

**OFFICIAL MINUTES
STATE BAR OF TEXAS
BOARD OF DIRECTORS MEETING
Hilton Austin
Austin, TX 78701
Friday, April 12, 2013**

The Board of Directors of the State Bar of Texas met in a regular session on April 12, 2013 at the Hilton in Austin. Chair Frank Stevenson called the meeting to order at 9:00am, and Executive Director Michelle Hunter called the roll. A quorum of voting Board members was present. Rev. Mike Russell of the Episcopal Church of the Good Shepard led the invocation. Virginia Campbell led the pledges to the U.S. and Texas flags.

Present:

Board Members: David Alders, Robert Aldrich, Jaime Balli, Immediate Past President Bob Black, TYLA President-elect Kristy Piazza Blanchard, Lawrence Boyd, Roy Brantley, Virginia Campbell, Sylvia Cardona, Christina Melton Crain, Greg Dykeman, Sara Dysart, Becky Baskin Ferguson, President Buck Files, Steve Fischer, Laura Gibson, Christopher Gilbert, Immediate Past Chair of the Board Beverly Godbey*, Robert Guest, Daniel Horowitz, Louis Iselin, John Kazen, Tim Kelly, Roger Key, TYLA Immediate Past President Natalie Cobb Koehler, Mike McDonald, Larry McDougal, Christina Melton Crain, Jo Ann Merica, Toni Nguyen, Andy Payne, Barrett Reasoner, Judge Jo Ann Reyes, TYLA President C.E. Rhodes, Ricky Richards, Tom Riney, Dr. Eliseo Ruiz, Steve Schechter, Denise Scofield, Chair of the Board Frank Stevenson, President-elect Lisa Tatum, Cindy Tisdale, David Whittlesey

Liaisons*: Judge Micaela Alvarez, Judge Alfonso Charles, Justice Phil Johnson, Judge Michael Keasler

Section Representatives*: Steve James, Susan Nelson, Scott Rothenberg

Excused Absences: *Sylvia Cardona, Luis Garcia*, Cori Harbour-Valdez, Mark Kelly, Michele Wong Krause*, Gary Nickelson, Dr. David Teuscher, John Trevino, Ike Vanden Eykel, Hap Weitzel*

(* = nonvoting)

I. CONSENT AGENDA ITEMS:

Upon motion properly made by Toni Nguyen and seconded by Christina Melton Crain, the following items from the Consent Agenda were approved:

A. APPROVAL OF MINUTES:

(Minutes Tab) a. Approval of minutes of Board meetings conducted on *January 25, 2013*

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

1) *March 28, 2013:* Approved minutes of the January 10, 2013 Executive Committee meeting

B. ITEMS FROM THE PRESIDENT:

Approval of appointments to the following entities:

a. **2013-2014 Special Committee to Nominate ABA Delegates:**

Bob Black, Chair (Beaumont)

Kim Askew (Dallas)

Harriet Miers (Dallas)

Janna Clarke (Fort Worth)
Roland Johnson (Fort Worth)
Hon. Lora Livingston (Austin)

Jay Ray (McKinney)
Hon. Jennifer Rymell (Fort Worth)
Laura Sharp (Austin)

b. **Commission for Lawyer Discipline:**

1) for term effective September 1, 2013 through August 31, 2014:

Chair: Guy Harrison (Longview)
Vice Chair: John Neal (Austin)

2) for three-year terms effective September 1, 2013 through August 31, 2016:

Bruce Ashworth (Arlington)
John Neal (Austin)

c. **Continuing Legal Education**, for a term effective April 12, 2013 through Annual Meeting 2016:

James Warner Huggler, Jr. (Tyler)

d. **Law Focused Education, Inc.**, for two-year terms effective June 1, 2013 through May 31, 2015:

Joshua Caldwell (McAllen)
Barbara Evans (Fort Worth)
Myra Mercer (Round Rock)
Lily Plummer (Odessa)
Tom Sullivan (Brownsville)

e. **Texas Board of Legal Specialization**, for an unexpired term effective April 12, 2013 through June 30, 2015:

Elisa M. Reiter (Dallas)

f. **Texas Center for Legal Ethics**, for three year terms effective June 1, 2013 through May 31, 2016:

