

**OFFICIAL MINUTES
STATE BAR OF TEXAS
BOARD OF DIRECTORS MEETING
Renaissance Hotel
Austin, Texas
Friday, September 28, 2018**

The Board of Directors of the State Bar of Texas met in regular session on September 28, 2018, at the Renaissance Hotel in Austin. Chair Laura Gibson called the meeting to order at 9:00 a.m., and Executive Director Trey Apffel called the roll. A quorum of voting Board members was present. Director Erich Birch delivered the invocation, and Director Sarah Keathley lead the pledges to the U.S. and Texas flags.

Present:

Board Members: Jerry Alexander, Christy Amuny, Jeff Chandler, Alison Colvin, Derek Cook, Robert Crain, Alistair Dawson, Leslie Dippel, Michael Dokupil, Estrella Escobar, TYLA President-elect Victor Flores, Jarrod Foerster, Chair Laura Gibson, Charlie Ginn, Shari Goldsberry, August Harris, Angelica Hernandez, Rice Horkey, Wendy-Adele Humphrey, Sarah Keathley, Neil Kelly, David Kent, President Joe K. Longley, Aldo Lopez, Robert McKnight, Rudy Metayer, Stephen Naylor, Chris Oddo, Amie Peace, TYLA President Sally Pretorius, Curtis Pritchard, TYLA Immediate Past President Baili Rhodes, Lisa Richardson, Fidel Rodriguez, Carmen Roe, Greg Sampson, Alan Sims, Dinesh Singhal, President-elect Randy Sorrels, Immediate Past President Tom Vick, Nicole Voyles, Brad Weber, Amy Welborn, James Wester and James Woo.

Liaisons*: Judge Randy Clapp, Justice Phil Johnson, Judge Karen Gren Scholer, Linda Thomas

Section Representatives*: Erich Birch, Wendy Burgower, Elizabeth Copeland, Shelby Jean, Matthew Kolodoski, Emily Miller

Excused Absences: Immediate Past Chair Rehan Alimohammad*, Judge Barbara Hervey*, Tom Keyser (* = nonvoting)

I. CONSENT AGENDA ITEMS

Upon motion properly made by President Longley and seconded by Director Lisa Richardson, the following actions were taken regarding the Consent Agenda items {CONSENT TAB}¹:

C1. APPROVAL OF MINUTES:

(Minutes Tab) Approval of minutes of Board meetings conducted on June 21-22, 2018.

C2. ITEMS FROM THE PRESIDENT:

Approval of appointments to the following entities:

a. Delegates to the 2019 Fifth Circuit Judicial Conference:

President Joe K. Longley	Immediate Past President Tom Vick
President-elect Randy Sorrels	Chair of the Board Laura Gibson
Executive Director Trey Apffel	TYLA President Sally Pretorius

b. At-large Directors Nomination Committee

Angelica Hernandez (Houston), chair
Amie Peace (Denton)
Dinesh Singhal (Houston)
Victor Flores (Plano)

¹ **Tabbed Materials** are available at www.texasbar.com/bodmaterials.

Alan Sims (Cedar Hill)
Wendy-Adele Humphrey (Lubbock)

- c. **Committee on Disciplinary Rules and Referenda**, for a three-year term effective January 1, 2019, through December 31, 2021:

Karen J. Nicholson, (Austin)

- d. **Texas Access to Justice Foundation**, for a term effective September 28, 2018, through May 31, 2021:

Perla Cavazos (Austin)

C3. ITEMS FROM COMMITTEES AND SECTIONS/DIVISIONS:

(Yellow Tab A) a. Intellectual Property Law Section Updated Bylaws

(Yellow Tab B) b. Environmental and Natural Resources Law Section Updated Bylaws

(Yellow Tab C) c. Insurance Law Section Updated Bylaws

(Yellow Tab D) d. Approval of request by the Tax Section to increase its dues from \$25 to \$30

- e. Approval of Appointments to the following standing committees (Per State Bar Rules, Art. VIII, Section 1B)

For terms effective on the adjournment of Annual Meeting 2018 through the adjournment of Annual Meeting 2021:

PJC Criminal
Jennifer Laurin (Austin)

PJC Malpractice
Jack London (West Lake Hills)

Women in the Profession
Elaine Pearlman (Dallas)

C4. OTHER ITEMS:

(Yellow Tab E) a. **Approval of resolution honoring:**
Shannon H. Ratliff

II. REPORTS

A. Remarks from the General Public:

Carlos Leon of Austin addressed the board regarding a dismissed grievance.

