

DRAFT
OFFICIAL MINUTES
STATE BAR OF TEXAS
BOARD OF DIRECTORS MEETING
Fort Worth Omni
1300 Houston St.
Fort Worth, TX 76102
Friday, April 27, 2018 – 9:00 AM

The Board of Directors of the State Bar of Texas met in a regular session on April 27, 2018 at the Omni Hotel in Fort Worth, Texas. Chair Rehan Alimohammad called the meeting to order at 9:00 am, and Executive Director Trey Apffel called the roll. A quorum of voting Board members was present. Scott Sherwood led the invocation. Shelby Jean led the pledges to the U.S. and Texas flags.

Present:

Board Members: Jerry Alexander, Chair Rehan Alimohammad, Christy Amuny, Micah Belden, Alan Carmichael, Jeff Chandler, Alison Colvin, Leslie Dippel, Estrella Escobar, Immediate Past Chair Joe Escobedo, Jarrod Foerster, Laura Gibson, Ricky Gonzalez, Ann Greenberg, August Harris, Angelica Hernandez, Rice Horkey, TYLA Immediate Past President Sam Houston, Sarah Keathley, Neil Kelly, David Kent, President-elect Joe Longley, Aldo Lopez, Robert McKnight, Rudy Metayer, 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 and Michael Wynne.

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

Section Representatives*: Erich Birch, Philip Mack Furlow, Shelby Jean, and Audrey Moorehead

Excused Absences: *Wendy Burgower*, Michael Dokupil and Rice Horkey*

(* = nonvoting)

I. CONSENT AGENDA ITEMS:

C1. APPROVAL OF MINUTES:

(Minutes Tab) a. Approval of minutes of Board meeting conducted on January 26, 2018

C2. ITEMS FROM THE PRESIDENT:

Approval of appointments to the following entities:

a. 2018-2019 Special Committee to Nominate ABA Delegates:

Frank Stevenson, Chair (Dallas)

Kim Askew (Dallas)

Rhonda Hunter (Dallas)

Laura Sharp (Austin)

Hon. Jennifer Rymell (Fort Worth)

b. Commission for Lawyer Discipline:

1) for a one-year term effective September 1, 2018, through August 31, 2019:

Noelle Reed, Chair (Houston)

Bruce Ashworth, Vice Chair (Arlington)

2) For a three-year term effective September 1, 2018, through August 31, 2021:

Gena Bunn (Longview)
Roberto Ramirez (McAllen)

c. **Law Focused Education, Inc.**, for a two-year term effective June 1, 2018, through May 31, 2020:

Dana Grieb (Rockwall)
Daniel Hu (Houston)
Mary Lee Webeck (Houston)

d. **Texas Center for Legal Ethics**, for a three-year term effective June 1, 2018, through May 31, 2021:

David Alders (Nacodoches)
Terry Gardner (Fort Worth)
Terry Tottenham (Austin)

e. **Texas RioGrande Legal Aid**, for a term ending December 2018:

Cindy Polinard (McAllen)
Ron Walker (Victoria)
Ricardo Lara (Brownsville)

f. **Texas Legal Services Center:**

1) For a three-year term effective January 1, 2018, through December 31, 2021:

John Jones (Katy)

2) For a two-year term effective January 1, 2018, through December 31, 2020:

Mario Lewis (Austin)

3) For a one-year term effective January 1, 2018, through December 31, 2019:

Erica Krennerich (Houston)

g. **2018 Annual Meeting co-chairs**

Wendy Burgower (Houston)
Christopher Popov (Houston)

C3. ITEMS FROM THE PRESIDENT-ELECT:

(Yellow Tab A)

a. **Approval of appointments:** State Bar committees, chairs, co-chairs, vice chairs, co- vice chairs, and members to serve during the year 2018-19 per State Bar Rules, Art. VIII, Section 1B

b. **Texas Bar Foundation Board of Trustees**

1) For a three-year term, effective June 1, 2018, through May 31, 2021:

MariBen Ramsey (Austin)
Jack Swallow (Midland)

2) For a one-year term effective June 1, 2018, through May 31, 2019:

Sarah Keathley (Corsicana)

C4. ITEMS FROM COMMITTEES AND SECTIONS/DIVISIONS:

(Yellow Tab B) a. Tax Section updated bylaws

C5. OTHER ITEMS

(Yellow Tab C) a. **Approval of recipients for the pro bono and indigent defense awards to be presented at the Annual Meeting:**

- 1) Pro Bono Award:
Houston Volunteer Lawyers (Houston)
- 2) Frank J. Scurlock Award:
Ronald New Dennis (Marshall)
- 3) The J. Chrys Dougherty Legal Services Award:
Aimee Maldonado, South Texas College of Law Houston (Houston)
- 4) W. Frank Newton Award:
San Antonio Young Lawyers Foundation (San Antonio)
- 5) Pro Bono Coordinator Award:
Keri Brown, Baker Botts (Houston)
- 6) Judge Merrill Hartman Pro Bono Judge Award:
Judge Eduardo V. Rodriguez (Brownsville)
- 7) Warren Burnett Award:
Martin Underwood (Comstock)
- 8) Michael K. Moore Award for Excellence in Research or Writing in the Area of Indigent Criminal Defense:
Scott Ehlers (Austin)
- 9) Pro Bono Support Staff Award:
Ann Berkowitz, Winston & Strawn (Houston)

C5. OTHER ITEMS (continued)

(Yellow Tab D) b. **Approval of recipient of the Nancy Garms Award:**
Ryan Kellus Turner (Austin)

(Yellow Tab E) c. **Approval of recipient of the Hon. Leon Jaworski Award for Teaching Excellence:**
Mavis Triebel (Port Arthur)

(Yellow Tab F) d. **Approval of resolutions honoring:**
1. Judge John Fostel (Decatur)
2. Judge Brent Carr (Fort Worth)
3. Hugh Akin (Dallas)
4. Texas Disciplinary Rules of Professional Conduct Committee

II. REPORTS

A. Remarks from the General Public

Michael Allen Wells addressed the Board regarding a trust he said was created July 4, 1776, and reconstituted on June 12, 2017. Carlos Leon of Austin addressed the Board regarding a dismissed grievance.

B. Report from the Executive Director

Executive Director Trey Apffel reported that he has spoken to a number of groups: the Council of Chairs, the LeadershipSBOT class, the Judicial Section, the boards of directors of both the Austin and Galveston County bar associations, and the Texas Access to Justice Commission. He announced that the new Directors Spotlight in the Texas Bar Journal will feature Chair of the Board Rehan Alimohammad. Mr. Apffel reported on Law Night at the Ballpark and on financial projects that are pending and that have been completed. He announced that State Bar board meetings are now being video recorded and will be published at texasbar.com.

Mr. Apffel gave an update on open records requests and reported that the Bar is committed to openness and transparency. **{EXHIBIT A}**¹

C. Report from the Chair

Chair Rehan Alimohammad reported that this year the State Bar is continuing its commitment to reaching out to its constituents through local director presentations in Districts 2, 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, and 16. He reported that Directors' Report emails were sent in March.

Chair Rehan Alimohammad stated he would be using the "Unanimous Consent Rules" in Roberts Rules of Order.

Chair Alimohammad asked if there were any objections to approving the items on the consent agenda. No objection; Consent agenda approved. {Consent Agenda}

President Tom Vick presented resolutions honoring: Judge John Fostel, Judge Brent Carr, Hugh Akin, and the Texas Disciplinary Rules of Professional Conduct Committee. **{EXHIBIT B}**

Chair Alimohammad conducted the election of 2018-2019 Chair of the Board. By written ballot, Laura Gibson was elected.

