

**OFFICIAL MINUTES
STATE BAR OF TEXAS
BOARD OF DIRECTORS MEETING
Overton Hotel
Lubbock, Texas
Friday, September 22, 2017**

The Board of Directors of the State Bar of Texas met in regular session on September 22, 2017 at the Overton Hotel in Lubbock. Chair Rehan Alimohammad called the meeting to order at 9:00 a.m., and Interim Executive Director John Sirman called the roll. A quorum of voting Board members was present. Philip Mack Furlow delivered the invocation, and Nicole Voyles lead the pledges to the U.S. and Texas flags. Richard Baker and Carolyn Moore from the public were present at the meeting and received a resolution from President Tom Vick. During the meeting, Michael Dokupil was sworn in as public member director by Justice Phil Johnson.

Present:

Board Members: Jerry Alexander, Chair Rehan Alimohammad, Christy Amuny, Micah Belden, Alan Carmichael, Jeff Chandler, Leslie Dippel, Michael Dokupil, Immediate Past Chair Joe Escobedo*, Sylvia Firth, Jarrod Foerster, Laura Gibson, Ann Greenberg, August Harris, Angelica Hernandez, Joe “Rice” Horkey, Immediate Past TYLA President Sam Houston, Sarah Keathley, Neil Kelly, David Kent, President-elect Joe Longley, Aldo Lopez, Bob McKnight, Rudy Metayer, Gary Nickelson, Chris Oddo, Amie Peace, TYLA President-elect Sally Pretorius, Curtis Pritchard, TYLA President Baili Rhodes, Lisa Richardson, Fidel Rodriguez, Scott Rothenberg, Greg Sampson, Rebecca Simmons, Dinesh Singhal, Immediate Past President Frank Stevenson, Scott Stolley, Andrew Tolchin, President Tom Vick, Nicole Voyles, Brad Weber, and Michael Wynne.

Liaisons*: Judge Barbara Hervey, Justice Phil Johnson, Tim Mountz, and Judge Jennifer Rymell.

Section Representatives*: Elizabeth Copeland, Philip Mack Furlow, Shelby Jean, Audrey Moorehead,

Excused Absences: Erich Birch*, Wendy Burgower*, Alison Colvin, Ricky Gonzalez, and Judge Amos Mazzant*

(* = *nonvoting*)

I. CONSENT AGENDA ITEMS

Consent agenda items approved with no objection [Exhibit A] ¹:

a. C1. APPROVAL OF MINUTES:

(Minutes Tab) **a.** Approval of minutes of Board meetings conducted on June 22-23, 2017.

C2. ITEMS FROM THE PRESIDENT:

Approval of appointments to the following entities:

- a. Texas Bar Foundation Board of Trustees**, to fill an unexpired term effective September 22, 2017, through May 31, 2019.

¹ **Exhibit A** is available at www.texasbar.com/bodcentral under Meeting Agendas and Minutes.

² **Exhibits 1-17** are available at www.texasbar.com/bodcentral under Meeting Agendas and Minutes.

Wendy Burgower (Houston)

b. Delegates to the 2018 Fifth Circuit Judicial Conference:

President Tom Vick	Immediate Past President Frank Stevenson
President-elect Joe K. Longley	Chair of the Board Rehan Alimohammad
State Bar of Texas Executive Director	TYLA President Baili B. Rhodes

c. At-large Directors Nomination Committee

Angelica Hernandez (Houston), chair
Amie Peace (Denton)
Dinesh Singhal (Houston)
Sam Houston (San Antonio)
Audrey Moorehead (Dallas)

d. ABA Delegate Walter Sutton for term expiring 2018.

e. Committee on Disciplinary Rules and Referenda:

Chair: M. Lewis Kinard (Dallas), for a term effective January 1, 2018, through December 31, 2018.

M. Lewis Kinard (Dallas), for a term effective January 1, 2018, through December 31, 2020.

Amy Enlow Bresnen (Austin), for a term effective January 1, 2018, through December 31, 2019.

Jane Anderson King (Amarillo), for a term effective January 1, 2018, through December 31, 2018.

f. Texas Center for Legal Ethics, for unexpired term effective September 22, 2017, through May 31, 2020:

Victoria Mather (San Antonio)

g. Texas Real Estate Commission Broker/Lawyer Committee, for terms effective September 22, 2017, through August 31, 2023:

John (Bo) Blackburn (Austin)
John G. George, Jr. (Houston)

C3. ITEMS FROM COMMITTEES AND SECTIONS/DIVISIONS:

(Yellow Tab A) **a.** Legislative and Campaign Law section updated bylaws to expand their counsel from 6 members to 9 members.

(Yellow Tab B) **b.** Intellectual Property Law Section updated by-laws based upon the State Bar model section by-laws.

C4. OTHER ITEMS:

¹ **Exhibit A** is available at www.texasbar.com/bodcentral under Meeting Agendas and Minutes.

² **Exhibits 1-17** are available at www.texasbar.com/bodcentral under Meeting Agendas and Minutes.

(Yellow Tab C) **a. Approval of resolutions honoring:**

- 1.) C. Richard “Dick” Baker
- 2.) Carolyn F. Moore

II. REPORTS

A. Chair Rehan Alimohammad that he will be using the “Unanimous Consent Rules” in the Roberts Rules of Order.

He then asked if there were any objections to moving up item 8F Resolutions. No objection.

B. Presentations of Resolutions:

President Tom Vick presented resolutions on behalf of the board to Richard “Dick” Baker and Carolyn F. Moore. **[Exhibit A]**

C. Report from the Chair of the Board:

Chair Rehan Alimohammad reported that the board is committed to a coordinated communications plan. Board members will be communicating with constituents regarding how the State Bar serves members and the public, and will be receiving feedback on how the State Bar can better serve its members. He provided a communications packet that included an example of the letter that was sent to constituents last year. In October, the communications staff will contact directors with general language to be included in this fall’s letter. Upon changes and approval, the staff will then coordinate mailing. The letter will be mailed in late October to all of the constituents in each district from all of the directors in the district. In February, a similar process will take place, but will use an email blast instead of a letter and will provide links that allow our members to access web-based resources immediately.

