

**OFFICIAL MINUTES
STATE BAR OF TEXAS
BOARD OF DIRECTORS MEETING
Hyatt Regency
Austin, Texas
January 28, 2011**

The Board of Directors of the State Bar of Texas met in a regular session on January 28, 2011 at the Hyatt Regency in Austin, Texas. Chair Pablo Almaguer 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. Emilee Dawn Whitehurst from the Rothko Chapel in Houston gave the invocation. Mike Gregory 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, Christina Melton Crain, Mark Daniel, Allan DuBois, Greg Dykeman, Damon Edwards, Immediate Past Chair David Fisher*, Susan Fisher, Pamela Gilbert, Beverly Godbey, Mike Gregory, 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, William W. Ogden, Yvette Ostolaza, W. Thomas Proctor, Annette Raggette, Ricky Richards, Robert Roby, Travis Sales, Steve Schechter, Frank Stevenson, President Terry Tottenham, John Trevino, Pat Wolter

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

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

Ex Officio*: Executive Director Michelle Hunter, Chief Disciplinary Counsel Linda Acevedo

Excused Absences: Brad Hancock, Judge Larry Meyers*, Barrett Reasoner

(* = nonvoting)

I. CONSENT AGENDA ITEMS:

- A. Approval of minutes of Board meeting conducted on *November 5, 2010*
- B. Ratification of actions taken at the following Executive Committee meeting:
 - 1) **January 11, 2011:** Approved minutes of the September 21, 2010 Executive Committee meeting
- C. Approval of appointments to the following entities:
 - 1) **Texas Access to Justice Foundation (IOLTA)**, for three-year term effective January 28, 2011 through August 31, 2014:
Oscar Garcia (Fort Worth - Public Member)
 - 2) **2011-2012 Special Committee to Nominate ABA Delegates:**
Roland Johnson, Chair (Fort Worth)

Richard Pena (Austin)
Kim Askew (Dallas)
Tony Patterson (Dallas)
Otway Denny (Houston)

Laura Livingston (Austin)
Rhonda Hunter (Dallas)
Eduardo Rodriguez (Brownsville)
Hon. Jennifer Rymell (Fort Worth)

3) **State Bar Professionalism Committee**, for three year term effective June 10, 2010 through Annual Meeting 2013.

Annabell Alegria (Brownsville)

4) **State Bar Annual Meeting Committee**, for a one year term effective June 10, 2010 through Annual Meeting 2011:

Priscilla Camacho (San Antonio)
Kristal Cordova Thomson (San Antonio)
C. Lee Cusenbary Jr. (San Antonio)
Sara Eileen Dysart (San Antonio)
Dawn Bruner Finlayson (San Antonio)
Pamela Gilbert (San Antonio)
Henry B. Gonzalez (San Antonio)
Albert W. Hartmann, III (San Antonio)
Gary Hutton (San Antonio)
Lamont Jefferson (San Antonio)
Andrew Kerr (San Antonio)
Alyssa Long (San Antonio)
Ricardo Loza (San Antonio)
Daniel Naranjo (San Antonio)
Victor Negrón, Jr. (San Antonio)
Cynthia Eva Hujar Orr (San Antonio)
Christine Reinhard (San Antonio)
Justice Rebecca Simmons (San Antonio)
Sonja Donielle Sims (San Antonio)
Judge Phylis Speedlin (San Antonio)
George A. Taylor (San Antonio)
Carl Teague (San Antonio)
James Martin Truss (San Antonio)
Mark Unger (San Antonio)
Mikal Watts (San Antonio)

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

1) for three-year terms, effective June 1, 2011 to May 31, 2014:

lawyers:

Shannon Dacus (Tyler)
Roland Johnson (Ft. Worth)
G. Thomas Vick, Jr. (Weatherford)

public member:

Myla Ramsey (Beaumont)

2) For one year term effective June 1, 2011 to May 31, 2012:

Board liaison:

Yvette Ostolaza (Dallas)
Damon Edwards (Houston)

