

**OFFICIAL MINUTES
STATE BAR OF TEXAS
EXECUTIVE COMMITTEE MEETING
Texas Law Center
Austin, TX
September 4, 2014**

The Executive Committee met on September 4, 2014 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, TYLA President Rebekah Steely Brooker, David Chamberlain, President-elect Allan DuBois, Sara Dysart, Laura Gibson, Chair of the Board Roger Key, Gary Nickelson*, Tom Riney*, Scott Rothenberg*, Immediate Past President Lisa Tatum, Barrett Thomas, Immediate Past Chair of the Board Cindy Tisdale*

Participating via teleconference: Jaime Balli, TYLA Immediate Past President Kristy Blanchard, Justice Phil Johnson*

**Nonvoting member*

I. APPROVAL OF MINUTES

Upon motion properly made by Robert Aldrich and seconded by Rebekah Steely Brooker, the minutes of the April 3, 2014 Executive Committee meeting were approved as presented.

II. REPORTS

A. Report from the President: President Apffel reported that since Annual Meeting, he has talked with bar leaders from across the nation at events like the Bar Leaders Conference, the ABA Annual Meeting and the Southern Conference of Bar Presidents. LeadershipSBOT kicks off next weekend in Austin. The next CLE seminar for solo and small firm practitioners will take place September 17 in Galveston, prior to the September 18-19 Board meeting there. Minority director Regina Bynote Jones resigned from the Board in August. President Apffel has appointed Anna Sankaran from Houston to fill the unexpired term for that position. The State Bar's social media presence continues to grow, with our Twitter account reaching 10,000 followers last month. Texas Bar Connect continues to operate in test mode with select State Bar Sections. A refresh of our website is about to move from simply planning to development.

President Apffel discussed the new webpage, texasbar.com/volunteer, which provides information on training and pro bono opportunities to attorneys interested in volunteering to help meet the legal needs of unaccompanied minors crossing our southern border. A separate webpage has also been created, texasbar.com/immigration, to offer general resources on immigration law to the public, including Spanish-language videos warning about the problem of *notario* fraud. President Apffel also co-wrote a column with Leland De la Garza for *The McAllen Monitor* that further explained the difference between attorneys and *notarios* to members of the public seeking legal services.

President Apffel noted that in early August, the Ad Hoc Submission Committee approved an emergency approval request from the Bankruptcy Law Section for approval to file an amicus brief in the case of *Baker Botts LLP v. ASARCO LLP*, on a petition for writ of certiorari in the U.S. Supreme Court. Emergency action was 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 August 29th, and the case involved whether Bankruptcy Code Section 330(a) grants judges the discretion to award fees for a defense of fees in a bankruptcy case. The Section's position is that judges should have this discretion. It was legal counsel's view was that this amicus

request fell within the purposes of the State Bar and 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 Bankruptcy Law Section's request to file an amicus in *Baker Botts LLP v. ASARCO LLP*; Chair of the Board Roger Key seconded. Motion carried.

President Apffel reported that on August 21, State Bar director David Chaumette received a public reprimand. An evidentiary panel of the District 5 Grievance Committee found that in two instances Mr. Chaumette failed to hold client funds in a trust account; that in two instances he failed to promptly deliver funds to a client that the client was entitled to receive; and that in one instance, upon conclusion of a legal matter, he failed to provide a client with a written statement of remittance and the method of its determination. As part of the judgment of public reprimand the evidentiary panel ordered two years of trust account monitoring, CPA review of trust accounts, additional CLE, and attorney's fees and expenses. Under the State Bar Act, Rules, and Board Policy Manual, Mr. Chaumette is not required to resign from the board of directors.

