

**OFFICIAL MINUTES
STATE BAR OF TEXAS
BOARD OF DIRECTORS MEETING
Hilton Palacio Del Rio
San Antonio, Texas
January 24, 2014**

The Board of Directors of the State Bar of Texas met in a regular session on January 24, 2014 at the Hilton Palacio Del Rio in San Antonio, Texas. Chair Cindy Tisdale 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. President Lisa Tatum introduced Nancy Abbott, chaplain at YMCA of Greater San Antonio, and she delivered the invocation. Daniel Horowitz led the pledges to the U.S. and Texas flags.

Present:

Board Members: David Alders, Robert Aldrich, President-elect Trey Appfel, Jaime Balli, Ben Barlow, TYLA President Kristy Blanchard, Lawrence Boyd, TYLA President-elect Rebekah Steely Brooker, Frank Carroll, David Chamberlain, Diane DeVasto, Sara Dysart, Richard Elliott, Steve Fischer, Christopher Gilbert, Robert Guest, Daniel Horowitz, Louis Iselin, Regina Bynote Jones, John Kazen, Mark Kelly, Tim Kelly, Andy Kerr, Roger Key, Larry McDougal, Susan Nelson, Gail Plummer, Florentino Ramirez, Judge Jo Ann Reyes, Tom Riney, Dr. Eliseo Ruiz, Ford Sasser III, Denise Scofield, Immediate Past Chair of the Board Frank Stevenson*, President Lisa Tatum, Dr. David Teuscher, Chair of the Board Cindy Tisdale, Ike Vanden Eykel, Andrew Wallace

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

Section Representatives*: Alison Colvin, Michele Wong Krause, Richard Melamed, Gary Nickelson, Scott Rothenberg,

Excused Absences: Brent Benoit, Curry Cooksey, Immediate Past President Buck Files, Laura Gibson, Cori Harbour-Valdez, Andy Payne, TYLA Immediate Past President C.E. Rhodes, Grant Scheiner*, David Whittlesey

(* = nonvoting)

I. CONSENT AGENDA ITEMS:

Upon motion properly made by Richard Elliott and seconded by Frank Carroll, the following actions were taken regarding the Consent Agenda items:

- A. Approval of minutes of Board meeting conducted on *September 20, 2013*
- B. Ratification of actions taken at the following Executive Committee meeting:
 - 1) ***January 9, 2014:*** Approved minutes of the September 5, 2013 Executive Committee meeting
- C. Approval of appointments to the following entities:
 - 1) **State Bar Annual Meeting Committee**, for a one year term effective Annual Meeting 2013 through Annual Meeting 2014:

**Stephen Benesh, Chair (Austin)
David Beck (Houston)**

Talmage Boston (Dallas)
Mary Schaerdel Dietz (Austin)
James Matthew Dow (Austin)
Claude Ducloux (Austin)
Hon. David Evans (Fort Worth)
Warren Wayne Harris (Houston)
Lamont Jefferson (San Antonio)
Hon. Lora Livingston (Austin)
Patton Lochridge (Austin)
Michael Marin (Austin)
Nikelle Meade (Austin)
Jo Ann Merica (Austin)
Richard Pena (Austin)
Denise Scofield (Houston)
Mark Shank (Dallas)
Terry Tottenham (Austin)
Delaine Ward (Austin)
William Whitehurst (Austin)

- 2) **Texas Legal Services Center**, for a three year term effective January 1, 2014 through December 31, 2016:

Mario Lewis (Austin)

- 3) **Texas RioGrande Legal Aid**, for a two year term effective January 1, 2014 through December 31, 2015:

Ricardo Lara (Brownsville)
Cindy Polinard (McAllen)
Ron Walker (Victoria)

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

- 1) for three-year terms, effective June 1, 2014 to May 31, 2017:

lawyers:

Wendy Burgower (Houston)
Dustin Burrows (Lubbock)
F.R. Buck Files (Tyler)

- 2) For one year term effective June 1, 2014 to May 31, 2015:

Board liaison:

Laura Gibson (Houston)
Andrew Wallace (Dallas)

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

F. Approval of request by the Corporate Counsel Section to raise its dues from \$25 to \$30

- G. Approval of the 2014-15 Preliminary Calendar/Holiday Schedule [**Exhibit B**]
- H. Approval of State Bar Legislative Timetable [**Exhibit C**]
- I. Approval of 2014 General and Run-off Election Timetable for President-elect and District Director [**Exhibit D**]
- J. Approval of resolutions honoring: [**Exhibit E**]

1) **Tammy Wincott (San Antonio)**

II. REPORTS:

A. Remarks from the General Public:

Chair Cindy Tisdale welcomed any members of the public that were present and asked that any member of the public who wishes to address the Board, to sign in, and they will be given three minutes to speak. Chair Tisdale recognized the work of Dallas family law attorney Ken Fuller, who passed away the previous weekend, and a moment of silence was observed in his memory.

