

**OFFICIAL MINUTES
STATE BAR OF TEXAS
BOARD OF DIRECTORS MEETING
Hyatt Lost Pines
Austin, Texas
January 20, 2012**

The Board of Directors of the State Bar of Texas met in a regular session on January 20, 2012 at the Hyatt Lost Pines in Austin, Texas. Chair Beverly Godbey 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. County Judge Ronnie McDonald from Bastrop delivered the invocation. Bastrop Mayor Terry Orr led the pledges to the U.S. and Texas flags.

Present:

Board Members: Immediate Past Chair Pablo Almaguer*, Tim Belton, President Bob Black, Roy Brantley, Virginia Campbell, David Copeland, Allan DuBois, Greg Dykeman, Damon Edwards, Becky Baskin Ferguson, President-elect Buck Files, Steve Fischer, Susan Fisher, Christopher Gilbert, Chair of the Board Beverly Godbey, Daniel Horowitz, Bert Jennings, John Kazen, Mark Kelly, Tim Kelly, TYLA President Natalie Cobb Koehler, Kyle Lewis, Mike McDonald, Jo Ann Merica, TYLA Immediate Past President Jennifer Evans Morris, Toni Nguyen, Yvette Ostolaza, Tommy Proctor, Annette Raggette, Barrett Reasoner, Judge Jo Ann Reyes, TYLA President-elect C.E. Rhodes, Ricky Richards, Dr. Eliseo Ruiz, Steve Schechter, Frank Stevenson, Cindy Tisdale, Immediate Past President Terry Tottenham, John Trevino, Ike Vanden Eykel, David Whittlesey

Liaisons*: Judge Fred Biery, Justice Phil Johnson

Section Representatives*: Stewart Gagnon, Luis Garcia, Steve James, Michele Wong Krause, Susan Nelson, Brian Webb

Excused Absences: *Sylvia Cardona, Christina Melton Crain, Mark Daniel, Cori Harbour-Valdez, Scotty Holloman*, Judge Liz Lang-Miers*, Andy Payne, Travis Sales*

(* = nonvoting)

I. CONSENT AGENDA ITEMS:

Upon motion properly made by Steve Fischer and seconded by Christopher Gilbert, the following actions were taken regarding the Consent Agenda items:

- A. Approval of minutes of Board meeting conducted on *September 16, 2011*
- B. Ratification of actions taken at the following Executive Committee meeting:

January 5, 2012: Approved minutes of the October 25, 2011 Executive Committee meeting

- C. Approval of appointments to the following entities:

1) **2012-2013 Special Committee to Nominate ABA Delegates:**

Terry Tottenham, Chair (Austin)

**Kim Askew (Dallas)
Natasha Brooks (Midland)
Hon. Lora Livingston (Austin)
Harriet Miers (Dallas)**

**Tony Patterson (Dallas)
Richard Pena (Austin)
Eduardo Rodriguez (Brownsville)
Laura Sharp (Austin)**

- 2) **State Bar Pattern Jury Charge, Business, Consumer and Employment Committee**, for a term effective January 20, 2012 through Annual Meeting 2014:

Valorie Glass (McAllen)

- 3) **Texas Legal Protection Plan**, for unexpired terms as follows:

Effective January 20, 2012 through May 31, 2014

John Hatchel (Woodway)

Effective January 20, 2012 through May 31, 2013

W. Stephen Benesh (Austin)

- 4) **Texas Real Estate Broker/Lawyer Committee**, for a term effective January 20, 2012 through August 31, 2017

Charles J. Jacobus (Bellaire)

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

For three-year terms, effective June 1, 2012 to May 31, 2015:

Lawyers:

Michael P. Heiskell (Fort Worth)

Timothy W. Mountz (Dallas)

Allan K. DuBois (San Antonio)

Public member:

Dr. Marjorie Hass (Sherman)

- E. Approval of request by the Criminal Justice Section to amend its bylaws [**Exhibit A**]¹

- F. Approval of members to serve on multiple standing committees:

Valorie Glass (McAllen) - Texas Disciplinary Rules of Professional Conduct Committee and Pattern Jury Charge Business, Consumer and Employment Committee

- G. Approval of the 2012-13 Preliminary Calendar/Holiday Schedule [**Exhibit B**]

- H. Approval of State Bar Legislative Timetable [**Exhibit C**]

- I. Approval of adoption of the Legal Services to the Poor in Criminal Matters Committee's proposed Michael K. Moore Award [**Exhibit D**]

- J. Approval of resolutions honoring:

- 1) **Austin Bar Association [Exhibit E]**
- 2) **Bastrop County Bar Association [Exhibit F]**

II. REPORTS:

A. Remarks from the General Public:

Chair Beverly Godbey welcomed any members of the public that were present and asked that any of those who are not voting or advisory members of the Board to sign in if they wanted to address the Board. Numerous members of the public addressed the Board concerning the work of the Supreme Court Uniform Forms Task Force, including Access to Justice Commission Chair Harry Reasoner, Administrative Director of the Office of Court Administration Carl Reynolds, Family Law Section Chair Tom Ausley, 415th District Court Judge Graham Quisenberry, and several others. There was also one member of the public who addressed the Board concerning a disciplinary matter.

