

**OFFICIAL MINUTES
STATE BAR OF TEXAS
BOARD OF DIRECTORS MEETING
Doubletree Suites Hotel
1800 South 2nd Street
McAllen, Texas 78503
Friday, January 20, 2017**

The Board of Directors of the State Bar of Texas met in a regular session on January 20, 2017 at the Doubletree Suites Hotel in McAllen, Texas. Chair Joe Escobedo 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. Barbara Bass delivered the invocation, and Travis Torrence led the pledges to the U.S. and Texas flags. Chair Escobedo introduced Pablo J. Almaguer who made remarks on the State Bar Minority Director positions and the pending lawsuit.

Present:

Board Members: Rehan Alimohammad, Christy Amuny, Barbara Bass, Amy Bryan, Alan Carmichael, Leon Carter, Jeff Chandler, Past Chair of the Board David Chamberlain*, Immediate Past President Allan DuBois, Estrella Escobar, Chair of the Board Joe Escobedo, Sylvia Firth, Ann Greenberg, August Harris, Angelica Hernandez, , Rice Horkey, TYLA President Sam Houston, Joe Indelicato, John Jansonius, Sarah Keathley, Mary Abbott Martin, Rudolph Metayer, Brian Miller, Gary Nickelson, Christopher Oddo, Curtis Pritchard, TYLA President-elect Baili Rhodes, Lisa Richardson, Fidel Rodriguez, Jr., Scott Rothenberg, Gregory Sampson, Lance Sharp, Scott Sherwood, Scott Stolley, President Frank Stevenson, TYLA Immediate Past President Barrett Thomas, Andrew Tolchin, Travis Torrence, President-elect Tom Vick, Bradley Weber, Michael Wynne

Liaisons*: Judge Barbara Hervey, Justice Phil Johnson, Judge Nelva Gonzalez Ramos, Tim Mountz, Judge Kerry Russell

Section Representatives*: Erich Birch, Phillip Mack Furlow, Audrey Moorehead,

Excused Absences: Micah Belden, Wendy Burgower*, Laura Gibson, Ricky Gonzalez, Tina Green*, Pat Maher*, Ruben Robles, Rebecca Simmons

(* = nonvoting)

I. CONSENT AGENDA ITEMS:

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

C1. APPROVAL OF MINUTES:

- a. Approval of minutes of Board meeting conducted on *September 16, 2016*
- b. Ratification of actions taken at the following Executive Committee meeting:

- 1) ***January 10, 2017:*** Approved minutes of the September 1, 2016 Executive Committee meeting

C2. ITEMS FROM THE PRESIDENT:

Approval of appointments to the following:

- a. Texas Rio Grande Legal Aid, for terms effective January 20, 2017, through December 31, 2017.

Ricardo Lara, (Brownsville)
Cindy Polinard, (McAllen)
Ronald Walker, (Victoria)

C3. ITEMS FROM THE PRESIDENT-ELECT:

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

- a. For three-year terms, effective June 1, 2017, to May 31, 2020:

lawyers:

Blue Hyatt (Midland)
Rick Robertson (Plano)
Travis Torrence (Houston)

public member:

Robbie Ausley (Austin)

- b. For one year term effective June 1, 2017 to May 31, 2018:

Board liaison:

Greg Sampson (Dallas)

C4. ITEMS FROM COMMITTEES AND SECTIONS/DIVISIONS:

- a. Approval of request by the Health Law Section to amend its bylaws [**Exhibit A**¹]

C5. OTHER ITEMS

- a. Approval of the 2017-18 Preliminary Calendar/Holiday Schedule [**Exhibit B**]
- b. Approval of 2017 General and Run-off Election Timetable for President-elect and District Director [**Exhibit C**]

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

- c. Approval of resolution for statement of support for the judiciary **[Exhibit D]**

- d. Approval of resolutions honoring: **[Exhibit E]**
 - 1) Victor A. Flores
 - 2) Dan K. Worthington

II. REPORTS:

A. Report from the Chair of the Board:

Chair Joe Escobedo, Jr. reported that the State Bar is continuing its commitment to reaching out to its constituents through local director presentations. He reported that to date, presentations have been given or are scheduled to be given for Bar Districts 1, 4, 5, and 7. Chair Escobedo encouraged all Directors to schedule presentations in his/her Districts. He then reported on the Directors' Report Email, which will be sent in February.