In the communications packet is a printed copy of a model PowerPoint presentation that directors can use when making presentations to local bars and specialty bars in their districts. The presentation is MCLE accredited for the entire bar year. Chair Alimohammad provided a local bar roster. He reported that the updated State Bar Act, along with the new annual reports of the State Bar, the Commission for Lawyer Discipline, and the Texas Young Lawyers Association were provided to each director.

Chair Alimohammad reported that the State Bar received a national award for one of its signature efforts to promote diversity and inclusion in the legal profession. The Texas Minority Counsel Program (TMCP) received one of three ABA Partnership Awards during a ceremony at the ABA Annual Meeting.

He announced that any second year voting director who desires to be nominated for the position Chair of the Board must notify the Chair on or before January 5, 2018.

Chair Alimohammad asked if there were any objections to approving the items on the consent agenda. No objection; Consent agenda approved. [Exhibit A]

D. Report from the President:

President Tom Vick reported on his official travels and presentations since June, including Fort Bend County Bar, Bar Leaders Conference in Houston, NCBP/ABA Annual Meeting in New York City, and Hurricane Harvey response in Houston.

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² **Exhibits 1-17** are available at www.texasbar.com/bodcentral under Meeting Agendas and Minutes.

President Vick thanked the State Bar staff for all of their work for Annual Meeting, Bar Leaders Conference, and disaster relief efforts.

In August, he traveled to New York for the annual meetings of the National Conference of Bar Presidents and the ABA. He stated that the State Bar is mindful of the costs involved in out-of-state travel. He noted that meetings like the NCBP and Southern Conference of Bar Presidents provide opportunities for training and professional development through courses on topics such as planning for the future needs of lawyers and the legal profession, how to effectively lead a staff or a board of directors, how to respond to crises, how to use emerging technologies, and how to better serve the unmet legal needs of citizens. Bar association staff and officers also use these meetings to share ideas and best practices. By being active in these associations, Texas can and does play a leadership role in the legal profession. The first calls President Vick received after Hurricane Harvey were from Southern Conference colleagues offering assistance. Other state bar associations have been quick to offer practical and financial help to Texas residents in the wake of this disaster.

On September 9th, President Vick attended the L. Clifford Davis Legal Association's scholarship and recognition banquet in Fort Worth. He helped to honor retired Judge L/ Clifford Davis, who he said is a true pioneer for civil rights and whose cases led to the desegregation of Fort Worth and Mansfield public schools.

President Vick reported that the State Bar continued its free CLE series for solo and small firm lawyers this week with a successful event in Lubbock. He thanked Sarah Keathley, Dinesh Singhal, and Greg Sampson from the State Bar board—along with Lubbock attorney Laurie Key—for their presentations during the CLE event on Wednesday.

President Vick reported that Austin lawyer Greg Gegenheimer's lawsuit against the State Bar over the minority director selection process was dismissed. On August 31, Gegenheimer's appeal deadline expired, with no notice of appeal having been given. He thanked the outside counsel, Tom Leatherbury and his team at Vinson & Elkins for their representation, which was in large part provided pro bono.

He reported that minority directors currently on the Board will serve out their terms, and be replaced by the new "at-large directors" when their terms expire. The State Bar has issued a call for nominations of at-large directors. An Ad-Hoc Selection Committee of five board members will recommend four finalists to President Vick, and he will select two nominees for approval at the January board meeting. [TAB 1]²

President Vick had one set of appointments listed on the consent agenda. The appointments were to the Committee on Disciplinary Rules and Referenda. The Sunset legislation established a joint committee made up of State Bar and Supreme Court appointed members. The committee will study the disciplinary rules and make recommendations to the board on what if any changes need to be made. The legislation spells out the process for conducting a referendum, the different layers of approval, and public input. [Exhibit A]

President Vick updated the board on the State Bar's Hurricane Harvey disaster response. For the public affected by the hurricane, the State Bar is directing them to the State Bar's toll-free disaster hotline, connecting disaster survivors to local legal aid or pro bono programs. The State Bar has posted a number of valuable explanatory documents, assistance links, and how-to videos on the State Bar website at texasbar.com/disasters. Attorneys, paralegals, and law students interested in helping with the relief effort can find resources like free CLE trainings at texasbar.com/attorneyresources. He has been working with Cindy Tisdale, chair of the Bar Foundation, on disaster relief. They visited the George Brown Convention center and other relief centers in Houston. He thanked the generosity of our legal community.

President Vick made a motion that the Board approve a donation of \$50,000 from the State Bar of Texas to the Texas Bar Foundation Hurricane Harvey Disaster Relief Fund. Motion seconded by Andrew Tolchin; No discussion. Motion carries.

¹ Exhibit A is available at www.texasbar.com/bodcentral under Meeting Agendas and Minutes.

² Exhibits 1-17 are available at www.texasbar.com/bodcentral under Meeting Agendas and Minutes.

The State Bar's own office in Houston was closed by Hurricane Harvey after flooding impacted the building. As the State Bar offices are on the third floor there was no flooding but the office was taken offline for a couple of weeks. During that time other regional offices did extra duty to keep things running. Houston CDC is now back in business.

President Vick reported that he and Chair Alimohammad nominated Ron Bunch to the State Commission on Judicial Conduct. The appointment can be found on the consent agenda under item 8E. [TAB 2]

President Vick made a motion that the Board approve the appointment of Ron Bunch to the State Commission on Judicial Conduct for a term beginning November 20, 2017, and expiring November 19, 2023. Motion seconded by Micah Belden; No discussion. Motion carries.

