

**MINUTES
STATE BAR OF TEXAS
BOARD OF DIRECTORS MEETING
The Pearl
South Padre Island, TX
Friday, September 20, 2013**

The Board of Directors of the State Bar of Texas met in regular session on September 20, 2013 at The Pearl Hotel in South Padre. Chair of the Board Cindy Tisdale called the meeting to order at 9:00 a.m., and Executive Director Michelle Hunter called the roll. A quorum of voting Board members was present. Tom Riney delivered the invocation, and Roger Key lead the pledges to the U.S. and Texas flags. Public Member Ford Sasser and Section Representative Grant Scheiner were both sworn in as new members by Justice Phil Johnson.

Present:

Board Members: David Alders, Robert Aldrich, President-elect Trey Apffel, Jaime Balli, Ben Barlow, Brent Benoit, TYLA President-elect Kristy Blanchard, Lawrence Boyd, TYLA President-elect Rebekah Steely Brooker, Frank Carroll, David Chamberlain, Curry Cooksey, Diane DeVasto, Sara Dysart, Richard Elliott, Immediate Past President Buck Files, Steve Fischer, Laura Gibson, Robert Guest, Cori Harbour-Valdez, Louis Iselin, Tim Kelly, Andy Kerr, Roger Key, Larry McDougal, Susan Nelson, Gail Plummer, Florentino Ramirez, TYLA President C.E. Rhodes, Tom Riney, Dr. Eliseo Ruiz, Ford Sasser III, Denise Scofield, Immediate Past Chair of the Board Frank Stevenson*, President Lisa Tatum, Chair of the Board Cindy Tisdale, Andrew Wallace, David Whittlesey

Liaisons*: Judge Ron Clark, Justice Phil Johnson, Judge Michael Keasler, Hap Weitzel

Section Representatives*: Alison Colvin, Gary Nickelson, Scott Rothenberg, Grant Scheiner

Excused Absences: Christopher Gilbert, Daniel Horowitz, Regina Bynote Jones, John Kazen, Mark Kelly, Michele Wong Krause*, Richard Melamed*, Andy Payne, Judge Jo Ann Reyes, Judge Penny Roberts*, Dr. David Teuscher, Ike Vanden Eykel

(* = nonvoting)

I. CONSENT AGENDA ITEMS

Upon motion properly made by Dr. Eliseo Ruiz and seconded by TYLA Immediate Past President C.E. Rhodes, the following actions were taken regarding the Consent Agenda items:

- A. Approval of minutes of Board meetings conducted on June 19-20, 2013
- B. Ratification of actions taken at the following Executive Committee meeting:
 - 1) **September 5, 2013:** Approved minutes of the March 28, 2013 Executive Committee meeting

C. Items from the President:

Approval of appointments to the following entities:

a. **Delegates to the 2014 Fifth Circuit Judicial Conference:**

President Lisa M. Tatum	Immediate Past President Buck Files
President-elect Trey Apffel	Chair of the Board Cindy Tisdale
Executive Director Michelle Hunter	TYLA President Kristy Blanchard

b. **Texas Real Estate Broker Lawyer Committee**, for six year terms effective September 20, 2013 through August 31, 2019:

Aimee C. Slusher (Lufkin)
SJ Davidson Swanson (Houston)

D. Items from Committees and Sections/Divisions:

- a. Approval of request by the Alternative Dispute Resolution Section to amend its bylaws **[Exhibit A]**
- b. Approval of request by the American Indian Law Section to amend its bylaws **[Exhibit B]**
- c. Approval of request by the Construction Law Section to amend its bylaws **[Exhibit C]**
- d. Approval of request by the Military Law Section to amend its bylaws **[Exhibit D]**
- e. Approval of request by the Paralegal Division to amend its bylaws **[Exhibit E]**
- f. Approval of request by the Judicial Law Section to amend its bylaws **[Exhibit F]**
- g. Approval of request by the School Law Section to amend its bylaws **[Exhibit G]**

E. Other Items:

a. **Nominating Committee to Select ABA Delegates** (*Chair Bob Black*)