D. Report from the President:

President Tom Vick reported on his recent travels to NCBP; ABA midyear meeting; Dallas Bar Association; ABA Days in Washington, DC; Law Day in Austin; and many more. He reported that the ATJ Gala raised \$404,000 to support legal services to veterans. President Vick reported that the State Bar along with the Texas Supreme Court and Court of Criminal Appeals will be hosting a Ukrainian Judicial delegation in Austin. Mr. Vick reported that the State Bar's disaster hotline is still active and that Texas Legal Answers is succeeding as an online legal advice clinic for low-income Texans. Mr. Vick reported there will be a Roundtable on Well-being in the Legal Profession to review the findings of the National Task Force on Lawyer Well-Being.

Kim Askew, Texas State Delegate to the ABA House of Delegates, spoke to the Board regarding the role of Texas lawyers within the ABA and the State Bar's involvement with the ABA.

President Vick made a motion that the Board approve the referral of the Advertising Review Committee Report and its recommendations to the Board DCAAP Committee for review and further study. No discussion, motion carried.

President Vick made a motion to approve the appointment of Wendy Humphrey of Lubbock to serve as At Large Director on the State Bar Board of Directors, for a three-year term effective Annual Meeting 2018 and expiring Annual Meeting 2021. Motion seconded by Director Richardson. No discussion; motion carried. {EXHIBIT C}

E. Report from the President-elect:

President-elect Joe Longley reported on Bill Brown's report from the January 2018 report and the question of whether the State Bar should issue 1099s after an employee's theft. Mr. Longley reported that Mr. Brown is recommending that the State Bar should report the amount stolen as income on the person's 1099. This question will be considered by the Audit & Finance Committee.

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

Mr. Longley reported an update on his task forces, the Fiscal and Financial Responsibility Task Force chaired by Lisa Blue and the Transparency Task Force chaired by Mark Ticer. Mr. Longley addressed records that he has requested as an officer of the State Bar and related that other directors may make requests as well.

Mr. Longley reported on the public hearing on the State Bar's fiscal year 2018-2019 proposed budget that was held on April 3rd at the Texas Law Center. A budget hearing before the Supreme Court has been scheduled for May 14th.
{EXHIBIT D}

On behalf of the Budget Committee, Mr. Longley made a motion for the board to approve the presentation of the State Bar's proposed fiscal year 2018-2019 budget to the Supreme Court of Texas for its approval. Coming from a committee, no second is needed. No discussion; motion carried.

Director Scott Stolley addressed Mr. Longley and the Board regarding a conversation that he had with President-elect Longley on March 26th, 2018, where he asked Mr. Longley to disband the Transparency Task Force. Mr. Stolley shared his view that the task force is a flawed vehicle for achieving the legitimate purposes of transparency and openness. Mr. Stolley reported that he had resigned from the task force. Mr. Stolley asked Mr. Longley to disband this task force and form a new task force in June. Mr. Longley respectfully declined. Mr. Stolley proposed that the Board develop some sort of vehicle for these task forces report to this Board about what they are doing, how they are doing it, and what they aim to achieve before the next Board meeting in June. Discussion ensued.

Mr. Apffel asked the Board what staff should do if the Transparency Task Force continues. He requested direction from the Board on how to proceed. Discussion ensued.

Director Wynne made a motion that the Board direct the Transparency Task Force to report in full on its work and its objectives at its next Board meeting in June. Motion seconded by Micah Belden. Discussion ensued.

Director Greenberg made a motion to amend or substitute Mr. Wynne's motion. Discussion ensued. Mr. Wynne accepted the amendment and the motion was seconded by Alan Carmichael. Director Rodriguez offered another amendment. Mr. Wynne accepted Mr. Rodriguez's amendment and made another amendment. The amended motion was seconded by Mr. Belden. Discussion ensued.

Mr. Wynne moved that the Board direct the Transparency Task Force to provide a report on its work to date as well as a timetable for its objectives going forward in writing two weeks before the June Board meeting. Seconded by Mr. Belden. Motion carried.