William D. Elliott (Dallas)
Beverly Godbey (Dallas)

g. **Texas Legal Protection Plan**, for three year terms effective June 1, 2013 through May 31, 2016:

Stephen Benesh (Austin)
Albert Betts, Jr. (Austin)
Janna Clarke (Fort Worth)
Robert D. Miller (Big Spring)

C. **ITEMS FROM THE PRESIDENT-ELECT:**

a. Approval of State Bar Committees, Chairs, Co-Chairs, Vice Chairs, Co- Vice Chairs, and members to serve during the year 2013-14 per State Bar Rules, Art. VIII, Section 1B

- b. **Texas Bar Foundation Board of Trustees**, for three year term effective June 1, 2013 through May 31, 2016:

Public Member:
Lorena Castillo (McAllen)

D. **OTHER ITEMS**

- a. Approval of recipients for the pro bono awards to be presented at the Annual Meeting: **[Exhibit A]**¹
- 1) Pro Bono Award: **Jefferson County Bar Association Veterans Legal Initiative Program**
 - 2) Frank J. Scurlock Award: **Michelle Reed, Akin Gump**
 - 3) The J. Chrys Dougherty Legal Services Award: **Meredith Linsky, ProBAR**
 - 4) W. Frank Newton Award: **ExxonMobil Corporation Law Department**
 - 5) Pro Bono Coordinator Award: **William “Bill” Dombrowski, Legal Aid of NorthWest Texas**
 - 6) Judge Merrill Hartman Pro Bono Judge Award: **Judge James M. “Jay” Patterson**
 - 7) Warren Burnett Award: **Kate Sauer**
 - 8) Michael K. Moore Award for Excellence in Research or Writing in the Area of Indigent Criminal Defense: **Catherine Greene Burnett**
 - 9) Lifetime Achievement Award: **Vincent Perini**
 - 10) Award of Special Recognition: **Office of the Colorado State Public Defender**
- b. Approval of resolutions honoring: **[Exhibit B]**
- 1) **Fred Helms**
 - 2) **Denise Hyde**
- c. Approval of dissolution of the Legal Administrators Division (which is inactive) **[Exhibit C]**

II. **REPORTS:**

A. **Report from the Chair of the Board:**

Chair Frank Stevenson reported the Board has more than exceeded the goals that were set at the July Board retreat, and he appreciates the effort that was made to work with the Bar staff to send the spring directors' report, enhance our communication efforts, and reminding our constituents to vote. The Board has done a great job presenting the Board presentation to local and specialty bars and “passing the word”. Chair Stevenson also thanked out-of-state lawyer liaison Hap Weitzel for doing a great job of keeping up with the concerns of our out-of-state lawyers.

Chair Stevenson reported that one person had declared their interest in running for Chair of the Board for 2013-14.

Chair Stevenson moved for approval to elect Cindy Tisdale as the 2013-14 Chair of the Board, Roy Brantley seconded. Motion carried. Tisdale made remarks.

B. **Report from the President:**

President Buck Files reported on the tragedy at the Courthouse in Kaufman. The State Bar is sending a letter of support to the community and made a \$5000 contribution to the reward fund dedicate to finding the assailant. President Files made remarks about the rule of law and how it will prevail in the courts of Texas. He also visited with the staff of the Texas Lawyers Assistance Program department, and commented that the program is more than just about saving reputations, it is about saving lives.

President Files reported that he has continued his travels throughout the state, resulting in more than 20,600 miles of in-state travel, visits with 296 judges, and talks to more than 6000 attorneys. He also attended the ABA mid-year meeting in Dallas in February. On March 18, in honor of the 50th anniversary of the *Gideon v. Wainwright* decision, a two hour CLE seminar was held by the Texas Criminal Defense Lawyers Association, the State Bar, and the Texas Indigent Defense Commission that included a variety of outstanding speakers. The Supreme Court of Texas and the Court of Criminal Appeals together have reaffirmed the importance of the Texas Lawyers Creed, and President Files is working with the Professionalism Committee to get the word out about the reaffirmation. By the end of the year, posters of the Creed will be printed and distributed to judges and lawyers to hang in their offices.