Approval of appointment of delegate to the American Bar Association House of Delegates:

for an unexpired term expiring at the conclusion of the 2015 ABA Annual Meeting:

Trey Apffel (League City)
Buck Files (Tyler)
Kelly Ann-Clarke (Galveston)

for an unexpired term expiring at the conclusion of the 2015 ABA Annual Meeting:

Lacy Durham (Dallas), Young Lawyer Designate

b. Approval of resolution honoring: **[Exhibit H]**

CJ Sanchez

II. REPORTS

A. Report from the Chair of the Board:

Chair Tisdale reported that last year, the Board committed to a coordinated communications plan that incorporated live presentations from board members at local and specialty bar events and messages mailed and emailed from the district directors to their constituents. In October, a communications letter will go out to all of the constituents in each district from each director in that district. In February 2014, a similar e-blast will go out that will allow constituents to access web-based resources immediately. Directors also received a PowerPoint presentation to present to local bar associations in their district that is MCLE accredited for the entire bar year, as well as a variety of handouts that can be shared when they present at a local bar.

Chair Tisdale reported that last year, Immediate Past President Files learned that our judges wished to have a copy of the Texas Lawyers Creed hanging in their courtrooms, and we were able to distribute copies to all those who were in attendance at the judicial conference. Copies of the poster have been sent to the Board and are available for free to members.

Chair Tisdale solicited candidates for the 2014-15 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- or two-page statement of position, outlining the director's views and strategies relative to the issues of greatest significance to the Board and the Bar, prior to the January Board meeting.

B. Report from the President:

President Lisa Tatum reported that since the Annual Meeting, she has talked with bar leaders across the nation at events ranging from the Bar Leaders Conference, the National Bar Association, and the ABA Annual Meeting. She was asked to be interviewed on NPR's Think program, to share what the State Bar does in terms of diversity efforts. A free two hour CLE seminar for solo and small firm practitioners was held in McAllen on Tuesday, September 17th, and the program was a success with more than 50 attendees. LeadershipSBOT kicked off last weekend in Austin with a class of 10 males and 10 females. The class divided into four groups and will conduct projects on access to justice, member service, public service, and diversity. President Tatum reported that the presidential initiative, *I was the first. Vote for Me!* has been introduced to more than 1,600 teachers by the Law Related Education team at 77 teacher seminars, reaching more than 145,000 students. The Care Campaign's first legal advice clinics will take place in October in conjunction with National Celebrate Pro Bono Week. Next week each board member will receive a Care Kit, a box containing all the resources to conduct a legal advice clinic, including office supplies, signage templates, forms, questionnaires, step-by-step instructions and more. President Tatum has received a lot of feedback from the Texas Bar Journal emails delivered the beginning of each month. She also sent letters to the section and committee chairs asking about their priorities in order to determine shared plans and concerns and to better leverage resources.

President Tatum reported on the Career Transition Program, noting that \$115,000 was added to the budget for career transition services for the under employed and unemployed attorneys through a program developed by Neville Career Consulting. The first free day-long seminar for attorneys interested in non-legal careers will take place on November 1 in Houston. More than 300 attorneys have registered for it, and the Bar is planning to hold two additional free seminars in San Marcos and Dallas in early 2014.

A task force, chaired by Terry Tottenham, has been appointed to look at issues associated with aging lawyers as they relate to the practice of law and interaction with the public, since many attorneys are practicing law well past typical retirement age. The task force will look at potential alternative avenues to address problems in the disciplinary system caused by a decline in cognitive abilities and other health issues. They will also look at the administrative requirements for Emeritus attorneys. Currently attorneys that are 70 years or older are exempt from the MCLE Rules and from paying dues and taxes.

President Tatum stated that the State Bar makes two appointments to the Judicial Conduct Commission. This year, one of the attorney terms has expired. The process required by the Supreme Court for this nomination has been followed, and the nominees for appointment are Demetrius Bivins from Houston and Lee Ann Reno from Amarillo.

