

OFFICAL
MINUTES
STATE BAR OF TEXAS
BOARD OF DIRECTORS MEETING
St. Anthony Hotel
300 Travis St.,
San Antonio, TX 78205
Friday, September 24, 2021 – 9:00 a.m.

The Board of Directors of the State Bar of Texas met in a regular session on September 24, 2021, at the St. Antony Hotel in San Antonio, Texas. The presiding officer and other directors were physically present at the meeting location above; certain directors participated remotely via Zoom videoconference. Chair of the Board Santos Vargas 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 Dr. Maria Hernandez delivered the invocation, and Director Robert Tobey led the pledges to the U.S. and Texas flags.

Present:

Benny Agosto, Andy Almanzán, Chad Baruch, Kate Bihm, Rebekah Brooker, David Calvillo, Luis Cardenas, Luis Cavazos, Jason Charbonnet, Kelly-Ann Clarke, Thomas Crosley, Dr. Maria Hernandez Ferrier, President Sylvia Borunda Firth, Steve Fischer, Lucy Forbes, President-elect Laura Gibson, Immediate Past Chair of the Board Charlie Ginn, August Harris, TYLA Immediate Past President Britney Harrison, Forrest Huddleston, Michael Hurst, Lori Kern, Bill Kroger, Yolanda Cortes Mares, Dwight McDonald, Immediate Past President Larry McDougal, Carra Miller, Lydia Mount, Kimberly Naylor, TYLA President Jeanine Rispoli, TYLA President-elect Michael Ritter, Adam Schramek, Audie Sciumbato, Mary Scott, David Sergi, David Smith, Jason Smith, Todd Smith, Diane St. Yves, Nitin Sud, Robert Tobey, Andrew Tolchin, Chair of the Board Santos Vargas, Michael Vasquez, Kimberly Pack Wilson, and Kennon Wooten.

Liaisons*: Judge Elisabeth Earle, Rakhi Israni, Justice Debra Lehrmann, Judge David Newell, and Judge Michael Truncale.

Section Representatives*: Carlos Cardenas, Bob Goss, Sonya Hoskins, Kathryn Murphy, and Michael Smith.

Excused Absence: Deborah Cordova and Christina Davis.

(denotes nonvoting)*

CONSENT AGENDA ITEMS:

C1. APPROVAL OF MINUTES:

Approval of minutes of the Board meeting conducted on:
June 16-17, 2021
July 19, 2021

C2. ITEMS FROM THE PRESIDENT:

Approval of appointments to the following entities:

a. Delegates to the 2021 Fifth Circuit Judicial Conference:

President Sylvia Borunda Firth	Immediate Past President Larry McDougal
President-elect Laura Gibson	Chair of the Board Santos Vargas
Executive Director Trey Apffel	TYLA President Jeanine Novosad Rispoli

b. Capital and Forensic Writs Committee, for a four-year term effective September 1, 2021, through September 1, 2025:

Marcy Hogan Greer (Austin)
Alma Lagarda (El Paso)

c. Committee on Disciplinary Rules and Referenda:

For a term effective January 1, 2022, through December 31, 2022:

M. Lewis Kinard, Chair (Dallas)

For a term effective January 1, 2022, through December 31, 2025:

Karen J. Nicholson, Public Member (Austin)

d. Texas Center for Legal Ethics, for a term effective September 24, 2021, through May 31, 2024:

Deborah A. Zuloaga, (Public Member – El Paso)

e. Texas Real Estate Broker/Lawyer Committee, for terms effective September 1, 2021, through August 31, 2027:

Anthony Malley, III (Beaumont)
Brian J. Watts (Irving)

f. Approval of appointments to the following standing committees (per State Bar Rules, Art. VIII, Section 1B):

For a term effective September 24, 2021, through the adjournment of Annual Meeting 2022:

Continuing Legal Education

David Gonzalez (Austin)

For a term effective September 24, 2021, through the adjournment of Annual Meeting 2023:

Diversity in the Profession

Victoria Mora (Austin)

For a term effective September 24, 2021, through the adjournment of Annual Meeting 2024:

Court Rules

Joshua Romero (Austin)
Susan Sullivan (McAllen)

Disability Rights and Issues

Randi Turner (Austin)

Local Bar Services

Adriana Leal (El Paso)

Pattern Jury Charge General Negligence

Adriana Cardenas (McAllen)