B. Report from the Chair of the Board:

Chair Godbey reported that Jo Ann Merica and Frank Stevenson have announced their intention to run for Chair of the Board for 2012-13, and Jo Ann and Frank gave brief remarks. [Exhibit G]

Chair Godbey 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 will be done by written ballot at the April meeting.

C. Report from the President:

President Bob Black congratulated various Board members who have received awards of distinction over the past year. The *Oyez, Oyez, Oh Yay!* civics education initiative has been well-received across the state, and the Bar has received a \$35,000 grant from the Texas Bar Foundation to continue work on the project.

President Black reported that the Executive Committee, at its January 5th meeting, unanimously approved a motion to request the Texas Supreme Court to suspend the work of the Uniform Forms Task Force and to delegate to the State Bar the responsibility for designing and implementing a process by which all stakeholders and all interests are at the table as the issue is studied. President Black anticipated studying the issue through some mechanism, presumably a taskforce, which would include members of the public, the Family Law Section, Access to Justice, and others. Many members of the Board expressed such concerns as who would be appointed to further study the issue, legal services funding, and whether there would be a deadline to report back to the Supreme Court.

Tim Belton moved that the Board affirm the Executive Committee's action of January, 5, 2011, to:

Request the Supreme Court of Texas to suspend the work of the Uniform Forms Task Force and ask the Bar to study the issue of indigent self represented litigants in the State's courts, including collecting data demonstrating the number of pro-se litigants, gathering information about how these cases are being handled by Courts throughout the state, and reviewing possible solutions to the issue; Ricky Richards seconded. After much discussion, Steve Fischer called the question. The motion passed unanimously. [Exhibit H]

President Black asked Immediate Past President Terry Tottenham to report on the State Commission on Judicial Conduct appointment. Tottenham reported that the State Bar makes two appointments to the Judicial Conduct Commission, and this year, one of the terms has expired. As called for by the Supreme Court Order, a nominating committee was appointed by President Black to assist in the process of making recommendations for the appointment. The order also requires that two names be listed on the board agenda for consideration. The nominating committee recommended Ricky Raven from Houston and Pat Wolter from Corpus Christi.

On behalf of the nominating committee, Immediate Past President Tottenham moved for approval to appoint Ricky Raven for a term on the State Judicial Conduct Commission, effective January 20, 2012 through October 31, 2017; no second needed. Motion carried.

President Black reported that the Redistricting Task Force he appointed to review current State Bar districts and the apportionment of State Bar directors has met several times since the last Board meeting. The task force had originally planned to report back to the Board at the January Board meeting, but they need more time for their review and will report their findings at the April Board meeting.

D. Report from the President-elect:

President-elect Buck Files reported that the public hearing on the proposed budget is scheduled for March 27. This year, the increase in the fund balance from FY 2010-11 is approximately \$2.2 million. Cheryl Howell reported on the proposed general fund budget, which includes revenues and transfers from a reserve, of \$39,970,237 with an equal amount of expenditures and transfers, thereby producing net revenues over expenditures of \$0. Highlights of the proposed FY 2012-13 budget include \$483,067 to Texas Law Center Fund; \$400,000 to Technology Fund; \$300,000 to Client Security Fund; \$100,000 included for a referendum, if necessary; a \$250,000 Executive Contingency; a \$350,000 Student Loan Repayment Assistance Program contribution based on a previous board designation in January 2011; and a 4% merit increase for staff. Howell outlined the Budget Committee's recommendation for the designation of the increase in the fund balance, which will include a \$440,740 increase in the minimum reserve to equal 2.6 months of operations, or \$8.2 million; a \$250,000 additional transfer to the client security fund; a \$1,179,871 additional transfer to the Technology Fund; \$50,000 to complete LRE's Oyez, Oyez, Oh Yay! project; a \$50,000 TexasBarCLE scholarship; \$100,000 for Presidential initiatives for FY 2012-13; and \$100,000 for the Texas Court Records Preservation Task Force.