Chair Escobedo reported that Rehan Alimohammad, Ann Greenberg, Gary Nickelson, and Andrew Tolchin have announced their intention to run for Chair of the Board for 2017-18, and the chair-elect candidates gave brief remarks. **[TAB 1²]**

Chair Escobedo 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, in accordance with the vote, the method of voting will be done by written ballot.

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. The section asserts that because face-to-face meetings are generally more productive for resolving taxpayer disputes, such meetings should remain available to taxpayers as an option. **[TAB 2]**

Barbara Bass moved to approve the Tax Section's request to comment to IRS. Joe Indelicato seconded. Motion carried with no discussion.

B. Report from the President:

President Frank Stevenson reported on his recent travels and events attended since the September Board Meeting including the State Bar Holiday party. President Stevenson provided an update on Solo and Small Firm Outreach.

Regarding the Texas Opportunity & Justice Incubator (TOJI), he reported that Anne-Marie Rábago from California Western School of Law was hired as TOJI's director. The State Bar has contracted with WeWork University Park to provide office space for TOJI's inaugural cohort, and the TOJI website (txoji.com) was launched in October. Approximately 20 qualified Texas lawyers have applied for the April 2017 cohort with more individuals indicating they would apply before today's deadline. The April 2017 cohort is expected to have ten (10) incubator lawyers. Then, a new cohort will join TOJI every six (6) months. At full capacity, there will be thirty (30) incubator lawyers in the 18-month program. The State Bar has hosted live information sessions

² Tabs 1 through 8 are available at www.texasbar.com/bodcentral under Meeting Agendas and Minutes.

following TexasBarCLE's "Handling Your First..." series at the Texas Law Center. The first took place in December, and another took place January 10. Video from these sessions will be available on the TOJI website for online viewing. Stevenson reported that the State Bar's 2017 Annual Meeting is June 22-23 at Dallas' Hilton Anatole.

President Stevenson reported that Immediate Past President 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. No such program exists in Texas. A letter was sent to the Fifth Circuit in support of the establishment of federal Capital Habeas Units.

President Stevenson reminded the Board Members to refer any inquiries they receive from the media to Communications Division Director, Lowell Brown. Stevenson reported that Kelley Jones King has re-joined the State Bar staff, on temporary assignment, to help with communications on various projects.

C. Sunset Review Update:

Trey Apffel gave a general report on the Sunset Review process. Apffel reported that the recommendations passed by the Sunset Commission in August will form the sunset bill that we expect to see filed in the coming weeks. The recommendations retain the rules referendum requirement. Apffel related that the State Bar supports this recommendation and is committed to protecting the profession's right to self-regulation, including the right of Bar members to vote in rules referendums.

D. Report from the President-elect:

President-elect Tom Vick gave a general update on the Committee Review Task Force, which included an upcoming recommendation on a policy manual change which will disallow travel reimbursement for individuals who get appointed to Bar Committees and then move out of state. A formal report will be given at the upcoming April Board meeting.

Vick explained that the proposed General Fund budget includes revenues and receipts from reserves of \$45,422,440 and has an equal amount of expenditures, transfers out, and proposed board commitments. This results in a balanced budget. In the General Fund budget, both revenues and expenditures are expected to increase by 1%. Revenue increases are primarily due to increases in TBCLE revenue and MCLE fees. Expenditures increases are primarily due to merit increases for staff and increases in the cost of health insurance benefits.