C3. ITEMS FROM COMMITTEES AND SECTIONS/DIVISIONS:

a. Approval of African American Lawyers Section Updated Bylaws

- b. Approval of Bankruptcy Law Section Updated Bylaws
- c. Approval of Government Law Section Updated Bylaws

C4. OTHER ITEMS

- a. Correcting term of appointment for Lacy Durham (Dallas) as SBOT ABA delegate, approved at the June 2021 Board Meeting, from 2021-2022 to 2021-2023.

b. Approval of resolutions honoring:

James L. Branton, San Antonio (in memoriam)
Jane H. Macon, San Antonio
Nancy Gallego, El Paso
David Slayton, Austin

I. REPORTS:

A. Remarks from the General Public:

The board heard oral comments from 15 members of the public relating to Agenda Item 20.

The board recessed at 9:48 a.m. and returned at 10:00 a.m.

B. Report from the Chair of the Board:

Director Thomas Crosley made a motion to approve the consent agenda items. Director August Harris seconded the motion. No discussion; motion carried.

Chair of the Board Santos Vargas reported on CLE presentations available to directors and solicited candidates to serve as Chair of the 2022-23 Board.

Presentation of Resolutions:

President Sylvia Borunda Firth presented presidential citations to James L. Branton (in memoriam), and David Slayton.

C. Report from the President:

President Sylvia Borunda Firth gave an update on travel, speaking engagements, rural lawyers initiatives, and Texas Bar Journal Columns; Presidential Task Force on Diversity, Equity, and Inclusion; Public Protection, Grievance Review, and Client Security Fund Task Force; Workgroup on the Texas Opportunity and Justice Program; and Criminal Court Proceedings Task Force.

President Borunda Firth made a motion that the board approve forwarding the resolution regarding trial safety measures from the Task Force on Criminal Court Proceedings to the Office of Court Administration for consideration. Seconded by Director Andy Almanzán. No discussion; motion carried.

President Borunda Firth made a motion to approve the creation of a Redistricting Task Force, including its roster of members. Seconded by Director August Harris. Discussion ensued. Motion was made to call the question and seconded by Director Kate Bihm; motion to call the question carried. A vote was taken on the motion to approve creation of a Redistricting Task Force. Motion carried.

President Borunda Firth made a motion to approve the creation of the Building Planning Special Committee, including its roster of members, and grant authority to the committee to work with State Bar staff regarding decisions on remodeling, repairs, and uses of the 1415 Lavaca building. Seconded by Director David Calvillo. No discussion; motion carried.

Former State Bar President Terry Tottenham gave an update via Zoom on Texas Lawyers for Texas Veterans, mental health programs, the establishment of a veteran's legal clinic, and the Clinic in a Box resource.

D. Supreme Court Liaison:

Justice Debra Lehrmann provided an update on appointments to and openings at the court; three pandemic orders still in effect, including related to the extension of the due date for state bar dues and remote court proceedings; Emergency Order pertaining to Operation Lone Star; amended Texas Rule of Civil Procedures 145 and 199; TRAP 49, TRAP 57 and TRAP 57.2; and Rule 4 amendment.

E. Report from the Executive Director:

Executive Director Trey Apffel provided employee updates and awarded the Staff Excellence Award to Royce Lamoine.

F. Closed Session: At 11:13 a.m., the State Bar Board of Directors recessed the open meeting and reconvened in closed session as authorized by Texas Government Code Section 551.071 for the purpose of consulting with legal counsel, including regarding pending or contemplated litigation, including *McDonald v. Longley* (No. 20-5448, 4 F.4th 229 (5th Cir. 2021); No. 1:19-cv-219-LY (W.D. Tex.)) and *Bennett v. State Bar of Texas* (No. 4:21-cv-02829 (S.D. Tex.)), 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 1:13 p.m., the open session of the State Bar Board of Directors meeting reconvened. During the closed session, only matters relating to consultation with legal counsel regarding pending or contemplated litigation were discussed. No action was taken in closed session.

Director Adam Schramek made a motion to approve proposed changes to the State Bar Rules and Policy Manual, including regarding membership and enrollment in the State Bar, the budgeting process, and the expenditure objection process. Seconded by Director Kimberly Pack Wilson. Discussion ensued; motion carried.

H. Report from the President-elect:

President-elect Laura Gibson provided an update on the Budget Committee meeting; changes to the budgeting process and review of proposed changes to board policy manual; and preparation and timeline for completion of the FY 2022-2023 budget.