President Tatum moved that the board appoint Demetrius Bivins for a term on the Judicial Conduct Commission, effective November 20, 2013 through November 19, 2019; Andrew Wallace seconded. Motion carried. [Exhibit I]

President Tatum noted that on September 9th, the Family Law Section sought and received emergency approval from the Ad Hoc Submission Committee to file a brief in a case in the Fifth Court of Appeals in Dallas. The section was concerned about how an opinion of the Fifth Court might adversely affect mediated settlement agreements. The Fifth Court, however, withdrew its opinion. The Family Law Section did not file a brief and no action is needed at this time.

C. Report from the President-elect:

President-elect Trey Apffel stated that he is intently focused on communications initiatives, especially relating to social media. During the ABA meeting in San Francisco, there was much discussion about Facebook and Twitter. The State Bar has almost 28,000 Facebook fans and approximately 7,400 Twitter followers. A new social media plan was launched on June 1 and we are seeing the positive results of that. We will also have a new mobile friendly site for our website before the January Board meeting. President-elect Apffel reported that Texas Bar Circle, the members-only social media platform that was launched in 2009, has not kept up with the fast-paced changes to social media, and therefore a new platform will be launched in October called Texas Bar Connect.

President-elect Apffel reported that the Budget Committee held its first meeting yesterday to discuss the State Bar's budget process and timeline. Budget worksheet packets will be distributed to division and department directors on October 1 with a deadline completion date of October 18. Budget subcommittees will review assigned areas of the proposed budget on November 18. The entire Budget Committee is scheduled to meet on Monday, December 9 in Austin in order to discuss and approve a proposed FY 2014-15 budget for presentation to the January Executive Committee and to the Board.

D. Report from the Immediate Past President:

Immediate Past President Buck Files recognized the work of Lubbock attorney Ralph Brock, who passed away in July, and a moment of silence was observed in his memory.

The Nominations and Elections subcommittee has begun the process of finding potential nominees to run for President-elect. For this election cycle, it is an open city year, meaning that potential nominees may come from any county of the state. The subcommittee met yesterday to consider potential nominees and plans to conduct interviews in December, and the subcommittee will submit the names of the two nominees to the Board in January for consideration. The subcommittee also heard from Steve Fischer regarding his suggestions on proposed election policy manual revisions. Fischer noted that he would like to see changes made to the election rules in order to allow more people to run for President, and he would like to see this as an item for vote and debate on the January Board agenda. President Files reported that the subcommittee has referred the proposed revisions to legal counsel for further review.

E. Policy Manual Subcommittee:

Robert Aldrich reported on the proposed revisions to Policy Manual Section 1.04.03 concerning the nominating committee for the selection of minority directors. The Policy Manual lays out a procedure whereby a nominating committee chooses nominees for minority directors to recommend to the President for appointment. Section 1.04.03 governs the membership of that nominating committee. This proposed revision reflects the change of

name of the Racial Diversity in the Profession Standing Committee to the Diversity in the Profession Standing Committee that was approved at our last meeting, and it also expands the pool of appointees from the Board by removing the restriction that Board appointees be from the Nominations and Elections Subcommittee. Under this revision, the Chair of the Board can appoint any three members of the Board.

On behalf of the Policy Manual Subcommittee, Aldrich moved for approval of the proposed revisions to Board Policy Manual Section 1.04.03; no second needed. Motion carried. [Exhibit J]

F. Commission for Lawyer Discipline/Chief Disciplinary Counsel:

Guy Harrison gave a general report on the role of the Commission for Lawyer Discipline and on the Commission's Annual Report highlights, first quarter sanction breakdown and first quarter attorneys' fees collections, the grievance referral program, and confidentiality provisions for Board members. [Exhibit K]

G. Texas Young Lawyers Association:

TYLA President Kristy Blanchard reported on the recent TYLA Board meeting, and highlighted other TYLA activities. Blanchard reported on upcoming TYLA project rollouts and various public service projects for the year, including upcoming CLE's, "*Generation Generosity*", and B.S.A.F.E. – "*Battling Substance Abuse for Everyone*".

H. Affordable Legal Services Subcommittee:

Cori Harbour-Valdez reported on pro bono fellowships the State Bar is funding, and noted they have received great responses so far.