B. Report from the Chair of the Board:

Chair Tisdale reported that she is pleased that so many Board members have continued with their commitment to not only keeping our members apprised of all the ways the State Bar serves members and the public, but also learning how we can better serve our members. She thanked the Board for their assistance in sending out letters to their constituents in November, and noted that the next district communication will be an email sent out in March. Chair Tisdale also noted that that Texas Lawyers Creed brochure will now be offered in Spanish.

Chair Tisdale reported that Robert Aldrich, Sara Dysart, Roger Key and Denise Scofield have announced their intention to run for Chair of the Board for 2014-15, and the chair election candidates gave brief remarks. [**Exhibit F**]

Chair Tisdale 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. She then declared that the method of voting will be done by written ballot at the April meeting.

C. Report from the President:

President Lisa Tatum reported that she attended the Texas Minority Counsel Program in Dallas, where she helped facilitate the SBOT Diversity Roundtable. She also attended the ABOTA *Open Forum for Civic Education for Our Youth*, where *I was the First. Vote for Me!* was presented to school administrators, attorneys, and other proponents of civics education. *I was the First. Vote for Me!*, which introduces Texas elementary students to historic firsts who are part of the TEKS standards, has been presented by the Law Related Education team to more than 4,778 teachers at 119 teacher seminars, reaching more than 196,000 students. President Tatum also noted that 70 Care Kits have been distributed to attorneys across Texas, filled with all the tools necessary to host a free legal advice clinic. On November 9, the Austin Black Lawyers Association held a successful free legal clinic, and the San Antonio Young Lawyers Association is in the process of planning their first clinic.

The State Bar is holding another free Solo and Small Firm CLE in Amarillo on April 23rd. The seminar updates attendees on current issues facing general practitioners and gives lawyers and judges a chance to learn more about State Bar Resources and how to get involved. The State Bar hosted a successful Alternative Careers Seminar on

November 1 in Houston, which helped participants determine what kind of work to pursue, how to market themselves, networking skills, and more. Another seminar will be held in Dallas on February 19th, and San Marcos at a later date.

The Task Force on Aging Lawyer Issues continues to look at concerns associated with aging lawyers as they relate to the practice of law and interaction with the public. President Tatum noted that, as first highlighted in her December Texas Bar Journal opinion, more attorneys are practicing law well past typical retirement age. The task force is looking at potential alternative avenues to address the decline in cognitive abilities and other health issues, such as modifying emeritus status or a new permanent retirement status as well as developing educational components for lawyers, judges, law partners, and family members.

D. Report from the President-elect:

President-elect Apffel reported that since the new social media plan was started back in June, there has been an increase of more than 1,600 Facebook fans and 2,021 Twitter followers on the State Bar of Texas pages, and our Twitter engagement rating has increased from 10% to 64%. We have also launched the new mobile friendly site for texasbar.com. President-elect Apffel also discussed Texas Bar Today, an online blog network featuring curated news and commentary from Texas legal professionals, and Texas Bar TV, the State Bar's branded YouTube channel. It is comprised of short videos of lawyers and legal professionals from across the state and country. Texas Bar Connect will also launch in test mode soon, and the new platform will include special legal discussion communities, a resource library, and a directory for attorneys. President-elect Apffel also highlighted the various email communications that are sent daily and monthly to keep members apprised of opportunities and resources.

