OFFICIAL MINUTES
STATE BAR OF TEXAS
BOARD OF DIRECTORS MEETING
Hyatt Regency Lost Pines
Lost Pines, Texas
April 16, 2010

The Board of Directors of the State Bar of Texas met in a regular session on April 16, 2010 at the Hyatt Regency Lost Pines Resort in Lost Pines, Texas. Chair David Fisher called the meeting to order at 9:00am, and Executive Director Michelle Hunter called the roll. A quorum of voting Board members was present. Steve Benesh introduced Pat Hazel from the Lakeside Mediation Center and St. David's Episcopal Church in Austin, who led the invocation. Allan DuBois led the pledges to the U.S. and Texas flags.

Present:
Board Members: J. Arnold Aguilar, Pablo Almaguer, Glenn Ballard, Jr., Tim Belton, Steve Benesh, Talmage Boston, TYLA Immediate Past President Sylvia Cardona, Theresa Chang, Guy Choate, Janna Clarke, Warren Cole, Jeanne C. (Cezy) Collins, David W. Copeland, Mark Daniel, Allan DuBois, Damon Edwards, Immediate Past President Harper Estes, Chair of the Board David Fisher, Susan M. Fisher, Deborah Gagliardi, Pamela Gilbert, Beverly Godbey, Mike Gregory, L. Bradley Hancock, TYLA President Cori Harbour, Lamont Jefferson, President Roland K. Johnson, Kyle Lewis, TYLA President-elect Jennifer Evans Morris, Timothy Mountz, Bill Ogden, Yvette Ostolaza, Tommy Proctor, Annette Raggette, Robert Roby, Mark K. Sales, Lisa Tatum, President-elect Terry Tottenham, Pat Wolter, Barbara S. Young

Liaisons*: Scotty Holloman, Justice Phil Johnson, Judge Larry Meyers

Section Representatives*: Chad Baruch, Stewart Gagnon, John Jansonius, Dan Micciche

Ex Officio*: Executive Director Michelle Hunter, CDC Linda Acevedo, Immediate Past Chair of the Board Joe Shannon, Jr.

Excused Absences: *Steve Bolden*, Judge David Folsom*, Judge David Garcia**, John Hatchel, Randy Howry, Bert Jennings, Sam Lovelady, Travis Sales, John D. Sloan, Jr., Brian Webb**

(= nonvoting)*

***Hon. Steve Smith attended in place of Judge David Garcia.*

I. CONSENT AGENDA ITEMS:

Upon motion properly made by Janna Clarke and seconded by Tim Mountz, the following items from the Consent Agenda were approved:

A. **APPROVAL OF MINUTES:**

a. Approval of minutes of Board meetings conducted on *January 28-29, 2010*

b. Ratification of actions taken at the following Executive Committee meetings:

1) ***April 6, 2010****:* Approved minutes of the January 12, 2010 Executive Committee meeting

B. **ITEMS FROM THE PRESIDENT:**

Approval of appointments to the following entities:

a. **Commission for Lawyer Discipline:**

1) for terms September 1, 2010 through August 31, 2011:

Chair: **Betty Blackwell (Austin)**
Vice Chair: **Ron Bunch (Waxahachie)**

2) for three-year terms effective September 1, 2010 through August 31, 2013:

Ron Bunch (Waxahachie)
Lisa Tatum (San Antonio)

b. **Law Focused Education, Inc**., for two-year terms effective June 1, 2010 through May 31, 2012:

Steve Gwinn (Dallas)
Ted Kerr (Midland)
Terry Marrs (Bronte)
Mario Martinez (El Paso)
Gracie Minyard (Edinburg)
Brenda Richardson (Corpus Christi)
Lisa Sanders Richardson (Round Rock)
Drew Yoder (Houston)

c. **Texas Legal Protection Plan,** for three-year terms effective June 1, 2010 through May 31, 2013:

Robert D. Miller (Big Spring)
Jennifer Ramsey (Austin)
Albert Betts, Jr (Austin)
Janna Clarke (Fort Worth)

d. **Texas Center for Legal Ethics**, for three year terms effective June 1, 2010 through May 31, 2013:

Hon. Jennifer Walker Elrod (Houston)
Kelly Frels (Houston)
Wright Moody (Houston)

C. **<u>ITEMS FROM THE PRESIDENT-ELECT</u>:**

a. **Texas Bar Foundation**, for a three year term effective June 1, 2010 to May 31, 2013:

Barbara Young (Temple)
Sonia A. Falcon (McAllen)

b. Approval of State Bar Committee Chairs and Vice Chairs to serve during the year 2010-11 per State Bar Rules, Art. VIII, Section 1B **[Exhibit A]** [1]

D. **<u>OTHER ITEMS:</u>**

a. Approval of recipients for the pro bono awards to be presented at the Annual Meeting:

1) **Pro Bono Award:** The Dallas Volunteer Attorney Program
2) **Frank J. Scurlock Award:** Jeffrey A. Stocks. (Houston)

3) **The J. Chrys Dougherty Legal Services Award:** Wafa Abdin, Catholic Charities of the Archdiocese of Houston-Galveston
4) **W. Frank Newton Award:** The Fowler Law Firm (Austin) and Marathon Oil Joe Simmons Legal Pro Bono Program (Houston)
5) **Pro Bono Coordinator Award**: Maria "Lulu" Villanueva, Texas RioGrande Legal Aid (San Antonio) **[Exhibit B]**

b. Approval of recipients for the Nancy Garms Memorial Award to be presented at the Annual Meeting:

Judge Lora Livingston (Austin)

II. REPORTS:

A. Report from the President:

Closed Session: At 9:09a.m., Chair Fisher announced that the Board of Directors would meet in closed session as authorized by Texas Government Code, Section 551.074 for the purpose of discussing recommendations concerning the appointment of Legal Counsel.