B. Report from the Chair of the Board: Chair Roger Key reported that the Board will continue to reach out to local bar associations and offer a State Bar Update CLE presentation. In October, a communications letter will go out to all constituents in each district from each director in that district. The feedback received from last year was helpful, and this is a great way to actively reach out to the lawyers in each district and learn how we can better meet their needs. Two years ago, Buck Files learned that our judges wished to have a copy of the Texas Lawyers Creed hanging in their courtrooms, and for the second year in a row, we were able to distribute copies to all those who were in attendance at the judicial conference. Copies are available for all of our members for free.

C. Report from the President-elect: President-elect Allan DuBois reported that over the summer, he attended the Bar Leaders Conference, the ABA annual meeting in Boston, and had the pleasure of welcoming new law students at the Texas A&M and St. Mary's orientations.

President-elect DuBois reported that the Budget Committee will hold its first meeting on Thursday, September 18 in Galveston to discuss the State Bar's budget process and timeline. Budget worksheet packets will be furnished to division and department directors on October 3 with a deadline completion date of October 17. The Budget Committee is scheduled to meet on Wednesday, December 10 in order to discuss and finalize a proposed FY 2015-16 budget for presentation to the January Executive Committee and to the Board at their respective meetings.

The State Bar Act requires the Board to conduct a comprehensive review of the standing committees biennially to determine two things; whether there is a continued need for each committee, and whether there is unnecessary overlap of committee activities. A Committee Review Task Force has been appointed to review the State Bar's standing committees. The Committee Review process has led to some positive changes to the standing committee structure and we look forward to another thorough review by the task force. The goal is to complete our final report by the April Board meeting.

D. Report from the Immediate Past President: Immediate Past President Lisa Tatum reported that in August, the State Bar hosted a Diversity Retreat for a select group of State Bar and TYLA leaders in order to bring together everyone involved with our diversity efforts to share projects, ideas, and ways to help each other. They broke into three groups to identify and discuss the distinct focus areas of attract, build, and connect. In August, Immediate Past President Tatum was honored to represent the State Bar in accepting a National Association of Bar Executives LexisNexis Community and Educational Outreach Award for *I was the First. Vote for Me!* We have now distributed more than 15,000 *I was the First* books to teachers and school children. She also led a presentation with Missouri Bar Past President Lynn Ann Vogel at the ABA Meeting in Boston, highlighting successful bar programs from across the country, including Texas Lawyers for Texas Veterans.

E. Administration Committee: Laura Gibson reported on the various projects that the subcommittees of the Administration Committee will be working on for the upcoming year. The Employment/Salary/Evaluation Subcommittee will be focusing on the review of State Bar affiliated groups as part of Board policy 1.17, and will be reviewing the Texas Legal Protection Plan. The Employee Handbook will also be revised since the last update was completed in 2010. The Facilities and Equipment Subcommittee has been touring properties for the Houston CDC office, whose lease expires October 31, 2015. The state UPL Committee held its quarterly meeting on August 16th, with regional and subcommittee chairs from across the state. The committee received reports on pending matters, considered requests for authorization of suit, and discussed other topics of interest affecting the unauthorized practice of law. Brad Powell also conducted a training session for members on the use of the new case management system.

F. Audit & Finance Committee: Tom Riney reported that the total amount of revenues over expenditures for the period ending July 31, 2014 was \$991,449 compared to a budgeted amount of \$658,438. This resulted in a positive overall net variance of \$333,011, or 51%. The CPA firm of Padgett & Stratemann is performing the State Bar's financial audit for FY 2013-14, and the financial audit report will be presented for approval at the January Board meeting. Maxwell Locke & Ritter will conduct the State Bar's internal audit for FY 2013-14. The State Bar's 4-year internal audit plan specifies review of the following areas for the fiscal year 2013-14 internal audit: CDC and the disciplinary process, purchasing and facilities, PDP, and research and analysis. The internal audit report will be presented to the Board at its January meeting also.