I. Performance Measures and Strategic Planning Subcommittee:

Louis Iselin reported that at the April meeting, the Board adopted a revised strategic plan for the State Bar. As required by the State Bar Act, the Board approves updated performance measures based on the strategic plan. The updates are refinements rather than wholesale changes.

On behalf of the Performance Measures and Strategic Planning Subcommittee, Iselin moved that the Board adopt the updated performance measures for fiscal years 2014 and 2015; no second needed. Motion carried. [Exhibit L]

J. Audit and Finance Committee:

Roger Key reported that the total amount of revenues for FY 2012-13 was \$39.5 million with total expenditures and operating transfers of \$36.9 million. The next excess for the general fund was \$2.6 million, and the fund balance as of May 31, 2013 is approximately \$15.2 million. The actual net excess for the first two months of this fiscal year was \$804,000, which resulted in a positive net variance of over \$98,000 at the end of July. The CPA firm of Padgett & Stratemann is performing the State Bar's financial audit for FY 2012-13, and Maxwell Locke & Ritter is performing the internal audit. Both audits will be presented for approval at the January Board meeting. Ken Couch, senior managing consultant with PFM, gave an investment presentation. The State Bar's investment portfolio is invested in federal agency securities, high quality commercial paper, certificates of deposit and AAAM-rated money market mutual funds. Key reported that back in January, the Board passed a resolution to encourage financial institutions with which the State Bar and other affiliates do business to become members of the Texas IOLTA Prime Partners Program. The State Bar's banking needs are complex, and after searching for a bank that can handle these needs and is a prime partner bank, Plains Capital in Austin was selected. Plains Capital Bank has been a part of the Texas IOLTA Prime Partners program since it first began in 2007.

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

(1) Acceptance of the quarterly investment reports for the quarters ending May 2013 and August 2013; no second needed. Motion carried.

(2) Approval of PFM Asset Management, LLC and The University of North Texas Center for Public Management as the Public Funds Investment Act Trainers; no second needed. Motion carried.

(3) Adoption of the PFM broker/dealer list for investments; no second needed. Motion carried.

(4) Adoption of the SBOT current investment policy; no second needed. Motion carried.

(5) Approval of proposed revision to Policy Manual Section 3.04.01 regarding depositories of State Bar funds; no second needed. Motion carried.

(6) Approval of change of bank depository to Plains Capital Bank; no second needed. Motion carried. [Exhibit M]

K. Client Security Fund Subcommittee:

Denise Scofield reported that the Client Security Fund subcommittee met on Thursday, September 19, and approved 28 applications for a total of \$319,027.33.

L. Discipline/Client Attorney Assistance Program Committee:

David Whittlesey reported that in the 2013 Legislative Session, §81.072 of the State Bar Act was amended to extend the statute of limitations in cases of alleged prosecutorial misconduct and to prohibit the imposition of a private reprimand in these cases. To accomplish the legislative enactment, Rule 15.06, the disciplinary procedural rule governing statute of limitations, requires revision as well as the Commission's Internal Operating Rules and Procedures governing the use of private reprimands in attorney discipline proceedings. The statute requires that the amendments must be enacted by the State Bar by December 1, 2013. The Commission for Lawyer Discipline approved the revisions at their August meeting. The proposed revisions have also been discussed with the Supreme Court's Rules Attorney, Marisa Secco.

On behalf of the DCAAP Committee, Whittlesey moved for approval of the amendments to Rule 15.06 of the Texas Rules of Disciplinary Procedure and to the Commission for Lawyer Discipline's Internal Operating Rules and Procedures; no second needed. Motion carried. [Exhibit N]

M. Appeals/Grants Review Subcommittee:

Larry Boyd reported that the Appeals/Grants Review Subcommittee received a request from the Texas Young Lawyers Association for authorization to seek outside funding from the Texas Bar Foundation for their public service project called "*Intervention: Recognizing the Dangers and Real Life Consequences of Substance Abuse.*" This multi-media project is intended to educate youth about the dangers of substance abuse and to educate the public about the use of drug courts to help deal with substance abuse issues and the benefits these special courts are providing the citizens of Texas. The Appeals/Grants Review Subcommittee approved the request For TYLA to seek funding from the Texas Bar Foundation for this project. **[Exhibit O]**

N. Professional Development Subcommittee:

Gary Nickelson reported that the CLE Committee and Board PDP subcommittee held a joint meeting on September 6 to brainstorm new topics and hear staff reports, and the PDP subcommittee met again on September 19th to discuss CLE financing and new book projects, specifically ideas for making books and CLE more available on mobile devices.