President Vick reported on the Executive Director Selection committee. At the April Board meeting, the Board approved the Executive Director Selection Committee to assist the Board in conducting a search for Executive Director. The committee agreed to hire a national search firm, Young Mayden. He thanked Barbara Mayden and the Search Committee for all of their work.

President Vick explained the search process: A job notice was posted in the May and June Bar Journal issues. The job announcement was posted on the State Bar website, and sent out to local bars, ABA list serves, committees, sections and many more. An email was sent out on August 24 informing the membership about who the finalists were. Interviews were conducted on September 11th at the State Bar. Candidates were interviewed for about an hour and then the committee had an hour of deliberation. After three rounds of voting on the candidates, the committee decided to recommend Trey Apffel to the board as the next Executive Director of the State Bar. The vote was 15-1 to recommend Trey.

The committee felt that Trey was the right choice for the position. The committee believed that he has the ability to connect with lawyers, to listen to lawyers, and to be the face of this organization. The committee also noted that he has knowledge of the workings of the Bar, and will work great with State Bar staff members to advance the work of this board and our members.

On behalf of the Executor Search Committee, President Tom Vick nominated Trey Apffel for the position of Executive Director.

President-elect Joe Longley named a second nomination, D. Hull Youngblood for the position of Executive Director.

Director August Harris made a motion to have a Closed Session as authorized by Texas Government Code Section 551.074 to deliberate for the purpose of discussing recommendations from the Executive Director Search Committee and Evaluation Subcommittee concerning the appointment, employment, and the election of a new executive director, including compensation and other terms of employment; Motion seconded by Ann Greenberg.

Joe Longley objected to a closed session; no second. Motion failed.

Chair Alimohammad said that this a privileged motion and there is no further need to debate.

Joe Longley motioned to have a roll call vote; no second. Motion failed.

Chair Alimohammad restated the motion to convene in closed session. Motion carried.

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² **Exhibits 1-17** are available at www.texasbar.com/bodcentral under Meeting Agendas and Minutes.

Closed Session: At 10:03 am, Chair Alimohammad announced that the board of directors would meet in closed session as authorized by Texas Government Code, Section 551.074 for the purpose deliberating the appointment, employment, and election of a new executive director, including compensation and other terms of employment.

Open Session: Upon return to open session at 11:20 am, Chair Alimohammad announced that during the closed session, only matters relating to the appointment, employment, and election of a new executive director, including compensation and other terms of employment, were discussed. Discussions in closed session include confidential information and must be kept confidential pursuant to Texas Govt. code sections 552.352 and 551.146. No action was taken in closed session.

In open session, Chair Alimohammad reopened the floor for discussion.

Director Scott Stolley asked for an explanation from the Selection Committee about the structure of their voting process.

President Vick reported that after they finished the interviews the committee had time to discuss each candidate. Chair Bob Black suggested that everyone could vote for three people: each member had a first choice, with an assigned value of 5, a second choice with an assigned value of 3, and a third choice with an assigned value of 1. All voting was done anonymously and then tabulated. Then the committee talked about the merits of each candidate and the last two places were cut from the list. The process was repeated until the third and final vote. The committee voted 15-1 to recommend Trey Apffel.

Director Scott Sherwood thanked the committee for explaining the process. He thanked Lowell Brown and his communications staff and the leadership in their communication efforts. Sherwood commented that communications can be sent out but we cannot make people read it and it is the responsibility of the receiver to read it. He stated that Trey Apffel is the right candidate for this time and for the future based on what he has done in the past. Scott Sherwood encouraged the Board to vote for Trey Apffel.

Roger Key spoke as a member of the public and as a practicing lawyer. Mr. Key served on the State Bar Board of Directors 2012-2016, and served as Chair of the Board the year that Trey Apffel was president. He spoke to Mr. Apffel's qualifications and encouraged the Board to elect Mr. Apffel as State Bar executive director. Director Greg Sampson, member of the ED Search committee, noted that several members of the committee have had previous experience on selection committees for various government entities. He expressed his opinion that the process was textbook, and that all members were open and honest. He commented that he was never asked how he voted nor did he ask anyone how they voted.

Chair Alimohammad, in accordance with the Unanimous Consent Rules, called for any objections to holding a roll call vote. Hearing no objection, a roll call vote was conducted. Interim Executive Director John Sirman called the roster of the voting directors asking them to indicate their vote for executive director. The results of the election were 42 votes for Trey Apffel, 1 vote for D. Hull Youngblood, and one abstention. Trey Apffel was elected as State Bar executive director.

President Vick reported on the employment offer letter for Mr. Apffel. The Evaluation Subcommittee had recommended a salary of \$271,000.00. President Vick noted that in the past, the State Bar had reimbursed out of town executive directors for moving expenses and recommended the same be offered Mr. Apffel along with travel reimbursement for up to two house hunting trips to Austin for Mr. Apffel and his spouse. Mr. Apffel's starting date will be December 1, 2017.

On behalf of the Evaluation Subcommittee, President Vick made a motion that the Board approve the compensation and terms of employment for Trey Apffel. The motion coming from a subcommittee, no second was needed. Rudy Metayer asked if there was any amount in mind regarding moving expenses.

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¹ Exhibit A is available at www.texasbar.com/bodcentral under Meeting Agendas and Minutes.

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President Vick said that we don't know the exact cost and that is why they inserted the word "reasonable" in the letter. No other discussion; Motion carried.

Trey Apffel thanked the board and the search committee for their support and time.

He shared his reasons for wanting to serve as executive director and pledged to represent all Texas lawyers, to renew existing relationships and form new ones, to invite participation, and to enhance communication efforts.