Open Session: Upon return to open session at 9:15a.m., Chair Fisher announced that during the closed session, only matters relating to recommendations concerning the appointment of Legal Counsel were discussed. No action was taken in closed session.

President Roland Johnson reported that the Court sent the State Bar a letter on the professional liability insurance disclosure issue, congratulating the Board for their efforts on this arduous but important task, and stating that the information gleaned during the process gave the Court the tools to make an informed decision. **[Exhibit C]**

President Johnson reported that the ABA will be taking a position on the rankings of law schools by Newsweek, and on the ABA 2020 project, which will study what the practice of law will look like in the next decade. President Johnson also discussed AftertheBarExam.com, the YouTube contest, the Transition to Practice mentoring program, LeadershipSBOT, Annual Meeting, and Texas hosting the Western State Bar Conference in San Antonio held in March. President Johnson reported that he had a meeting with State Representative Senfronia Thompson to discuss her efforts in dealing with the problem of human trafficking in Texas, and ways in which the State Bar could help call attention to the issue. President Johnson also reported on the dues statement and the changes to the ATJ contribution option, which requires members to opt-out of a $150 contribution if they don't wish to donate to legal aid.

President Johnson reported on the Ad Hoc Committee to Select Minority Directors, noting that the committee submitted four qualified names to the President, and gave background information on the final two selected.

Lisa Tatum moved for approval of the appointment of Toni Nguyen (Keller) and John Trevino (Dallas) as a minority member to the Board of Directors, for a three-year term effective at the Annual meeting of 2010 and expiring at Annual Meeting 2013; Tim Belton seconded. Motion carried. [Exhibit D]

B. Report from the Chair of the Board:

Chair David Fisher reported that at the January meeting, the Board voted to conduct the Chair election by written ballot. Chair Fisher explained the balloting process, and noted that if one candidate gets a majority of all votes cast, that candidate wins the election, and if no candidate gets a majority of all votes cast, a runoff election will be held between the two candidates getting the most votes. **After two rounds of voting were conducted, Chair Fisher announced that Pablo Almaguer has been named the 2010-11 Chair of the Board**. Almaguer made remarks.

C. Report from the President-elect:

President-elect Terry Tottenham reported on committee appointments, noting that diversity was a big concern this year, and discussed the Texas Lawyers for Texas Veterans initiative and training sessions as well as the mental health DVD focusing on alcohol and substance abuse. President-elect Tottenham reported that the budget is unchanged from what was approved by the Board in January and the budget hearing with the Supreme Court is scheduled for May 4.

On behalf of the subcommittee, President-elect Tottenham moved for approval of the 2010-11 budget for presentation to the Supreme Court of Texas; no second needed. Motion carried. [Exhibit E]

D. Administration Committee:

Mark Sales reported on the changes to the Employee Handbook, noting that the last review was in 2005, and the changes were based on changes in state and federal law and a review of "Best Practices" models of other state agencies. Tim Mountz reported on the terms of the TCLEP lease, noting that it is a one-year term with automatic renewal and a holdover penalty of 110%, with the base rental of $24,310/yr in monthly installments of $2025.83. There is also a proposed administrative services agreement, which TCLEP will pay $1000 per month for services provided by the State Bar such as accounting, payroll, and IT support.

On behalf of the subcommittee, Tim Mountz moved for approval of the following:

1) Changes to the Employee Handbook Policies [Exhibit F]
2) Texas Center for Legal Ethics and Professionalism lease; no second needed. Motion carried. [Exhibit G]

Closed Session: At 10:09a.m., Chair Fisher announced that the Board of Directors would meet in closed session as authorized by Texas Government Code, Section 551.071 for the purpose of consultations with legal counsel regarding *Project Masters, LLC v. State Bar of Texas*.

Open Session: Upon return to open session at 10:20a.m., Chair Fisher announced that during the closed session, only matters relating to consultations with legal counsel regarding *Project Masters, LLC v. State Bar of Texas* were discussed. No action was taken in closed session.

In open session, Yvette Ostolaza moved for approval of the *Project Masters, LLC v. State Bar of Texas* settlement; Cezy Collins seconded. Motion carried.

