

**OFFICIAL MINUTES
STATE BAR OF TEXAS
BOARD OF DIRECTORS MEETING
Texas Law Center
Austin, Texas
November 5, 2010**

The Board of Directors of the State Bar of Texas met in regular session on November 5, 2010 at the Texas Law Center in Austin, Texas. Chair of the Board Pablo Almaguer called the meeting to order at 10:30am, and Executive Director Michelle Hunter called the roll. A quorum of voting Board members was present. Steve Benesh delivered the invocation. Mike Gregory, participating by teleconference, led the pledges to the U.S. and Texas flags.

Present:

Board Members: J. Arnold Aguilar, Pablo Almaguer, Becky Baskin Ferguson, Tim Belton, Steve Benesh, President-elect Bob Black, Talmage Boston, Roy Brantley, Virginia Campbell, Sylvia Cardona, Warren Cole, Jeanne C. (Cezy) Collins, David Copeland, Allan DuBois, Greg Dykeman, Damon Edwards, Susan Fisher, Pamela Gilbert, TYLA Immediate Past President Cori Harbour, John Hatchel, 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, W. Thomas Proctor, Barrett Reasoner, Ricky Richards, Rob Roby, Travis Sales, Steve Schechter, President Terry Tottenham, John Trevino, Pat Wolter

Liaisons*: Judge Steve Smith, Judge Jorge Solis

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

Teleconference: Mike Gregory, Justice Phil Johnson*, Yvette Ostolaza, Annette Raggette

Excused Absences: Christina Melton Crain, Mark Daniel, Immediate Past Chair David Fisher*, Stewart Gagnon*, Beverly B. Godbey, Brad Hancock, Scotty Holloman*, Judge Larry Meyers*, William W. Ogden, Frank Stevenson, Brian Webb*

(* = nonvoting)

A. Remarks from the General Public:

Several members of the public spoke on the proposed changes to the disciplinary rules. Julie Oliver from the Texas Coalition on Lawyer Accountability commented on Rule 1.08 concerning binding arbitration in consumer contracts. Richard Hile, speaking on behalf of some members of the Texas Trial Lawyers Association, made remarks on Rule 1.06 and 1.07 regarding the conflicts of interest and the form of vote on the ballot. Eric Anderson also made comments on arbitration.

B. Report from the Chair of the Board:

Upon motion properly made by Warren Cole and seconded by Bert Jennings, the minutes of the Board of Directors meeting conducted on October 1, 2010 were approved.

C. DCAAP Committee:

Pat Wolter thanked everyone who worked on the proposed changes to the disciplinary rules, and reported that the DCAAP Committee has met twice since the Board meeting on October 1 to consider additional amendments to the rules based on the comments and proposals received. A blast email was sent out to membership asking for input on Rules 1.06-1.09, and a meeting was held on October 20 in Dallas to allow attorneys to provide input on

the proposed revisions to the rules relating to conflicts of interest. Wolter outlined the materials being presented for approval, including the DCAAP proposed amendments to Rules 1.06-1.09 in redlined format, a resolution requesting the Supreme Court to authorize the State Bar to conduct a referendum, a proposed ballot form, and a proposed referendum timeline. Wolter reported on the proposed revisions to Rule 1.06 *Conflicts of Interest*, including a revision to the comments to Rule 1.06 that the DCAAP Committee is recommending in response to feedback received from government lawyers. Wolter also outlined the proposed changes to Rule 1.07 *Multiple Clients in Same Matter*, Rule 1.08 *Prohibited Transactions*, and Rule 1.09 *Former Client*. Wolter then discussed the DCAAP Committee's recommendation, based on comments it received, that the referendum ballot provide for voting on the proposed rules by separate parts. Wolter outlined the specific break-out of the ballot as follows: Part F groups together those rules to which significant revisions are not proposed; Part E groups together those rules to which significant revisions are proposed, but which did not generate substantial comment from members and the public; Part D groups together the proposed new rules; Parts B and C contain the rules concerning conflicts of interest; and Part A groups together the remaining rules in Part I. Steve Schechter remarked on the comments regarding the section on arbitration agreements.

On behalf of the DCAAP Committee, Wolter moved for approval of the DCAAP Committee's recommendations regarding the proposed amendments and comments to Rules 1.06, 1.07, 1.08 and 1.09 of the Texas Disciplinary Rules of Professional Conduct as presented; no second needed.

Wolter accepted a friendly amendment that comment 22 to Rule 1.06 be placed under the heading "Conflict Issues for Certain Government Lawyers" rather than under the heading "Standing to Raise Conflict Concerns", and that a reference to Preamble 11 in comment 22 of Rule 1.06 be changed to Preamble 10.

There was a call to vote by hand, with 35 yes votes and 1 no vote. Motion carried.

Dan Micciche suggested adding website links to the form of the ballot in order to reference the sections of the Texas Bar Journal which set forth the particular rules. Jennifer Evans Morris also suggested adding the current date to the ballot form (the date it is being presented and approved), in this case November 5, 2010.

After an amendment to include the date the ballot form was being presented was added, Wolter moved for approval on behalf of the DCAAP committee to adopt the resolution reflecting the approval of the proposed amendments to the Texas Disciplinary Rules of Professional Conduct, requesting the Texas Supreme Court to authorize the State Bar to conduct a referendum on the amendments and to approve the referendum timeline and ballot form presented November 5, 2010 to be distributed to the members of the Bar in both electronic and paper format; no second needed. There was a call to vote by hand, with 35 yes votes and 1 no vote. Motion carried. [Exhibit A¹]

President Terry Tottenham thanked the Board of Directors, the DCAAP Committee and others for their service. There being no further business, the meeting was adjourned at 11:32am.

¹ Exhibit A is available at www.texasbar.com/bodcentral under Meeting Agendas and Minutes.