

**OFFICIAL MINUTES
STATE BAR OF TEXAS
BOARD OF DIRECTORS MEETING
The Westin Stonebriar
Frisco, TX
Friday, September 25, 2015**

The Board of Directors of the State Bar of Texas met in regular session on September 25, 2015 at the Westin Stonebriar in Frisco. Chair of the Board David Chamberlain 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. Diane DeVasto delivered the invocation, and Ben Barlow lead the pledges to the U.S. and Texas flags. During the meeting, Carter Crow from Houston and Rebecca Simmons from San Antonio were both sworn in by Justice Phil Johnson as new district directors.

Present:

Board Members: Rehan Alimohammad, Immediate Past President Trey Apffel, Ben Barlow, Barbara Bass, Micah Belden, Brent Benoit, TYLA Immediate Past President Rebekah Brooker, Amy Bryan, Alan Carmichael, Frank Carroll, Chair of the Board David Chamberlain, Carter Crow, Diane DeVasto, President Allan DuBois, Richard Elliott, Joe Escobedo, Sylvia Firth, Ricky Gonzalez, Ann Greenberg, August Harris, TYLA President-elect Sam Houston, Joe Indelicato, John Jansonius, Andy Kerr, Immediate Past Chair of the Board Roger Key, Brian Miller, Susan Nelson, Gail Plummer, Tino Ramirez, Ruben Robles, Anna Sankaran, Lance Sharp, Scott Sherwood, Scott Stolley, President-elect Frank Stevenson, TYLA President Barrett Thomas, Andrew Tolchin, Travis Torrence, Andrew Wallace, Michael Wynne

Liaisons*: Judge Fred Biery, Justice Phil Johnson, Judge Michael Keasler, Tim Mountz, Judge Pat Pirtle

Section Representatives*: Alison Colvin, Philip Mack Furlow, Tina Green, Pat Maher, Audrey Moorehead, Grant Scheiner

Excused Absences: Leon Carter, Curry Cooksey, Rice Horkey, Mary Abbott Martin, Gary Nickelson, Ford Sasser

(* = nonvoting)

I. CONSENT AGENDA ITEMS

Upon motion properly made by John Jansonius and seconded by Susan Nelson, the following actions were taken regarding the Consent Agenda items:

- A. 1. Approval of minutes of Board meetings conducted on June 17-18, 2015
2. Ratification of actions taken at the following Executive Committee meeting:
- a) **September 10, 2015:** Approved minutes of the March 10, 2015 Executive Committee meeting

B. Items from the President:

Approval of appointments to the following entities:

1. **Delegates to the 2016 Fifth Circuit Judicial Conference:**

**President Allan K. DuBois
Immediate Past President Trey Apffel**

**President-elect Frank Stevenson
Chair of the Board David Chamberlain
Executive Director Michelle Hunter
TYLA President C. Barrett Thomas**

2. **Texas Center for Legal Ethics, for an unexpired term effective September 25, 2015 through May 31, 2016:**

J.B. Whittenburg (Beaumont)

3. **Texas Real Estate Broker/Lawyer Committee, for a six year term effective September 1, 2015 through August 31, 2021:**

Brian J. Watts (Dallas)

C. Items from Committees and Sections/Divisions:

1. Approval of request by the Alternative Dispute Resolution Section to amend its bylaws **[Exhibit A]**¹
2. Approval of request by the Animal Law Section to amend its bylaws **[Exhibit B]**
3. Approval of request by the Consumer and Commercial Law Section to amend its bylaws **[Exhibit C]**
4. Approval of request by the Computer and Technology Section to amend its Bylaws **[Exhibit D]**
5. Approval of request by the Insurance Law Section to amend its bylaws **[Exhibit E]**
6. Approval of request by the Tax Section to amend its bylaws **[Exhibit F]**
7. Approval of request by the Poverty Law Section to increase its dues from \$15 to \$20 **[Exhibit G]**

