

**OFFICIAL MINUTES
STATE BAR OF TEXAS
BOARD OF DIRECTORS MEETING
Hilton Americas
Houston, TX
Wednesday, June 13, 2012**

The Board of Directors of the State Bar of Texas met in a regular session on June 13, 2012 at the Hilton Americas in Houston, Texas. Chair of the Board Beverly Godbey called the meeting to order at 9:00a.m., and Executive Director Michelle Hunter called the roll. A quorum of voting Board members was present. Rev. Michael J. Barrett of the Holy Cross Chapel in Houston delivered the invocation. Travis Sales led the pledges to the U.S. and Texas flags. Brent Benoit, the incoming president of the Houston Bar Association, made welcoming remarks.

Present:

Board Members: *Present:* Immediate Past Chair Pablo Almaguer*, Tim Belton, President Bob Black, Roy Brantley, Virginia Campbell, Sylvia Cardona, Christina Melton Crain, Allan DuBois, Damon Edwards, Becky Baskin Ferguson, President-elect Buck Files, Steve Fischer, Susan Fisher, Christopher Gilbert, Chair of the Board Beverly Godbey, Cori Harbour-Valdez, Daniel Horowitz, Bert Jennings, John Kazen, Mark Kelly, Tim Kelly, Kyle Lewis, Mike McDonald, Jo Ann Merica, TYLA Immediate Past President Jennifer Evans Morris, Yvette Ostolaza, Tommy Proctor, Annette Raggette, Barrett Reasoner, Judge Jo Ann Reyes, TYLA President-elect C.E. Rhodes, Ricky Richards, Dr. Eliseo Ruiz, Travis Sales, Steve Schechter, Frank Stevenson, Cindy Tisdale, Immediate Past President Terry Tottenham, John Trevino, Ike Vanden Eykel, David Whittlesey

Liaisons*: Judge Fred Biery, Scotty Holloman, Justice Phil Johnson, Justice Liz Lang-Miers

Section Representatives*: Stewart Gagnon, Luis Garcia, Steve James, Michele Wong Krause, Susan Nelson, Brian Webb

Excused Absences: *David Copeland, Mark Daniel, Greg Dykeman, TYLA President Natalie Cobb Koehler, Judge Larry Meyers*, Toni Nguyen, Andy Payne*

(* = nonvoting)

I. CONSENT AGENDA ITEMS

There was one amendment to the consent agenda (an item was listed for an appointment to the Texas Access to Justice Commission, and the person had since withdrawn her name), so the name was taken off the consent agenda. **Upon motion properly made by Yvette Ostolaza and seconded by Dr. Eliseo Ruiz, the following actions were taken regarding the Consent Agenda items:**

A. Approval of Minutes:

Approval of minutes of Board meeting conducted on April 13, 2012.

B. Items from the 2011-12 President:

Approval of appointments to the following entities:

1. Legal Aid of NorthWest Texas, for a two-year term effective May 1, 2012 through April 30, 2014

Charles Lotter (Dallas)

2. Commission for Lawyer Discipline:

For term effective June 1, 2012 through August 31, 2013

Vice Chair: Guy Harrison (Longview)

For term effective June 1, 2012 through August 31, 2013

Gary Allen Cobb (Austin)

3. Texas Real Estate Broker/Lawyer Committee, for an unexpired term effective June 13, 2012 through September 1, 2013

Denise M. Drake (San Antonio)

C. Items from the 2012-2013 President:

Approval of appointments to the following entities:

1. The College of the State Bar of Texas, for three-year terms effective June 1, 2012 through May 31, 2015:

David E. Keltner (Ft. Worth) **Hon. Rose Guerra Reyna (Edinburg)**
Marvin W. Jones (Amarillo) **Patsy Pei Ling Yung Micale (Dallas)**
Hon. James A. Moseley (Dallas)

