

**OFFICIAL MINUTES  
STATE BAR OF TEXAS  
BOARD OF DIRECTORS MEETING  
Waterway Marriott Hotel  
The Woodlands, Texas  
Friday, January 22, 2016**

The Board of Directors of the State Bar of Texas met in a regular session on January 22, 2016 at the Waterway Marriott Hotel in The Woodlands, Texas. Chair 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. Susan Nelson delivered the invocation, and Frank Carroll led the pledges to the U.S. and Texas flags. Chair Chamberlain introduced Amy Tripp and Katharine Teleki from the Sunset Advisory Commission.

***Present:***

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

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

**Section Representatives\*:** Alison Colvin, Tina Green, Pat Maher, Audrey Moorehead, Grant Scheiner

***Excused Absences:*** TYLA Immediate Past President Rebekah Brooker, Philip Mack Furlow\*, Ricky Gonzalez, Rebecca Simmons, Andrew Wallace

(\* = nonvoting)

**I. CONSENT AGENDA ITEMS:**

**Upon motion properly made by Brian Miller and seconded by Joe Indelicato, the following actions were taken regarding the Consent Agenda items:**

- A. Approval of minutes of Board meeting conducted on *September 25, 2015*
- B. Ratification of actions taken at the following Executive Committee meeting:
  - 1) ***January 7, 2016:*** Approved minutes of the September 10, 2015 Executive Committee meeting
- C. Approval of appointments to the following entities:
  - 1) **Texas Real Estate Commission Broker/Lawyer Committee**, for a term effective January 22, 2016 through August 31, 2021:

**Charles Kramer (Plano)**

**2) Texas Bar Foundation's Board of Trustees:**

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

*lawyers:*

**Florentino A. Ramirez (Dallas)**

**Janna Ward Clarke (Fort Worth)**

**Jaime Balli (Edinburg)**

*public member:*

**Tim Kelly (Austin)**

- D. Approval of request by the Tax Section to increase its dues from \$35 to \$40 effective at the next dues cycle
- E. Approval of request by the Family Law Section to amend its bylaws [**Exhibit A**]
- F. Approval of the 2016-17 Preliminary Calendar/Holiday Schedule [**Exhibit B**]
- G. Approval of State Bar Legislative Timetable [**Exhibit C**]
- H. Approval of 2016 General and Run-off Election Timetable for President-elect and District Director [**Exhibit D**]
- I. Approval of resolutions honoring: [**Exhibit E**]

**1) The Hon. Kathleen A. “Kathy” Hamilton (Montgomery County)**

**2) The Hon. K. Michael Mayes (Montgomery County)**

**II. REPORTS:**

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

Chair Chamberlain reported that he 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. He noted that it is important that directors coordinate with MCLE when giving presentations in their district to ensure proper credit is given to our attorneys. He 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 February. The New Lawyers Induction ceremony on November 16<sup>th</sup> was very well attended, and thanks to Senate Bill 534, a new oath was used to swear in new members. The bill’s authors and sponsors were there to commemorate the occasion.

*At this time, Justice Johnson administered the new lawyer’s civility oath to the whole Board.*

Chair Chamberlain reported that Joe Escobedo, Joe Indelicato, and John Jansonius have announced their intention to run for Chair of the Board for 2016-17, and the chair election candidates gave brief remarks. [**Exhibit F**]

**Chair Chamberlain 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. He then declared that the method of voting will be done by written ballot at the April meeting.**

B. Report from the President:

President Allan DuBois reported on his travel and various activities over the last months, including helping with veterans' clinics, senior interest issues, and LeadershipSBOT. Another successful solo/small firm CLE event was held in the Woodlands before the Board meeting. After deadly tornadoes hit north Texas on December 26, the State Bar took action to publicize its legal hotline and newly updated disaster relief web page. The State Bar continues to promote its inspirational video, *Courage, Hope and Help: TLAP Is There*, and for several months TexasBarCLE has offered a 30-minute version of the video as a free ethics CLE. The State Bar is conducting a judicial poll for contested primary races for the Texas Supreme Court, the Court of Criminal Appeals, and the courts of appeals from various judicial districts around the state. Ballots were sent electronically on January 13 and must be received by February 5. The Annual Meeting is June 16-17 in Fort Worth and there are great speakers lined up this year. Thanks to fundraising efforts, more than \$432,000 has been raised for the Sheeran-Crowley Memorial Trust to support life-saving treatment for attorneys suffering from substance abuse and mental health issues.

