

**OFFICIAL MINUTES
STATE BAR OF TEXAS
BOARD OF DIRECTORS MEETING
Marriott Rivercenter Hotel
San Antonio, TX
June 23, 2004**

The Board of Directors of the State Bar of Texas met in a regular session on June 23, 2004 at the Marriott Rivercenter Hotel in San Antonio, Texas. The meeting was called to order at 1:30 p.m. by Chair Kim J. Askew, and the roll was called by Chief of Staff Michelle Hunter. A quorum of voting Board members was present. Invocation was presented by the Rev. Art Hall (Associate Minister, Grace Baptist Church of San Antonio, and SB African-American Lawyers Section member).

Present:

Board Members: Kim J. Askew, Dr. Fred E. Aurbach, W. Mike Baggett, H. Mack Barnhart, Blair A. Bisbey, Michael J. Black, Mina A. Brees, Ralph H. Brock, Russell G. Burwell III, Linda R. Butter, Judge Jim Coronado, Jennifer G. Durbin, Michael A. Elliott, William D. Elliott, Kelly Frels, Roland Garcia, Jr., Guy N. Harrison, Paula W. Hinton, John H. Hofmann, Jarvis V. Hollingsworth, Roland K. Johnson, John F. Landgraf, Stephen C. Maxwell, David R. McAtee, Melinda C. McMichael, M.D., S. Leon Mitchell, Mark N. Osborn, Glenn A. Perry, Velva L. Price, Mickey R. Redwine, Viane Lopez Robinson, Renato Santos, Jr., Charles W. Schwartz*, W. Steven Steele, Andrew L. Strong, Mark A. Shank, Amy Dunn Taylor, Betsy Whitaker, Patricia J. Williams, Marshall C. Wood

Liaisons*: Joette Furlough, Justice Michael H. Schneider, Judge Walter S. Smith, Jr.,

Section Representatives*: William H. Betts, Jr., Demetrius K. Bivins, Suzanne Mann Duvall, W. David East, Robert V. Gibson, Mark L. Murdock

Excused Absences:

Patricia O. Alvarez, Ophelia F. Camina, Tom Godbold, Terri L. Hagan, Pauline E. Higgins, James C. Winton;
Liaisons Judge Molly M. Francis, Judge Sharon Keller

(* = *nonvoting*)

I. CONSENT AGENDA ITEMS

Upon motion properly made and seconded, the following items on the Consent Agenda were approved:

1. Minutes of the Board meeting conducted on *April 16, 2004*.
2. Appointments by the 2004-05 President to the following entities:
 - a. **College of the State Bar Board**, for three-year terms effective June 1, 2004 through May 31, 2007:

Justice Eugene A. Cook (College Station)	Katherine D. Julia (Edinburg)
Lauren Beck Harris (Houston)	Robert D. "Bob" Miller (Big Spring)
Baynetta M. Jordan (Lubbock)	Kerry L. Russell (Tyler)
 - b. **Section Coordination Committee**, for two-year terms effective Annual Meeting 2004 through Annual Meeting 2006:

Michael J. Black, Chair (San Antonio, Board)
Michael Connelly (Houston, Board)
Charles A. Spain, Jr. (Houston, Section)
Constance C. Westfall (Dallas, Section)

c. **Section Representative to the Board Committee:**

1) for three-year terms effective Annual Meeting 2004 through Annual Meeting 2007:

Stephen J. Smith (Houston, Large Section)
Judy L. Ney (Houston, Medium Section)

2) to complete Demetrius K. Bivins' unexpired term through Annual Meeting 2006:

Lisa M. Tatum (San Antonio, Small Section)

d. **State Bar Insurance Trust**, for three-year terms effective July 1, 2004 through June 30, 2007:

Christopher W. Martin (Houston)
Melvin L. Burner, Jr. (Austin)

e. **Texas Access to Justice Commission**, for three-year terms effective June 2004 through June 2007:

Douglas Caldwell (Houston, Program Representative)
Guy N. Harrison (Longview, At-Large Member)

f. **Texas Board of Legal Specialization**, for three-year terms effective July 1, 2004 through June 30, 2007:

Olan J. Boudreaux (Houston) **John R. Mercy (Texarkana)**
Alene R. Levy (Houston) **Robert E. Valdez (San Antonio)**

g. **Texas Equal Access to Justice Foundation (IOLTA)**, for three-year terms effective September 1, 2004 through August 31, 2007:

Rep. Brian McCall (Plano, Public Member)
Karen M. Neeley (Austin)

h. Approval of State Bar committee chairs to serve during the year 2004-05, per State Bar Rules, Art. VIII, Section 1B [**See Exhibit A.**]

3. Recommendations by the Nominating Committee to Select ABA Delegates (Chair Guy N. Harrison) for appointment of delegates to the American Bar Association House of Delegates for two-year terms beginning at the conclusion of the 2004 ABA Annual Meeting and expiring at the conclusion of the 2006 ABA Annual Meeting:

Delegates:

Eduardo R. Rodriguez (Brownsville)
Elizabeth D. Whitaker (Dallas)

H. Mack Barnhart (Gainesville)
Walter L. Sutton, Jr. (Richardson)

4. Request by **Public Utility Law Section** to conduct its annual meeting in August 2004 other than in conjunction with the State Bar Annual Meeting.

5. Request by **Taxation Section** to revise its bylaws on condition of subsequent approval by the section at its June 25 meeting. [See Exhibit B.]
6. **Resolutions** honoring: [See Exhibit C.]
 - a. Executive Director Antonio Alvarado (Austin)
 - b. Chief Justice Thomas R. Phillips (Austin)
 - c. Late Federal Judge Filemon Vela (Brownsville)

II. OVERVIEW OF THE BAR YEAR

President Betsy Whitaker praised the Board members and leaders of Texas, the lawyers who are at the center of productivity, and the contributions made by so many volunteers during her presidency. She acknowledged the many events that occurred, the trailblazers such as Hon. Charlye O. Farris, and celebrations including the 50th anniversary of *Brown v. the Board of Education*.

Chair of the Board Kim J. Askew reviewed the accomplishments made in customer service, technology, communication and involvement, and the wide spectrum of issues dealt with by the Board, including the Rules of Disciplinary Procedure that had to be drafted and went into effect on January 1 of this year, Rule 8A, the successful attorney profile, and funding of legal services.

III. SPECIAL PRESENTATIONS

A. Former Executive Director: Chair Askew and President Whitaker reviewed some of the many contributions made by Antonio Alvarado during over nine years of service to the Bar as Executive Director (2/1/95-6/15/04). Alvarado was presented with a specially framed version of the resolution approved by the Board and allowed to make comments. Alvarado acknowledged attending approximately 50 Board meetings while serving as Executive Director (plus 12 as a former Board member), and cherished the memories made. Special thanks were given to his two executive assistants, Catherine Nahay and Jennie Gounah, who served with him through the day-to-day issues; and to his family members, wife Cheryl and children David and Laura, who Alvarado said paid the biggest sacrifice during his service to the Bar.

B. Outstanding Third-Year Director: Chair Askew presented a plaque to Jarvis V. Hollingsworth as recipient of the Outstanding Third-Year Director Award, in commemoration of his contributions to the Board, including service as Administration Committee Chair for two years.

IV. REPORTS

A. President-elect: President-elect Kelly Frels gave a brief report thanking TYLA for its commitment to helping the Bar accomplish its financial goals, and to the Annual Meeting Committee for coordinating a successful annual meeting.

1) Closed Session: Chair Askew announced that the Board of Directors met from 2:03 p.m. to 2:17 p.m. in closed session, as authorized by Texas Government Code, Section 551.074, for the purpose of discussing appointment of an interim executive director and an assistant general counsel.

2) Open Session: Upon return to open session, Chair Askew announced that during the closed session, pursuant to Texas Government Code, Section 551.074, only items pertaining to appointment of an interim executive director and an assistant general counsel were discussed. No action was taken in closed session.