2. Section Representative to the Board Committee, for three-year terms effective on the adjournment of Annual Meeting 2012 through the adjournment of Annual Meeting 2015:

Gary Nickelson (Large-sized Section, Fort Worth)
Scott Rothenberg (Small-sized Section, Houston)

3. State Bar Insurance Trust, for terms effective July 1, 2012 through June 30, 2015:

Paula J. Miller (Dallas)
Laura Frances Bellegie Sharp (Austin)
James C. Winton (Houston)

4. Texas Access to Justice Commission, for three-year terms effective June 1, 2012 through May 31, 2015:

Roy Dayton Brantley (College Station)
Patricia Chamblin (Beaumont)

5. Texas Access to Justice Foundation, for three-year terms effective September 1, 2012 through August 31, 2015:

Carol M. Barger (Dallas)
Rose Wilson (Lubbock)

6. Texas Bar Foundation, for one-year term effective June 1, 2012 through May 31, 2013:

Board Liaison:
Jo Ann Merica (Austin)
Steven C. James (El Paso)

7. Texas Board of Legal Specialization, for three-year terms effective July 1, 2012 through June 30, 2015:

Pat E. Allison (Houston)
James David Dickson (Waco)
Susan Marie Fisher (Melissa)
Glenn A. Perry (Longview)

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

- a. for three-year terms effective on the adjournment of Annual Meeting 2012 through the adjournment of Annual Meeting 2015:

Court Rules

Justice Kerry P. Fitzgerald (Dallas)

Texas Bar Journal Board of Editors

Laura Gibson (Houston)

- b. for one-year term effective on the adjournment of Annual Meeting 2012 through the adjournment of Annual Meeting 2013:

Annual Meeting

Beverly B. Godbey - Co-Chair (Dallas)

Robert J. Witte - Co-Chair (Dallas)

Council of Chairs

Patrick J. Maher – Chair (Fort Worth)

Audrey F. Moorehead – Vice Chair (Dallas)

Local Bar Services

Cade Weston Browning - Vice Chair (Abilene)

Texas Bar Journal Board of Editors

Kristy Piazza Blanchard - TYLA Repr. (Plano)

D. Items From Committees and Sections/Divisions:

1. Approval of members to serve on multiple standing committees:

Catherine G. Burnett (Houston) – Law Focused Education and Legal Services to the Poor in Criminal Matters

Justice Rebecca Simmons (San Antonio) – Court Rules and PJC Business, Consumer and Employment

Judge Barbara Walther (San Angelo) – Jury Service and Administration of Rules of Evidence

2. Approval of request by the Criminal Justice Section to amend its bylaws [**Exhibit A**]¹
3. Approval of request by the Appellate Law Section to amend its bylaws [**Exhibit B**]

E. Other Items:

1. Approval of the Discipline/Client Attorney Assistance Program Committee's proposed revisions to Texas Rules of Disciplinary Procedure 3.01-3.03 [**Exhibit C**]
2. Nominating Committee to Select ABA Delegates (Chair Terry Tottenham)

Approval of appointment of delegates to the American Bar Association House of Delegates for two-year terms beginning at the conclusion of the 2012 ABA Annual Meeting and expiring at the conclusion of the 2014 ABA Annual Meeting:

Delegates:

Bob Black (Beaumont)
Lisa Tatum (San Antonio)
Jennifer Rymell (Fort Worth)
Jay E. Ray (McKinney)

Alternate:

Chris Brasure (Edinburg)

3. Approval of recipient for the Nancy Garms Award:

David C. Courreges (Austin)

4. Approval of recipient for the Leon Jaworski Award:

Lieutenant Kimberly Bustos (Austin)

II. REPORTS

A. Report from the Chair of the Board: Chair of the Board Beverly Godbey made remarks about her year as Chair and regarding the work done by Tim Belton, whom she presented with the Outstanding Third Year Director Award. Belton made remarks.