Vick continued that \$300,000 is being transferred to the Client Security Fund and \$288,800 is being transferred to the Texas Law Center Fund for the Capital Equipment Replacement Plan. Additionally, \$500,000 is being transferred to the Technology Fund which will be used to lease and maintain the Bar's computer equipment and printers and also fund the purchase of software and software maintenance agreements. This amount represents a \$100k increase in the annual transfer amount. Minimum reserve considerations are well within the range recommended by the independent auditors. The total amount available for Board commitments is \$3,692,400, including \$89,700 to increase the minimum reserve to maintain 2.7 months or \$9.2 Million; \$1,000,000 to the Texas Opportunity and Justice Incubator Program; \$250,000 to the Sheeran Crowley Memorial Trust; \$750,000 to the Technology Capital Projects Fund; \$425,924 to Legal Access Division/Malpractice Insurance; \$316,776 to Legal Access Division/Online Legal Research; \$360,000 to Legal Access Division/Language Interpretive Services; \$200,000 to the Student Loan Repayment Assistance Program; \$100,000 to establish a referendum fund; \$100,000 to replace Supreme Court equipment; and \$100,000 to archives digitization improvements. [TAB 3]

On behalf of the Budget Committee, President-elect Vick moved for approval of the SBOT FY 2017-18 proposed budget for publication in the March 2016 issue of the *Texas Bar Journal*; no second needed. Brian

Miller and Rudy Metayer provided discussion regarding clarifying the restatement of State Bar employee pension liability amounts as stated in the budget to bar members. Motion carried.

E. Report from the Immediate Past President:

Immediate Past President Allan Dubois spoke on his recent travels and upcoming activities including Saint Mary's Law School for an ethics panel, Hays County Bar Association to speak on TLAP, the Southern Conference of Bar Presidents meeting in Missouri, and Brownsville, Texas to tour the area with the U.S. Border Patrol.

F. Nominations & Elections Subcommittee:

Immediate Past Chair of the Board David Chamberlain reported that the Nominations and Elections Subcommittee interviewed six highly-qualified individuals to be considered as nominees for president-elect. This year was 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. There are 10 elected members of the board whose terms are expiring at the Annual Meeting. The positions for these directors will be up for election this year as well. Anyone interested in running for director must submit a petition for those district director positions to the State Bar by March 1.

The subcommittee also considered a request from Joe Longley of Austin to allow collection of petition signatures through an electronic petition process. Mr. Longley is collecting signatures to try to qualify as a petition candidate for president-elect, and he has until March 1 to submit about 5,000 signatures to get on the ballot.

Mr. Longley asked that we allow the collection of signatures electronically by creating a new online website where people can go to sign the petition. The Nominations and Election subcommittee considered the request and decided unanimously that the concept requires further study because (1) the Bar does not currently have the technology to allow electronic petitions and building such a system for this election would not be feasible; (2) it is unclear whether electronic petition signatures are permissible under the State Bar Act and Rules; and (3) fiscal and other considerations must be studied before creating a new election process that could result in numerous additional candidates qualifying in one election year. For these reasons, the subcommittee unanimously decided not allow electronic signatures for this election cycle and to study the issue further. The subcommittee will make recommendations to the Board regarding future elections.

As a reminder, there are limitations on 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 election for president-elect and district directors begins on April 3 and ends on May 2.

And finally, the Bar has selected a new election services provider, Election Services Corporation.

On behalf of the Nominations and Elections Subcommittee, Immediate Past Chair Chamberlain moved for approval of Chad Baruch (Dallas) and Laura Sharp (Austin) as the State Bar candidates for president-elect for the 2016 election; no second needed. Motion carried. [TAB 4]

The two candidates were introduced – Chad Baruch by Leon Carter, and Laura Sharp by Ann Greenberg. Both addressed the Board.