D. Other Items:

1. **Nominating Committee to Select ABA Delegates (*Chair Lisa Tatum*)**

Approval of appointment of delegate to the American Bar Association House of Delegates for an unexpired term expiring at the conclusion of the 2017 ABA Annual Meeting:

**Trey Apffel (League City)
Frank Stevenson (Dallas)
Jay E. Ray (McKinney)
Lacy Durham, YLD (Dallas)**

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

Trey Dowdy (Dallas)

II. REPORTS

A. Report from the Chair of the Board:

Chair of the Board David Chamberlain reported that the Board is committed to a coordinated communications plan to inform our constituents how the State Bar serves members and the public. In October, a letter will go out to all constituents in each district from each director in that particular district. In February, a similar process will take place with an e-blast. Directors received a PowerPoint presentation to present to local bar associations in their district that is MCLE accredited for the entire Bar year. Also included is a professionalism presentation, a project of the Professionalism Committee, which is an optional addition to the standard State Bar Update presentation and which is pre-approved for one hour of CLE ethics credit.

Chair Chamberlain gave an update on the new lawyer oath, the result of Senate Bill 534 that added a civility element to the existing Texas Lawyer's Oath. As part of the oath, an attorney will pledge to "conduct oneself with integrity and civility in dealing with and communicating with the court and all parties." The new oath will be used to swear in inductees at the next New Lawyer Induction Ceremony on November 16 at the Erwin Center in Austin.

Chair Chamberlain solicited candidates for the 2016-17 Chair of the Board. Per Board policy, second-year voting directors interested in running for chair must 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 must 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 State Bar.

B. Report from the President:

President Allan DuBois reported that LeadershipSBOT kicked off last week in Austin with a new class. On Wednesday in Frisco, President DuBois spoke at the Solo and Small Firm CLE event, along with several other Board members. President DuBois noted that the Supreme Court issued a final order on August 28th amending Article XII of the State Bar Rules to eliminate the MCLE exemption for emeritus attorneys. Beginning June 1, 2016, emeritus members will be required to comply with MCLE requirements. The purpose of the Rule change is to ensure that all active, practicing attorneys continue to receive current legal education. President DuBois reported that the TLAP inspirational video "TLAP Is There" has launched and is getting positive responses. An excerpt from the video was played. He noted that \$333,000 has been raised for the Sheeran-Crowley Trust, and the donor list now includes the State Bar, Texas Bar College, TCLE, Texas Lawyers Concerned for Lawyers, the Family Law Section, James C. Watson Inn of Former Officers and Directors, the Book Fund, the Annual Meeting Fund, and the Labor and Employment Law Section.

C. Report from the President-elect:

President-elect Frank Stevenson noted that he is enjoying his various duties this year serving as President-elect. He reported that the Budget Committee held its first meeting yesterday to discuss the State Bar's budget process and timeline. Budget packets will be furnished to division and department directors on October 2nd with an October 16th completion deadline. The Budget Committee is scheduled to meet on Thursday, December 10th to discuss and finalize a proposed FY 2016-17 budget for presentation to the Executive Committee and to the Board at their respective January meetings.

D. Report from the Immediate Past President:

Immediate Past President Trey Apffel made remarks on Justice Sandra Day O'Connor's rise to becoming the first female appointed to the United States Supreme Court. He also reported that Baylor Law School was selected to receive a 2015 Pro Bono Publico Award from the ABA Standing Committee on Pro Bono & Public Service. The award ceremony was held on August 1st at the ABA meeting in Chicago, and Baylor was the only law school that received the award.

E. Nominations and Elections Subcommittee:

Immediate Past Chair Roger Key reported that the Nominations and Elections subcommittee has begun the process of finding potential nominees to run for President-elect. For this election cycle, it is a small city year, meaning that potential nominees may come from the non-metropolitan areas of the state (all counties except Bexar, Dallas, Harris, Tarrant, or Travis counties). The subcommittee met yesterday to consider potential nominees, and plans to conduct interviews in December in order to submit the names of two nominees to the Board in January for consideration. The election will begin on April 1st and end on April 30th.