The Professionalism Committee has developed new resources for our mentoring program, *Transition to Practice*, and videos covering the proposed mentoring CLE topics will be available for free to local bar associations who would like to implement the program but do not have easy access to speakers. Last month, Austin College hosted a pre-law symposium, where the Supreme Court heard oral arguments, and Chair Frank Stevenson was honored by the Austin College for his service to the profession. President Files also recognized Jo Ann Mercia for her continued leadership of the Texas Lawyers for Texas Veterans initiative. President Files reiterated that his theme for this year is working together to strengthen the legal profession, and the Board has been successful in getting the word out about what the State Bar does for its members.

President Files reported on the Ad Hoc Committee to Select Minority Directors, noting that two positions on the Board will expire in June. The Committee, chaired by John Trevino, received a number of excellent nominations, and submitted four candidates to him for consideration. President Files interviewed all four candidates, and selected Regina Bynote Jones of Houston, and Andrew Wallace of Dallas to fill the next minority director positions.

President Files moved for approval of the appointment of Regina Bynote Jones and Andrew Wallace as Minority Directors to the Board of Directors, for a three-year term effective Annual Meeting 2013 through Annual Meeting 2016; Toni Nguyen seconded. Motion carried. [Exhibit D]

President Files reported that the Ad Hoc Submission Committee approved his request that the State Bar file a neutral amicus brief in the Court of Criminal Appeals. The case is *In Re Patrick McCann and Albert James Turner*. In this case, attorney Patrick McCann was held in contempt for refusing to turn over his client's file to subsequent counsel, in accordance with his client's instructions. The client is at the habeas stage in a death penalty case. Turner cited attorney-client privilege in the issue of not turning over his records. The Court of Criminal Appeals has asked for briefs regarding who owns the client's file, and the plan is for the State Bar to file a neutral, informational brief in the Court of Criminal Appeals explaining that the file belongs to the client and asserting the importance of attorney-client privilege.

President Files moved for approval that the Board approve this request to file a neutral amicus in the Court of Criminal Appeals; Larry Boyd seconded. Motion carried.

President Files reported that on April 1, he sent a letter on behalf of the State Bar to the Texas Supreme Court commenting on new Rules for Justice Court Cases. The Ad Hoc Emergency Legislative Response Committee approved this comment. The State Bar made a comment after learning that new Rule 500.4 appears to allow non-attorneys to represent individuals and businesses in justice courts. He expressed the concern that this would seem to allow the unauthorized practice of law by non-lawyers.

President Files moved that the Board approve the Emergency Legislative Response Committee's approval of this comment on Rules for Justice Court Cases; Larry Boyd seconded. Motion carried. [Exhibit E]

C. Report from the President-elect:

President-elect Lisa Tatum reported on next year's civics education initiative, "I was the first. Vote for Me!" The project is designed to teach elementary school students about the important firsts in American and Texas history included in the STAAR tests. The Law Related Education department is prepared to introduce the project to teachers this summer and it will be introduced to local bars at the Bar Leaders Conference. President-elect Tatum encouraged the Board to attend the Bar Leaders Conference July 26-27 in order to listen to bar leaders from across the state to

learn what they are doing and how we can better serve them. Tatum also reported that another project that is in the beginning stages is an access to justice related initiative that will be called the Care Campaign. Through a grassroots effort incorporating marketing materials, a short video, and a care kit, the goal is to encourage attorneys to participate in legal service efforts.

President-elect Tatum reported that the public hearing on the State Bar's budget was held on March 28, and no one from the public attended. The proposed budget has not changed since the January presentation, and pending Board approval, the Supreme Court budget hearing has been scheduled for May 13.

On behalf of the Budget Committee, President-elect Tatum moved for approval of the SBOT 2013-14 proposed budget for presentation to the Supreme Court of Texas; no second needed. Motion carried. [Exhibit F]

President-elect Tatum reported that the State Bar Act requires that the Executive Committee conduct a comprehensive review of the standing committees biennially to determine whether there is a continued need for each committee and whether there is unnecessary overlap of committee activities. On behalf of the Executive Committee, the Committee Review Task Force has completed its review of all standing committees, and concluded that the committee structure is working well and that there is a continuing need for all standing committees with the exception of one, and that they are working on mutually exclusive projects. Additionally, the task force made several recommendations: eliminate the Lawyer Referral Service Committee, change the name of the Racial Diversity in the Profession Committee to Diversity in the Profession, create a new Pattern Jury Charge on Oil & Gas, and continue to monitor several committees which share subject matter areas with corresponding sections.