In open session –

a) Interim Executive Director: **President-elect Kelly Frels moved approval that “the Board select Michelle Hunter as the Interim Executive Director effective June 15, 2004, to serve until the next executive director has been chosen and begins the duties of the position, that she be hired at a monthly salary of \$10,833, which is annualized to \$130,000.”** Seconded by John Landgraf, the motion carried.

b) Consultant Agreement: President-elect Frels introduced the consultant agreement item and indicated it had not been discussed during the closed session. The proposal is to enter into a consulting agreement with former Executive Director Antonio Alvarado for a maximum six-month period **at a monthly compensation of \$12,000** to assist Michelle Hunter and the Board in the transition until a new executive director is hired or until he finds full-time employment. Frels stressed the need to be supportive of Hunter and requested the Board to go through her for major communication with the Bar.

President-elect Frels moved approval “of a consultant agreement to provide services to the State Bar of Texas with former Executive Director Tony Alvarado effective June 16, 2004, and ending on November 30, 2004, [for a maximum six-month period at a monthly compensation of \$12,000] unless the agreement is terminated by its terms or by mutual agreement at an earlier date.” Properly seconded, the motion carried.

c) Assistant General Counsel: General Counsel Patricia A. Moore proposed appointing Dudley McClellan (Austin) as Assistant General Counsel. **Blair Bisbey moved Board approval to appoint Dudley McClellan as Assistant General Counsel. Properly seconded, the motion carried.**

3) President-Elect Election Guidelines: President-elect Frels indicated the proposed guidelines were to clarify definitional terms and to provide for electronic voting for the 2005 President-elect elections. **On behalf of the Nominations & Elections Subcommittee, Frels moved acceptance of the proposed revision to the guidelines. The motion carried. [See Exhibit D.]**

B. Referral Fee Task Force: Chair Askew thanked Task Force Chair Richard C. Hile for his leadership in accomplishing the work of the Task Force. Hile acknowledged the contributions made by the members of the Task Force, and presented an extensive review of the 54-page Final Report and Recommendations to the Supreme Court, which was designed to establish minimum levels of conduct by an attorney by prospective clients, by an attorney and his clients, by the attorney and the court, and attorney by third parties and the public at large.

Hile indicated the proper motion for the Board to make was three-pronged:

MOTION:

1) **That the Board of Directors, pursuant to Texas Government Code, Section 81.024(b), adopt the amendments to the Rules and Comments to Rule 1.04(f)(g)(h), 7.02(a), 7.04(q) and to Part VII of the Texas Disciplinary Rules of Professional Conduct as set forth in the revised Appendices A, B, C, and D of the Final Report and Recommendations of the Referral Fee Task Force.**

2) **That the request that the Texas Supreme Court, pursuant to Texas Government Code, Section 81.024(c), authorize the State Bar of Texas to conduct a referendum, with voting not to commence not less than 75 days after the Supreme Court adopts the proposed amendments to the Texas Disciplinary Rules of Professional Conduct, so that the rest of the members of the State Bar may vote on the proposed amendments.**

3) **Authorize the Referendum Task Force Committee to prepare and submit to the Supreme Court a proposed ballot form to be distributed to registered members of the Bar for the purpose of voting on the proposed amendments to the Texas Disciplinary Rules of Professional Conduct adopted by the Supreme Court.**

Blair Bisbey moved approval as indicated above. The motion was seconded by Stephen Steele.

Much discussion ensued about a safe haven against future litigation and providing the State Bar with a cap and guidance to attorneys subject to grievance.

Immediate Past President Guy Harrison stressed clarification about the proposed referendum being presented as an all or nothing package or as individual portions of the Rules, and recommended including the clarification in part 3 of the proposed motion.

Amendment #1: President-elect Frels suggested the motion be amended to reflect “not less than 60 days” instead of “75 days after the Supreme Court adopts the proposed amendments.”