Presentation of Resolutions:

President Sylvia Borunda Firth presented a presidential citation to Jane H. Macon.

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

J. Commission for Lawyer Discipline/Chief Disciplinary Counsel:

Bobby Ramirez gave an update on the CDC disciplinary actions.

K. Nominations and Elections Subcommittee:

Immediate Past Chair Charlie Ginn reported on the Nominations and Elections Subcommittee selection of the two president-elect candidates: Jose "Joe" Escobedo Jr. and Cindy V. Tisdale.

On behalf of the committee, Past Chair Ginn made a motion for approval of Cindy Tisdale of Granbury and Joe Escobedo of Edinburg as the State Bar Candidates for President-elect for the 2022 election. Coming from a committee, no second was needed. No discussion; motion carried.

On behalf of the committee, Past Chair Ginn made a motion to approve proposed amendments to the Board Policy Manual pertaining to electronic signatures. Coming from a committee, no second was needed. Discussion ensued. Director Schramek proposed an amendment to delete the second sentence proposed for addition in 1.03.03(C) and 2.01.05(A). There was no objection to the amendment and the proposal was adopted. Discussion ensued. Director Kate Bihm raised a point of order. Point of order was sustained. Motion carried.

On behalf of the committee, Past Chair Ginn made a motion to approve proposed amendments to the Board Policy Manual pertaining to principal place of practice. Coming from a committee no second was needed. Discussion ensued. Director Bihm raised a point of order. Director Andrew Tolchin made a motion to amend the proposed change to the policy manual subparagraph 1.03.03(C) so that the last words be “and March 1 of the Bar year of the election.” Director Yolanda Cortes Mares objected to Director Tolchin’s amendment. Motion second by Director August Harris. A vote was taken on the motion to amend the proposal changes to the Policy Manual; motion to amend carried. Discussion on current motion as amended ensued. Motion on proposed changes to the Board Policy Manual as amended carried.

Remarks from candidates Joe Escobedo, Jr and Cindy Tisdale.

L. Report from the Policy Manual Subcommittee:

Director Adam Schramek provided an update on the State Bar Appellate Section in regard to a change to a State Bar amicus policy.

Director Schramek made a motion to approve the revision to Board Policy Manual Section 8.02.02(E), relating to the filing of amicus briefs. Coming from a committee, no second was needed. No discussion; motion carried.

M. Discipline & Client Attorney Assistance Committee:

Director Diane St. Yves provided an update on the referral to DCAAP of the report and recommendations of the Task Force on Public Protection, Grievance Review, and the Client Security Fund.

Director St. Yves made a motion to approve proposed Rule 1.18 of the Texas Disciplinary Rules of Professional Conduct, pertaining to duties to prospective clients, for submission to the Supreme Court of Texas at a later date. Coming from a committee, no second was needed. No discussion; motion carried.

Director St. Yves made a motion to approve proposed Rule 13.05 of the Texas Rules of Disciplinary Procedure, pertaining to the termination of a custodianship for the cessation of practice, for submission to the Supreme Court of Texas at a later date. Coming from a committee, no second was needed. No discussion; motion carried.

N. Client Security Fund Subcommittee:

Director Kate Bihm reported that the Subcommittee recently met and reviewed 24 applications and approved 12 for payment of \$46,397.25.

O. Texas Young Lawyers Association:

TYLA President Jeanine Rispoli provided an update on the Civility in the Law project, Relationship Wellness, Mentoring and Leadership guide.

TYLA President Rispoli made a motion to approve the recommended changes to the TYLA membership structure. Seconded by Director Rebekah Brooker. Discussion ensued. Motion carried.

TYLA President Rispoli made a motion to approve the request to the Supreme Court of Texas to amend the State Bar Rules regarding the TYLA membership structure. Motion was seconded by Director Rebekah Brooker. Discussion ensued. Motion carried.

P. Audit & Finance:

Director David Calvillo gave an update on financial reports, a general review of financial statements, and an update on the internal audits.

Director Calvillo made a motion to approve the State Bar's quarterly investment report for May 2021. No second was needed. No discussion; motion adopted.

Director Calvillo made a motion to approve the Texas State University PFIA online training as Public Funds Investment Act trainers. No second was needed. No discussion; motion adopted.

Director Calvillo made a motion to approve the adoption of the PFM Broker/Dealer List for investments. No second was needed. No discussion; motion adopted.

