

**OFFICIAL MINUTES
STATE BAR OF TEXAS
EXECUTIVE COMMITTEE MEETING
Texas Law Center
Austin, TX
Tuesday, January 10, 2017**

The Executive Committee met on January 10, 2017 in Austin at the Texas Law Center. President Frank Stevenson called the meeting to order at 10:30am, and Executive Director Michelle Hunter called the roll.

Present: Rehan Alimohammad, Immediate Past Chair of the Board David Chamberlain*, Immediate Past President Allan K. DuBois, Chair of the Board Joe Escobedo, TYLA President Sam Houston, Joe Indelicato, Jr., John Jansonius, Justice Phil Johnson*, Mary Martin, Audrey Moorehead*, Gary Nickelson, TYLA President-elect Baili Rhodes, Lance Sharp, President Frank Stevenson, Travis Torrence, President-elect Tom Vick

Participating via teleconference: Barbara Bass, Tina Green*, Pat Maher*,

**Nonvoting member*

I. REPORT BY SUPREME COURT LIAISON

A. Supreme Court Liaison: Justice Phil Johnson, introduced David Slayton, Executive Director Office of Court Administration, who along with Justice Johnson, gave an update on the state wide electronic access to court records system, "Research Texas," and mandatory e-filing.

II. APPROVAL OF MINUTES

Upon motion properly made by Joe Indelicato, Jr., and seconded by Gary Nickelson, the minutes of the September 1, 2016 Executive Committee meeting were approved as presented.

III. REPORTS

A. Report from the President: President Frank Stevenson gave an update on his travels and activities since September, which included the new lawyer induction, CLEs, local bar meetings, Bar Presidents Consortiums, and various law schools throughout the State.

Stevenson reported that the State Bar will continue its Solo and Small Firm Outreach with a CLE presentation on January 18, 2017 in McAllen. President Stevenson thanked Erich Birch, Christy Amuny, Rehan Alimohammad, Joe Indelicato, and Audrey Moorehead for volunteering their time to help present this CLE.

Stevenson reported on the Sunset process. The Sunset Commission met in August and issued its recommendations for the State Bar, which included retaining the referendum requirement for State Bar rules. The Bar supports this recommendation and is committed to protecting the profession's right to self-regulation, including specifically the right of Bar members to vote in rules referendums. The State Bar is unaware of any current challenge or threat to the retention of the rules referendum process and the critical ability of Texas lawyers to determine the professional standards applicable to the practice of law in this state. Frank reported that he sent several email updates to Bar membership on these developments and will continue to keep them apprised. The State Bar is awaiting the filing of the State Bar Sunset bill in the coming weeks.

President Stevenson reported that the State Bar continues to move forward with the implementation of the Incubator project, Texas Opportunity & Justice Incubator (TOJI). Anne-Marie Rábago from California Western School of Law has been hired as TOJI's director. The State Bar reached an agreement with WeWork

University Park to provide office space. The TOJI website was launched in October—txoji.com. As of last Friday (1/6/2017), eighteen (18) qualified Texas lawyers have applied for the ten openings for the April 2017 start date with more individuals indicating interest. Every six months, an additional ten attorneys will be added. At full capacity, there will be thirty (30) incubator lawyers at any one time in the 18-month program. Since 11/1/2016, the Bar has responded to over 150 phone and email inquiries from potential applicants, volunteer attorneys, and law school faculty and administrators. The Bar is hosting live Information Sessions following TexasBarCLE's "Handling Your First..." series at the Texas Law Center. The first took place in December, and another will take place on 1/10/2017. Video from these sessions will soon be available on the TOJI website for online viewing.

For more news and updates, follow TOJI on social media—Twitter, Facebook, or Instagram.

President Stevenson reported on Capital Habeas Units ("CHUs"). Allan Dubois received an invitation from Judge Edward Prado of the Fifth Circuit for the State Bar to send a letter to the court supporting the creation of federal Capital Habeas Units (CHUs) in Texas. Such units have been established around the country to provide high-quality, cost effective representation to death row prisoners, but no such program exists in Texas. President Stevenson reported that he will send a letter to the Fifth Circuit in support of the establishment of federal Capital Habeas Units.

President Stevenson announced that Kelley Jones King would be back for the State Bar to assist with communications during the Sunset process.

C. Report from the Chair of the Board: Chair of the Board Joe Escobedo, reported that the district letters from board members were mailed in November. The next correspondence from the board to their districts will be an e-blast, planned for February. Chair Escobedo reported that Directors who are interested in running for next year's Chair of the Board should submit their letter of intent to run along with a statement of position before our January board meeting. Rehan Alimohammad, Ann Greenberg, Gary Nickelson, and Andrew Tolchin have already submitted their letters.

Chair Escobedo reported that the State Bar received a request from the Tax Section for permission to send a letter to the IRS expressing concerns over a recent change in policy by the IRS that limits the availability of face-to-face meetings with taxpayers and their representatives as part of the IRS appeals process. In it the section asserts that because face-to-face meetings are generally more productive in resolving taxpayer disputes, such meetings should remain available to taxpayers as an option.