Mr. Wynne made a second motion as amended by Ms. Greenberg's to neither continue nor dissolve the task force but to direct the State Bar staff to suspend their activities of responding to the task force requests. Motion seconded by Mr. Foerster. Discussion ensued. Mr. Belden offered an amended motion. Ms. Greenberg did not accept the amendment.

Mr. Belden moved that Executive Director Trey Apffel and Chair Alimohammad may speak to the task forces. Director Tolchin seconded. Discussion ensued. Mr. Belden accepted Mr. Tolchin's amendment and moved to amend Ms. Greenberg's motion to state that the Board instruct that no State Bar staff or directors appear before the task force prior to the June meeting with the exception of Executive Director Trey Apffel at his discretion. Mr. Longley moved for a roll call vote. No second, motion failed. Mr. Longley moved for a rising vote. No discussion. Motion failed. Rising vote was called for by Chair Alimohammad, motion failed.

Ms. Greenberg moved that the Board instruct that the State Bar staff not appear before the Transparency Task Force until the Board receives the report at the June meeting. Seconded. Mr. Longley motioned for a roll call vote. No Second. Motion failed. Mr. Longley moved for a rising vote. Mr. Belden seconded. Motion failed. Ms. Greenberg's motion carried.

Director Rebecca Simmons made a motion that the Financial Responsibility Task Force report to the Board and that a written report be given to the Board two weeks prior to the June meeting. Seconded by Mr. Kelly. Motion carried.

Ms. Greenberg made a motion that the Board direct the State Bar staff and directors suspend support of the Fiscal Responsibility Task Force except for matters in writing between now and the receipt of the task force's report at the June Board meeting. Mr. Wynne seconded. Discussion ensued. Ms. Greenberg amended her own motion, that there will still be financial support of that task force. Mr. Wynne seconded. Discussion ensued. Mr. Belden made a motion to amend which was not accepted by Ms. Greenberg.

Mr. Belden made a motion that the Executive Director be allowed to participate with the Financial Task Force. Seconded. No discussion; motion failed.

Discussion ensued on Ms. Greenberg's motion.

Ms. Greenberg moved that the Board direct the board staff and board members to suspend all further support other than fiscal support of the Financial Task Force until the Board receives the written and oral report at the June meeting. Seconded. Rising motion. Motion carried.

Discussion ensued.

Chair Alimohammad called for a lunch break at 11:57 am. The State Bar Board of Directors open meeting resumed at 12:18 pm.

F. Closed Session: At 12:20 pm, the State Bar Board of Directors recessed the open meeting and reconvened in closed session pursuant to Texas Government Code Sections 551.071 for the purpose of consulting with legal counsel regarding pending or contemplated litigation (*Jovita Pardo v. the State Bar of Texas et al.* and *LegalForce RAPC Worldwide v. LegalZoom et al.*); and Section 551.074 to deliberate regarding personnel matter(s). 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.

G. Open Session: At 12:53 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.

H. Director August Harris made a motion to delegate to the Audit & Finance Committee the development and issuance of an RFP prior to the June meeting to obtain an independent audit firm to examine the State Bar's current open government efforts and make recommendations for improvement. Seconded by Mr. Tolchin. No discussion; motion carried.

I. Mr. Rodriguez made a motion that Mr. Ticer be removed, effective immediately, from the committee that he now chairs. Seconded by Amie Peace. Discussion ensued. President Vick made a motion to lay this motion on the table. Seconded by Mr. Singhal. No discussion. Motion carried. Mr. Rodriguez withdrew his motion.

J. Director Amie Peace made a motion that Mr. Ticer's email to Director Stolley be sent to members of the Bar. Discussion ensued. Seconded by Mr. Wynne. Discussion ensued. Ms. Peace withdrew her motion.

K. Director Scott Sherwood requested that agenda item 9B be on the June meeting agenda.

L. Report from the Immediate Past President

Immediate Past President Frank Stevenson reported on the TOJI program and that 10 new lawyers joined the program in March. TOJI is creating a model and curriculum that can be replicated by other organizations across Texas.