E. Approval of request by the Bankruptcy Law Section to amend its bylaws [**Exhibit A**]

- F. Approval of request by the Immigration & Nationality Law Section to amend its bylaws [**Exhibit B**]
- G. Approval of request by the Taxation Law Section to amend its bylaws [**Exhibit C**]
- H. Approval of the 2011-12 Preliminary Calendar/Holiday Schedule [**Exhibit D**]
- I. Approval of adoption of the Legal Services to the Poor in Criminal Matters Committee's proposed Warren Burnett Award [**Exhibit E**]

II. REPORTS:

A. Report from the President:

President Tottenham reported on the 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". At the end of November, the U.S. Senate unanimously passed the "Red Flag Program Clarification Act of 2010", and in December, President Obama signed the legislation into law, effectively exempting all practicing lawyers from the Red Flags Rule. President Tottenham also reported that Texas lawyers will continue to have unlimited FDIC coverage on their IOLTA accounts. That coverage was set to expire due to an inadvertent omission in the Doo-Frank Act. U.S. Representative Lloyd Doggett authored a bill to restore those protections and Senator John Cornyn encouraged bipartisan support.

President Tottenham reported that Texas Lawyers for Texas Veterans continues to be a success, with twenty veterans clinics held throughout the month in all major metropolitan areas, as well as in other smaller counties. Metropolitan cities are continuing their regularly scheduled veterans' clinics. El Paso is expanding its programming for veterans, and other local bars are still in the process of organizing veterans' clinics or are planning to hold their first clinic this year. The "Practicing Law and Wellness" DVD is also out and has been distributed to all Board members.

President Tottenham reported that the referendum ballots for the proposed disciplinary rules were sent out on January 18, and voting ends on February 17. President Tottenham then presented Tom Watkins, Kennon Peterson, and Immediate Past President Roland Johnson each with an award for their tremendous effort and work on the referendum.

Also at this time, Executive Director Michelle Hunter presented Pam Dudley with the Employee of the Quarter award.

Closed Session: At 9:34a.m., Chair Almaguer announced that the Board of Directors would meet in closed session pursuant to Texas Government Code, Section 551.071 for the purpose of consultation with legal counsel concerning pending or contemplated litigation in relation to proposed changes to the Texas Disciplinary Rules of Professional Conduct and Referendum.

Open Session: Upon return to open session at 10:35a.m., Chair Almaguer announced that during the closed session, only matters relating to consultation with legal counsel concerning pending or contemplated litigation were discussed. No action was taken in closed session.

B. Texas Lawyers' Assistance Program:

Mike C. Crowley thanked the Board for their generous contribution to the Patrick D. Sheeran and Michael J. Crowley Memorial Trust, and gave background information on TLAP.

C. Texas Young Lawyers' Association:

TYLA President Jennifer Evans Morris highlighted the recent activities of TYLA, including the Veteran's Day parade, a new mortgage modification scam brochure, "Office In A Flash", and the Access to Justice donations drive. A public service announcement on child abuse titled "The Little Voice" was shown.

D. Report from the President-elect:

President-elect Bob Black reported that the Committee Review Task Force process is coming along and the task force will be making tentative recommendations in order to draft and finalize the report to present to the Board in April.

President-elect Black reported that the total amount in the fund balance that is available for designation is approximately \$3.1 million. The committee is recommending a contribution of \$1,750,000 to the Texas Access to Justice Foundation for the benefit of the Student Loan Repayment Assistance Program, which will be contributed over a 5-year period at \$350,000 per year. In addition, almost \$900,000 will be designated to increase the minimum reserve to \$7.8 million and \$290,000 will go towards the technology fund for funding continued improvements to the CDC case management system replacement and for disaster recovery planning. Cheryl Howell highlighted several items of the general fund, including \$35,000 to fund a professional evaluation of the Hatton W. Sumners Institute; a \$483,067 transfer from the general fund to the building fund; \$400,000 annual transfer to the technology fund; \$300,000 annual transfer to the Client Security Fund; \$100,000 included for a referendum; a \$250,000 reserve for contingencies, and a 4% merit raise for staff. Also, \$161,917 will be used to fund the training of District Clerks, County Law Librarians, and Legal Aid office personnel in assisting the public with understanding the grievance process and the preservation of historical documents.