President DuBois reported that St. Mary's School of Law was unhappy with a recent decision of the MCLE Committee which resulted in a "notice of non-accreditation" for future presentations of the course it sponsored, *Christian Ethical Perspectives: Faith and Law Today*. The course was held in October at St. Mary's with provisional MCLE approval, and all attendees received full course credit. Since approval was provisional, the MCLE Committee reviewed the course and based on the supporting materials submitted, decided that future presentations of the course would not be accredited. St. Mary's appealed the decision. The Executive Committee discussed the matter and agreed that our letter notice unintentionally created an impression that we would not approve courses containing religious content, and directed the MCLE department to draft a new letter that expressed regret for the miscommunication, withdrew the notice of future non-accreditation, and better explained our established practice of granting credit for courses with religious content. St. Mary's then withdrew their appeal, and the MCLE Committee will work with St. Mary's and others to clarify and update the Accreditation Standards regarding religious and moral content.

President-elect Frank Stevenson reported that the ABA's Commission on the Future of Legal Services was formed to recommend innovations to improve the delivery of and access to legal services by the public. The ABA Commission has a resolution up for consideration at the February ABA Midyear meeting that asks the ABA House of Delegates to approve what it describes as "model regulatory objectives for the provision of legal services." [Exhibit G] Concerns were expressed at the Executive Committee meeting about the purpose of ABA resolution, which urges that the highest state court in every state be guided by those regulatory objectives when developing regulations for what the ABA resolution terms "non-traditional legal service providers," a phrase which created concern. In November, the Supreme Court of Texas created the Texas Commission to Expand Civil Legal Services to look at proposals and initiatives to help close the justice gap, the same purpose and goal as the ABA Commission that proposed their resolution. The Executive Committee proposed that the Board draft its own resolution expressing concerns about any resolution or policy that would presume, endorse, or promote the practice of law by non-lawyers, especially because the Texas Commission has not begun its work or issued a report. The resolution is being presented today and will be shared with the Texas delegates in advance of the ABA midyear meeting next month. Several comments were made in favor of the SBOT resolution, and one opposition, with reason being that SBOT should take no position and let ABA delegates vote their consciences on the matter.

**President-elect Stevenson moved for adoption of the resolution, expressing reservations about the concept of "non-traditional legal services providers" and suggesting to the Texas delegates that support of this ABA resolution before the Texas Commission to Expand Legal Services has issued its final report would be premature; Frank Carroll seconded. Motion carried with one nay vote. [Exhibit H]**

C. Report from the President-elect:

President-elect Stevenson reported on one of his primary programs for next year, which will be legal incubator programs focused on improving legal service delivery through innovation and entrepreneurship. There are currently more than 50 legal incubators in the country and almost as many models for how an incubator program can be set up. The goal of incubator programs is to expand legal services and access to justice to low and moderate-income people, as well as provide transitory employment for recently admitted attorneys. The program curriculum will provide training, information exchange, and other programming to lawyers, with TexasBarCLE providing legal training and Law Practice Management providing law office technology and business training. After considering several models, the State Bar decided that a legal incubator in Texas modeled on the Justice Entrepreneur Project (JEP) of the Chicago Bar Foundation may have the best chance. We also hope to create a learning lab within the incubator to coordinate pro bono opportunities for participants, oversee and track pro bono cases and outcomes, and coordinate training and mentoring of incubator attorneys with legal aid advocates. The State Bar intends to launch a pilot program based on the JEP model, and a board commitment of \$200,000 is requested to fund the program.

President-elect Stevenson reported that the Budget Committee approved the FY 2016-17 budget as presented at its meeting on December 10. A public hearing on the budget is set for April 5, and a hearing will be scheduled in May before the Supreme Court for final approval. The proposed General Fund budget includes revenues and receipts from reserves of \$42,017,927. In looking at the General Fund operating budget, both revenues and expenditures are expected to increase by 2%, due to increases in royalty payments and the number of attorneys paying membership dues, and merit increases for staff and increases in the cost of state retirement and health insurance benefits. Three annual transfers are included in the General Fund budget; a \$300,000 annual transfer to the Client Security Fund; a \$288,800 annual transfer to the Capital Equipment Replacement Plan; and a \$400,000 annual transfer to the Technology Fund. 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 \$791,656. The Budget Committee is making the following recommendations to the Board for commitment of the available funds; a \$6,456 proposed increase to the minimum reserve in order to maintain the minimum reserve at 2.7 months of budgeted operating expenses; \$500,000 commitment to the Texas Access to Justice Foundation's Student Loan Repayment Assistance Program; \$150,000 commitment to the Legal Aid Fellowship Program that pays for a family lawyer for Legal Aid of NorthWest Texas, Texas Rio Grande Legal Aid, and Lone Star Legal Aid; and \$200,000 to develop the new incubator program.

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

- 1) Reclassification of funds remaining in the amount of \$64,800 from the completed Alternative Careers Program to the Student Loan Repayment Assistance Program; no second needed. Motion carried.**
- 2) Four Board commitments of the excess fund balance as outlined above; no second needed. Motion carried.**
- 3) SBOT FY 2016-17 proposed budget for publication in the March 2016 issue of the *Texas Bar Journal*; no second needed. Motion carried. [Exhibit I]**

D. Report from the Immediate Past President:

Immediate Past President Trey Apffel stated that he was proud to deliver the commencement address to South Texas College of Law on December 19<sup>th</sup>.