On behalf of the Budget Committee, President-elect Buck Files 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 2012-13 proposed budget for publication in the March 2012 issue of the *Texas Bar Journal*; no second needed. Motion carried. [Exhibit I]**

E. Nominations & Elections Subcommittee:

Immediate Past President Terry Tottenham reported that the subcommittee interviewed seven highly qualified individuals to be considered as potential nominees for President-elect. After much deliberation, the subcommittee voted to select Steve Bolden of Dallas and Lisa Tatum of San Antonio. Tottenham also reported on Policy Manual Section 1.10 concerning campaign activities and endorsement of candidates, noting that current officers and Board members may not endorse, support, or participate in the campaigns in their official capacities. Also, this year there are 10 elected members of the board whose terms are expiring. The elections for President-elect and district directors begin on April 2nd and end on May 1st.

On behalf of the N&E subcommittee, Immediate Past President Terry Tottenham moved for approval of Steve Bolden (Dallas) and Lisa Tatum (San Antonio) as the 2012-13 President-elect candidates; no second needed. Motion carried. [Exhibit J]

The two candidates were introduced – Steve Bolden by Frank Stevenson, and Lisa Tatum by Annette Raggette – and both gave remarks.

F. Policy Manual Subcommittee:

Jo Ann Merica outlined some of the proposed revisions to the policy manual that the subcommittee has been working on, which pertain to Part V. concerning Sections and Divisions.

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

Ron Bunch reported on the sanctions statistics, the grievance referral program, and district grievance committee appointments. [Exhibit K]

H. Texas Young Lawyers Association:

TYLA President Natalie Cobb Koehler reported on the TYLA Board meeting in Frisco; the San Antonio Women's Shelter Ladies' Night Out; the Waco Veteran's Day parade; "Shelby's Story", which helps educate teenagers about the dangers of underage drinking; and Attorneys Without Borders, a diversity discussion and opportunity to hear oral arguments before the Supreme Court that will be held in Laredo in February.

I. Administration Committee:

Tommy Proctor reported on the termination of the San Antonio regional office's lease in the Federal Reserve Bank Building. The lease is being terminated by the Federal Reserve Bank due to the closing of their operations in San Antonio. The State Bar has received proposals for 5-year and 10-year lease options, and they have been narrowed down to three properties that meet SBOT criteria, including a requirement that the lease be in a Class B building, with a central business district location, and an affordable cost per square foot. These are turn-key proposals, meaning they include tenant improvements, estimated operating expense escalations, parking, and moving expenses. The Facilities and Equipment subcommittee recommended executing a new 10-year lease with Travis Park Plaza contingent on certification that asbestos is not in the lease space, at an annual cost of \$142,225 per year, or \$20.79 per rentable square foot. The State Bar may also consider seeking damages from the Federal Reserve for unilaterally breaking the lease, which would offset what could potentially be increased expenses incurred by the Bar due to the early termination of the lease.

On behalf of the Facilities and Equipment Subcommittee, Proctor moved for approval of the new lease with Travis Park Plaza for the San Antonio CDC office as well as the lease termination with the Federal Reserve; no second needed. Motion carried with one nay vote.

Annette Raggette reported on the objective of the Employment/Salary/Evaluation Subcommittee to implement revised Policy Manual Section 1.17 concerning affiliated entities of the State Bar. The subcommittee drafted a letter to send to each of the affiliated entities requesting their annual budget and goals, annual report, financial audit, and their performance measures/outcomes. The requested information will be reviewed by the Subcommittee with the goal of presenting an analysis to the Board in June.

On behalf of the Employment/Salary/Evaluation Subcommittee, Annette Raggette moved for approval of the request letter to the affiliated entities of the State Bar; no second needed. Motion carried. [Exhibit L]

Frank Stevenson reported on behalf of the Litigation and Contracts Subcommittee that *Miller v. State Bar of Texas* settled on September 30, 2011 for under \$50,000. Both parties agreed and acknowledged that nothing contained in the settlement agreement constituted an admission by either party of any wrongdoing or violation of law. The other litigation the State Bar is currently involved in is *State Bar of Texas v. Abbot*. This case was filed in August 2011 to challenge an AG's opinion under the Texas Public Information Act, and since our last Board meeting, the requestor has attempted to intervene in the suit. We have challenged that intervention both on jurisdictional and scope issues, and Austin attorney Jennifer Riggs is representing the Bar in the matter. The AG's lawyer has recently gone on FMLA leave until late February, so no activity is expected until March at the earliest.