Amendment #2: Jeff Parsons offered an amendment to the motion on the floor: “and that the Supreme Court is encouraged to provide a safe harbor provision for referring lawyers that is a minimum percentage for referral fee that is beyond challenge.” Hile expressed concern about including a capping provision in the recommendations.

President Whitaker indicated that Commission for Lawyer Discipline Chair Mark White had pointed out that there is a provision under Rule 1.08(g) that the proposed amendment would violate: “A lawyer shall not make an agreement prospectively limiting the lawyer’s liability to a client for malpractice unless permitted by law....”

Hile indicated the Court expected the Board to vote on the report at today’s meeting.

MOTION AS AMENDED:

1) Pursuant to Tex. Government Code Section 81.024(b), adopt the amendments to the Rules and Comments to Rule 1.04(f)(g)(h), 7.02(a), 7.04(q); and to Part VII of Texas Disciplinary Rules of Professional Conduct as set forth in revised Appendices A, B, C and D of the Final Report and Recommendations of the Referral Fee Task Force.

2) Request that the Texas Supreme Court, pursuant to Texas Government Code Section 81.024(c) authorize the State Bar of Texas to conduct a referendum, with voting not to commence less than 60 days after the Supreme Court adopts proposed amendments to the Texas Disciplinary Rules of Professional Conduct, so that registered members of the State Bar may vote on the proposed amendments.

3) Subject to Board approval, authorize the Referendum Task Force Committee to prepare and submit to the Supreme Court a proposed ballot form, which allows one to vote on one or more of the proposed rules, such to be distributed to registered members of the Bar.

Upon the call to vote, the motion carried. [See Exhibit E.]

[Chair Askew introduced the new Supreme Court Rules Clerk, Lisa Hobbs.]

C. Referendum Issues: Mike Baggett reviewed the proposed timeline for the referendum, which indicates a vote being taken today by the Board, submitting the proposed Referral Fee Task Force final report to the Supreme Court, which would then distribute the report for comment, with subsequent publication in the *Texas Bar Journal*. How the items are presented to the membership for voting will be up to the Board. The referendum process would include on-line voting.

Chair Askew clarified that the Supreme Court requested the Board vote on the Rule 8a [referral fee] issue today, but that other referendum items will be presented to the Board at subsequent meetings.

D. Technology Oversight Subcommittee: Mark Osborn gave credit to Board members and staff who have worked on the technology improvements made throughout the year and presented an update of the technology issues and the back office database project.

E. Administration Committee:

1) Contract: Following the overview of the ASI/iMIS proposal by Osborn, Administration Committee Chair Jarvis Hollingsworth stated the proposed contract had been reviewed by the General Counsel, portions reviewed by outside counsel, was unanimously recommended by the Technology Oversight Subcommittee and the Contract Subcommittee of the Administration Committee and the Administration Committee.

On behalf of the Administration Committee, Hollingsworth moved approval of the Advanced Solutions International contract for the purchase and implementation of the iMIS software system license. [See Exhibit F.]

2) Amicus Brief: Hollingsworth indicated that the Supreme Court did ask the insurance companies involved in the UPL case (American Home Assurance Company, Inc., and Traveler Indemnity Company vs. UPL Committee, Cause No. 11-02-00212-CV case) to file a response. In the response, the insurance companies waived their right to recover attorneys fees until the appellate court could instruct the trial court on that issue; therefore the UPLC immunity issue would not come before the Court in the appeal.

3) Litigation: Hollingsworth reported that one new lawsuit had been filed, a *pro se*, \$52,659,789.65 case against the State Bar (and 20 other defendants) by an individual regarding a piece of property due to foreclosure. No legal basis was stated in the petition, and the Bar's carriers have determined it to be a frivolous lawsuit. A full report of litigation matters is available from the General Counsel at the request of any Board member.

4) Performance Measures: Mike Baggett summarized the process used to develop meaningful performance measures, and indicated the true test will be in prioritizing and working as a team to execute the goals, which will be tied to budget items in the future.

On behalf of the Administration Committee, Baggett moved approval of the performance measures. The motion carried. [See Exhibit G.]