President-elect Apffel reported that the State Bar's fiscal year 2014-15 proposed General Fund budget includes revenues and transfers from reserves of \$43,097,423. Some highlights of the proposed budget include a \$386,454 annual transfer to the Capital Equipment Replacement plan; \$300,000 annual transfer to the Client Security Fund; a \$400,000 annual transfer to the Technology Fund; and a \$350,000 commitment for the Student Loan Repayment Assistance Program (the fourth payment of five payments totaling \$1.75 million). One of the Budget Committee's duties each year is to make a recommendation to the Board regarding the commitment of any increase in the fund balance resulting from the previous year's financial activities, and the audit report shows the total amount available for Board commitment is \$2,604,305. The Budget Committee is making the following recommendations to the Board for commitment of the available funds; a \$35,000 proposed increase to the minimum reserve in order to maintain the minimum reserve at \$9.04 million; \$200,000 for funds for presidential initiatives for FY14-15; \$1,204,305 to the Client Security Fund in order to pay additional claims related to the lawyer misconduct case of attorney Thomas Corea; and a \$1 million commitment to the Technology Fund to be used to fund the cost of Microsoft licensing for all State Bar systems, replace the existing virtual server infrastructure and printers, fund website improvements, upgrade membership and document management systems, and fund the cost of emergency alerting systems. Additionally, another \$95,000 commitment to continue the Alternative Careers Project is being proposed; as well as \$30,000 for a compensation analysis survey of employee positions and a \$40,000 commitment to the State Bar's Law Related Education Department to upgrade the website. The total of these seven commitments is \$2,604,305. There was some discussion on the interpretation of the financial statements, and questions were answered by Chief Financial Officer Cheryl Howell.

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

- (1) Commitments of the excess fund balance as outlined above; no second needed. Motion carried with one nay vote.**
- (2) SBOT FY 2014-15 proposed budget for publication in the March 2014 issue of the *Texas Bar Journal*; no second needed. Motion carried with one nay vote. [Exhibit G]**

E. Nominations & Elections Subcommittee:

Immediate Past Chair of the Board Frank Stevenson reported that the subcommittee interviewed six highly qualified individuals to be considered as potential nominees for President-elect for this open-county year. After much deliberation, the subcommittee voted to select Allan DuBois of San Antonio and Beverly Godbey of Dallas. Immediate Past Chair Stevenson also reported that there are 10 elected members of the board whose terms are expiring in June. Also, the subcommittee considered proposed revisions to the policy manual President-elect election provisions submitted by a current director. The revisions would require the automatic addition of a petition candidate to the ballot who obtains 1000 signatures on the petition and has served on two State Bar standing committees. With the assistance of legal counsel, the subcommittee determined that the proposed amendments would be in conflict and inconsistent with the State Bar Act and State Bar Rules, and therefore were impermissible revisions to the Policy Manual. **[Exhibit H]**

On behalf of the N&E subcommittee, Immediate Past Chair Stevenson moved for approval of Allan DuBois (San Antonio) and Beverly Godbey (Dallas) as the 2014-15 President-elect candidates; no second needed. Motion carried. [Exhibit I]

The two candidates were introduced – Allan DuBois by Sara Dysart, and Beverly Godbey by Roger Key. Both addressed the Board.

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

Guy Harrison reported on the second quarter disciplinary sanctions statistics and attorney's fees collections, the grievance referral program, confidentiality provisions, and considerations for district grievance committee appointments, stressing the importance of areas of practice diversity. **[Exhibit J]**

G. Texas Young Lawyers Association:

TYLA President Kristy Blanchard reported on completed projects, toolkits, and guides. The annual diversity dinner was held last weekend in Fort Worth. Blanchard also reported on upcoming TYLA project rollouts and CLE's, an Education Advocates pilot project, and a Health Awareness Trial run in Austin on June 28th.

H. Administration Committee:

John Kazen reported on the career transition project, noting that 124 attorneys attended the November 1 seminar in Houston. Based on the evaluations submitted, 97% of the respondents stated that the seminar met or exceeded their expectations. Three hundred attorneys are registered for the seminar in Dallas on February 19th, and a free online version of the seminar will be available by February 1. Kazen noted that the project is referenced in the director presentation power points for presentations to local bars.

