

**OFFICIAL MINUTES
STATE BAR OF TEXAS
BOARD OF DIRECTORS MEETING
Baylor Law School
Waco, Texas
January 16, 2015**

The Board of Directors of the State Bar of Texas met in a regular session on January 16, 2015 at Baylor Law School in Waco, Texas. Chair Roger Key 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. David Alders delivered the invocation, and Sara Dysart led the pledges to the U.S. and Texas flags. President Trey Apffel introduced Baylor Law School Dean Brad Toben, and Dean Toben gave welcoming remarks. Chair Key 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. Travis Torrence from Houston was sworn in by Justice Phil Johnson as the new District 4, Place 2 director to replace David Chaumette, who resigned from the Board in September.

Present:

Board Members: David Alders, Robert Aldrich, President Trey Apffel, Ben Barlow, Barbara Bass, Brent Benoit, Lawrence Boyd, TYLA President Rebekah Steely Brooker, Frank Carroll, Leon Carter, David Chamberlain, Diane DeVasto, President-elect Allan K DuBois, Sara Dysart, Richard Elliott, Joe Escobedo, Sylvia Firth, Laura Gibson, Robert Guest, Rice Horkey, Louis Iselin, John Jansonius, Andy Kerr, Chair of the Board Roger Key, Larry McDougal, Mary Martin, Brian Miller, Susan Nelson, Gail Plummer, Florentino Ramirez, Tom Riney, Ruben Robles, Anna Sankaran, Ford Sasser III, Denise Scofield, Lance Sharp, Immediate Past President Lisa Tatum, Dr. David Teuscher, TYLA President-elect Barrett Thomas, Travis Torrence, Andrew Wallace

Liaisons*: Judge David Evans, Justice Phil Johnson, Judge Michael Keasler, Judge Ed Kinkeade, Hap Weitzel

Section Representatives*: Alison Colvin, Tina Green, Pat Maher, Scott Rothenberg, Grant Scheiner

Excused Absences: *Jaime Balli, TYLA Immediate Past President Kristy Blanchard, Amy Bryan, Curry Cooksey, Joe Indelicato, Gary Nickelson*, Immediate Past Chair Cindy Tisdale**

(* = nonvoting)

I. CONSENT AGENDA ITEMS:

Upon motion properly made by Larry Boyd 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 19, 2014*
- B. Ratification of actions taken at the following Executive Committee meeting:
 - 1) **January 8, 2015:** Approved minutes of the September 4, 2014 Executive Committee meeting
- C. Approval of appointments to the following entities:
 - 1) **Travis Torrence (Houston)**, to fill an unexpired term for State Bar District 4, Place 2 Director, effective January 16, 2015 through Annual Meeting 2017

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

- 1) for three-year terms, effective June 1, 2015 to May 31, 2018:

lawyers:

Sara Dysart (San Antonio)

Lisa Tatum (San Antonio)

Cindy Tisdale (Granbury)

public member

Cindy Johnson (Fort Worth)

- 2) For one year term effective June 1, 2015 to May 31, 2016:

Board liaison:

Ruben Robles (El Paso)

- E. Approval of request by the Collaborative Law Section to amend its bylaws [**Exhibit A**]¹
- F. Approval of request by the Real Estate, Probate and Trust Law Section to amend its bylaws [**Exhibit B**]
- G. Approval of request by the Workers Compensation Section to amend its bylaws [**Exhibit C**]
- H. Approval of request by the Insurance Law Section to amend its bylaws [**Exhibit D**]
- I. Approval of request by the Women and the Law Section to raise its dues from \$20 to \$25 [**Exhibit E**]
- J. Approval of the 2015-16 Preliminary Calendar/Holiday Schedule [**Exhibit F**]
- K. Approval of 2015 General and Run-off Election Timetable for President-elect and District Director [**Exhibit G**]
- L. Approval of name change from the College of the State Bar to Texas Bar College [**Exhibit H**]
- M. Approval of resolution for statement of support for the judiciary [**Exhibit I**]
- N. Approval of resolutions honoring: [**Exhibit J**]

Kenneth D. Fuller (Dallas)

II. REPORTS:

A. Report from the Chair of the Board:

Chair Key reported that he is pleased that so many Board members have continued with their commitment to keep our members apprised of all the ways the State Bar serves members and the public through the State Bar Update presentations. The next district communication will be an email sent out in late February. The benefit to electronic communication is that it allows our constituents to immediately access the many web-based resources we offer.