E. Report from the President-elect:

President-elect Joe Longley pledged to Trey Apffel that although they may have different approaches to making this profession better, it was his wish is that they will converge more than they will diverge. President-elect Longley reported that the budget committee met September 21 and will meet again on December 7. The budget will be presented to the Board for approval for publication at the January Board meeting.

President-elect Longley reported on his task forces. The first, fiscal responsibility and fiscal controls, has been working and President-elect Longley thanked Tracy Jarratt and Cheryl Howell for working with this task force. There are two task forces that are pending: one on elections and the other on transparency. [TAB 10]

President-elect Longley reported on the position of General Counsel of the State Bar. [TAB 3-9] He stated that that position has not been filled in 6 to 7 years, that it is a statutory position with specific duties, and that it answers solely to the Board of Directors. He reported that it is important to review the issue and determine what should be done about filling the position of General Counsel. It's important in regards to open records, open meetings, elections, misuse of bar funds, and theft within the bar. He referenced Jim McCormick's letter [TAB 9] explaining how important the General Counsel's office is and the function that it has.

F. Report from the Immediate Past President:

Immediate Past President Frank Stevenson reported on the benefits the State Bar receives from its participation with the American Bar Association, Southern Conference of Bar Presidents, National Conference of Bar Presidents and all the other national groups that we are engaged with. This is something that a great state bar does and the State Bar of Texas is a great state bar.

Immediate Past President Frank Stevenson reported that a new cohort of TOJI participants will start a three-week boot camp on October 2. The practice areas that the new cohort will focus on include elder law, landlord/tenant issues, family law, consumer law, criminal defense, and representing victims of domestic violence, the LGBT community, and the families of children with special needs.

The group includes three members who also participated in Baylor's Legal Mapmaker program, which is a program designed to give new lawyers advice on what they need to start a practice. TOJI Director Anne-Marie Rabago was a speaker at this year's Legal Mapmaker program, where she talked to program participants about the services available to lawyers through the State Bar of Texas. At full capacity, there will be 30 incubator lawyers in the 18-month program, making TOJI one of the largest legal incubators in the nation.

G. Nominations and Elections Subcommittee:

Immediate Past Chair Joe Escobedo reported that the Nominations and Elections Subcommittee met on September 21st to begin the nominations process for President-elect. For this next election cycle, it is a large city year, meaning that potential nominees must come from the metropolitan counties of the state (Bexar, Dallas, Harris, Tarrant, and Travis counties).

The subcommittee has announced the nominations process by placing an ad in the September Bar Journal and has sent notices to local bars, sections, and committees. The subcommittee plans to conduct interviews in

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December and the subcommittee will submit the names of two nominees to the Board in January for consideration.

Joe Escobedo reported that there are two candidates who have declared their intention to seek candidacy by petition - Lisa Blue of Dallas, and Randy Sorrels of Houston. To become candidates, they both must collect approximately 5,000 signatures and submit them by March 1st.

The election cycle will begin on April 2 and end on May 1. Joe Escobedo reported that if there are more than 2 candidates there will likely be a runoff election in mid-May. In regards to the budget, if there is a runoff there will be an extra expense of \$70,000 to conduct another statewide election in addition to SBOT general election costs of about \$74,000. The State Bar may need to look at budgeting extra money every year if there continue to be petition candidates to cover the cost of 2 elections. The committee will suggest to president-elect Longley that he add an extra \$70,000 to his budget for next year to cover the costs of any potential runoff elections next year.

Joe Escobedo reported that the Nominations and Elections Subcommittee has begun looking at various aspects of the rules pertaining to the State Bar. He thanked Ann Greenberg, who is serving as chair of a subcommittee created to look at the rules and to help evaluate the election processes. The committee is looking at a number of things related to the election process, including: the time frame for elections, how to change or even potentially eliminate current rules related to campaigning, and the time frame for the nominations process. The board nominates its candidates in January. The candidates face a tremendous disadvantage compared to petition candidates, because the petition candidates begin campaigning long before the board votes to approve its candidates.

Since there are two petition candidates already campaigning, the subcommittee voted yesterday to suspend some of the rules related to campaigning for this election cycle. This was done to help level the playing field for all candidates. Some of the highlights include: candidates may send communications to non-professional acquaintances; suspending the time frame for when the campaign may begin; board members may endorse or participate in campaigns for president-elect; and each candidate will be reimbursed \$15,000 for campaign expenses, rather than the \$10,000 as prescribed by board policy when there are more than two candidates.

Immediate Past President Frank Stevenson reported that there are two items that were voted on by the full Nominations and Elections subcommittee, based on recommendations made by the sub-subcommittee. The first item is a request is to consider the allowance of electronic signatures for petition candidates for president-elect and director. The sub-subcommittee studied the issue and determined that there were both legal and policy reasons why electronic signatures should not be allowed. A motion was made to keep the issue of electronic signatures pending in the sub-subcommittee and that the issue be published in the Bar Journal for comment. The motion failed for a lack of a second. The subcommittee then approved a motion to deny the request to allow electronic signatures for petitions. That motion was approved by a vote of 8 to 1.

The matter was subsequently presented to the full Nominations and Elections Subcommittee. A motion was made to deny the request for implementation of electronic signatures due to both legal and policy issues related to the request, and the motion was approved by a vote of 14-1.

Immediate Past President Stevenson reported on the qualifications of bar members to run for director. The State Bar rules currently prohibit a member from running for director if they have ever been suspended from the practice of law. The Supreme Court has asked the State Bar to look at these rules and determine whether or not changes should be made. Specifically, the Court has asked the State Bar to examine the rule that prohibits an attorney who has ever been suspended for discipline reasons from the practice of law from serving as a member of the Board. The concern was that there is an absolute disqualification for someone who had been suspended for disciplinary reasons but has later turned his or her life around and wants to serve on the Board.