On behalf of the Executive Committee, President-elect Tatum moved for approval of the recommendations of the Committee Review Task Force, to be effective June 1st in conjunction with the Bar's fiscal year; no second needed. Motion carried. [Exhibit G]

D. Report from the Immediate Past President:

Immediate Past President Bob Black made remarks about his past years on the Board and as President, and commended President Files on his "Myth Busters" *Texas Bar Journal* column and reaching out to Courthouses.

Immediate Past President Black reported that there are 10 members of the Board whose terms will be ending at the Annual Meeting, and those third year directors were recognized. Of the 10 positions, eight of those district director races are contested. The campaign period for this year's election ended on April 1 (the date the ballots were distributed), and candidates are no longer allowed to campaign during this period. As of the day before the meeting, 16,818 attorneys had voted, which is about 18.2% of the approximately 92,000 attorneys that received a ballot. If no candidate receives a majority vote, there will be a run-off election, which would begin May 9 and end on May 23. **[Exhibit H]**

Steve Fischer made remarks about the election and how he feels it should have been handled, as well as his issues with the "We the Candidate" live webcast debate of the three candidates, a *Texas Bar Journal* editorial, reimbursements for campaign expenses, and fairness of the election. Immediate Past President Black addressed several of Fischer's concerns and clarified the misstatements that were made during the webcast that Fischer mentioned, and noted that there is no provision in the policy manual that permits reimbursement for money spent gathering petition signatures.

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

Ron Bunch gave the quarterly report of the Commission and reported on the third quarter sanctions breakdown, attorney fees collected, the grievance referral program, and district grievance committee vacancies and appointments. **[Exhibit I]**

F. Section Representatives to the Board Committee:

Steve James reported that two new Section Representatives have been elected to the Board for terms beginning in June to replace himself and Luis Garcia. They are Alison Colvin and Grant Scheiner.

G. Texas Young Lawyers Association:

TYLA President C.E. Rhodes thanked the TYLA directors and the Board for their continued support, noting that great leadership is about the followers, not the leaders. Rhodes highlighted several of TYLA's projects, including *Project SOS: Spotlight on Human Trafficking*, *From the Inside Out: In-House Counsel's Advice for Young Lawyers*, *Healing The Wounds* video, the National Trial Competition, and various pamphlets. The last TYLA Board meeting of the year is May 2-4 in San Marcos.

H. Administration Committee:

Jo Ann Merica reported that the Facilities and Equipment Subcommittee reviewed energy management proposals aimed at minimizing recent increases in electricity rates, and approved accepting proposals from Terracon for retro-commissioning services and energy star application services for a total cost of \$12,335. The vendor states the typical payback period is two years.

I. Performance Measures & Strategic Planning Subcommittee:

Greg Dykeman reported that the State Bar Act requires the State Bar to adopt a revised strategic plan every two years, and this traditionally happens at the April Board meeting. The Subcommittee has redlined the strategic plan based on input received at the board retreat in July, and the changes are refinements rather than wholesale changes.

On behalf of the Performance Measures & Strategic Planning Subcommittee, Greg Dykeman moved for approval of the adoption of the updated SBOT strategic plan for fiscal years 2014 and 2015; no second needed. Motion carried. [Exhibit J]

J. Audit & Finance Committee:

Barrett Reasoner reported that the February financials show that the State Bar is doing very well 9 months into the current fiscal year. General Fund net revenues over expenditures totaled almost \$3.3 million at the end of February, which produced a positive net revenue over expenditure variance of slightly over \$1.8 million. Ken Couch, Senior Managing Consultant from PFM Asset Management LLC, presented the investment report to the Audit & Finance Committee during the meeting the day before. The State Bar's portfolio is highly liquid and maintains the highest credit quality. PFM representatives continue to work very closely with the Bar's CFO to place investments in those areas that will produce the highest yields while maintaining safety of principal.

On behalf of the committee, Barrett Reasoner moved for acceptance of the quarterly investment report for the period ending February 28, 2013; no second needed. Motion carried. [Exhibit K]

Reasoner also reported that a new position of internal auditor has been created and filled for the State Bar. After interviewing several potential candidates, a decision was made to promote the current State Bar Controller, Sharon Smith, to the internal auditor position, and Tracy Jarratt was hired as the new Controller.