Mr. Stevenson reported on the General Counsel Search Committee. The committee created a finalist list of 3 candidates: Martha Dickie, Ross Fisher, and Michael Shaunessy. A second round of interviews with the final three candidates will take place on May 7th in Austin.

M. Nominations & Elections Subcommittee

Mr. Escobedo reported that March 1 was the deadline for candidates to submit petitions for president-elect and director. There are five contested and five uncontested director races. President-elect candidates are Lisa Blue and Randy Sorrels. Ballots were distributed April 2 and the election will conclude on May 1. The terms for the new President-elect and district directors will begin at the adjournment of the Annual Meeting in June. **{EXHIBIT E}**

N. Policy Manual Subcommittee:

Section Representative Philip Mack Furlow reported that there were four revisions for the board to review. The revisions are for the Public Member Award (1.21.09); President's Certificate of Merit (1.21.07); Election of Chair- Chair Candidate Position Statement (1.11.03); and Election of Chair-Verification of Votes (1.11.05).

Mr. Furlow made a motion that the Board approve the revisions to Policy Manual Section 1.21.09, 1.21.07, 1.11.03, and 1.11.05 as recommended by the Policy Manual Subcommittee. No discussion; motion carried. {EXHIBIT F}

O. Discussion: 2018-2019 Board Meeting Locations:

Directors Sarah Keathley and Lisa Richardson expressed concerns that the 2018-2019 quarterly Board meetings are scheduled to be held exclusively in, or around, Austin, rather than spread across the State. They reported that members of the Board have coordinated Board meetings with the Solo and Small Firm section of the State Bar and provided free CLE to local and regional attorneys prior to each Board meeting. Discussion ensued. **{EXHIBIT G}**

P. Commission for Lawyer Discipline:

Linda Acevedo related that any outstanding nominations for district grievance committee members must be submitted to President Vick by June 1.

Q. Administration Committee

Director Scott Stolley gave no report from the Administration Committee. Mr. Stolley reported on the Evaluation Committee that reviews Executive Director Trey Apffel and related that the committee asked Trey to set out a list of goals and objectives. President Vick and the Bar's human resources department will be working on a process to be used to evaluate the executive director position.

R. Audit and Finance Committee:

Director Tim Mountz reported that the General Fund had a positive budget to actual net variance of approximately \$1.4 million. Total General Fund interest revenue earned for the nine months ended February 28, 2018, was \$257,000. **{EXHIBIT H}**

Director Mountz made a motion on behalf of the Audit & Finance Committee that the Board accept the February 28, 2018, Quarterly Investment Report. No discussion; motion carried.

Darlene Brown, director of McConnell & Jones, LLP, presented the results of the Internal Audit.

Director Mountz made a motion on behalf of the Audit & Finance Committee, that the Board accept the FY2016-17 Internal Audit Reports. No discussion; motion carried.

Director Mountz reported that PFM Asset Management LLC's two-year contract ends on May 31, 2018. The Public Funds Investment Act specifies that a contract for investment management services may not be for a term longer than two years. However, the Act does allow the governing body of an agency to extend or renew an investment management contract.

Director Mountz made a motion on behalf of the Audit & Finance Committee for the Board to approve a one-year extension of the PFM Asset Management Contract. No discussion; motion carried.

S. Legislative Policy:

Director Michael Wynne reported that the Bankruptcy Law Section sought authority from the State Bar of Texas to take a position in support of bipartisan federal legislation (US Senate Bill 2282). The goal of the proposed legislation is to address issues associated with the current venue provisions of the Bankruptcy Code. **{EXHIBIT I}**

Director Wynne made a motion on behalf of the Legislative Policy Subcommittee to approve the ratification of the actions of the Ad Hoc Emergency Legislative Response Committee taken pursuant to Policy Manual Section 8.01.07 (C), authorizing the Bankruptcy Section to take a position in support of US Senate Bill 2282. No discussion; motion carried.