Chair Key reported that David Chamberlain and Tino Ramirez have both announced their intention to run for Chair of the Board for 2015-16, and they each gave brief remarks. [**Exhibit K**]

Chair Key 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. The Board unanimously voted to conduct the Chair election by written ballot at the April meeting.

B. Report from the President:

President Trey Apffel reported that in November, he attended the Texas Appleseed's Good Apple Dinner and accepted an award on behalf of the State Bar for the assistance TexasBarCLE provides the Children's Commission. TexasBarCLE has helped lawyers representing clients in Child Protective Services litigation get online CLE training. Though event submissions have slowed in recent months, the State Bar is continuing to offer information to lawyers and the public on texasbar.com/volunteer and texasbar.com/immigration. In an effort to reduce the strain on providers, the State Bar is no longer accepting volunteer interest forms online. The new members-only social networking platform Texas Bar Connect continues to grow in test mode. We now have five sections and LeadershipSBOT participating. The texasbar.com website refresh is progressing well. This refresh is aimed at simplifying the website design and making the site more user-friendly. The State Bar was honored on November 7th as one of the top 10 state agencies on Twitter by the Texas Social Media Institute, part of Tarleton State University. Our twitter account ranks seventh among state agencies in the number of followers and eighth among state agencies in "Klout Score". President Apffel remarked on the power of social media to build relationships, especially among younger attorneys who expect us to be active on online platforms. President Apffel noted that the Solo Practitioners and Small Firms presentation on January 14th in Waco was another success, and he highlighted the various presentations that were made by board members at the event.

President Apffel introduced Jan Miller, director of Law Related Education, and noted that the LRE department serves as a catalyst to advance law related and civic education programs throughout the state through curriculum development and educator training. Jan Miller reported on the Hatton Sumners Foundation program and various LRE civic education initiatives and resources.

President Apffel noted that there are two amicus requests from State Bar sections, both of which were approved by the Ad Hoc Submission Committee on an emergency basis according to the policy manual, because the deadlines for the briefs were before the date of the Executive Committee meeting. It was the legal counsel's view in both cases that the requests fell within the interests and expertise of the respective sections, combined with *Keller* and the State Bar Act, and could be approved. In October, the Submission Committee approved an emergency request from the Intellectual Property Law Section to file an amicus in *B&B Hardware, Inc. v. Hargis Industries, Inc.* in the U.S. Supreme Court. The brief was filed on October 31st, and the case involves whether a Trademark Trial and Appeal Board decision should be given preclusive effect in a subsequent infringement proceeding in district court, and in the alternative whether a TTAB decision should be given deference in a subsequent proceeding. The Section's position is that TTAB decisions should not normally be given preclusive effect or deference.

President Apffel moved that the Board ratify the Ad Hoc Submission Committee's approval of the Intellectual Property Law Section's request to file an amicus brief in *B&B Hardware, Inc. v. Hargis Indus., Inc. d/b/a Sealtite Building Fasteners, d/b/a East Texas Fasteners* pursuant to Policy Manual Section 8.02.04(C); Immediate Past President Lisa Tatum seconded. Barbara Bass abstained from voting. Motion carried. [Exhibit L]

In November, the Ad Hoc Submission Committee approved an amicus request from the Bankruptcy Law Section in the case of *Baker Botts LLP v. ASARCO LLP* in the U.S. Supreme Court. In September, the EC and Board ratified approval of a request in the same case on petition for writ of certiorari. Certiorari was granted and the Section sought to file an amicus on the merits. The brief was filed on December 10th, and the Section again asked

to assert its position that the bankruptcy judges should have discretion to award fees for the defense of a fee application.