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

John Neal reported on the grievance committee appointment process and highlighted the areas of law which get the most grievances, which are criminal, family, personal injury, and probate. [TAB 5]

H. 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 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.

I. Administration Committee:

Amy Bryan gave the Administration Committee report on behalf of Pat Maher. Ms. Bryan 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 Center for Legal Ethics. A report will be given at the April board meeting.

Ms. Bryan gave the Performance Measures and Strategic Planning Subcommittee Report. She reported the State Bar Act requires the State Bar to adopt a revised strategic plan every two years. The revisions are based on input received at the July Board retreat. The next step in our strategic planning process will be to draft new performance measures based on the updated plan.

On behalf of the Performance Measures and Strategic Planning Subcommittee, Bryan moved for approval of the updated strategic plan; no second needed. Motion carried. [TAB 6]

J. Audit and Finance Committee:

Barbara Bass reported that the CPA firm of Padgett, Stratemann & Co, LLP has completed the State Bar’s internal audit for fiscal year 2015-2016. The internal audit resulted in no finding of material deficiencies to include in the report. The report included one recommendation for the Finance Division and several for TBLs. Bass reported total revenues of \$42.6 million, total expenditures of \$38.3 million, transfers out of \$1.1 million, and board commitments of \$1.1 million. Bass reported a net increase in the fund balance for fiscal year 15-16 of \$2.1 million, fund balance at 5/31/15: \$12.5 million, fund balance at 5/31/16 \$14.6 million. Bass reported 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 \$579K. At the end of November, the General Fund had a positive budget to actual net variance of approximately \$1M. This represents a 231% positive variance of budget to actual. As of November 30, 2016, the State Bar’s General Fund portfolio is fully invested in: (1) US Treasuries; (2) Federal Agency securities, (3) high quality commercial paper; (4) FDIC insured certificates of deposit, and (5) AAA-rated money market mutual funds. Overall, the portfolio is highly liquid and maintains the highest credit quality. The portfolio generated a quarterly return of 0.13% which slightly underperformed the benchmark 6-month Merrill Lynch Treasury Index of 0.17%. PFM representatives work very closely with the Bar’s Finance Director to place investments in those areas that will produce the highest yields, while maintaining the safety of principal and liquidity as required by the Public Funds Investment Act.

On behalf of the Audit and Finance Committee, Barbara Bass moved for acceptance of the following:

- 1) FY 2015-16 Financial Audit Report; no second needed. Motion carried.**
- 2) FY 2015-2016 Internal Audit Report; no second needed. Motion carried.**

3) November 2016 Quarterly Investment Report; no second needed. Motion carried. [TAB 7]

K. Client Security Fund Subcommittee:

Rice Horkey reported that the Client Security Fund Subcommittee met the day before the Board meeting and reviewed 40 claims for a total of \$322,715.57. To date, the fund has paid out over \$800,124.59 for this fiscal year. 8 claims were denied, 1 claim was tabled, and 31 claims were approved.

L. Discipline and Client Attorney Assistance Committee:

Greg Sampson reported that the DCAAP Committee met and reviewed the two resolutions that were approved by the General assembly during Annual Meeting. In September, the State Bar Board voted to refer the resolutions to the DCAAP Committee for review. One of the resolutions recommended creating a safe harbor provision for the sale of a law practice. The second resolution proposes to create a disciplinary rule that would implement a five-year retention period for client files. Sampson reported that the Committee thought it would be more effective to consider adding official comments to the disciplinary rules to help explain to lawyers what the right approach is to take in these matters. The Disciplinary Rules Committee is going to draft official comments and submit them to us for review and consideration. The Committee is also recommending that the Bar's Law Practice Management committee develop best practices guidelines to educate lawyers about how to deal with the sale of a practice and the retention of client files. Using these materials, we can create an education campaign that we can use across the state to help lawyers understand their rights and responsibilities. The Committee will give an updated report on our progress at the April Board meeting.