Motion for approval was properly made by Tom Vick and seconded by John Jansonius. After no discussion the motion carried.

D. Report from the President-elect: President-elect Tom Vick reported The Budget Committee approved the Fiscal Year 2017-2018 budget as presented. Vick reported that the State Bar would commit: \$1,000,000 to kick off and maintain the Incubator Program; \$250,000 to the Sheeran Crowley Memorial Trust; \$750,000 to the Technology Fund; \$425,924 to the Legal Access Division for a 2 year funding of malpractice insurance; \$316,776 to the Legal Access Division for a 2-year funding of Online Legal Research through Westlaw; \$360,000 to the Legal Access Division for a 2-year funding of the Language Line; \$200,000 for the Student Loan Repayment Assistance Program; \$100,000 to establish a Referendum Fund; \$100,000 to replace Supreme Court Equipment; and \$100,000 for Archives Digitization Improvements.

On behalf of the Budget Committee, Joe Indelicato, Jr. moved for approval of the SBOT FY 2017-18 proposed budget for publication in the March 2017 issue of the *Texas Bar Journal*; no second needed. Motion carried, no discussion.

E. Report from the Immediate Past President: Immediate Past President Alan DuBois reported on his travels and activities, including Saint Mary's Law School for an ethics panel, Hays County Bar Association to speak on

TLAP, Southern Conference of Bar Presidents in Missouri, and Brownsville, Texas to tour the area with the U.S. Border Patrol.

F. Administration Committee: Pat Maher reported that this year the Administration Committee would be reviewing the Texas Center for Legal Ethics as required by the State Bar Board Policy Manual.

Amy Bryan reported on behalf of the Performance Measures & Strategic Planning Subcommittee. Ms. Bryan gave a general report on the updated Strategic Plan for fiscal years 2018 and 2019.

John Jansonius moved that the Executive Committee approve the updated strategic plan for presentation to the full Board on January 20 in McAllen; second by Gary Nickelson. No Discussion. Motion carried.

G. Audit & Finance Committee: Barbara Bass reported that the General Fund actual amount of net revenues over expenditures for the period ending November 30, 2016 was approximately \$579K. The amount budgeted for the same period was (\$442K). This resulted in a positive net revenue over expenditure variance of slightly over \$1M. The CPA firm of Padgett, Stratemann & Co. has completed the FY 2015-2016 financial audit of the State Bar. The financial audit resulted in the Bar's receiving an unmodified opinion. Padgett, Stratemann encountered no difficulties during the audit and that they did not have any disagreements with management. The CPA firm of Maxwell Locke & Ritter has completed the FY 2015-2016 internal audit. The internal audit resulted in findings relating to the Texas Board of Legal Specialization, for which Leo Figueroa, TBLS's new Executive Director, has provided detailed management responses. There was one recommendation for the Finance Division to implement a review of employee's 401k and 457 payments applied by the plan administrator. The Finance Division will take steps to monitor applied payments as an added precaution.

H. Nominations & Elections Subcommittee: **Lance Sharp recused himself for the duration of the Nominations & Elections Subcommittee report and any deliberations.** Immediate Past President Allan DuBois reported that the subcommittee interviewed six (6) highly qualified individuals to be considered as potential nominees for President-elect. This year is an open year, meaning that attorneys could be considered from any county of the state. After much deliberation, the subcommittee voted to select Chad Baruch of Dallas and Laura Sharp of Austin.

Immediate Past Chair Chamberlain reported that the full board will vote on these individuals as the President-elect candidates at the January 20th Board meeting in McAllen. The subcommittee also considered a request from Joe Longley of Austin, to allow collection of petition signatures through the use of electronic signatures. Mr. Longley is collecting signatures to try to qualify as a petition candidate for President-elect, and he has until March 1st to submit about 5,000 signatures to get on the ballot. He is asking that we allow the collection of signatures electronically by creating a new online website where attorneys can sign the petition electronically. At the moment, we do not have such an online system and would have to develop such a system from scratch. Currently, signatures may be collected using a form that we have, that can be printed, scanned, and emailed. Mr. Longley has been emailing this form out to people and has posted it on a website. A petition candidate was able to use this form in 2013 in order to be certified as a candidate. The Nominations and Election subcommittee believes that there are questions about whether the State Bar Act can allow electronic petition signatures. They unanimously declined the request to allow electronic petition signatures for the 2017 election. However, the subcommittee did recommend that the issue should be studied for future elections, and recommended that a study group be created to look at it and develop recommendations.

Immediate Past Chair Chamberlain reported that there are limitations for what Board members can do in the campaigns for president-elect. Board members may not endorse, support, or participate in the campaigns in their official capacities. The elections for President-elect and District Directors begins on April 3rd and end on May 2nd.