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After discussion and review by the Nominations Subcommittee, they unanimously agreed that the State Bar Rules should be amended to allow previously suspended lawyers to serve on the Board, but with several conditions in order to become eligible: 10 years or more shall have passed since the end of the disciplinary suspension; and the suspension is disclosed on a director's election petition and in campaign materials. The subcommittee's recommendation would allow previously suspended members to serve as a director, but would continue the restriction for State Bar officers. The subcommittee recommended that a previously disbarred attorney not be allowed to serve as a director or officer. [TAB 11]

On behalf of the Nominations & Elections subcommittee, Frank Stevenson made a motion that the Board approve the Nominations and Elections Subcommittee's recommended changes to the State Bar Rules regarding the qualifications of directors and the Petition for Election form as written in the packet materials under Tab 11. Motion coming from a committee, no second is needed. Discussion:

Director Scott Rothenberg asked if the committee performed or had any research regarding the constitutionality of compelled speech within regard to a candidate placing a statement on these petitions. If so, what is the result? John Sirman stated that this is not a compelled speech in this case.

Director Andrew Tolchin stated that he will be voting for this action but asked that in the future they revisit the disclosure requirement.

Director Dinesh Singhal made a request to amend the motion to separate the recommendations of the Nominations and Elections Subcommittee.

Immediate Past President Stevenson accepted the amendment and moved that the Board approve the provision that relaxes the rule and allows an attorney who has been suspended to run for Board. Coming from a committee no second is needed. Motion carried.

Immediate Past President Stevenson moved that the Board approve the recommendation that would require disclosure of any suspension. Coming from a committee no second is needed. Discussion:

Director Andrew Tolchin said that when he spoke earlier he was under the impression that they would be voting on Section 5 and 7 together. He is going to vote against Section 7C, urged the board to do so. He stated that in rural districts have a different view of the State Bar and they will see this as the State Bar putting its thumb on the scale of elections.

Immediate Past President Stevenson explained that the subcommittee believed this was relevant information that many lawyers would want to have highlighted for them in considering the request to sign a petition.

Director Tolchin stated that we don't presently require suspended attorneys to tell their clients that they have been previously suspended.

Director Michael Wynne stated that he supported Director Tolchin's position and said that this serves as a strong disincentive for an individual who has turned their life around, to then put themselves in the spotlight, branding themselves with a scarlet letter. In his opinion, this would be inconsistent with the spirit of the first part of this proposal.

Director Singhal stated that in a campaign the opponent can ask the question as to why they were suspended and that by requiring candidates to state why they were previously suspended does not make elections fair. He stated his opposition to this particular section.

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Director Greenberg, reported that the subcommittee did consider these concerns. The subcommittee had been provided with the transcript of the Supreme Court Advisory Committee discussing the changes and concomitant issues. She reminded the Board that the recommendations will go back to the Supreme Court for final adoption.

Immediate Past Chair Escobedo responded to Director Singhal's argument that an opposing candidate can bring up any past suspension. He noted that often there is not an opponent in the rural area races and this was something the subcommittee also took into consideration.

Director Rebecca Simmons stated that this all started because of a lawyer in San Antonio, Tom Kaiser. She talked about the Texas Lawyers Assistance Program, and how Mr. Kaiser speaks about becoming sober and the help he received from Allan DuBois. Because of the current rules, Mr. Kaiser was precluded from running for the board. She said that with the protections in place, someone who has turned their life around and followed TLAP ought to be allowed to run for the board.

The Chair restated the motion that the Board approve the disclosure requirement and called for a rising vote. Motion failed.

H. Policy Manual Subcommittee:

Philip Mack Furlow reported that the Policy Manual Subcommittee had 6 action items for Board consideration. A redlined and clean copy of the revisions can be found in [TAB 12].

Philip Mack reported that the first item concerns the change from Minority Directors to At-Large Directors that was the subject of new legislation this past session. The change resulted from a lawsuit brought last year against the State Bar alleging that the Minority Director quota on our Board was unconstitutional. The new legislation (now Section 81.020 of the State Bar Act) provides for the appointment of 4 At-Large Directors "who demonstrate knowledge gained from experience in the legal profession and community necessary to ensure the board represents the interests of attorneys from the varied backgrounds that compose the membership of the state bar."

The bill also provides that the current Minority Directors may continue to serve out their terms. The revisions to the Policy Manual establish a process by which At-Large Directors are chosen, including a nominating committee as reported on by President Vick earlier in this meeting. They also set out the selection criteria the nominating committee and the President should consider when recommending and appointing these directors. Our attorney in the litigation (Tom Leatherbury of Vinson & Elkins) was instrumental in drafting and reviewing the revisions.

On behalf of the Policy Manual Subcommittee, Philip Mack Furlow made a motion that the Board approve the At-Large Director revisions to the Policy Manual as set forth in Tab 12 of the Board materials. Coming from a committee, no second is needed. Motion carried.

Philip Mack reported that there will be no discussion on the second item as the committee is going to revisit.

Philip Mack reported that the third item revises Section 1.12.04 concerning Agenda and Minutes. These revisions clarify the process for including items on the agenda and allow Board materials that are not finalized 7 days before a meeting to be delivered closer to, or handed out at the Board meeting.

On behalf of the Policy Manual Subcommittee, Philip Mack Furlow made a motion that the Board adopt the proposed revisions to Section 1.12.04 of the Policy Manual as set forth in Tab 12 of the Board Materials. Coming from a committee, no second is needed. Motion carried.

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Philip Mack reported that the fourth item revises Section 1.21.07 concerning the Presidents' Award. The current version requires past presidents, along with the current president, to consider and vote on the recipient. This process is unwieldy and response by past presidents is low. The revision will make this an award given by the current president only.