E. Nominations & Elections Subcommittee:

Immediate Past President Apffel reported that the subcommittee interviewed seven individuals to be considered as potential nominees for President-elect for this small city year, meaning that attorneys could be considered from any of the non-metropolitan counties of the state. After much deliberation, the subcommittee voted to select Michael Smith of Marshall and Tom Vick of Weatherford. Immediate Past Chair Roger Key reminded the Board that there are limitations on what Board members can do in the campaigns for president-elect; specifically, Board members may not endorse, support, or participate in the campaigns in their official capacities. Additionally, there are 10 elected members of the board whose terms are expiring in June. Those individuals interested in running for director must submit a petition to the State Bar by March 1. The elections for President-elect and district directors begin on April 1 and end on May 2.

**On behalf of the Nominations and Elections Subcommittee, Immediate Past Chair Key moved for approval of Michael Smith (Marshall) and Tom Vick (Weatherford) as the State Bar candidates for President-elect for the 2016 election; no second needed. Motion carried. [Exhibit J]**

The two candidates were introduced – Michael Smith by Leon Carter, and Tom Vick by Gary Nickelson. Both addressed the Board.

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

John Neal reported on the grievance committee appointment process, noting the importance of areas of practice, second quarter disciplinary sanctions breakdown and attorney's fees collections, the grievance referral program, and the ethics helpline. [Exhibit K]

G. Texas Young Lawyers Association:

TYLA President Barrett Thomas reported on various activities and projects, including the "Wrongful Conviction Project," TYLA's commitment to TLAP and issues of mental health and chemical dependency, and the "Breaking the Silence" project. There is a full slate of new nominees for positions on the TYLA Board.

H. Administration Committee:

Pat Maher reported that the Employment/Salary/Evaluation Subcommittee periodically reviews affiliated groups and reports to the Board on their operations and recommendations. The next group to be evaluated will be the Texas Bar Foundation. Last June, the Board approved the subcommittee's recommendation that the State Bar end its affiliation with Texas Legal if it did not meet its goal of increasing the number of its in-force policies by 6% by December 31, 2015. Texas Legal has reported that it did not meet its goal, so the process has begun to end its affiliation with the State Bar, the final step of which is for the Board to approve restated bylaws and a new certificate of formation for Texas Legal. Texas Legal will continue to operate and exist without the State Bar affiliation.

**On behalf of the Employment/Salary/Evaluation Subcommittee, Maher moved for approval of the restated bylaws and certificate of formation for Texas Legal; no second needed. Motion carried. [Exhibit L]**

I. Audit and Finance Committee:

Brent Benoit reported that Padgett Stratemann & Co., LLP has completed the financial audit for FY 2014-15, and it resulted in an unqualified opinion, the best financial audit opinion the State Bar can receive. The General Fund balance as of May 31, 2015 is \$12.5 million. The CPA firm of Maxwell Locke & Ritter LLP has completed the State Bar's internal control audit for FY 2014-15, and it was presented to the Audit & Finance Committee the day

before the Board meeting. The internal audit resulted in no finding of material deficiencies. The November financials show that the State Bar is doing well six months into the current fiscal year. As of November 30, the General Fund actual net revenues over expenditures and transfers totaled approximately \$862,316, which resulted in a positive budget to actual net variance of approximately \$559,253. Ken Couch, senior managing consultant for PFM Asset Management LLC, presented the investment report to the Audit & Finance Committee the day before. The State Bar's General Fund portfolio is fully invested in US 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. The portfolio generated a quarterly return of .06% which slightly underperformed the benchmark 6-month Merrill Lynch Treasury Index of .07%. PFM representatives continue to work closely with the Bar's CFO to place investments in those areas that will produce the highest yields, while maintaining safety of principal and liquidity as required by the Public Funds Investment Act.

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

- 1) FY 2014-15 Financial Audit Report; no second needed. Motion carried.**
- 2) FY 2014-2015 Internal Audit Report; no second needed. Motion carried.**
- 3) November 2015 Quarterly Investment Report; no second needed. Motion carried. [Exhibit M]**

J. Client Security Fund Subcommittee:

Gail Plummer reported that the Client Security Fund Subcommittee met the day before the Board meeting and reviewed 26 claims for a total of \$216,368. To date, the fund has paid out \$425,581 for this fiscal year.

