

**OFFICIAL MINUTES  
STATE BAR OF TEXAS  
EXECUTIVE COMMITTEE MEETING  
Texas Law Center  
Austin, TX  
January 8, 2015**

The Executive Committee met on January 8, 2015 in Austin at the Texas Law Center. President Trey Apffel called the meeting to order at 10:30am, and Executive Director Michelle Hunter called the roll.

**Present:** President Trey Apffel, David Alders, Robert Aldrich, Jaime Balli, TYLA President Rebekah Steely Brooker, David Chamberlain, President-elect Allan DuBois, Sara Dysart, Laura Gibson, Justice Phil Johnson\*, Chair of the Board Roger Key, Larry McDougal, Gail Plummer, Tom Riney\*, Scott Rothenberg\*, Immediate Past President Lisa Tatum, TYLA President-elect Barrett Thomas, Immediate Past Chair Cindy Tisdale\*

**Participating via teleconference:** TYLA Immediate Past President Kristy Blanchard

*\*Nonvoting member*

I. APPROVAL OF MINUTES

**Upon motion properly made by Roger Key and seconded by Robert Aldrich, the minutes of the September 4, 2014 Executive Committee meeting were approved as distributed.**

II. REPORTS

A. **Closed Session:** At 10:33 a.m., the Executive Committee 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, 298<sup>th</sup> 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 10:56 a.m., the open session of the Executive Committee 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.

B. Report from the President:

President Trey Apffel reported he has appointed Travis Torrence to fill the unexpired term for District 4, Place 2 in Houston, the position previously held by David Chaumette who resigned from the Board in September. Travis comes highly recommended from the Houston Bar Association and is currently employed at Shell Oil. In November, Apffel 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. The State Bar is continuing to offer information to lawyers and the public on [texasbar.com/volunteer](http://texasbar.com/volunteer) and [texasbar.com/immigration](http://texasbar.com/immigration). In an effort to reduce the strain on providers, the State Bar is no longer accepting volunteer interest forms online. More than 120 attorneys completed the volunteer interest form during the time it was provided online. The new members-only social networking platform Texas Bar Connect continues to grow in test mode, and we now have five sections participating. The State Bar was honored November 7<sup>th</sup> as one of the top 10 state agencies on Twitter by the Texas Social Media Institute. President Apffel remarked on the power of social media in engaging personal connections.

In October, the Ad Hoc 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. Emergency approval was needed under the policy manual because the deadline for the brief was before the date of the Executive Committee meeting. 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 brief was filed on October 31, 2014, taking the position that TTAB decisions should not normally be given preclusive effect or deference. It was the legal counsel's view that this amicus request complied with *Keller* and the State Bar Act and fell within the Section's interest and expertise and thus could be approved.

**President Apffel moved that the Executive Committee ratify the Ad Hoc Submission Committee's approval of the Intellectual Property Law Section's request to file an amicus in *B&B Hardware, Inc. v. Hargis Indus., Inc. d/b/a Sealtite Building Fasteners, d/b/a East Texas Fasteners*; Tom Riney seconded. Motion carried.**

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. Emergency approval was again needed under the policy manual because the deadline for the brief was before the date of the Executive Committee meeting. The brief was filed on December 10<sup>th</sup>, 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. It was the legal counsel's view that this request fell within the purposes of the State Bar and the Section's interest and expertise.

**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 in *Baker Botts, L.L.P. v. ASARCO, LLC*; Immediate Past President Lisa Tatum seconded. Motion carried.**

C. Report from the Chair of the Board:

Chair Roger Key reported that the district letters from Board members were mailed in November. The next correspondence from the Board to members in their districts will be an e-blast, scheduled for late February. Directors are taking advantage of the assistance offered by the State Bar communications team in obtaining handouts and district-specific information for local presentations. At the January Board meeting, an updated version of the PowerPoint will be distributed to our Board. We continue to receive positive comments from members on what services the State Bar offers its members.

D. Report from the President-elect:

President-elect Allan DuBois noted that in the upcoming months, he will work with State Bar staff to raise awareness of the Texas Lawyers' Assistance Program (TLAP) which 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. He will also work to raise 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. Over the past three years, the Trust has distributed nearly \$150,000 in grants to attorneys for in-patient treatment, outpatient treatment and mental health counseling, therapy, and medication. 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.

President-elect DuBois is the chair of the Committee Review Task Force, which is charged with reviewing the standing committees of the Bar. The State Bar Act requires that the Board conduct 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 is finishing up its work and will be presenting their recommendations to the Board at the April Board meeting.