B. Swearing-in of New Board Member:

Justice Philip Johnson swore in new Federal Judicial Liaison Judge Karen Gren Scholer and new Out-of-State Lawyer Liaison Linda Thomas.

C. Presentations of Resolutions:

President Joe K. Longley presented a resolution on behalf of the board to Shannon Ratliff.

D. Report from the Executive Director:

Executive Director Trey Apffel reported on recent travels, meetings, and activities since the June 2018 Annual Meeting. He reported that the State Bar of Texas received the 2018 Harrison Tweed Award on August 3 at the ABA Annual Meeting. Mr. Apffel reported on the new member service program, SOLACE, which was launched on September 1 as well as the “What Do Attorneys Do?” Project, the State Bar of Texas Podcast, which launched in June, and a reminder on the 2019-20 dues season. Mr. Apffel presented Angie Burke with the Staff Excellence Award.

Mr. Apffel reported that the State Bar Act Section 81.0201(c), added during the last Legislative session, requires that the Executive Director create and distribute a training manual annually to each member of the Board. Each director was given a training manual. Lona Chastain gave a PIA update.

E. Report from the Chair of the Board: Chair Laura Gibson recognized Director Elizabeth Copeland who was confirmed to the U.S. Tax Court. Ms. Gibson reported on her recent travels, board member outreach efforts, and the solicitation of candidates to serve as Chair of the 2019-20 board. She reported on the proposed protocol for access to General Counsel services. {TAB 1}

On behalf of the Executive Committee, Chair Gibson made a motion to approve the protocol for obtaining advice and services of the General Counsel. Coming from a committee, no second was needed. No discussion; motion carried.

F. Report from the President:

President Joe K. Longley reported on his travel to the border with Hilarie Bass and Efrén Olivares focusing on the family separation crisis. President Longley reported that in his August “President’s Message” he focused on volunteer efforts at the border. He also asked for assistance in identifying ideas for cost savings to further reduce the general-fund budget for 2019-2020 by 5 percent.

President Longley reported that he has appointed a subcommittee made up of members of the Executive Committee to perform a comprehensive review of standing committees.

President Longley reported that the Appellate Section submitted a request for permission to file an amicus brief in the Texas Supreme Court in *Geeting v. Dyer*. Since the deadline for filing the brief fell before the next EC and Board meetings, the request was considered on an expedited basis pursuant to the Board Policy Manual by the Ad Hoc Submission Committee and approved unanimously. {TAB 2}

President Longley moved that the Board approve the ad Hoc Subcommittee’s decision to approve the Appellate Section’s request. Seconded by Immediate Past President Tom Vick. No discussion; motion carried.

G. Report from the President-elect:

President-elect Randy Sorrels reported on the “30 member benefits in 30 minutes” program for directors to present in their districts. He reported that he is trying to add more member benefits, and that members will now get a discount on Vonlane. He reminded directors of the AD&D insurance benefits.

President-elect Sorrels reported on his recent travels including to the ABA Annual Meeting and that it’s important to continue to participate in the ABA. He reported that he encouraged TYLA to continue their ABA membership and participation.

President-elect Sorrels reported that the Budget Committee had its first meeting to discuss the State Bar’s budget process and the timeline for preparation of the fiscal year 2019-2020 budget. The Budget Committee will meet on December 13th in Austin to finalize a proposed fiscal year 2019-2020 budget for presentation to the Executive Committee and to the Board at their January meetings.

President-elect Sorrels reported that he sought approval for a Courthouse Access Badge Task Force in order to study how to implement a statewide courthouse access badge for lawyers to expedite access to Texas Courthouses. He proposed a roster of task force members that will be a made up of individuals from various groups throughout the state. {TAB 3}

President-elect Sorrels made a motion to approve the creation of the Courthouse Access Badge Task Force and its membership. No second is needed; no discussion; motion carried.