E. Audit & Finance Committee:

Beverly Godbey reported that fees for lawyer referral, CDC disciplinary, and advertising review are ahead of the amount budgeted and have contributed to the positive net revenue variance of approximately $1.8 million, or 134% as of the end of February. TexasBarCLE's revenues over expenditures are approximately $3.9 million, which represents a $1.3 million positive variance. Warren Cole discussed the quarterly investment report, explaining that now that the Law Center renovation is complete, there are funds available to invest further out into the future and obtain a slight increase in interest rates.

On behalf of the committee, Warren Cole moved for acceptance of the quarterly investment report for the period ending February 28, 2010; no second needed. Motion carried. [Exhibit H]

F. DCAAP/Client Security Fund Subcommittees:

Janna Clarke reported that the Client Security Fund made awards of $172,000 to 35 complainants and year-to-date have dispersed $215,000, and are currently receiving between 12-15 complaints a month. President Johnson discussed the proposed changes to the disciplinary rules that were distributed by the Supreme Court the day before, and summarized the process up to this point and for the upcoming Bar year regarding the recommendation of the rules changes. President Johnson noted that the interpretive comments are still being

worked on, and thanked Justice Johnson and Kennon Peterson, the Supreme Court Rules Attorney, for their hard work on the changes. Lisa Tatum reported on the history of the work of the DCAAP Committee and asked the Board to provide feedback to the DCAAP Committee as they are looking through the proposed rules. Justice Johnson summarized the proposed revised disciplinary rules changes that were distributed at the Board meeting, noting that the timeline allows for a possible referendum in the fall. **[Exhibit I]**

G. Nominations & Elections Subcommittee:

Immediate Past Chair Joe Shannon reported that we have received 16,064 votes so far, and there are two contested races this year for the district elections, District 4 and District 10.

H. Member Services and Education:

Kyle Lewis reported that the Appeals Grant Review subcommittee received five requests for authorization to seek outside funding, three from TYLA and two from SBOT, and the subcommittee approved all these requests. **[Exhibit J]** Chad Baruch reported that the technology staff continues to work on the implementation of the new Virtual server systems that were approved by the Technology Oversight subcommittee prior to the January Board meeting. The PDP subcommittee will have a joint meeting with the CLE Committee in Austin on April 23. New Directors Orientation will be in conjunction with Annual Meeting this year, on June 8-9 in Fort Worth. Tommy Proctor reported that the Insurance/Member Benefits is looking at using Beneplace Inc. for providing personal use products with the deepest discounts and will offer their program at no cost to members. Also, in light of its findings with the individual health insurance plans that are offered by the SBOTIT, the subcommittee does not see a need to continue its review of the Insurance Trust as this time.

I. Texas Legal Protection Plan:

TLPP Executive Director Jim Buck summarized what has been happening at TLPP, including the website redesign, claims paid, a new provider-relations position, streamlining of the eligibility process, and the need for more provider attorneys throughout the state.

J. Commission for Lawyer Discipline/Chief Disciplinary Counsel:

Betty Blackwell reported on various aspects of the Commission and CDC, including the prevention efforts and grievance referral program, grievance statistics, disciplinary actions and the district grievance committee appointments, asking that the Board consider areas of expertise, law practice and diversity in making those nominations. **[Exhibit K]**

K. Section Representative to the Board:

Chad Baruch reported on the Sections name change and the proposed new Section, noting that the bylaws in order and both proposals have been approved by the Council of Chairs.

1) **Immediate Past President Harper Estes moved for approval of the recommendation regarding the name change of the Sexual Orientation and Gender Identification Issues Section to the LGBT Law Section; Pat Wolter seconded. Motion carried. [Exhibit L]**

2) **Mike Gregory moved for approval of the recommendation regarding the proposed Collaborative Law Section; Warren Cole seconded. Motion carried. [Exhibit M]**

L. Annual Meeting:

Janna Clarke reported on the Annual Meeting taking place June 9-11 in Fort Worth and various highlights including the Atticus Finch and Ethics track and speaker/author David Dow.

M. Supreme Court Liaison:

Justice Johnson reported further on the ATJ contribution opt-out aspect of the dues statement, and reported that the letter from the Court on PLID was a sincere statement of the State Bar's work on the issue. Justice Johnson noted that various public incidents that were positively viewed, such as Eldorado, the Court reorganization process and ATJ, reflect an attitude that the State Bar and lawyers in Texas are constructionists, not obstructionists.

N. Judicial Section Liaison:

Judge Steve Smith, who will become the chair of the Judicial Section in June, reported on Ethics Opinion 484**,** the Judicial Compensation Commission, and the Texas Center for the Judiciary's Executive Director search.

O. Texas Young Lawyers Association:

TYLA President Cori Harbour reported on the National Trial Competition, Central Texas Diversity Forum, TYLA Roadshows, Environment & the Law Symposium in celebration of Earth Day, and public service brochures.

P. Executive Director:

Michelle Hunter called on KaLyn Laney, who reminded the Board that Personal Financial Statements are due to the Ethics Commission by April 30. Linda Acevedo introduced Erica Locust from the Chief Disciplinary Counsel's office and presented her with the Employee of the Quarter Award.

There being no further business, the meeting was adjourned at 12:08pm.

[1] **Exhibits A** through **M** are available at www.texasbar.com/bodcentral under Meeting Agendas and Minutes.