President-elect DuBois reported that the Budget Committee met on December 10, and after hearing from different State Bar divisions and departments, the Committee approved the FY 2015-16 budget as presented. 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 Budget Committee is also 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 the current level of 2.7 months of budgeted operating expenses; \$250,000 to the Sheeran Crowley Memorial Trust; \$200,000 additional funding to the Client Security Fund; and \$50,000 additional funding for the Technology Fund.

**On behalf of the Budget Committee, President-elect DuBois moved for approval of the SBOT 2015-16 proposed budget for publication in the *Texas Bar Journal*; no second needed. Motion carried.**

E. Report from the Immediate Past President:

Immediate Past President Lisa 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 a 2014 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 10<sup>th</sup> annual National Black Pre-Law Conference and Law Fair in Houston in October and spoke as a panelist during a workshop on legal careers. The conference provided participants with access to over 100 law schools that participate in the law fair. In February, she will join Benny Agosto on a Diversity Forum panel at the National Conference of Bar Presidents during the ABA mid-year meeting.

F. 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). The subcommittee will meet on January 13 to review a draft report. 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, in consultation with Lacey Gourley of Winstead PC who has reviewed the policies. The subcommittee is reviewing a first draft of the recommended revisions.

Gibson 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 \$14,400/month. The landlord's proposal to renew the current lease is \$24,200/month. The subcommittee and staff toured five properties in Houston, and two additional properties that met the required criteria were asked to submit proposals. The subcommittee will recommend a lease to the Administration Committee on January 15.

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 current proposal increases the review fee from \$75 to \$100 and the non-filer application from \$300 to \$325. There were questions raised on the fee increases, and Gene Major noted that the disciplinary rules require that certain forms of public media advertisements and written solicitations be filed with the Ad Review Committee for their review.

David Alders reported that the State Bar Act requires the State Bar to adopt a revised strategic plan every two years. Based on input received from the Board Retreat in July, the strategic plan has been updated with refinements, rather than wholesale, substantive changes designed to make the plan more clear and readable.

**On behalf of the Performance Measures and Strategic Planning Subcommittee, Alders moved for adoption of the updated Strategic Plan for presentation to the Board; no second needed. Motion carried.**

G. Audit & Finance Committee:

Tom Riney reported that as of November 30, the General Fund actual net revenues over expenditures totaled approximately \$785,000. This resulted in a positive net revenue over expenditure variance of approximately \$376,000. Padgett Stratemann & Co., LLP has completed the financial audit for FY 2013-14, and it resulted in the Bar receiving an “unqualified opinion. 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. Maxwell Locke & Ritter will make a presentation of the internal control audit report to the Audit & Finance Committee, and the committee will make a recommendation to the Board regarding the acceptance of the internal audit report.

H. Nominations and 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. After much deliberation, the subcommittee selected Randy Howry of Austin and Frank Stevenson of Dallas.

**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.**

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, and move it to Austin. As a result, this year there will be two positions up for election in District 4, and one new position up for election in District 9. As a reminder, there are limitations for what the 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.

I. Members 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”. They are requesting \$20,000 from the Bar Foundation to produce a series of educational videos to teach students about the principles of the U.S. Constitution. The Appeals/Grants Review Subcommittee approved the request to seek funding from the Texas Bar Foundation for this project. Rothenberg also reported that the subcommittee reviewed two appeals from attorneys who were denied certification by the Texas Board of Legal Specialization. The first appellant was denied certification in Civil Appellate Law due to a lack of experience in the number of appeals handled by the attorney. The other appellant was denied certification in Estate Planning and Probate Law due to a lack of experience in the practice area. In both these appeals, the subcommittee upheld the decisions made by the Texas Board of Legal Specialization.

David Chamberlain reported that this month is the one year anniversary of the Private Insurance Exchange, and the Exchange has tripled in membership from the former insurance trust. The Member Benefits Subcommittee gave presentations on the Exchange in Austin, San Antonio, and Houston, and all have been well received. There will be presentations in Dallas, Fort Worth, and Lubbock later this month.

J. Legislative Policy Subcommittee:

Jaime Balli reported that the subcommittee completed their work on the legislative proposals at the September Board meeting. The 84<sup>th</sup> Texas Legislative Session will begin on January 13.

K. Supreme Court Liaison:

Justice Johnson reported that there has been no turnover in the Supreme Court, and the investiture for three new judges of the Court of Criminal Appeals was held yesterday.

L. TYLA:

TYLA President Rebekah Brooker reported on various projects underway, including “Just In Case” – Attorneys Get Your Affairs In Order, Lawyers Who Lunch Blog, the web-based Bullying Project, Interns Across Texas judicial project, and the Just Drive Campaign on driving distracted. The TYLA Board meeting begins tomorrow in San Antonio.

M. 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.

There being no further business, the meeting was adjourned at 12:36 p.m.