Immediate Past President Apffel reported that the committee periodically reviews the election rules to determine whether any changes should be made to the election process. This year, the proposed amendments deal mainly with social media communications as they pertain to district director and president-elect candidates. For district director candidates, the proposed amendments allow use of a campaign website and social media communications and prescribes parameters and timing for use. For president-elect candidates, the revisions would allow the use of more social media providers in campaigns. Currently, Facebook is the only social media allowed. The proposals would also expand the type of content allowed on campaign websites and social media, to allow candidates to include more information about their professional background.

On behalf of the Nominations and Elections Subcommittee, Immediate Past President Apffel moved for approval of the proposed revisions to the Board Policy Manual pertaining to director and president-elect candidate campaigns; no second needed. Motion carried. [Exhibit I]

F. Commission for Lawyer Discipline/Chief Disciplinary Counsel:

Linda Acevedo gave a general report on the members and purpose of the Commission for Lawyer Discipline, the diversity of grievance committee members, annual report highlights, and the ethics hotline. **[Exhibit J]**

G. Texas Young Lawyers Association:

TYLA President Barrett Thomas reported on upcoming TYLA activities and projects, including “*And Justice for All: Preventing Wrongful Convictions Through Education*,” which is a web based program designed to educate young criminal law practitioners about how to recognize common issues and situations that lead to wrongful convictions.

H. Administration Committee:

Rebekah Brooker reported on behalf of the Performance Measures and Strategic Planning Subcommittee. She noted that at the January Board meeting, the Board adopted a revised SBOT strategic plan, and today the updated performance measures are being presented for approval as required by the State Bar Act. The updates are refinements rather than wholesale changes.

On behalf of the Performance Measures and Strategic Planning Subcommittee, Brooker moved that the Board adopt the updated performance measures for FY 2016 and 2017; no second needed. Motion carried. [Exhibit K]

I. Audit and Finance Committee:

Brent Benoit reported that the total amount of revenues for FY 2014-15 was \$39.6 million with total expenditures and operating transfers of \$38.7 million. This resulted in a net excess of \$925,000. The State Bar’s fund balance as of May 31, 2015 is \$12.5 million. This represents a decrease of slightly over \$2.1 million resulting from FY 2014-15 financial activities, which included special Board commitment expenditures of approximately \$3.1 million. The actual net excess for the first two months of the current fiscal year was \$803,000, which resulted in a positive variance of \$90,000 at the end of July.

The CPA firm of Padgett & Stratemann is performing the State Bar's financial audit for FY 2014-15, 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, provided an investment presentation. The State Bar's general fund portfolio is fully invested in U.S. treasuries, federal agency securities, commercial paper, FDIC insured certificates of deposit, and AAAM-rated money market mutual funds. Overall the portfolio is highly liquid and maintains high credit quality. The portfolio generated a quarterly total return of .10% which outperformed the benchmark 6-month Merrill Lynch Treasury Index return of .01%. PFM representatives continue to work with State Bar's CFO to place investments in those areas that will produce the highest yields while maintain safety of principal and liquidity as required by the Public Funds Investment Act.

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

(1) Acceptance of the May 2015 and August 2015 quarterly investment reports; no second needed. Motion carried.

(2) Approval of PFM Asset Management, LLC, Patterson & Associates, 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. [Exhibit L]

J. Client Security Fund Subcommittee:

Gail Plummer reported that the Client Security Fund was established in 1975 to restore client confidence when a Texas attorney steals money intended for a client or fails to refund unearned fees. The subcommittee met yesterday and reviewed 35 claims for a total of \$103,691 in payments to claimants. The subcommittee has paid out a total of \$209,252 for the fiscal year so far.

K. DCAAP Subcommittee:

Frank Carroll reported that the DCAAP Subcommittee met yesterday for the first time this year, and they received an overview from the Chief Disciplinary Counsel about disciplinary procedures. There are no plans currently to address any specific disciplinary rule changes this year, but the subcommittee will keep the Board updated if anything changes.