K. DCAAP/Client Security Fund Subcommittees:

Virginia Campbell reported that the Client Security Fund Subcommittee considered 106 applications, and approved 86 applications for a total of \$527,509. The Subcommittee has also discussed increasing the maximum reimbursement amount per grant amount from \$30,000 to \$40,000. The Subcommittee compared the capped amount for Texas to other states, and the \$30,000 amount is below comparable states.

On behalf of the Client Security Fund Subcommittee, Virginia Campbell moved for approval the revision to Section 3.08.02 of the Policy Manual concerning the Client Security Fund, Rule 13, Maximum Reimbursement Limits, changing the maximum amount approved for a grant from the fund from \$30,000 to \$40,000; no second needed. Motion carried. [Exhibit L]

L. Member Services and Education:

Becky Baskin Ferguson reported that the New Directors Orientation will take place June 18-19 in Dallas at the Hilton Anatole, and asked directors from Dallas to attend the dinner on June 18th to welcome the new directors to the Board.

Steve Schechter reported that the Insurance/Member Benefits Subcommittee has been discussing how to provide low cost health insurance for State Bar members and how to make the group more attractive to the insurance companies and discuss an action plan. A free webcast was held on January 30th, a member survey was sent to sole and small firm practitioners on February 4th, and an email to all active members who have not opted out of receiving surveys and have an email address listed on their profile went out on March 8th to ensure all members who met the criteria had an opportunity to participate. The survey had a 21% response rate, and the Subcommittee is considering hiring an expert to advise on options and provide services, as well as going with a self-funded plan, called MEWA, or Multiple Employer Welfare Arrangement.

On behalf of the Insurance/Member Benefits Subcommittee, Steve Schechter moved for approval to authorize the expenditure of up to \$50,000 to evaluate establishing a State Bar group self-insured health plan by (1) engaging Betty DeLargy with Mitchell Williams to provide legal services, (2) engaging an actuary, (3) issuing a Request for Information/Interest (RFI) for administrative services and pharmacy benefit management (PBM) services, (4) if satisfactory results are achieved, soliciting non-binding commitments from an adequate number of State Bar members to participate, and (5) if satisfactory results are achieved, to issue Requests for Proposals (RFPs) for administrative and PBM services; no second needed. Motion carried.

The State Bar has also contracted with TLIE and USI Affinity as the preferred providers for professional liability insurance, with a program launch target of May 1.

Susan Nelson reported that the Professional Development Subcommittee has considered and approved revisions to the policy manual relating to TexasBarCLE and TexasBarBooks, which will be submitted to the Policy Manual Subcommittee for review and for possible presentation at the next Board meeting. The Subcommittee also met jointly with the CLE Committee on April 5 to recommend new courses, webcasts, and other projects, and to hear reports from staff.

M. Legislative Policy Subcommittee:

Christina Melton Crain reported that there are 45 days remaining in the legislative session. More than 6000 bills have been filed to date, and State Bar staff has reviewed all bills filed for impact on the profession and the State Bar as an agency. The State Bar legislative program is moving through the process, and at this time there is no need to add any bills.

N. Supreme Court Liaison:

Justice Johnson reported that the legislature is still amenable to Access to Justice. The Court is still considering rules for Justice Court cases, and the Court is considering input from the State Bar. The legislature has also directed the Court to make rules on certain bills, and those are progressing.

O. Court of Criminal Appeals Liaison:

Judge Michael Keasler reported that the criminal justice system works in many ways gets it right most of the time, and the Brady Curriculum is a step to get us closer to a mistake free system.

P. Federal Judiciary Liaison:

Judge Micaela Alvarez reported that there are still several vacancies in districts in Texas, and that all of the districts in Texas have vacancies except for the Northern district.

Q. Judicial Section Liaison:

Judge Alfonso Charles reported that the Judicial Section has been focused on the legislature, and the main priority is to advance the report of the Judicial Compensation Committee on raising judicial pay. The Judicial Section website is also being redesigned.

R. Executive Director:

Michelle Hunter made remarks about Gabriel Torres and presented him with the Employee of the Quarter Award.

There being no further business, the meeting was adjourned at 11:19 a.m.

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