J. Audit and Finance Committee:

Bert Jennings reported on the financial audit for FY 2010-11, which received an *unqualified* opinion from Maxwell Locke & Ritter LLP, also referred to as a "clean" opinion. Maxwell Locke & Ritter LLP also confirmed that they did not find any deficiencies in internal controls during the process of conducting the Financial Audit; there were no significant or unusual transactions that lacked Board approval, and there were no

difficulties or disagreements with management during the audit. Padgett, Stratemann & Co., LLP conducted the internal audit for FY 2010-11, and had two suggestions; that an on-site visit be scheduled to Statco, the vendor responsible for processing cash receipts for the membership department, to ensure that the controls surrounding the processing of cash receipts are properly designed and operating efficiently. The second suggestion involves the 'locking' of the State Bar's individual computer workstations, so that a screen saver timeout feature that locks the workstation after a configured idle period of time be implemented as a bar-wide policy. Jennings also reported that as of November 30, the General fund net revenues over expenditures totaled almost \$1.4 million, which is a 384% positive actual to budgeted variance. Ken Couch, Senior Managing Consultant from PFM Asset Management LLC, presented the investment report to the Committee the day before.

On behalf of the Audit and Finance Committee, Bert Jennings moved for acceptance of the following:

- 1) Financial Audit for FY ending May 31, 2011;**
- 2) FY 2011-2012 Internal Audit ending May 31, 2011; and**
- 3) PFM November 2011 Quarterly Investment Report; no second needed. Motions carried. [Exhibit M]**

K. Client Security Fund Subcommittee:

Ricky Richards reported that the Client Security Fund Subcommittee met the day before, and the fund has paid out \$400,000 so far this fiscal year.

L. Member Services and Education Committee:

Technology Oversight Subcommittee Chair Damon Edwards reported that work continues on the CDC case management system, and the completion and acceptance of the Functional Design for the system is anticipated in late January/early February. The IT staff has completed the computer replacement and operating system upgrades of all CDC offices in Austin and around the state.

Luis Garcia reported that the Appeals-Grants Review Subcommittee heard an appeal of a decision made by the Texas Board of Legal Specialization regarding denial of specialty certification for attorney Warren McCollum. The subcommittee applies the substantial evidence standard in its consideration of appeals, and the appellant carries the burden of proof to show that the decision of the TBLS is not supported by substantial evidence. Using that standard, the subcommittee upheld the TBLS decision to deny the appeal.

On behalf of the Appeals-Grant Review Subcommittee, Steve Schechter moved for approval of the action of the subcommittee affirming the decision of the Texas Board of Legal Specialization regarding the denial of certification in Labor and Employment Law for Warren McCollum; no second needed. Steve Fischer abstained from voting. Motion carried. [Exhibit N]

Steve Schechter highlighted the work being done by the Insurance/Member Benefits Subcommittee, including researching low cost health insurance options, looking at professional liability insurance and implementing an ABA-certified lawyer referral program as well as assessing potential brokers for PLI for non-referral insurance coverage. The subcommittee is also researching adding a credit union and evaluating whether to consider adding dental insurance to the member benefit program.

PDP Subcommittee Chair Allan DuBois reported that TexasBarCLE is doing an excellent job, and a collaborative law book may be the next project produced by TXBarBooks.

M. Ad Hoc Committee to Select Minority Directors:

Toni Nguyen reported on the selection process for the Ad Hoc Committee to Select Minority Directors. Committee interviews were conducted on January 13, and after much deliberation, the committee chose two highly qualified nominees to recommend to the President in order for him to appoint one of those individuals for

the position that will become available in June. The Board will vote on the appointment at the April Board meeting.

N. Section Representatives to the Board Committee:

Stewart Gagnon reported that the Council of Chairs will meet at the end of March, and two new Section Representatives to the Board will be elected to serve three-year terms starting in June.

O. Access to Justice Commission:

Harry Reasoner, Chair of the Commission, reported on the work of the Access to Justice Commission, and thanked the Bar for their support of access to justice. Reasoner noted that he is confident that solutions will be found regarding the uniform forms issue.

P. Report on Director Outreach:

Steve Schechter and Dr. Eliseo Ruiz reported on speeches they have been giving to lawyers in their district and to schools in their areas with regard to what services the Bar has available, and both have received positive responses.

Q. Supreme Court Liaison:

Justice Phil Johnson reported that the Supreme Court will listen to and consider the Board's recommendation on the uniform forms issue and welcomes any input. Justice Johnson emphasized the importance of the Access to Justice Commission and noted that its volunteer members have no agenda other than to provide access to justice to indigents.

R. Federal Judicial Liaison:

Judge Fred Biery reported on the judicial branch budget, Article III vacancies, and the new federal courthouse in Austin.

S. Executive Director:

Executive Director Michelle Hunter made remarks about TexasBarCLE Event and Sponsorship Manager Kanice Spears, and presented her with the employee of the quarter award.

There being no further business, the meeting was adjourned at 3:14p.m.

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