On behalf of the Policy Manual Subcommittee, Philip Mack Furlow made a motion that the Board adopt the proposed revisions to Section 1.21.07 of the Policy Manual as set forth in Tab 12 of the Board Materials. Coming from a committee, no second is needed. Motion carried.

Philip Mack reported that the fifth item revises Section 8.02.02 concerning requests to file amicus briefs. These revisions are intended to prevent any appearance of impropriety and conflict of interest.

They provide that: amicus briefs may only be filed by the Bar or Sections in matters involving substantive or procedural law on major issues of importance to the practice of law or the administration of justice; The Bar may not file an amicus brief in a case in which a Voting Board Member represents any party in the case; A section may not file an amicus brief in a case in which any member of the section's council represents any party in that case; and no amicus brief may be filed which purports to resolve or take a position with regard to factual disputes in a case.

On behalf of the Policy Manual Subcommittee, Philip Mack Furlow made a motion that the Board adopt the proposed revisions to Section 8.02.02 of the Policy Manual as set forth in Tab 12 of the Board Materials. Coming from a committee, no second is needed. Motion carried.

Philip Mack reported that item 6 adds sections 5.01.11 and 5.04.07 concerning Section Annual Reports and Division Annual Reports. These reports are required by the State Bar Rules and sections and divisions currently file these reports. These are simply clean up provisions to comply with the Rules.

On behalf of the Policy Manual Subcommittee, Philip Mack Furlow made a motion that the Board adopt sections 5.01.11 and 5.04.07 to the Policy Manual as set forth in Tab 12 of the Board Materials. Coming from a committee, no second is needed. Motion carried.

I. Court of Criminal Appeals Liaison:

Judge Barbara Hervey reported that court went back into full session but that there has been a lull in work because of Hurricane Harvey. The Court had Japanese judges and PhD's visit to see how the Court of Criminal Appeals handles convictions. The Court is scheduled to go to Fort Worth for oral arguments. One of the Court's projects this year is to look into the legislation on mental health and to collect information from every county concerning their mental health facilities to determine what the Court might do to assist the mentally in in this state. President Tom Vick thanked the Court for working with the State Bar on disaster relief.

J. Performance Measures & Strategic Planning Subcommittee:

August Harris reported that the Performance Measures and Strategic Planning Subcommittee has completed the required biennial update to the State Bar performance measures. A redline was provided. [TAB 13]

In addition to routine updates to conform the performance measures with the most recent strategic plan, the subcommittee worked to improve the readability and usability of the document. The Executive Committee approved these updates on September 7.

On behalf of the Performance Measures and Strategic Planning Subcommittee, August Harris made a motion that the Board approve the proposed updated performance measures. Coming from a committee, no second is needed. Motion carried.

¹ Exhibit A is available at www.texasbar.com/bodcentral under Meeting Agendas and Minutes.

² Exhibits 1-17 are available at www.texasbar.com/bodcentral under Meeting Agendas and Minutes.

K. Audit and Finance Committee:

August Harris reported that the total State Bar revenues for fiscal year 2016-2017 were \$42.1 million. Total expenditures and annual transfers were \$40.2 million. This resulted in a net excess of approximately \$1.9 million compared to a budgeted net excess of \$-0-.

The State Bar's fund balance as of May 31, 2017, was approximately \$15.9 million. This represents an increase in fund balance of slightly over \$1.2 million. Mr. Harris reported that the net excess for the first two months of the current fiscal year was \$510,000.00 compared to a budgeted net excess of \$309,000.00, resulting in a positive variance of \$202,000.00 at the end of July.

The CPA firm of RSM is performing the State Bar's financial audit for fiscal year 2016–2017. Field work for the financial audit occurred from August 1 through September 15. The financial audit report will be presented to the Audit & Finance Committee by RSM representatives during the Committee's January meeting. The Committee will present the audit results to the Board in January for action.

Maxwell, Locke & Ritter, the State Bar internal auditor since 2015, is discontinuing its internal audit services due to the departure of key audit staff last year, including the partner and a senior audit associate on the engagement. As a result, an RFP for internal audit services is needed. In order to complete the internal audit services within the fiscal year, the Audit and Finance Committee requests that the Board delegate to the Committee the authority to select and engage internal auditors prior to the Board meeting in January. A full internal audit report will be presented to the Board for acceptance during the April Board meeting.

On behalf of the Audit & Finance Committee, August Harris made a motion to approve to issuance of a Request for Proposal for Internal Audit Services. Coming from a committee, no second is needed. Motion carried.

On behalf of the Audit & Finance Committee, August Harris made a motion to approve the delegation of authority to the Audit and Finance Committee to select and engage internal auditors prior to the January board meeting. Coming from a committee, no second is needed. Motion carried.

Mr. Harris reported that due to the progression of the meeting, Barry Baughier (PFM Investment Consultant) will be making his annual presentation at the January Board meeting in San Antonio.

Mr. Harris reported on behalf of Barry Baughier that the State Bar's total portfolio of \$41M is highly liquid and maintains high credit quality. For the period ending August 31, the portfolio generated a quarterly return of 0.31% which slightly under-performed the benchmark 6-month Merrill Lynch Treasury Index return of 0.34%. PFM representatives continue to work very closely with the Bar's Finance Division Director 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. The total quarterly return has increased by 0.11% from this time last year.

On behalf of the Audit & Finance Committee, August Harris made a motion to accept the May and August 2017 State Bar Quarterly Investment Reports. Coming from a committee, no second is needed. Motion carried.

Mr. Harris reported that according to the Public Funds Investment Act, the Board must approve the State Bar's PFIA trainers on an annual basis.

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On behalf of the Audit & Finance Committee, August Harris made a motion to approve PFIA trainers to provide Public Funds Investment Act training for State Bar staff and new directors. Coming from a committee, no second is needed. Motion carries.