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

- (1) Allocation of undesignated portion of the fund balance as outlined above; no second needed. Motion carried.**
- (2) SBOT 2011-12 proposed budget as presented and for publication in the *Texas Bar Journal*; no second needed. Motion carried. [Exhibit F]**

E. Report from the Chair of the Board:

Chair Almaguer announced that Beverly Godbey, Bert Jennings, and Travis Sales have announced their intention to run for Chair of the Board for 2011-12, and all three gave brief remarks. [Exhibit G]

Chair Pablo Almaguer 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, and declared that the method of voting to be used at the April meeting will be by written ballot.

F. Ad Hoc Committee to Select Minority Directors:

Yvette Ostolaza reported on the selection process for the Ad Hoc Committee to Select Minority Directors, noting that 18 nominations were received this year for consideration. Of those nominations, the committee submitted two nominees to the President in order for him to appoint one of those individuals for the position that will become available in June.

G. Audit and Finance Committee:

Warren Cole reported on the financial audit, which received an unqualified opinion from Maxwell Locke & Ritter LLP, also referred to as a "clean" opinion. Padgett, Stratemann & Co., LLP conducted the internal audit and had no "comments or recommendations for change". The General fund balance is \$1,972,670 of revenues over expenditures, which is a 266% positive variance. At the end of December, TexasBarCLE had a positive budget to actual variance of \$892,201, or 40% more than the amount budgeted for this point in the fiscal year.

On behalf of the Audit and Finance Committee, Warren Cole moved for acceptance of the PFM November 2010 Quarterly Investment Report, the FY 2009-2010 Financial Audit Report, and the FY 2009-2010 Internal Audit; no second needed. Motion carried. [Exhibit H]

H. Client Security Fund Subcommittee:

John Jansonius reported on the purpose of the client security fund and what it does for clients. There is currently a \$3.75 million reserve, and the number of claims is rising.

I. Access to Justice Commission:

Harry Reasoner, Chair of the Commission, spoke on funding for Access to Justice.

J. Nominations & Elections Subcommittee:

Co-chair David Fisher reported on the process of finding the two candidates for recommendation for President-elect, noting that originally David Dickson from Waco was one of the final two but due to health reasons, he withdrew from consideration. Buck Files then stepped in to take Dickson's place as the new candidate, and he and Guy Choate are the two candidates being presented for approval before the Board. Fisher also reported on Policy Manual Section 1.10 concerning campaign activities and endorsement of candidates, noting that current officers and Board members shall not in their official capacity, endorse any candidate for any elective office, including but not limited to candidates for SBOT offices.

On behalf of the N&E subcommittee, Immediate Past President Roland Johnson moved for approval of Guy Choate (San Angelo) and Buck Files (Tyler) as the 2011-12 President-elect candidates; no second needed. Motion carried. [Exhibit I]

The two candidates were introduced – Guy Choate by Cori Harbour, and Buck Files by Ricky Richards – and both gave remarks.

K. Policy Manual Subcommittee:

Arnold Aguilar outlined the policy manual changes, including the conflicts with the State Bar Act and Rules and changes to the sections regarding Board committees, Associated Boards and related entities, and Additional committee policies and procedures.

On behalf of the Policy Manual Subcommittee, Arnold Aguilar moved for approval of the proposed amendments to the Policy Manual provisions concerning the conflicts with Act and Rules, and sections 1.14, 1.17, and 4.04; no second needed. Motion carried. [Exhibit J]

L. Member Services and Education Committee:

Appeals-Grants Review Subcommittee Chair Bert Jennings reported that the Appeals Grants Review Subcommittee has reviewed a request from the Child Abuse and Neglect Committee to seek outside funding for a Child Welfare Legal Training Conference, and the subcommittee approved the grant request. **[Exhibit K]** The subcommittee also heard three appeals of decisions made by the MCLE Committee, and their recommendations are being presented to the Board for approval.

