworn Declaration), Civil Practice and Remedies Code. Proposed Repeal of Sections 132.002 (Requirements of Declaration) & 132.003 (Form of Declaration), Civil Practice and Remedies Code.	Support
ADR/COLLABORATIVE LAW (TAB 2)		
2	<i>Relating to the resolution of certain disputes by collaborative law procedures.</i> Proposed New Chapter 161 (Uniform Collaborative Law Act), Civil Practice and Remedies Code.	Neutral
ANIMAL LAW (TAB 3)		
3	<i>Relating to appeals.</i> Proposed Amendments to Section 821.025 (Appeal), Health and Safety Code. Proposed Amendments to Sections 30.00001 (Short Title; Application), and 30.00014 (Appeal), Government Code. Proposed Amendments to Section 822.0423 (Hearing) and 822.047 (Local Regulation of Dangerous Dogs), Health and Safety Code.	Support
FAMILY LAW (TABS 4-14)		
4	<i>Relating to a child less than three years of age.</i> Proposed Amendment to Section 153.254 (Child Less Than Three Years of Age), Family Code.	Support
5	<i>Relating to the appointment of an attorney ad litem and an appeal in which the termination of the parent-child relationship</i>	Support

	<p><i>is in issue.</i></p> <p>Proposed Amendment to Section 107.013 (Mandatory Appointment of Attorney ad Litem for Parent), Family Code. Adds New Section 107.014, Family Code. Proposed Amendments to Sections 109.002 (Appeal) and 263.405 (Appeal of Final Order), Family Code.</p>	
6	<p><i>Relating to testimony of a child victim of family violence.</i></p> <p>Proposed Amendments to Section 104.006 (Hearsay Statement of Child Abuse Victim), Family Code.</p>	Support
7	<p><i>Relating to discretionary issuance of permanent protective orders in certain cases involving family violence.</i></p> <p>Proposed Amendments to Sections 85.001 (Required Findings and Orders), 85.025 (Duration of Protective Order) and 87.002 (Modification May Not Extend Duration of Order), Family Code.</p>	Support
8	<p><i>Relating to gestational agreements.</i></p> <p>Proposed Amendments to Sections 160.102 (Definitions), 160.752 (Scope of Subchapter; Choice of Law), 160.754 (Gestational Agreement Authorized), 160.755 (Petition to Validate Gestational Agreement), 160.756 (Hearing to Validate Gestational Agreement), 160.759 (Termination of Gestational Agreement), and 160.760 (Parentage Under Validated Gestational Agreement), Family Code.</p>	Support
9	<p><i>Relating to termination of the parent-child relationship and the duty to pay child support in circumstances involving mistaken paternity.</i></p> <p>Proposed Amendments to Sections 154.006 (Termination of Duty of Support) and 161.005 (Termination When Parent is Petitioner), Family Code.</p>	Support
10	<p><i>Relating to the military deployment.</i></p> <p>Proposed Amendments to 153.702 (Temporary Orders) and 153.703 (Appointing Designated Person for Conservator with Exclusive Right to Designate Primary Residence of Child), Family Code. Proposed Repeal of Section 153.706 (Temporary Order of Child Support), Family Code.</p>	Support
11	<p><i>Relating to the division of property in a suit for dissolution of marriage.</i></p> <p>Proposed Amendment to Section 7.002 (Division and Disposition of Certain Property Under Special Circumstances), Family Code.</p>	Support
12	<p><i>Relating to court ordered spousal maintenance.</i></p> <p>Proposed Amendments to Sections 8.051 (Eligibility for Maintenance; Court Order), 8.052 (Factors in Determining Maintenance), 8.053 (Presumption), 8.054 (Duration of Maintenance Order), 8.055 (Amount of Maintenance), 8.056 (Termination), 8.057 (Modification of Maintenance Order) and 8.059 (Enforcement of Maintenance Order), Family Code. Proposed New Section 8.0591, Family Code.</p>	Support
13	<p><i>Relating to family violence and protective orders.</i></p> <p>Proposed New Section 81.010 (Court Enforcement). Proposed Amendments to Sections 82.002 (Who May File Application), 82.009 (Application for Temporary Ex Parte</p>	Support

	Order), 83.006 (Exclusion of Party From Residence), 85.026 (Warning on Protective Order), and 261.001 (Definitions), Family Code. Proposed Repeal of Sections 83.007 (Recess of Hearing to Contact Respondent), 85.026(b) (Warning on Protective Order), and 85.065 (a) and (b) (Effect of Transfer), Family Code.	
--	--	--

M. Section Representatives to the Board Committee:

Dan Micciche reported that the Section Representatives will be providing a model newsletter and bylaws to their members. He also reported that the Alternative Dispute Resolution Section has begun the process to change its name.

N. TYLA:

Jennifer Evans Morris reported on the national awards received for the “R U Safe? Protecting Yourself in Cyberspace” public service project, Vote America, the Partnering for Pro Bono project, which brings together in-house counsel and law-firm lawyers to help those in need, Office-in-a-Flash, which provides valuable information needed to start your own law firm, and “The Little Voice” DVD concerning recognizing and reporting child abuse.

O. Supreme Court Liaison:

Justice Phil Johnson reported that the Court is preparing its legislative proposal and is also focusing on the Office of Court Administration. The Court has several rules pending as well as a recommendation from TBLS to initiate a new area of specialization in Criminal Appellate Law. The Court has also created a task force to work with local coastal areas to preserve historical records in Texas.

P. Judicial Section Liaison:

Judge Steve Smith thanked the State Bar for their work on Texas Ethics Advisory Opinion 484, and noted that the Judicial Compensation Commission has been meeting in order to work on providing an increase in salaries for the judiciary. Judge Smith also noted that Justice Jack Pope was the recipient of the first “Outstanding Lifetime Achievement Award in the Judiciary.”

Q. Out-of-state Lawyer Liaison:

Scotty Holloman thanked the staff for their work on the district and out-of-state lawyer letters that were sent concerning the professional liability insurance issue and the disciplinary rules.

R. Report from the Executive Director:

Michelle Hunter thanked several staff members for the excellent work they’ve been doing, and made remarks about the recipient of the Employee of the Quarter Award, Hedy Bower.

There being no further business, the meeting was adjourned at 2:24pm.

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