G. Nominations & Elections Subcommittee: The Nominations and Elections subcommittee will begin the process of finding potential nominees to run for President-elect. For this election cycle, it is a big city year. The subcommittee will meet in Galveston 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. Also, this is the year that the State 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 District 4 (Houston) and move it to District 9 (Austin). Therefore, this year there will be only two positions up for election in District 4, and one new position is up for election in District 9. The elections will begin on April 1st.

H. Member Services and Education Committee: Scott Rothenberg reported that the Appeals/Grants Review Subcommittee received a \$59,000 grant request from the Texas Young Lawyers Association for authorization to seek outside funding from the Texas Bar Foundation for their public service project called "*The Bullying Project*", a project that teaches kids and adults about bullying laws and available resources to the public. The Appeals/Grants Review Subcommittee voted to approve this request. Gary Nickelson reported that the PDP/CLE Committees met jointly last Friday, and there was vigorous discussion of several dozen new topics for seminars and webcasts. The subcommittee forsees steadily rising costs relating to hotels, airlines, food and beverage, and equipment rental, which will exceed the expense budget. David Chamberlain reported that enrollments in the Private Insurance Exchange have more than doubled, to 1,866 enrollments. Member Benefits Inc. is seeing 15-30% increase in group rates with renewals, especially if the average age of the group is higher. The subcommittee is also looking at whether to use Fed Ex or UPS, and will be receiving a proposal from UPS.

I. Public Services and Education Committee: Jaime Balli reported that the Legislative Policy Subcommittee met on August 22nd to consider proposals from four Sections: Animal Law, Family Law, LGBT Law, and REPTL. Sections are required to circulate their proposals to all other Sections and committees for review and comment. The subcommittee carefully reviewed submission materials and evaluated testimony on 20 proposals as presented by section members. The subcommittee voted to recommend support of 19 of the 20 proposals. The REPTL Section has chosen to appeal the Subcommittee's recommendation on the 20th proposal and the subcommittee will hold a teleconference to discuss. The Subcommittee's final recommendations will be made at the September Board meeting.

J. MCLE Committee: Jason Honeycutt reported that back in April, the Task Force on Aging Lawyers Issues made a recommendation to the Board to eliminate the MCLE exemption for Emeritus attorneys. The MCLE Committee agreed with the task force that Emeritus attorneys who practice law should be required to take

continuing education courses. The Committee approved proposed recommendations for changes to the MCLE Rules and Regulations that would eliminate the age exemption for emeritus attorneys. The first change would repeal the age exemption from MCLE Rules, meaning that attorneys who are 70 years of age or older who continue to practice law would be required to comply with the MCLE requirements like all practicing attorneys, and additionally, they would be given a one year initial grace period to complete CLE requirements. The second change would reduce non-compliance and reinstatement fees for emeritus members. Questions were raised on whether or not to grandfather attorneys who are already 70 or older from the policy change, and whether there would be a financial hardship to emeritus attorneys to have to take CLE course.

President Apffel moved for approval of the proposed changes to the State Bar Rules and MCLE Regulations concerning the elimination of the MCLE age exemption; David Chamberlain seconded. After much discussion, President Apffel withdrew his motion for further discussion and study until the January Board meeting.

K. Supreme Court Liaison: Justice Johnson reported that the Court is working on fiscal year matters and getting ready for the legislative session. The Court is also working on getting their docket cleared out before the end of the year. The Court will also hear oral arguments at Texas Tech law school in October.

L. Texas Young Lawyers Association: TYLA President Rebekah Steely Brooker reported that they are trying to encourage young lawyers to participate in TYLA. TYLA's first Board meeting is starting in Dallas that day. Brooker also reported on upcoming public service projects, and congratulated Immediate Past TYLA President Kristy Blanchard on the TYLA awards for her projects last year.

M. Report from the Legal Counsel: ***Closed Session: At 12:19 p.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. With the exception of board liaisons and section representatives, all other individuals including non-essential staff excused themselves from the closed session.***

Open Session: At 1:23 p.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.

There being no further business, the meeting was adjourned at 1:24 p.m.