5) Real Estate Strategic Plan: William Betts reported the task of the subcommittee over the last two years was to look at the physical plant and properties of the State Bar and develop a short and long-term plan for those facilities. Phase I (FY04-FY07) requires a commitment of \$1.4-\$1.6 million to maintain the physical plant and continue the work already begun. Phase II (FY08-FY24) entails expenditures of \$10.4-\$13 million over a 20-year period.

On behalf of the Administration Committee, Mark Shank moved approval of the Real Estate Strategic Plan. [See Exhibit H.]

F. Finance Subcommittee: William Elliott presented a brief update on the financial status of the Bar and indicated that net excess revenues over expenses at the end of April 30, 2004, were \$805,121.

On behalf of the Finance Subcommittee, Elliott moved acceptance of the Quarterly Investment Report for the period ending February 29, 2004. The motion carried. [See Exhibit I.]

G. Legal Services Funding Study: Hon. Harriet O'Neill reminded the Board that she previously had spoken as a representative of the Texas Access to Justice Commission about the need for legal services funding, and noted the following during her presentation: (1) The responsibility for meeting the need has to be broader based, is a

societal problem and not just a lawyer problem, therefore, there is a need to focus on increasing buy-in on a broader spectrum of the community; (2) the role of the TAJC should also be a strong policy setting commission; and (3) communication, coordination, and consensus are key to any successful effort.

Honorable O'Neill focused on item (1), and indicated the Fund-raising Project of Management Information Exchange Consultant Report (by Dennis Dorgan, and funded by the State Bar) was completed. [See Exhibit J.] Obstacles identified in the report were three things that negatively affected the ability to increase funding in Texas: reduction of LSC providers from nine to three, the Legislature's mandatory \$65 add-on fee, and the drop in IOLTA funding, which forced many of the programs to operate in a crisis mode. Also noted in the report is a consensus throughout the community that additional resources to legal aid need to be secured and the programs need to be strengthened; a sense of chagrin about where Texas stands nationwide in terms of spending per capita on legal services to the poor; and a shared sense of commitment across a broad base of the community and Texas leadership to do more.

Honorable O'Neill indicated she would like to see a long-term, stable, enduring financial infrastructure for legal services, and hopes the State Bar would consider funding the implementation plan to allow Dorgan to continue the next phase of the study for the TAJC.

H. Budget Subcommittee: Kelly Frels indicated that after the April BOD meeting, discussions were held to determine a better method of assisting legal services providers in a more traditional way through Texas Lawyers Care, which resulted in the legal services proposed State Bar initiatives.

MOTION 1:

On behalf of the Budget Subcommittee, Frels moved approval of up to \$300,000 from the FY04-05 budget (from the \$400,000 contingent, set-aside fund). [See Exhibit K.]

From the general public, Carol Barger (Member, SBOT Legal Services to the Poor in Civil Matters Committee, Dallas) signed in and addressed the Board on the legal services issue. (Pam Brown, Co-chair/SBOT Legal Services to the Poor in Civil Matters Committee, Weslaco, signed in, but had to leave before speaking.) Barger indicated the initiatives were a good first step and thanked the Board for its recent efforts.

Much discussion ensued, with some members reminding the Board of the action taken during the April 16, 2004, meeting to not provide funding for the legal services request based on the analysis presented by the Legal Services Workgroup, whereas other members indicating it was the right move to make.

MOTION 2:

A motion was made "that the motion on the floor be tabled and the issue be put to a referendum vote at the next scheduled referendum and let the licensed lawyers decide how their dues are spent, especially when it could cause a dues increase for the Texas lawyers." Seconded by Mack Barnhart, the motion to table failed.