President Apffel moved that the Board ratify the Ad Hoc Submission Committee's approval of the Bankruptcy Law Section's request to file an amicus brief in *Baker Botts, L.L.P. v. ASARCO, LLC* pursuant to Policy Manual Section 8.02.04(C); Immediate Past President Tatum seconded. Motion carried. [Exhibit M]

C. Report from the President-elect:

President-elect Allan DuBois noted that one of his goals when running for President-elect was to be an advocate for lawyers and to promote our services supporting mental health and wellness, and in particular raising awareness of the Texas Lawyers' Assistance Program. The TLAP program offers confidential help for lawyers, law students, and judges who have problems with substance abuse and/or mental health issues. This effort will include the production of a short video designed to inspire members to get help for themselves or lawyers they know. President-elect DuBois also reported that he would work on raising support for the Patrick D. Sheeran & Michael J. Crowley Memorial Trust, which provides financial help to Texas attorneys who need, but cannot afford, treatment for substance abuse, depression, and other mental health issues. He also will work to ensure the recommendations of the Task Force on Aging Lawyers Issues are carried forward, as well as engaging those attorneys by partnering them with younger lawyers for mentoring programs.

The Committee Review Task Force, chaired by President-elect DuBois, conducts a comprehensive review of the committees biennially to determine whether there is a continued need for each committee and whether there is unnecessary overlap of committee activities. The task force has begun its work reviewing the committees, and is looking at such matters as term limits for Pattern Jury Charge Committees and the Real Estate Forms Committee. The task force will present their recommendations to the Board at the April Board meeting.

President-elect DuBois reported that the State Bar's proposed General Fund budget includes revenues and transfers from reserves of \$41,402,024. 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 \$313,160 contribution for the Student Loan Repayment Assistance Program (the fifth and final payment of five payments totaling \$1.75 million). The Budget Committee is recommending the following Board commitments of the unassigned fund balance resulting from the previous year's financial activities; a \$42,192 increase to the minimum reserve in order to maintain it at \$9.12 million; \$250,000 to the Sheeran Crowley Memorial Trust; \$200,000 to the Client Security Fund; and a \$50,000 commitment to the Technology Fund to be used to pay for maintenance costs. The Budget Committee is also recommending two reclassifications of previous board commitments, \$25,000 from the *Texas Bar Journal* Readership Survey and \$30,000 from the Compensation Analysis Survey, for a total of \$55,000 to be transferred to the Technology Fund.

On behalf of the Budget Committee, President-elect DuBois moved for approval of the SBOT FY 2015-16 proposed budget for publication in the *Texas Bar Journal*, including commitments of the excess fund balance as outlined above; no second needed. Motion carried. [Exhibit N]

D. Report from the Immediate Past President:

Immediate Past President Tatum reported that in October, she presented *I Was the First. Vote for Me!* to the San Antonio Council on Alcohol and Drug Abuse and also used the opportunity to highlight other State Bar and TYLA programs, including *The Unconscious Truth*, *BSAFE*, and *Oyez Oyez, O Yay!* She was also honored to receive an ABA GPSolo Difference Makers Award, which is given to attorneys who break down barriers through community service, pro bono work, and service to the legal profession. She participated in the 10th annual

National Black Pre-Law Conference and Law Fair in Houston and spoke as a panelist during a workshop on legal careers. Next month she will join Benny Agosto on a Diversity Forum panel at the National Conference of Bar Presidents during the ABA mid-year meeting.