Immediate Past Chair Chamberlain reported that the Bar has selected a new election services provider, Election Services Corporation.

On behalf of the Nominations and Elections Subcommittee, Immediate Past Chair Chamberlain and Immediate Past President Allan DuBois moved for approval of Chad Baruch of (Dallas) and Laura Sharp of (Austin) as the State Bar candidates for President-elect for the 2017 election; no second needed. Motion carried.

I. Discipline & Client Attorney Assistance: Tina Green reported that the DCAAP Committee will have its next meeting in McAllen on January 19. In September, the State Bar board voted to refer the two resolutions approved by the Annual Meeting General Assembly to the DCAAP Committee for review. One of the resolutions has to do with a safe harbor provision for the sale of a law practice. The second resolution would implement a five-year retention period for retention of client files. Both of these resolutions recommend changes to the disciplinary rules of professional conduct. As part of the review, DCAAP will be getting feedback from the Chief Disciplinary Counsel's office and from the State Bar's Rules Committee. A progress report will be given at the January Board meeting.

J. Member Services & Education Committee:

Professional Development Subcommittee: Joe Indelicato, Jr. reported that the Professional Development Subcommittee will be meeting jointly with the CLE Committee on March 8 to develop new topics for webcasts and other events and hear staff reports. In December, TexasBarCLE rolled out a new feature in the online classroom: interactive transcripts (time linked to the video and audio) of speeches and the option to view closed captioning of the video. So far this fiscal year, TexasBarCLE has awarded 312 scholarships for live and video courses and 89 for online classes. As of June 1, 2016 attorneys 70 years and older must complete a minimum of 15 hours of accredited CLE during each MCLE compliance year. Since the rule went into effect, 3.7% of the scholarship recipients were over 70. In prior years that percentage was 2.7%. TexasBarBooks finalized a new agreement with Thomson Reuters effective January, 1, 2017. Thomson Reuters has licensed material from several of the practice manuals (including the Texas Family Law Practice Manual and the Texas Pattern Jury Charges) for use in their online forms product for several years. The new agreement increases the minimum guaranteed royalty paid by Thomson Reuters from \$720,000 per year to \$950,000 per year in 2017. The guaranteed minimum royalty will increase each year through 2022, when the minimum guaranteed royalty will have reached \$1.28 million per year. The second TexasBarBooks online manual, the Texas Guardianship Manual Online, went live in October. The total number of online subscribers for the two online manuals (Family Law and Guardianship) is 468. The revenue for the online manuals is more than \$50,000 to date for this fiscal year.

Insurance/Member Benefits Subcommittee: John Jansonius reported that major medical enrollments in the State Bar's Private Insurance Exchange have grown by 21 percent (6,123 to 7,409). The number of individuals enrolled in one or more products has grown by 8 percent (12,370 to 13,351). Major medical and individual enrollments are expected to exceed the projected growth of 25 percent and 8 percent respectively. The 2017 health insurance open enrollment ends January 31, 2017. Open enrollment presentations were conducted in Austin, Dallas, and Houston. Following open enrollment the Subcommittee will review program offerings and recommend enhancements in order to continue to improve the program. A recent comparison with other large bar associations revealed that with 30 contracted vendors and 220 additional benefits available through our partner Beneplace, SBOT continues to have the most extensive benefit program. The subcommittee will be reviewing the comparison to consider additional offerings. As of November, the member benefit program has collected \$404,649 in non-dues revenue. This compares to a total of \$383,003 for all of last fiscal year. Total revenue for this fiscal year is projected to be \$750,000.

K. Public Services & Education Committee, Legislative Policy Subcommittee: Gary Nickelson had no report.

L. Section Representatives to the Board: Pat Maher had no report.

M. Texas Young Lawyers Association: TYLA President Sam Houston provided an update on several TYLA projects including "Vote America," the "Sexual Assault Survivor Rights Guide," and "I was the First, You Can

Be a Lawyer Too.” Houston provided an update on two (2) new divorce guides aimed at children; one is a coloring book and the other is a pamphlet for teenagers. Houston provided a report on the recent January TYLA Board meeting in Houston, Sally Pretorius (Dallas), and Jenny Smith (Austin) are the TYLA President Elect Candidates.

N. Report from the Executive Director: Michelle Hunter reported that Kelley Jones King would be working with Lowell Brown to get information related to Sunset out to the Board Members.

O. **Closed Session**: At 11:54 a.m., the Executive Committee recessed the open meeting and reconvened in closed session pursuant to Texas Government Code Sections 551.071 and 551.074 for the purpose of consultation with legal counsel concerning pending litigation (Gegenheimer v. Stevenson et al., Longley v. State Bar of Texas et al.) . 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 12:45 p.m., the open session of the Executive Committee meeting reconvened. During the closed session, only matters relating to consultations with legal counsel concerning contemplated litigation were discussed. No action was taken in closed session.

There being no further business, the meeting was adjourned at 12:46 p.m.