Amendment to Main Motion 1: Mack Barnhart expressed concern that the issue had been presented to the Board three times, that the Board had already voted on the issue, and that it was being expressed differently. **Barnhart moved "to amend the motion to say that this is a grant for only one year and then if it is to be renewed, it will be a separate and specific agenda item for the budget year 2005-06 and may not be considered as a part of the budget agenda, but must be a separate item." The motion was seconded by Jeff Parsons. On the call for a hand vote, the motion to amend carried 17:16.**

MOTION AS AMENDED:

Chair Askew clarified that the amended motion on the floor included the \$300,000 from the 2004-05 budget, that this is a grant for a one-year period, and if renewed, it will be listed as an agenda item and limited for the 2004-05 budget, not separate.

William Elliott called for a point of order regarding voting by the Chair of the Board. Confirmed by the General Counsel, Chair Askew indicated the Chair could vote on any matter. Ralph Brock interjected that the Board is guided by *Roberts Rules of Order*, which indicates the Chair should wait to see how the voting goes, then votes to break a tie.

Carol Barger clarified the proposed funding was a one-time request of the Board. Mina Brees requested a recount on the prior vote to amend, which was denied as some members had already left.

Additional discussion ensued, including comments made by Dr. Melinda McMichael, who called for the vote. **Upon the Chair's call to vote on the amended motion, the motion carried.**

I. Appeals-Grant Review Subcommittee: Steven Steele referred to the grant contained in the Board packet that had been received from the State Bar Law Office Management Department, reviewed by the subcommittee, and approved for submission to the State Bar College Board. **[See Exhibit L.]**

J. Policy Manual/Bar Refresher Subcommittee: Mina Brees summarized the proposed revisions to the State Bar Policy Manual, including clean up provisions, Client Security Fund matters, and CDC grievance committee appointment issues. Three items being held for review by the 2004-05 Policy Manual Subcommittee are: Election of Chair of the Board, Setting the Agenda for Board Meetings, and the Executive Director/General Counsel performance criteria.

On behalf of the Policy Manual/Bar Refresher Subcommittee, Brees moved approval of the policy manual provisions. The motion carried. [See Exhibit M.]

A review of the results of the Bar Refresher survey/questionnaire was also presented, with Brees noting the Bar should do more to publicize the various Bar programs, Brees recommended the 2004-05 leadership include that as a focal point.

K. Commission for Lawyer Discipline Internal Operating Rules: Vianei Lopez Robinson presented a summary of the proposed Internal Operating Rules for the Commission for Lawyer Discipline and indicated the Discipline/CAAP Subcommittee recommended acceptance of the revised rules for submission to the Texas Supreme Court.

On behalf of the Discipline/CAAP Subcommittee, Robinson moved acceptance of the revised rules for submission to the Texas Supreme Court. The motion carried. [See Exhibit N.]

There being no further business, the meeting was adjourned at approximately 5:45 p.m.

EXHIBITS ATTACHED

EXHIBIT A: SB Committee Chairs 2004-05

EXHIBIT B: Bylaw Revisions – Taxation Section

EXHIBIT C: Resolutions Honoring Antonio Alvarado, Justice Thomas R. Phillips, Late Federal Judge Filemon Vela)

- EXHIBIT D: Policy Manual Revisions – President-elect Guidelines
- EXHIBIT E: Referral Fee Task Force - Final Report and Recommendations
- EXHIBIT F: Advance Solutions International/iMIS Software System License Analysis
- EXHIBIT G: Performance Measures
- EXHIBIT H: Real Estate Strategic Plan
- EXHIBIT I: Quarterly Investment Report, Period Ending February 29, 2004
- EXHIBIT J: Fund-raising Project of Management Information Exchange Consultant Report (by Dennis Dorgan for TAJC)
- EXHIBIT K: Legal Services Proposed State Bar Initiatives
- EXHIBIT L: Grant Proposal: SB Law Office Management to the State Bar College Board
- EXHIBIT M: Policy Manual Revisions (Clean-up Provisions, Client Security Fund Matters, CDC Grievance Committee Appointment Issues)
- EXHIBIT N: Commission for Lawyer Discipline Internal Operating Rules

U:\WPDOCS\MINUTES\MINUTES - 2004\BOD - JUN\JUNE BOD AGE - MIN (2)\MINUTES 23-24\BOD04JUN23m.doc