E. Nominations & Elections Subcommittee:

Immediate Past President Tatum reported that the subcommittee interviewed five highly qualified individuals to be considered as nominees for President-elect for this “large city” year. The subcommittee voted to select Randy Howry of Austin and Frank Stevenson of Dallas. Additionally, there are 10 elected members of the Board whose terms are expiring in June. This is the year that the Bar’s redistricting of elected board positions goes into effect. In 2012, the Court approved the Board’s proposal to reapportion one director position from Houston, District 4, and move it to Austin, District 9. **[Exhibit O]**

Immediate Past President Tatum reminded Board members that there are limitations on what they can do in the campaigns for president-elect. Board members may not endorse, support, or participate in the campaigns in their official capacities.

On behalf of the N&E subcommittee, Immediate Past President Tatum moved for approval of Randy Howry of Austin and Frank Stevenson of Dallas as State Bar candidates for President-elect for the 2015 election; no second needed. Motion carried. [Exhibit P]

The two candidates were introduced – Randy Howry by David Chamberlain, and Frank Stevenson by Frank Carroll. Both addressed the Board.

F. Policy Manual Subcommittee:

Diane DeVasto reported that the Policy Manual Subcommittee expects to bring proposed policy manual revisions for action to the April Board meeting. Specifically, they are anticipating proposed revisions to the Amicus brief approval process, minor revisions to Section 7.05 concerning the policies for the Texas Bar Journal, and possible revisions proposed by the Committee Review Task Force.

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

Guy Harrison reported that the Commission met the day before in Austin. Harrison reported on second quarter disciplinary sanctions statistics and year-to-date attorney’s fees collections, and considerations for district grievance committee appointments, stressing the importance of areas of practice diversity. Harrison also reported on barratry efforts. **[Exhibit Q]**

H. Texas Young Lawyers Association:

TYLA President Rebekah Brooker reported on various projects completed and in the works, including the Pro Se Litigants project, “Just In Case” – Attorneys Get Your Affairs In Order, the Just Drive Campaign on driving distracted, and the web-based Bullying Project. Brooker also announced the two TYLA president-elect candidates, Sam Houston from San Antonio and John Shaw from Fort Worth.

I. Administration Committee:

Laura Gibson reported that the Employment/Salary/Evaluation Subcommittee reviews the State Bar Affiliated Entities in accordance with Board policy 1.17, and currently they are reviewing Texas Legal (formerly TLPP). Recommended actions, if any, will be presented for approval at the April Board meeting. The subcommittee is

also working on revising the State Bar Employee Handbook, and has utilized the work of Lacey Gourley of Winstead PC, who has reviewed the policies.

Gibson reported that the State Bar Advertising Review Committee has submitted a proposal to raise the application fees for reviewing lawyer advertisements, which is necessary to cover the increased costs to operate the department. The disciplinary rules require that certain forms of public media advertisements and written solicitations be filed with the Ad Review Committee for their review. There have been no fee increases since 2001. The current proposal increases the review fee from \$75 to \$100 and the non-filer application from \$300 to \$325.

On behalf of the Administration Committee, Gibson moved for approval of the Advertising Review Committee's proposal to increase application fees for lawyer advertising; no second needed. Motion carried. [Exhibit R]

Dr. David Teuscher reported that the Facilities & Equipment Subcommittee has been negotiating the Houston CDC lease, which expires on October 31, 2015. The Houston office currently has 20 employees, and the gross rental rate for the current Class B lease space is \$172,800/year. The landlord proposed a 67% increase in rent to renew the current lease. The subcommittee and staff toured nine properties in Houston, narrowing it down to two properties; Wortham Tower at \$286,944/year and Woodway Center at \$212,868/year.

On behalf of the Facilities & Equipment Subcommittee, Dr. Teuscher moved for approval of State Bar staff to pursue negotiations with the owners of Woodway Center and to authorize the Administration Committee to approve a lease at Woodway Center; no second needed. Motion carried.