O. Insurance/Member Benefits Subcommittee:

Tim Kelly gave an update on the Texas Bar Private Insurance Exchange, the State Bar's new insurance exchange. The Bar issued a request for proposals for a third-party administrator to run the exchange and selected Member Benefits Inc., which also administers insurance exchanges for both the Georgia and Florida State Bars. The State Bar issued an email blast to members announcing the exchange on September 19th, and we have received 1,000 inquiries indicating an interest in the private exchange.

Closed Session: At 11:05 a.m., the Board recessed the open meeting and reconvened in closed session pursuant to Texas Government Code, Section 551.071 and 551.074, for the purpose of consultation with legal counsel concerning issues surrounding the State Bar of Texas Insurance Trust and concerning pending litigation involving a Texas Lawyers Assistance Program volunteer.

Open Session: At 11:14 a.m., the open session of the Board of Directors meeting reconvened. During the closed session, only matters relating to consultations with legal counsel and pending litigation were discussed. No action was taken in closed session.

In open session, on behalf of the Insurance/Member Benefits Subcommittee, Tim Kelly moved for approval to give the authority to the Executive Committee to make decisions regarding insurance, the State Bar of Texas Insurance Trust and its participants, if needed, prior to the next Board meeting on January 24, 2014; no second needed. Motion carried.

P. Section Representatives to the Board:

Gary Nickelson reported on the two Section name changes up for approval, American Indian Law and Military Law. The American Indian Law Section name change is being requested to more accurately describe the work they do and to keep up with the growing prominence of the use of "Native American" rather than "American Indian" by groups and organizations in similar fields. The Military Law Section is requesting to change their name to Military and Veterans Law Section, in order to more closely represent the demographics of their current membership and the services they provide to the citizens of Texas.

(1) Susan Nelson moved for approval of the American Indian Law Section name change to the Native American Law Section; TYLA Immediate Past President C.E. Rhodes seconded. Motion carried.

(2) Tom Riney moved for approval of the Military Law Section name change to the Military and Veterans Law Section; Larry Boyd seconded. Motion carried. [Exhibit P]

Q. Report from the Texas Bar Foundation:

Tom Vick, chair of the Texas Bar Foundation, gave a report on the work and the mission statement of the Foundation, as well as the qualifications and process of how an attorney becomes a Texas Bar Foundation fellow. Vick also reported on the Foundation's grant process and deadlines.

R. Supreme Court Liaison:

Justice Phil Johnson reported that Chief Justice Wallace Jefferson has resigned, and Justice Nathan Hecht has been appointed to take over as Chief Justice of the Supreme Court on October 1. A new justice will be appointed to replace Justice Hecht. Also, General Counsel Jen Cafferty and Rules Attorney Marisa Secco will both be leaving the Court at the end of the month.

S. Court of Criminal Appeals Liaison:

Judge Michael Keasler reported on judicial vacancies coming up, and noted that Judge Hervey is head of the grants committee this year.

T. Federal Judicial Liaison:

Judge Ron Clark discussed funding and budget issues, noting that judicial vacancies make budget issues worse. Judge Clark noted that the State Bar does a great job of supporting state judges.

U. Report from the Executive Director:

Michelle Hunter highlighted the PowerPoint presentations that have been distributed to Board members for their presentations at local and specialty bar events, noting that they can contact the Communications staff to update their presentation materials whenever needed. Hunter presented Debbie Roebuck-Cummings from TexasBarCLE with the Employee of the Quarter Award.

There being no further business, the meeting was adjourned at 11:53 a.m.

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