I. Audit and Finance Committee:

Roger Key reported that Padgett Stratemann & Co., LLP has completed the FY 2012-13 financial audit of the State Bar, and it resulted in the Bar receiving an "unqualified opinion", the best financial audit opinion the State Bar can receive. Representatives from Padgett, Stratemann & Co. presented the financial audit report during the Audit & Finance Committee's meeting the day before. The CPA firm of Maxwell Locke & Ritter LLP has completed the State Bar's internal control audit for FY 2012-13, and it was presented to the Audit & Finance Committee the day before. Several suggestions that will be implemented as a result of the internal audit are as follows: 1) instituting stronger controls over the processes the State Bar uses for refunding credit card transactions; 2) recommending that the State Bar's accounting department furnish quarterly financial statements

to the 8 State Bar Sections that do not currently take advantage of the State Bar's offer of free account management services; 3) implementing a process whereby software access granted to State Bar staff members is reviewed on an annual basis; and 4) the MCLE department using an endorsement stamp on checks received for deposit. As of November 30, the General Fund actual net revenues over expenditures and transfers totaled approximately \$1.2 million, which resulted in a positive budget to actual net variance for the general fund of almost \$418,000. The State Bar's General Fund portfolio is fully invested in federal agency securities, high quality commercial paper, FDIC insured certificates of deposit, and AAAM-rated money market mutual funds. Overall, the portfolio is highly liquid and maintains the highest credit quality.

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

- 1) FY 2012-13 Financial Audit Report;**
- 2) FY 2012-2013 Internal Audit Report; and**
- 3) November 2013 Quarterly Investment Report; no second needed. Motions carried.**
[Exhibit K]

J. Client Security Fund Subcommittee:

Judge Jo Ann Reyes reported that this year, the Client Security Fund is facing a shortage of funds due in large part because of claims associated with the theft of client settlement monies by a Dallas lawyer named Thomas Corea. To date, a total of 46 Corea-related applications have been filed with the Fund with an additional 19 victims on the prosecutor's list who are anticipated to also file claims. So far, \$283,775 has been paid or approved for Corea victims. There is an additional \$152,842 in non-Corea claims approved at the September meeting that is also still unpaid. The total claims for 2013-14 are anticipated to be at \$1.273 million, and there is currently \$428,000 available for payment.

On behalf of the Client Security Fund subcommittee, Judge Jo Ann Reyes moved for approval that Section 3.08.02 (D)(1) of the Board Policy Manual be amended to allow a reduction in the amount required to be maintained in the corpus of the Fund from \$3 million to \$2 million; no second needed. Motion carried.
[Exhibit L]

K. Member Services and Education Committee:

Daniel Horowitz reported that the Appeals/Grants Review Subcommittee received two requests for authorization to seek outside funding from the Texas Bar Foundation. The first request came from the Disability Issues Committee seeking funding for their public service project called "The Rights of Shelter Residents with Disabilities". The second request came from Law Focused Education, Inc. seeking funding for their project "Justiceville, USA", a web based project to help educate students about history, government, and the rule of law. The Appeals/Grants Review Subcommittee approved both of these requests. Horowitz also reported that the subcommittee heard three appeals from decisions of the Texas Board of Legal Specialization. In considering these appeals, the subcommittee is required to apply the substantial evidence standard with the burden of proof resting on the appellant. The subcommittee heard appeals from Jack Manning, whose application for certification in Residential Real Estate Law had been denied; Tanner Neidhart, for certification in Criminal Law; and Natalie Webb, for certification in Family Law.

On behalf of the Appeals-Grants Review Subcommittee, Daniel Horowitz moved for approval of the following:

- 1) The recommendation of the subcommittee to deny the appeal submitted by Mr. Jack Manning and uphold the decision of TBLS;**

- 2) **The recommendation of the subcommittee to deny the appeal submitted by Mr. Tanner Neidhart and uphold the decision of TBLS;**
- 3) **The recommendation of the subcommittee to deny the appeal submitted by Ms. Natalie Webb and uphold the decision of TBLS; no second needed. Motions carried. [Exhibit M]**

Sara Dysart reported that the New Directors Orientation subcommittee met yesterday to plan the orientation for new board members, and this year's event will take place in June in conjunction with the Annual Meeting in Austin.

Gary Nickelson reported that Texas Bar CLE is financially doing better than ever due to a decrease in costs. CLE course materials can now be downloaded prior to the course.

Tim Kelly reported that the State Bar of Texas Insurance Trust has contracted with Member Benefits Inc. to sell non-health insurance products through the Texas Bar Private Insurance Exchange. Member Benefits Inc. will also assist in the transition of terminated individual health plans and group plans to ACA-compliant plans through the Exchange. Kelly also reported on the future of the Insurance Trust, noting that the existing trustees have amended the declaration of trust between the Trust and the State Bar to reduce the number of trustees and to require that all new Trustees be members of the State Bar Board. New trustees will consider proposals from Member Benefits, Inc. to change plans and utilize Premium Stabilization Funds, and in the future, they may consider proposals to eliminate the need for the Trust.