K. Member Services and Education Committee:

Richard Elliott reported that the Appeals/Grants Review Subcommittee received two appeals from attorneys who were denied certification by the Texas Board of Legal Specialization. The subcommittee met on November 4 to hear the appeals of attorney Baili Rhodes and James Whalen. Rhodes's application for certification in Family Law had been denied by TBLS because they determined that Ms. Rhodes failed to show that she had the requisite lead counsel experience in family law cases. Applying the substantial evidence standard, the subcommittee determined that the decision by TBLS should be upheld. Several comments were made about Ms. Rhodes case, and TBLS certification standards. There was some discussion on whether preparation of Anders Briefs would qualify towards Criminal Law certification. Whalen's application was for certification in Criminal Appellate Law was denied by TBLS as they determined that he had not handled the requisite number of qualifying criminal appeals as required by the TBLS standards. Applying the substantial evidence standard, the subcommittee determined that the decision by TBLS should be upheld.

*Let the record reflect that Barrett Thomas and Sam Houston abstained from the vote on Ms. Rhodes appeal.*

**On behalf of the Appeals-Grants Review Subcommittee, Elliott moved for approval of the following:**

- 1) The recommendation of the subcommittee to deny the appeal submitted by Ms. Baili Rhodes and uphold the decision of TBLS; no second needed. Motion carried with three nay votes.**
- 2) The recommendation of the subcommittee to deny the appeal submitted by Mr. James Whalen and uphold the decision of TBLS; no second needed. Motion carried with two nay votes. [Exhibit N]**

Diane DeVasto reported that the New Directors Orientation Subcommittee met the day before the Board meeting to begin planning the orientation for new incoming Board members in June. This year's orientation is scheduled for a half-day on Wednesday, June 15 in conjunction with the Annual Meeting in Fort Worth.

Susan Nelson reported that the Professional Development Subcommittee met jointly with the CLE Committee on August 21 to discuss various programs, primarily webcasts, and the next meeting will be February 26. Nelson reported that the TexasBarCLE scholarship program continues to be a success and the number of recipients increases each year.

Curry Cooksey highlighted the work of the Insurance/Member Benefits Subcommittee, specifically the Texas Bar Private Insurance Exchange. The PIE will be wrapping up open enrollment on January 31, and total individuals enrolled in one or more insurance products has increased by 14%. The PIE will also make program enhancements such as adding online quotes for group policies and creating a newsletter for the Board and members.

Grant Scheiner reported on behalf of the Technology Oversight Subcommittee that administration of security and compliance training has been completed for the State Bar staff. The MCLE software system replacement project is also well underway.

L. Ad Hoc Committee to Select Minority Directors:

Joe Escobedo reported that the Ad Hoc Committee to Select Minority Directors received 14 applications for potential nominees to fill the minority director positions on the Board, and will conduct interviews in February. Of that group, they will recommend four people to President DuBois to fill two positions, and the Board will vote to confirm the appointment at the April Board meeting.

M. Section Representatives to the Board Committee:

Alison Colvin gave an update on Sections and asked that the Board reach out to Sections and attend the Section Council meetings to which they are liaisons.

N. Texas Access to Justice Commission:

Harry Reasoner, Chair of the Texas Access to Justice Commission, gave an update on access to justice efforts in Texas and the increased need for access to justice funding and legal aid. He noted that the Champions of Justice Gala has raised \$2.1 million to provide legal aid for veterans, and this year's Gala is on April 6.

O. Supreme Court Liaison:

Justice Johnson reported the Supreme Court of Texas is working on revising certification standards for the Texas Board of Legal Specialization. Justice Johnson commended the State Bar staff for remedying the situation with MCLE and St. Mary's School of Law.

P. Court of Criminal Appeals Liaison:

Judge Michael Keasler reported that elections are coming up in the Court of Criminal Appeals, and three judges' terms are expiring. The Court is also putting together a "writ academiae" with the help of Pat Nester.

Q. Federal Judicial Liaison:

Judge Fred Biery had to leave, and Judge Keasler read a portion of Judge Biery's report, noting that Orlando Garcia is now the Chief Judge of the Western District, and courthouse funding is still an issue.

R. Judicial Section Liaison:

Judge Pat Pirtle reported that Judicial Section projects are on schedule, and the Finance Subcommittee is planning to make a contribution to the Sheeran-Crowley Trust.

S. Out-of-State Lawyer Liaison:

Tim Mountz reported that there are over 11,000 Texas licensed lawyers who practice out of state. He suggested developing a report or e-blast that could go out to all out of state attorneys, similar to the district director newsletters that the State Bar sends to each district.

T. Executive Director:

Executive Director Michelle Hunter reported on open enrollment for the Texas Bar Private Insurance Exchange. She also presented Spencer Walker, a paralegal in the Legal Counsel's office, with the employee of the quarter award.

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

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<sup>1</sup> Exhibits A through N are available at [www.texasbar.com/bodcentral](http://www.texasbar.com/bodcentral) under Meeting Agendas and Minutes.