On behalf of the Appeals-Grant Review Subcommittee, Bert Jennings moved for approval of the recommendations on the following appeals: [Exhibit L]

- (1) **To affirm the decision of the MCLE Committee in the matter of the administrative suspension of the law license of Rodolfo Rivera Munoz for MCLE non-compliance; no second needed. Motion carried.**

- (2) To affirm in part and reverse in part the decision of the MCLE Committee in the matter of the Application for Accreditation for CLE Activity submitted by Ismaili Legal Professionals for its Ismaili Legal Professionals Conference, September 25-26, 2010 in Houston; no second needed. Motion carried.**
- (3) To affirm the decision of the MCLE Committee in the matter of the Application for Accreditation for CLE Activity submitted by the Christian Legal Society for its Christian Legal Society 2009 National Conference, October 15-18, 2009 in La Jolla, California; no second needed. Motion carried.**

PDP Subcommittee Chair Talmage Boston reported that TexasBarCLE is doing a fantastic job, and that the PLP/CLE committees held a joint meeting October 22 to review staff reports, discuss priorities, and consider new topics for courses and webcasts.

Technology Oversight Subcommittee Chair Steve Benesh reported that the subcommittee met on October 29 and approved computer replacements for the CDC offices, telephone system upgrades required for the Texas Law Center, updated AV and audio equipment for the Hatton Summers conference room, and established a project budget for the CDC Case Management System project.

M. Public Services and Education:

Chair of the Legal Services Subcommittee Travis Sales reported that the Legal Services to the Poor in Civil Matters Committee has adopted a resolution in support of the Texas Access to Justice Foundation's Prime Partners Program. The Prime Partners program consists of those willing to pay a minimum of 1% interest or an interest rate equal to 75% of the Federal Funds Target Rate of Interest, whichever is higher, on IOLTA accounts, which results in more funding for legal aid from the additional interest.

Sales asked Jeff Blackburn and Andrea Marsh to give background information on the committee's work on the *Proposed Guidelines for Counsel in Non-Capital Cases*. The committee began work on these proposed guidelines in 2006 after the successful completion of the Guidelines for Counsel in Capital Cases. The proposed Performance Guidelines for Non-Capital Criminal Defense Representation specifically apply to practice in Texas state court from the time of initial representation in trial-level proceedings to the exhaustion of direct review before the Court of Criminal Appeals. The Guidelines were circulated for comment in spring 2010 to many organizations.

On behalf of the Affordable Legal Services subcommittee, Travis Sales moved for approval of the following:

- (1) Legal Services to the Poor in Civil Matters Committee Resolution in support of Prime Partners Program; no second needed. Motion carried. [Exhibit M]**
- (2) Legal Services to the Poor in Criminal Matters Committee *Proposed Guidelines for Counsel in Non-Capital Cases*; no second needed. Motion carried. [Exhibit N]**

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

Betty Blackwell reported on grievance statistics, disciplinary actions, and the grievance referral program. **[Exhibit O]**

O. Section Representatives to the Board:

Dan Micciche reported on various Section updates including the recent Council of Chairs meeting.

P. Supreme Court Liaison:

Justice Phil Johnson reported that the Supreme Court is focusing on Access to Justice funding and working with the State Bar on having more contact with lawyers. Justice Johnson also reported on the financial impact of budgeting, the disciplinary rules, and Supreme Court appointments.

Q. Judicial Section Liaison:

Judge Steve Smith reported on Ethics Opinion 484 and thanked the Board for their assistance with that, noting that there have not been any judicial raises yet but no pay cuts either.

R. Out-of-State Lawyer Liaison:

Scotty Holloman thanked the staff for their help with the letters to out-of-state lawyers on the referendum.

S. Executive Director:

Executive Director Michelle Hunter reported on staff involvement with Texas Lawyers for Texas Veterans and the book club for employees.

There being no further business, the meeting was adjourned at 2:41p.m.