H. Report from the Immediate Past President: No report.

I. Nominations and Elections Subcommittee:

Immediate Past President Tom Vick reported that the Nominations and Elections Subcommittee interviewed six individuals on August 29th to be considered as nominees for president-elect. After much deliberation the subcommittee voted to select Cezy Collins of El Paso and Larry McDougal of Richmond. Chair Gibson introduced Cezy Collins and Director Carmen Roe introduced Larry McDougal. Both nominees made remarks to the Board. {TAB 4}

On behalf of the Nominations and Elections Subcommittee, Immediate Past President Vick made a motion that the Board approve Cezy Collins of El Paso and Larry McDougal of Richmond as the State Bar Candidates for president-elect for the 2018 election. Coming from a subcommittee, no second is needed. No discussion; motion carried.

J. Policy Manual Subcommittee:

Director Estrella Escobar reported that there were three proposed Policy Manual updates for the Board to consider: updates regarding Officer and Director Requests for Records; a series of updates to reflect the role of the elected General Counsel; and an update regarding the Budget Committee Chair. {TAB 5}

As chair of the Policy Manual Subcommittee, Director Escobar moved that the Board approve the revisions to the Policy Manual concerning Office and Director Requests, the General Counsel, and the Budget Committee Chair. Coming from a subcommittee, no second was needed. No discussion; motion carried.

K. Audit and Finance Committee:

Director Jarrod Foerster reported that the total State Bar revenues for fiscal year 2017-2018 were \$42.6 million. The State Bar's fund balance at May 31, 2018, was approximately \$15.7 million. The CPA firm of RSM is performing the State Bar's financial audit for fiscal year 2017-2018, which will be reported during the Committee's January meeting. Mr. Foerster reported that the CPA firm of McConnell & Jones is performing the State Bar's internal audit for fiscal year 2017-2018. Mr. Foerster invited Dan Graves from Weaver to provide an update to the Board.

Mr. Foerster reported that the Board adopted a revision to the Board Policy Manual in June 2018 that requires the Executive Director to prepare State Bar business expense reimbursement policies and procedures for the upcoming Fiscal year, and to submit those policies and procedures to the Audit and Finance Committee for approval.

Mr. Foerster invited Barry Baughier, a representative from the State Bar's Investment Manager, PFM Asset Management, LLC, to provide an update to the board. {TAB 6}

On behalf of the Audit & Finance Committee, Director Foerster made a motion to accept the May and August 2018 State Bar Quarterly Investment Reports. Coming from a committee, no second was needed. No discussion; motion carried.

According to the Public Funds Investment Act, the Board must approve the State Bar's Public Funds Investment Act trainers on an annual basis.

On behalf of the Audit & Finance Committee, Director Foerster made a motion to approve PFM Asset Management, LLC, Patterson & Associates, and The University of north Texas as Public Funds Investment Act Trainers to provide Public Funds Investment Act training for State Bar staff and new directors. No discussion; motion carried.

Mr. Foerster reported that the Public Funds Investment Act requires that the Board annually review and adopt a list of qualified brokers that are authorized to engage in investment transactions with the State Bar. These brokers comply with Securities and Exchange Commission requirements.

On behalf of the Audit & Finance Committee, Director Foerster made a motion to adopt the current PFM Dealer/Broker list for investments. Coming from a committee, no second was needed. No discussion; motion carried.

Mr. Foerster reported that the State Bar's Investment Policy has been updated to bring the policy in alignment with the Act and in alignment with the actual process of the Bar. The policy would require training within 6 months of taking office or assuming duties for investment officers. The policy previously required the training within 12 months.

On behalf of the Audit & Finance Committee, Director Foerster made a motion to approve the adoption of the State Bar of Texas investment policy as revised. Coming from a committee, no second was needed. No discussion; motion carried.

Mr. Foerster reported that section 3.04 of the Board Policy requires that every 3 years, the State Bar's bank depository will be reviewed by the Audit and Finance Committee for reasonableness of fees and level of service. Currently, the State Bar of Texas uses PlainsCapital bank as its primary depository institution.

On behalf of the Audit & Finance Committee, Director Foerster make a motion to approve the use of PlainsCapital Bank as the State Bar's primary depository institution for the next 3 years. Coming from a committee, no second was needed. No discussion; motion carried.

L. Closed Session: At 11:07 am, the State Bar Board of Directors recessed the open meeting and reconvened in closed session pursuant to Texas Government Code Sections 551.071 Closed Session as authorized by Texas Government Code Section 551.071 for the purpose of consulting with legal counsel, including pending or contemplated litigation (*Jovita Pardo v. the State Bar of Texas et al.*); and Section 551.074 to deliberate regarding personnel matter(s); 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.

M. Open Session: At 11:23 pm, 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 litigation were discussed. No action was taken in closed session.