David Alders reported that the State Bar Act requires the State Bar to adopt a revised strategic plan every two years, and this is typically done in odd-numbered years. Based on input received from the Board Retreat in July, the strategic plan has been updated with refinements in order to make it more clear and readable. The changes are not wholesale and are non-substantive.

On behalf of the Performance Measures and Strategic Planning Subcommittee, Alders moved for adoption of the updated Strategic Plan; no second needed. Motion carried. [Exhibit S]

J. Audit and Finance Committee:

Tom Riney reported that Padgett Stratemann & Co., LLP has completed the financial audit for FY 2013-14, and it resulted in the Bar receiving an "unqualified opinion", the best financial audit opinion the State Bar can receive. Padgett, Stratemann also provided a letter entitled "Letter on Conduct of Audit & Management Letter Comments", which summarizes the audit processes used and also notes that the auditors encountered no difficulties and had no disagreements with management during the audit. The CPA firm of Maxwell Locke & Ritter LLP has completed the State Bar's internal control audit for FY 2013-14. The auditors suggested instituting stronger controls over the receipt of monies within the TexasBarCLE department. Management has implemented new processes to tighten the controls by requiring two staff to open the mail and an additional staff to reconcile the deposit. As of November 30th, the General Fund actual net revenues over expenditures and transfers totaled approximately \$785,000. At the end of November, the General Fund had a positive budget to actual net variance of approximately \$377,000, which represents a 92% positive variance. Riney noted that Ken Couch from PFM Asset Management LLC presented the investment reports to the Audit and Finance Committee the day before. The State Bar's General Fund portfolio is fully invested in U.S. treasuries, 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, Tom Riney moved for acceptance of the following:

- 1) **FY 2013-2014 Financial Audit Report;**
- 2) **FY 2013-2014 Internal Audit Report; and**
- 3) **August 2014 and November 2014 Quarterly Investment Reports; no second needed. Motions carried. [Exhibit T]**

K. Client Security Fund Subcommittee:

Denise Scofield reported that the Client Security Fund Subcommittee met the day before the Board meeting and reviewed 37 claims and awarded \$136,105. The total amount awarded so far this year is \$235,135.

L. Member Services and Education Committee:

Scott Rothenberg reported that the Appeals/Grants Review Subcommittee received a request for authorization to seek outside funding from the Texas Bar Foundation. Law Focused Education, Inc. is seeking funding for their public service video project called "Seven Principles of the United States Constitution". The Appeals/Grants Review Subcommittee approved the request. Rothenberg also reported that the subcommittee reviewed two appeals from attorneys who were denied certification by 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 Hank Prejean, whose application for certification in Civil Appellate Law had been denied due to a lack of experience in the number of appeals handled by the attorney; and Kathy Roux, whose application for certification in Estate Planning and Probate Law was denied due to a lack of experience in the practice area.

On behalf of the Appeals-Grants Review Subcommittee, Scott Rothenberg moved for approval of the following:

- 1) **The recommendation of the subcommittee to deny the appeal submitted by Mr. Hank Prejean and uphold the decision of TBLS; no second needed. Motion carried.**
- 2) **The recommendation of the subcommittee to deny the appeal submitted by Ms. Kathy Roux and uphold the decision of TBLS; no second needed. Motion carried. [Exhibit U]**

Hap Weitzel reported that the New Directors Orientation subcommittee met yesterday to plan the orientation for new board members, and this year's orientation has been streamlined. The orientation is scheduled for a half day on June 17th in conjunction with the Annual Meeting in San Antonio.

Susan Nelson reported that TexasBarCLE has begun the first phases on putting all of their online programs directly into the Cloud rather than going through a commercial middleman. Overall expenses are up by only one percent over budget, but expenses relating to hotels and air travel are up about nine percent. Texas Bar Books' revenue for the year will be impacted by the Real Estate Forms Manual committee's decision not to draft a supplement for publication this year. The committee has committed to drafting a supplement for publication next year.