Director Calvillo made a motion to approve the adoption of the State Bar of Texas investment policy. No second was needed. No discussion; motion adopted.

Q. Administration Committee:

Director Rebekah Brooker gave an update on the recommendation from the Administration of Rules of Evidence Committee.

Director Brooker made a motion to approve the referral of recommendations from the State Bar Administration of Rules of Evidence Committee regarding Texas Rules of Evidence 404(b) to the Supreme Court of Texas for consideration. No second was needed. No discussion; motion adopted.

Director Brooker made a motion to approve the referral of recommendations from the State Bar Administration of Rules of Evidence Committee regarding Texas Rules of Evidence 601(b) to the Supreme Court of Texas for consideration. No second was needed. No discussion; motion carried.

R. Report from the Insurance/Member Benefits Subcommittee:

Director Steve Fischer reported that a change to the program is the loss of Bank of America affinity program with a loss of \$70,000 in revenue, and financial and utilization numbers are on track and revenue is up.

S. Resolution Regarding Remote Participation in Court Hearings

Director Steve Fischer made a motion to approve a resolution regarding remote participation in court hearings. Motion was seconded by Director Kennon Wooten. Discussion ensued. Director Adam Schramek made a motion to postpone a vote on the resolution until the January Board of Directors Meeting. Motion to postpone was seconded by Past Chair Charlie Ginn. The motion to postpone the vote on the resolution carried.

T. Litigation and Contracts Subcommittee: No report.

U. Facilities and Equipment Subcommittee:

Director Yolanda Cortes Mares reported on the facility-related projects including the upgrades to the air cleaning systems, groundwater infiltration in the garage, third floor carpet replacement, and upgrades to Room 101 and lobby.

V. Report from the Appeals-Grant Review Subcommittee:

Director Todd Smith reported that on September 1, the Subcommittee heard the appeal of TBLS decisions brought by Mr. Howard Kahn. TBLS denied Mr. Kahn's applications for specialization in the areas of Civil Trial Law and Estate Planning and Probate Law. The Subcommittee, applying the substantial evidence standard, voted in favor of upholding the TBLS decision on both applications.

Director Todd Smith made a motion to approve the Appeals-Grant Review Subcommittee's recommendation to uphold the decision of the Texas Board of Legal Specialization denying the applications of Mr. Howard M. Kahn for Civil Trial Law and Estate Planning and Probate Law specialization. No second was needed. No discussion; motion carried.

W. Report from the Professional Development Committee:

Director Luis Cardenas reported that on November 2, the PDP Subcommittee will meet jointly with the CLE committee to discuss topics for CLE and publications and hear reports on finances and operations. TexasBarCLE has resumed some in-person seminars while still offering courses in a webcast format, has provided \$170K in free CLE to legal aid lawyers and over 1 million in free CLE events, and has offered full and partial scholarships for all programs. The 29th Annual Texas Minority Counsel Program has been postponed.

X. Affordable Legal Services:

Director Jason Smith reported on the Performance Guidelines for Non-Capital Criminal Defense Representation.

Director Jason Smith made a motion to approve the updates to the Performance Guidelines for Non-Capital Criminal Defense Representation, as requested by the State Bar Legal Services to the Poor in Criminal Matters Committee. No second was needed. Discussion ensued; motion carried.

Y. Section Representatives to the Board Committee:

Director Kathryn Murphy reported on sections holding fall meeting, live CLE events, work with Board Policy Manual Subcommittee to update the policy manual regarding sections and drafting model bylaws.

Z. Court of Criminal Appeals Liaison: No report.

AA. Judicial Section Liaison: No report.

BB. Federal Judicial Liaison:

Judge Michael Truncale reported on keeping federal courts open and operating with few minor challenges during the pandemic and a surge in compassionate release petitions relating to the pandemic.

CC. Out of State lawyer Liaison:

Out-of-State Lawyer Liaison Rakhi Israni reported that the number of out of state attorneys has increased by 40 percent, with the largest concentrations of out of state attorneys working in California, Louisiana, and Florida, and that business law and litigation are major practice areas for all Texas attorneys.

DD. Report from General Counsel: No report.

Executive Director Trey Apffel announced Associate Executive Director and Legal Counsel John Sirman's retirement.

EE. SBOT Mission Statement:

Chair of the Board Santos Vargas led the board in the reciting of the Mission Statement.

There being no further business, a motion to adjourn was made by Director David Calvillo. The meeting was adjourned at 4:12 p.m.