Immediate Past President Tom Vick made a motion that the confidential settlement offer discussed in closed session be rejected. Director Jerry Alexander seconded. No discussion; motion carried.

N. Report from the Legislative Policy Subcommittee:

Director Jeff Chandler reported that the subcommittee met on August 16 and 17 in Austin to consider the legislative proposals from 7 sections: ADR, Construction Law, Family Law, GP Solo, LGBT Law, Poverty Law, and Real Estate Probate and Trust Law (REPTL). The Legislative Policy Subcommittee recommends

¹ **Tabbed Materials** are available at www.texasbar.com/bodmaterials.

support of 20 of the 25 proposals. {See Legislative Policy Subcommittee Report at www.texasbar.com/bodmaterials for subject matter of each proposal}

Director Chandler made a motion to adopt the Legislative Policy recommendation that tabs 2, 4-14, 18, 21, 22, 23, 25 comply with the Policy Manual requirements regarding legislative proposals. Coming from a subcommittee, no second was needed. No discussion; motion carried.

Director Chandler made a motion to support tabs 2, 4-14, 18, 21, 22, 23, and 25. Coming from a subcommittee, no second was needed. No discussion; motion carried.

There were remarks from the general public regarding tab 24 – REPTL Section: Cesar Lopez, Lisa Hill, Lora Davis, and Craig Hopper. Discussion ensued.

Director Chandler made a motion to adopt the Legislative Policy subcommittee’s recommendation that tab 24 complies with the policy manual. Coming from a subcommittee, no second is needed. No discussion; motion carried.

Director Chandler made a motion to conditionally support all of tab 24. Discussion ensued. (Note: the power of attorney form will be discussed and negotiated in October to see if the concerns addressed by the Health Law Section can be satisfied.) Coming from a subcommittee, no second is needed. Motion carried.

There were remarks from the general public regarding tab 16 & 17- LGBT Law: Charles Spain. Discussion ensued.

Chair Gibson called for a lunch break at 12:23 pm.

The board returned at 12:40 pm.

Director Chandler made a motion that tabs 16 & 17 comply with the policy manual. Coming from a subcommittee, no second was needed. Motion carried.

Director Chandler made a motion to conditionally support tab 16 & 17. Coming from a subcommittee, no second is needed. Motion carried.

Director Chandler made a motion to adopt the Legislative Policy Subcommittee’s recommendation that tabs 3, 15, 19, and 20 do not comply with the policy manual. Coming from a subcommittee, no second is needed. No discussion, motion carried.

There were remarks from the general public regarding tab 1- ADR: John Boyce and Trey Bergman. Discussion ensued.

Director Chandler made a motion to adopt the Legislative Policy Subcommittee’s recommendation that tab 1 does not comply with the State Bar of Texas policy manual. Coming from a subcommittee, no second is needed. Motion carried.

O. Report from the Supreme Court:

Justice Phil Johnson reported that the Court has been holding oral arguments in Odessa and then they will be held in Texarkana in the Spring. He reported on Court’s consideration of the Uniform Bar Exam and the forms that the Legislature directed the Court to develop on landlord/tenant, probate, and cyber bullying.

P. Report from the Administration Committee:

Director Christy Amuny reported the committee met to review information related to the history, purpose, and functions of the Bar Journal. The committee also reviewed the budgetary effects of the current print and digital formats and discussed possible alternative formats including digital-only or digital-first with a print “opt-in”.

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The Administration committee voted unanimously that the Bar should maintain the current distribution methods of the Bar Journal, including a print copy mailed to every subscriber and the continued availability of the digital edition and website content.

Q. Report from Performance Measures & Strategic Planning Subcommittee:

Director Fidel Rodriguez reported the subcommittee drafted updates to the strategic plan based on input received at the Board retreat in July. {TAB 7}

On behalf of the Performance Measures Subcommittee, Director Rodriguez moved that the Board approve the proposed updates to the State Bar of Texas strategic plan. Coming from a subcommittee, no second was needed. No discussion; motion carried.

R. Report from the Facilities Subcommittee:

Director Jerry Alexander reported that the current lease on the Dallas Regional Counsel's office expires on December 31, 2019. The subcommittee is working with the broker CBRE to obtain the best deal for the Bar. He reported that the brokers are distributing a Request for Proposal to the current landlord and to other landlords. The subcommittee will evaluate the proposals and report back to the Board with their recommendations in January.