David Chamberlain reported that there are currently 3,450 members of the Private Insurance Exchange. Members of the Member Benefits Subcommittee have been giving presentations on the Exchange in Austin, Houston, Dallas, Fort Worth, and Lubbock later this month. Chamberlain encouraged the Board members to grow the Exchange by communicating with the members in their districts about the many products available.

Louis Iselin reported that State Bar staff conducted a business continuity test, including establishing remote workspace and computer workstations, telephone call centers, and remote network access. In late November, implementation of the new backup system approved by the Technology Oversight Subcommittee at their

September meeting was successfully completed. The subcommittee will meet later this month to review and approve capital replacements for desktop computers, the Bar's primary virtual server system, and a new Intrusion Detection System.

M. Ad Hoc Committee to Select Minority Directors:

Andrew Wallace reported that the Ad Hoc Committee to Select Minority Directors will make a recommendation to President Trey Apffel for appointment. The deadline for nominations was December 15th. Ten nominations were received. The Committee will interview six nominees on January 29th, and will recommend two to President Apffel for appointment. President Apffel will appoint one of the nominees to serve as a minority director beginning at the Annual Meeting in June to replace Jaime Balli, whose term is expiring. The Board will vote to confirm the appointment at the April Board meeting.

N. Section Representatives to the Board Committee:

Scott Rothenberg reported that in December, the State Bar received a request from the Appellate Section to assert its own position on proposed changes to the Federal Rules of Appellate Procedure. The section requests permission to oppose proposed reductions in word limits on appellate briefs from 14,000 words in principal briefs to 12,500 words, and from 7000 in reply briefs to 6250 words. According to the process required by Policy Manual Section 8.01.10, the request was sent to the Executive Director, the Chair of the Board, and State Bar president and TYLA president, as well as being circulated for comment to all section and committee chairs, and no comments were received.

Brian Miller moved for approval of the Appellate Law Section's request to assert a position regarding changes to the Federal Rules of Appellate Procedure; Tino Ramirez seconded. Motion carried. [Exhibit V]

O. Access to Justice Commission:

Trish McAllister reported on ATJ funding, law school incubator programs, and statewide pro bono work groups. The ATJ Gala will be held in Austin on April 7th.

P. Supreme Court Liaison:

Justice Johnson reported that the Court is focused on the legislature during this time of the year, from presenting their budget to supporting access to justice. The Court will sit in Tyler this spring to hold oral arguments.

Q. Court of Criminal Appeals Liaison:

Judge Michael Keasler reported that three new judges of the Court of Criminal Appeals were sworn in last week, Bert Richardson, Kevin Patrick Yearly, and David Newell. The Court will sit in El Paso in February.

R. Federal Judicial Liaison:

Judge Ed Kinkeade remarked how pleased he was that the Board was meeting in Waco. He also reported on the variety of types of cases they see in federal court in Texas.

S. Executive Director:

Executive Director Michelle Hunter presented Michael Dobbs from Advertising Review with the employee of the quarter award.

T. Legal Counsel:

John Sirman reported that *Citizens Against The Bar, Jamar Osborne, and Mikal Osborne v. Travis County, Julia E. Vaughn, and Buck Files* (1:13-cv-00528-LY, U.S. District Court, Western District of Texas) was dismissed.

Closed Session: At 12:28 p.m., the Board recessed the open meeting and reconvened in closed session pursuant to Texas Government Code, Section 551.071 for the purpose of consultation with legal counsel concerning pending litigation, *John V. McShane v. Mary L. Greiner* (DC-13-07712, 298th District Court of Dallas). With the exception of Board liaisons and Section representatives, all other individuals including non-essential staff and other guests excused themselves from the closed session.

Open Session: At 12:37 p.m., the open session of the Board of Directors meeting reconvened. During the closed session, only matters relating to consultations with legal counsel concerning pending litigation were discussed. No action was taken in closed session.

There being no further business, the meeting was adjourned at 12:39 p.m.

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