On behalf of the Insurance/Member Benefits Subcommittee, Tim Kelly moved for approval of the amendments to the declaration of trust between the State Bar of Texas Insurance Trust and the State Bar of Texas; no second needed. Motion carried. [Exhibit N]

President Lisa Tatum made remarks about the three members of the Board who she has proposed to appoint as new trustees of the State Bar of Texas Insurance Trust, Tim Kelly, David Chamberlain, and Michele Wong Krause. She noted that each of them are current members of the Insurance/Member Benefits Subcommittee and have been instrumental in the creation of the private insurance exchange.

President Lisa Tatum moved for approval of the appointment of David Chamberlain (Austin), Tim Kelly (Austin), and Michele Wong Krause (Dallas) as new trustees of the State Bar of Texas Insurance Trust; Steve Fischer seconded. Motion carried.

Michele Wong Krause reported that the Technology Oversight Subcommittee met and reviewed the State Bar's current technology, including the client security fund's system, the CDC's system, and case management implementation for the UPL Committee. The subcommittee also discussed the planned replacement of the MCLE system, which will be a custom-written system to improve accounting and reporting capability. The subcommittee also plans to bring an updated business technology plan for approval at the April Board meeting.

L. Ad Hoc Committee to Select Minority Directors:

Jaime Balli reported that the Ad Hoc Committee to Select Minority Directors selects potential nominees to fill the minority director positions on the Board and will make a recommendation to President Lisa Tatum for appointment. The Committee will interview six nominees on January 30th, and of that group, they will recommend two to President Tatum for the appointment of one to serve as minority directors beginning at the Annual Meeting in June to replace Judge Jo Ann Reyes, whose term is expiring. The Board will vote to confirm the appointment at the April Board meeting.

M. Section Representatives to the Board Committee:

Michele Wong Krause gave an update on Sections and noted that Section membership is on the rise. Of the over 90,000 State Bar members, 44% are members of one or more Sections.

N. MCLE Committee:

Trey Bergmann reported on the proposed changes to the MCLE regulations. One proposed change involves faculty exemption, replacing the current credit allowance added to the attorney's record with an actual exemption. The change will simplify administrative and IT processes. The other proposed changes involve exemptions for local and district bar associations and government agencies from accredited sponsor application and renewal fees, and assessing a \$200 fee for application for accredited sponsor status as well as an annual \$200 renewal fee to maintain accredited sponsor status. The changes would be effective June 1, 2014.

Andy Kerr moved for approval of the amendments to MCLE Regulations, Section 5.1, 5.1.1 – Faculty Exemptions; Sections 10.3.2 and 10.3.5 Accredited Sponsor Application and Renewal Fees, and Section 10.8.5 regarding exemptions to the accredited sponsor fee; Tom Riney seconded. Motion carried. [Exhibit O]

O. Texas Lawyers Assistance Program:

Dan Garrigan, Chair of the TLAP, gave an update on the Sheeran Crowley Trust. Port Arthur attorney Darren Bertin discussed his experience with addiction and how the work of TLAP and the Sheeran Crowley Trust helped him, and thanked the Board for their support of the Trust.

P. Supreme Court Liaison:

Justice Johnson reported that there are no rules changes currently in process. The Office of Court Administration is available to help anyone who has issues with e-filing, and most complaints involve the electronic service provider.

Q. Court of Criminal Appeals Liaison:

Judge Michael Keasler reported that the composition of the Court is stable regarding compensation. Three judges are retiring, and qualified candidates are running to fill the judicial positions.

R. Federal Judicial Liaison:

Judge Ron Clark reported that there have been cutbacks on staff while the case load has increased by 20%, and the lack of judges running for election vacancies.

S. Judicial Section Liaison:

Judge Penny Roberts reported that there will be a Judicial Section board retreat in April, and the legislative committee has begun working on pay raises.

T. Section Update:

Cottie Miles gave an update on the Oil and Gas Section, and showed a video that was produced in honor of the Section's 75th Anniversary.

U. Executive Director:

Executive Director Michelle Hunter presented Tracy Brown, Director of the TYLA, with the employee of the quarter award.

There being no further business, the meeting was adjourned at 12:55 p.m.

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