The Public Funds Investment Act requires that the Board annually review and adopt a list of qualified brokers authorized to engage in investment transactions with the State Bar. A list of qualified brokers can be found in your Board packet. These brokers comply with Securities and Exchange Commission requirements.

On behalf of the Audit & Finance Committee, August Harris made a motion to adopt the current PFM Dealer/Broker list for investments. Coming from a committee, no second is needed. Motion carried.

The Public Funds Investment Act (PFIA) requires that the Board adopt the State Bar's investment policy on an annual basis. The State Bar's Investment Policy has been updated to comply with changes made to the PFIA during the 85th Legislative Session. This includes requiring money market funds to comply with SEC rule 2a-7. This regulation requires money market funds to restrict their underlying holdings to investments that have more conservative maturities and credit ratings than those previously permitted to be held.

In addition, the Investment Policy has been updated to require money market funds to only be invested in obligations approved by the PFIA or have a duration of less than one year, and be limited to investment grade securities, excluding asset-backed securities.

On behalf of the Audit & Finance Committee, August Harris made a motion to approve the adoption of the State Bar of Texas investment policy as revised. Coming from a committee, no second is needed. Motion carried. [TAB 15]

L. Employment, Salary, and Evaluation Subcommittee:

Leslie Dippel reported that the subcommittee reviewed and approved updated bylaws of the Texas Center for Legal Ethics. These updates were approved by the Executive Committee. The changes are non-substantive.

On behalf of the Employment, Salary, and Evaluation Subcommittee, Leslie Dippel made a motion that the Board approve the proposed updates to the bylaws of the Texas Center for Legal Ethics. [TAB 14] Coming from a committee, no second is needed. Motion carried.

M. Appeals-Grants Review Subcommittee:

Rebecca Simmons reported the subcommittee heard two appeals earlier this month. [TAB 16] The first is an appeal brought by Jeff Joyce of a decision by the Minimum Continuing Legal Education Committee denying accreditation of a CLE course in ethics titled "Rules vs. Principles: Why Both Matter."

Director Dinesh Singhal had to recuse himself as he sits on the board of the course sponsor (Texas Association of Civil Trial and Appellate Specialists) and stepped out of the room.

Mr. Joyce argued that the course should have been accredited, noting that the content of the course and input from the attendees clearly showed that it met the standards for accreditation for CLE ethics. He further noted that the same course by the same presenter had previously been accredited on at least two prior occasions. The MCLE Committee Chair stated that the MCLE Committee had mistakenly accredited the course previously and did not believe it met the minimum requirement for CLE ethics because it dealt with general and business ethics. The Subcommittee, in its deliberation, found that the record and testimony did not support the MCLE Committee's decision even under a strict application of the substantial evidence standard.

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Rebecca Simmons made a motion that the Board approve the recommendation of the Subcommittee to overrule the decision of the Minimum Continuing Legal Education Committee denying the accreditation of the course "Rules vs. Principles: Why Both Matter" be overruled and that the course be granted full accreditation for CLE ethics credit. Coming from a committee, no second is needed. Motion carried.

Ms. Simmons reported that the second appeal was submitted by Curtis White of a decision by the Texas Board of Legal Specialization denying certification in Immigration and Nationality Law. TBLs found that Mr. White did not meet the Texas office and practice requirement listed in the Standards for Attorney Certification. Mr. White argued that good cause should be found to exist to waive this requirement because he uses his Texas law license to practice federal immigration law in California and some of the immigrants he works with are headed to Texas. The Subcommittee applied the required substantial evidence standard and found that the decision of the TBLs should be upheld

Rebecca made a motion that the Board approve the recommendation of the Subcommittee to deny the appeal submitted by Mr. White and uphold the decision of the Texas Board of Legal Specialization. Coming from a committee, no second is needed. Motion carried.

N. Professional Development Committee:

Gary Nickelson reported that the Professional Development Subcommittee met jointly with the CLE Committee on August 23 to discuss new topics for webcasts and other events and hear staff reports.

TexasBarCLE is developing webcasts and online classes to assist attorneys and their clients with the legal issues resulting from Hurricane Harvey. On September 5, TexasBarCLE presented a free webcast on Handling Hurricane and Disaster Claims. The course is now online and available for free.

Last fiscal year, TexasBarCLE awarded 509 scholarships, with a retail value of more than \$200,000. Scholarship recipients may request full or partial scholarships for one multi-day or two one-day live or video seminars or up to 15 hours of online classes per year. This program is available to all lawyers but may be especially helpful now to those in the areas affected by Hurricane.

TexasBarBooks staff met to review the Bar's disaster relief resources and to make sure customer service staff know how to help attorneys who are in need of assistance. In particular, the customer service team can direct callers to the Bar's online resources and will make sure that attorneys who lost TexasBarBooks materials in the flooding can get replacements.

The Law Practice Management Program added a free digital version of the publication Bracing for Impact: A Practical Guide to Preparing for Disasters to the LPM website in advance of the hurricane, and the LPM program is now working with TexasBarCLE to develop programs and materials to help attorneys recover from the hurricane and get their practices back up and running.

O. Insurance/Member Benefits Subcommittee:

Scott Rothenberg reported that there are now 7,980 major medical enrollments in the Insurance Exchange and these enrollments are anticipated to grow an additional 10 percent this year. The 2018 health insurance open enrollment period will run from November 1, 2017, to December 15, 2017. With fewer health insurance options to choose from and an anticipated rise in health premiums, State Bar staff will be holding periodic teleconferences with the Private Insurance Exchange to monitor changes. Open enrollment presentations will be conducted in Austin, Dallas, Houston, and San Antonio. The administrator of the State Bar Private Insurance Exchange is working to launch an Association Health Plan, which it hopes to make available as one of several options on the Exchange.