S. Report from TYLA:

TYLA President Sally Pretorius reported that TYLA held its first board meeting in San Antonio. The TYLA Executive Committee met at President Longley's request to discuss TYLA by-laws. She reported that the TYLA Annual Report went digital this year and that TYLA Immediate Past President Baili Rhodes accepted two awards at the ABA Annual Meeting in Chicago. She also reported on various TYLA projects: Podcast on Shero; Diversity Toolkit; Law School Scholarships; Local affiliate grants; "Proud to be an American"; Junior Judges; Children's Advocacy Guides; Bookshelves in Courtrooms; Practice Series Podcast; and the Compassion Fatigue Guide.

T. Report from the Commission for Lawyer Discipline/Chief Disciplinary Counsel:

John Neal reported that the Commission is a twelve member board made up of six attorneys appointed by the State Bar President and six public members appointed by the Supreme Court. Mr. Neal reported that Linda Acevedo, Chief Disciplinary Counsel, announced that she will be retiring in January 2019. {TAB 8}

U. Report from DCAAP: No report.

V. Report from Client Security Fund:

Director Lisa Richardson reported that the Client Security Fund Subcommittee met on Thursday, September 27, 2018, and reviewed 48 claims, for a total of \$142,217.24. To date, the fund has paid out \$285,193.24 for the year.

W. Report from the Professional Development Subcommittee:

Director Sarah Keathley reported that the subcommittee met and approved a proposal for a book on the history of the Texas Bar to be published by TexasBarBooks. She reported that the next joint meeting of the CLE Committee and the Board PDP subcommittee will meet on December 6th in Austin and that the State Bar is holding a free CLE event for solo and small firm practitioners on November 7th in Corpus Christi. Director Keathley reported that TexasBarCLE received an Outstanding Achievement award in the best programming category for its "CLE Fifteen" and "Best Of" online classes at the Association for Continuing Legal Education Annual Meeting in July.

X. Insurance/Member Benefits Subcommittee:

Director Greg Sampson reported that this year the number of major medical enrollments in the Insurance Exchange is projected to grow by 15 percent and that the 2019 health insurance Open Enrollment period will run from November 1, 2018, to December 15, 2018. He reported that the subcommittee is working on a financial

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services RFP for the Bank of America contract that is set to expire on June 30, 2019. He reported on newly added member benefits such as Vonlane and the \$10,000.00 in AD&D insurance that members can receive at no cost.

Y. Technology Oversight Subcommittee:

Director Brad Weber reported that the subcommittee met via teleconference to discuss the current projects underway: a new advertising review system; replacing telephone systems in the CDC regional offices and staff computer systems at the Texas Law Center; and the annual staff training for State Bar staff for PCI, HIPAA, privacy, and security. He reported that the subcommittee will be bringing an updated Business Technology Plan forward to the Board for approval in January.

Z. Report from Section Representatives to the Board:

Section Representative Erich Birch reported that there was an increase of six sections over the last ten years, 500 e-blasts from Sections, that section membership is at 88,500 lawyers and that they are very active and growing.

AA. Report from the Judicial Section Liaison:

Judge Randy Clapp reported that he testified in front of the Joint Committee on Judicial Salaries with the goal of increasing judicial pay. He reported that the Judicial Section is gearing up for the upcoming legislative session, that the section has updated its judiciary website and that judicial ethics opinions are now available online.

AB. Report from the Federal Judicial Liaison:

Judge Karen Gren Scholer reported that she is the first new Article III judge in the Northern District in over ten years. She reported that there are four new federal district judges in Midland, Dallas, Brownsville, and Waco. Judge Scholer reported that the Amarillo courthouse has been renamed to J. Marvin Jones and Mary Robinson Courthouse on September 8th. This is the first federal courthouse to be named after a woman. She reported that the Power Act has been enacted and that there are discussions underway to develop mandatory disclosures in certain cases and the Judicial Conference has encouraged better communication between both federal and state courts.

AC. Report from Out of State Lawyer Liaison:

Linda Thomas reported that the Oklahoma Bar is facing the same problems and issues that the State Bar of Texas is facing. She attended the WSBC and the SCBP and learned that many bars are facing similar issues.

AD. Report from General Counsel: No report.

AE. Report from Legal Counsel: No report.

There being no further business, the meeting was adjourned at 1:59 p.m.