T. Discipline and Client Attorney Assistance Program Subcommittee:

Greg Sampson had no report.

U. Client Security Fund Subcommittee:

Director Alan Carmichael reported that the Subcommittee considered 61 applications and approved payments totaling \$204,508.69.

V. Professional Development Subcommittee:

Director Gary Nickelson reported that the CLE Committee and the PDP Subcommittee met jointly to discuss potential CLE topics and book publications and receive updates from staff on financial performance and operations. In September 2017, TexasBarCLE created two free webcasts: Handling Hurricane and Catastrophe Claims and Counseling the Landlord and Tenant in the Wake of a Hurricane. TexasBarCLE has awarded 411 scholarships for live and video courses and 129 for online classes. TexasBarBooks now has five practice manuals in the TexasBarBooks Online library and more than 1,100 subscribers.

W. Insurance/Member Benefits Subcommittee

Director Scott Rothenberg reported on the Texas Bar Private Insurance Exchange which launched the Member Health Plan. He also related that free supplemental health insurance was added. He also reported an update on non-insurance member benefits, including a partnership with Bank of America and a project to offer affordable member websites.

X. New Directors Orientation:

Director Chris Oddo reported that the committee is working on June orientation agenda and asked for the Board to contribute what would be helpful to new directors.

Y. Technology Oversight Subcommittee:

Director Andrew Tolchin reported that the subcommittee looked at the advertising review system, new network upgrades, and new attorney search processes.

Z. Section Representatives to the Board Committee:

Director Philip Mack Furlow reported on the two new section representatives to the Board: Matthew Kolodoski as a small-sized section representative and Emily Miller as large-sized section representative.

AA. Report from the Texas Bar Foundation:

Chair Cindy Tisdale gave a general report on the Texas Bar Foundation, including an overview of the various entities the Foundation has provided funding to over the years. Ms. Tisdale anticipates the Foundation will approve over one million dollars in grants this upcoming year.

BB. Texas Young Lawyers Association:

On behalf of TYLA President Baili Rhodes, TYLA President-elect Sally Pretorius reported that TYLA had a March Board Meeting in Horseshoe Bay, where Executive Director Trey Apffel attended. She also reported on various TYLA projects and highlighted the project, "Teach Safe, Learn Safe, Be Safe," which is supported by a grant from the Texas Bar Foundation. TYLA's nominees for President are Victor Flores (Denton) and Raymond Baeza (El Paso).

CC. Supreme Court Liaison:

Justice Phil Johnson gave a general report on the new position of ombudsman that was created to make sure that the Chief Disciplinary Counsel's office is following the proper procedures when reviewing, investigating, and prosecuting grievances. The Court has had several invitations to testify before the Legislature on what has been going on in the legal

profession, such as Hurricane Harvey response, the judicial commission on mental health, the task force on the bar exam, and case transferring from the Supreme Court to other court dockets.

DD. Court of Criminal Appeals Liaison:

Judge Barbara Hervey gave a general report on the Court of Criminal Appeals including the joint meeting on the effects of mental health issues. One of the Court's projects this year is to look into legislation on mental health and to collect information from every county concerning their mental health facilities to determine what courts might do to assist the mentally ill in Texas. Last fall, the Court had Japanese judges and PhD's visit to see how the Court of Criminal Appeals handles convictions.

EE. Federal Judicial Liaison:

Judge Amos Mazzant gave an update on the current federal judicial vacancies and nominations in Texas.

FF. Judicial Section Liaison:

Judge Jennifer Rymell reported on the Section's newly-designed website that went live last month. The Legislative Committee had its first meeting on April 11, monitoring interim legislative charges. The Judicial Compensation Commission had their first meeting in February and the Judicial Section has been asked to testify.

GG. Out-of-State Lawyer Liaison:

Director Tim Mountz had no report.

HH. Report from the Legal Counsel:

Legal Counsel John Sirman had no report.

There being no further business, the meeting was adjourned at 2:40 p.m.