M. Member Services and Education Committee:

Brian Miller reported that the Appeals/Grants Review Subcommittee received a request for authorization to seek outside funding from the Texas Bar Foundation. The Texas Young Lawyers Association sought funding for their public service project called "*Teach Safe. Learn Safe. Be Safe.*" TYLA is requesting \$50,300 to develop a web-based education program designed to educate parents, children, and educators of their legal rights and obligations related to a number of legal issues facing parents, children, and schools. The Appeals and Grants Subcommittee unanimously approved the request to seek funding from the Texas Bar Foundation for this project. **[TAB 8]**

Tina Green had no report for the New Directors Orientation 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.

John Jansonius highlighted the work of the Insurance/Member Benefits Subcommittee; specifically, the major medical enrollments in the 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. The Subcommittee has been monitoring the program weekly during Open Enrollment. Following Open Enrollment, the Subcommittee will review program offerings and recommend enhancements in order to continue to improve the program. As of November 2016, 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.

Rebecca Simmons had no report for the Technology Oversight Subcommittee.

N. Public Services and Education Committee:

Sylvia Firth had no report for the Affordable Legal Services Subcommittee.

Gary Nickelson had no report for the Legislative Policy Subcommittee.

O. Ad Hoc Committee to Select Minority Directors:

Ruben Robles had no report for the Ad Hoc Committee. An update litigation regarding the Minority Director search process was to be given during closed session.

P. Section Representatives to the Board Committee:

Pat Maher had no report.

Q. Supreme Court Liaison:

Justice Johnson gave a general report on three items, including 1) the “Beyond the Bench” seminar which is a joint project between the Texas Supreme Court and the Court of Criminal Appeals; 2) the Justice Gap Commission concerning access to justice for those with financial needs who cannot afford legal services when needed; and 3) the beginning of the legislative year; the judicial budget approval process; and an update on mandatory e-filing and access to court records.

R. Court of Criminal Appeals Liaison:

Judge Barbara Hervey gave a general report on the Court of Criminal Appeals, including the underfunding of education grants for lawyers and judges, overseen by the court. The court plans to resubmit its request for more funding. Judge Hervey reported that two new judges were recently sworn in - Judge Walker and Judge Keel. Judge Hervey reported that the court put on a two-day course at the State Bar of Texas on writs and will continue to hold more trainings.

S. Federal Judicial Liaison:

Judge Nelva Gonzales Ramos gave an update on the 11 judicial vacancies in Texas and her hope that they would soon be filled. Five individuals have been nominated to sit on Federal District Courts in Texas, but none were confirmed and the application process starts over for those individuals. Two of the three vacancies on the 5th Circuit Court are Texas seats and have been open for several years. One vacancy remains on the US Supreme

Court. Since the last Board meeting, the Southern District of Texas has a new Chief Judge - Lee Rosenthal from Houston.

T. Judicial Section Liaison:

Judge Kerry Russell had no report for the Judicial Section.

U. Out-of-State Lawyer Liaison:

Tim Mountz reported that more than twice as many in-state lawyers (43%) happen to be members of the various sections of the State Bar as opposed to out-of-state lawyers (21%). Mr. Mountz plans to have conversations with the Sections staff to find out what can be done to increase section membership for out of state lawyers.

V. Executive Director:

Executive Director Michelle Hunter reported on open enrollment for the Texas Bar Private Insurance Exchange. She also presented Torrie Bethany, a Project Coordinator in the Communications Division, with the Employee of the Quarter award.

Closed Session: At 11:51 a.m., the State Bar Board of Directors 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 12:56 p.m., the open session of the State Bar Board of Directors 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.

President Frank Stevenson announced that he would be asking the Minority Director Nominating Committee to delay its selection effort due to the pendency of Senate Bill 416: 1) to allow the Legislature to act; 2) to avoid wasting the time and efforts of the Committee Members and potential candidates; and 3) to avoid selecting a candidate only to have it potentially undone by the passing of Senate Bill 416.

There being no further business, the meeting was adjourned at 12:57 p.m.