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The State Bar's non-insurance member benefits program provides a wide array of discounts and services that generates non-dues revenue. Last fiscal year revenue more than doubled, growing from \$383,003 to \$895,194. A major undertaking of the subcommittee this year will be a deeply discounted website platform for members which we hope will launch by the end of this fiscal year.

For professional liability insurance (PLI), USI decided not to renew its partnership with the State Bar. This left Texas Lawyers Insurance Exchange (TLIE) as the sole partner provider. A new Agreement with TLIE as the exclusive provider will include a \$125k admin fee and \$25 per new enrollee. Additionally, the subcommittee voted to amend the Bar's partnership agreement with practice management provider Clio for a one-year exclusive term with a \$75k Admin fee in addition to royalties of \$35k+.

P. Technology Oversight Committee:

Andrew Tolchin reported that the Subcommittee met September 15, 2017. Members were updated on the progress of the annual staff security/compliance training, which is almost complete. The subcommittee was briefed on security testing that was performed by an independent 3rd party on the Bar's Network systems. While, no external penetration was possible, the vendor made a number of recommendations that are being evaluated and implemented by technical staff. The staff highlighted the Disaster Recovery activities that were executed to support the Chief Disciplinary Counsel Houston Regional office as a result of Hurricane Harvey. These included stand-by recovery of data to Austin, remote system access for key employees, and restoration of services in the facility once access was possible. No equipment or data was lost as a result of the flooding in the lower level of the building. Minimal operations continued, despite the temporary closure of the facility. Ongoing progress on projects was also discussed, including remote office telephone system and video conferencing system replacements. Lastly, members began discussing the collection of ideas for potential improvements to the texasbar.com website, as well as development of an updated Technology Plan to be brought to the board this spring.

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

Linda Acevedo reported that the Commission for Lawyer Discipline has a new chair and two new members. She reported as a result of new legislation, the public online attorney profiles will now include the full public sanction history for any lawyer. Ms. Acevedo noted that monthly sanction reports can also be found online. Finally, Ms. Acevedo encouraged the board to read the report from the National Task Force on Lawyer Well Being. [TAB 17]

R. Client Security Fund Subcommittee:

Alan Carmichael reported that the Client Security Fund Subcommittee met on Thursday, September 21, 2017 and reviewed 53 claims, for a total of \$253,614.15. To date, the fund has paid out \$409,201.15_ for the year.

S. D/CAAP Subcommittee:

Greg Sampson reported that the D/CAAP Committee met on Thursday, September 21. Linda Acevedo, Chief Disciplinary Counsel for the State Bar presented the current draft of the proposed rules to implement the mandates of the State Bar's sunset legislation. Pursuant to that legislation, the Supreme Court is required to adopt rules by March 1, 2018.

The new rules address referrals to the Client Attorney Assistance Program (CAAP) by the Chief Disciplinary Counsel (CDC) during the initial screening process; establishment of the CDC's Grievance Referral Program (GRP) in the disciplinary procedural rules and availability of the program before a matter reaches formal litigation; the ability of CDC to issue subpoenas and hold investigatory hearings during the investigation phase of the process and to enter into a negotiated sanction with the

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respondent before formal litigation; guidelines for imposing sanctions to be utilized by the district grievance committees and district courts; and a self-reporting rule requiring attorneys to report criminal convictions and any disciplinary action taken by another state bar against the attorney.

Mr. Sampson also reported that the TDRPC Standing Committee worked with the Law Practice Management Committee to put practice tips together concerning the sale of a law practice and client retention of files. The information has been posted on the Law Practice Management Committee website. These issues arose from annual meeting resolutions that were submitted to the board last year.

T. Texas Young Lawyers Association:

TYLA President-elect Sally Pretorius reported on behalf of TYLA President Baili B. Rhodes. She reported that TYLA has been busy working on “Making the Impact”. She also reported that the TYLA won first place for the comprehensive award for the ABA YLD. Ms. Pretorius highlighted several of their projects including “I was the First” project; “Not a Victim” (an online resource that focuses on sexual assaults on college campuses); “Divorce Guide” (a coloring book for children/teens); and Hurricane Harvey disaster relief publications including “How to Hire A Contractor”, “Lost Documents During A Disaster”, “Employment During National Disasters”, “Know Your FEMA Rights”, and “How to Enroll Your Child in School”. All of these can be accessed online. She reported on Baili’s project “Teach Safe, Learn Safe, Be Safe” which is supported by a grant from the Texas Bar Foundation.

U. Supreme Court Liaison:

Justice Phil Johnson reported that the Court has been busy responding to Hurricane Harvey relief efforts: Chief Justices from outside states called the Court to find out what they can do to help with relief efforts. The Court was scheduled to sit at the University of Houston Law Center just after Hurricane Harvey. The Court has issued several orders extending dates and payments on bar dues. The Judicial branch is acting and reacting as best they can.

V. Judicial Section Liaison:

Judge Jennifer Rymell reported that the Judicial Section's Annual Meeting was scheduled to meet in Houston for September 5 and was cancelled due to Hurricane Harvey. They have rescheduled an Annual Meeting for October 5th in Austin to conduct business and elect new officers.

Judge Rymell reported that the Judicial Section's focus for this non-legislative year is monitoring legislation that has an impact on the judiciary. She reported that the judges in the state are very disappointed that for the second session in a row, the issue of judicial compensation was not addressed by the legislature. The Section will be working on the issue of judicial compensation in the interim. They have already met with Chief Justice Hecht and they are trying to find a unified approach with the legislature in 2019. They will also be serving as a resource for a new Senate committee a looking at judicial compensation.

W. Report from the Interim Executive Director:

John Sirman congratulated Trey Apffel, thanked the board for their service, and thanked Michelle Hunter for leaving the Bar in such great shape. He presented the Staff Excellence Award, also known as the Employee of the Quarter Award, to Jennifer Reames.

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