L. Appeals/Grants Review Subcommittee:

Richard Elliott 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 "*And Justice for All: Preventing Wrongful Convictions Through Education*", which Barrett Thomas discussed earlier. The subcommittee unanimously approved the request to seek funding from the Texas Bar Foundation for this project. **[Exhibit M]**

M. Professional Development Subcommittee:

Susan Nelson reported that the PDP Subcommittee met jointly with the CLE Committee on August 21 to brainstorm new topics and hear staff reports. The TexasBarBooks' *Family Law Practice Manual* will be moving towards an online subscription version which will reduce costs for attorneys. The TexasBarCLE scholarship program, offering high-quality CLE without regard to a lawyer's financial situation, has been expanded for emeritus attorneys and will be allowed for more than just one course per attorney.

N. Insurance/Member Benefits Subcommittee:

Joe Escobedo reported that the Texas Bar Private Insurance Exchange, the one-stop marketplace for health insurance and other products, has been a tremendous success and continues to grow. Currently the Exchange has 4,505 major medical enrollments, and 10,558 individuals are enrolled in one or more insurance products through the Exchange. The 2016 open enrollment for health insurance products will run from November 1, 2015 to January 31, 2016. In addition to insurance, there are currently 283 non-insurance benefit offers available to members. The Exchange is working to rebrand and relaunch the 401K program offered by ABA Retirement Funds, which will be called the SBOT Retirement Member Benefit. Escobedo also reported on the SBOT Insurance Trust, noting that the Trust was created in 1973 to help members obtain affordable insurance. Over the last two years, the Board has made changes to the Trust to streamline its operation, and currently three members of the Board serve as trustees. To further modernize the structure, the subcommittee is recommending that we move to a format where a bank will serve as trustee, and the Board will continue to oversee the operations. PlainsCapital, our prime partner bank, has agreed to serve as trustee. Escobedo also announced that the Trust is now offering a wellness program, which allows enrollees to earn money by completing a health assessment and taking part in health workshops.

On behalf of the Insurance/Member Benefits Subcommittee, Escobedo moved for approval of the amended and restated Trust agreement as presented; no second needed. Motion carried. [Exhibit N]

O. Technology Oversight Subcommittee:

Grant Scheiner reported that the Technology Oversight Subcommittee approved capital replacement of computers and it is proceeding according to plan. The MCLE software system replacement project is underway. This project will replace the existing 15 year-old system for tracking MCLE compliance, and will provide new features such as online fee collection.

P. Supreme Court Liaison:

Justice Phil Johnson reported that the Supreme Court cleared their docket of all argued cases by the end of the fiscal year. The Court will sit at Abilene Christian University this fall. Justice Johnson reported that comments were received after the emeritus attorney MCLE changes were published, and a few were positive.

Q. Court of Criminal Appeals Liaison:

Judge Michael Keasler reported that the new term of the Court of Criminal Appeals began earlier this month, and many new cases have come up. The Court had a productive joint lunch with the Supreme Court recently.

R. Federal Judicial Liaison:

Judge Fred Biery noted that he is thankful to serve as a liaison this year for the Federal Court. There are eight judicial vacancies at this time.

S. Judicial Section Liaison:

Judge Pat Pirtle reported that the Judicial Section is dedicated to ensuring that justice is served. The Section's annual meeting will convene next week in Dallas.

T. Out of State Lawyer Liaison:

Tim Mountz reported that there are approximately 10,500 lawyers licensed in Texas that are practicing outside the state, which is a 51% increase from 10 years ago.

U. Report from the Executive Director:

Michelle Hunter reported that staff is working on alternate ways to disseminate board materials as a cost saving method. Over the next 21 months, the State Bar will be going through the Sunset Review process, and the Self Evaluation Report completed by staff was submitted to the Sunset Commission on September 1. The next step in the process will be the Sunset staff review. Hunter presented Bree Buchanan from TLAP with the Employee of the Quarter Award.

There being no further business, the meeting was adjourned at 11:32 a.m.

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