B. Report from the President: President Bob Black made remarks about the past year and working with Chair Godbey. President Black introduced past president Roland Johnson, who chaired the Redistricting Task Force, and asked him to discuss the recommendations of the task force.

Johnson reported that the State Bar Act requires that the State Bar, from time to time, reapportion the Bar in Bar districts. Currently, there are 30 elected directors of the Bar from 17 Bar districts throughout the state. The Board studied the issue in 1995, but did not make any changes at that time. The last time redistricting was done to Bar districts was in 1988. The task force looked at the current ratios of board members to attorneys in all the districts to determine whether there was a need to reapportion board member seats. The task force heard proposals to reapportion board member seats from board member Steve Fischer, as well as input from Austin Bar president David Chamberlain. In looking at all of the information gathered, the task force found that District 9 (Austin) appeared to be underrepresented in the ratio of board members to attorneys in Travis County. Given the fact that District 4 (Houston) has seven seats on the Board and is well-represented, the task force decided to explore reapportioning a board seat from District 4 to District 9. Board members from Houston and the Houston Bar Association were contacted and were receptive to the apportionment proposal and did not express any concerns. The task force presented its recommendation to the Executive Committee on May 29th and it was approved. The task force also looked at the timeline of implementing the apportionment, and determined the election cycle for 2015 to be the optimal time for the change to become effective, in order to ensure that both District 4 and District 9 have at least one opening for a Bar director each year.

President Black moved that the Board approve the recommendations of the Redistricting Task Force to reapportion one district director position from District 4 (Houston) and move that director position to District 9 (Austin), effective as of the 2015 State Bar district director election, and that the Board submit the reapportionment plan to the Supreme Court of Texas for approval in accordance with the State Bar Act; Daniel Horowitz seconded. [Exhibit D]

Steve Fischer expressed concerns about the task force's proposal, and suggested that it should be tabled because not enough information has been gathered. He drew up a redistricting plan and explained his reasoning for it, asserting that the U.S. Constitution is the basis for doing a redistricting, not the State Bar Act, and that the U.S. Supreme Court ruling in *Reynolds v. Sims* requires "one person, one vote". Kyle Lewis reported that Fischer's plan would drastically change District 13, in that it would make it difficult to effectively represent and communicate with all the attorneys in that particular district, and the voice of the rural attorney would be lost. Lewis stated that redistricting is more than just population, and that the State Bar Act needs to be considered in all respects. David Whittlesey urged the Board to approve the recommendations from the task force, and on behalf of the attorneys in Austin, thanked the task force for all their hard work.

President Black called upon John Sirman to address whether the "one person, one vote" principle applies to State Bar director elections. Sirman stated that, based on an analysis from the California case of *Hoffman v. State Bar of California*, the "one person, one vote" principle does not apply to State Bar director elections. Travis Sales reported that the Houston Bar Association and the directors from Houston support the proposal of the task force. Sales called the question. Chair Godbey noted that there's no debate on a motion to call the question, and a vote was taken. **Motion carried with one nay vote.**

1) **Closed Session:** At 2:25p.m., Chair Godbey 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 the evaluation, duties and compensation of the Executive Director.

2) **Open Session:** Upon return to open session at 2:47p.m., Chair Godbey announced that only matters relating to compensation of the Executive Director were discussed. No action was taken in closed session.

In open session, President Black moved for approval of the recommendation for a salary increase to \$230,000 annually for Executive Director Michelle Hunter; Immediate Past President Terry Tottenham seconded. Motion carried unanimously.

President Black made remarks on the Texas Lawyers for Texas Veterans initiative, the *Oyez, Oyez, Oh Yay!* civics education project, and the State Bar's commitment to preserving Texas legal history, as well as the need for a unified, integrated State Bar.

C. **Report from the President-elect:** President-elect Buck Files reported that the budget hearing with the Supreme Court was held on May 7, and the State Bar FY 2012-13 budget has been approved by Supreme Court order.

D. **Report from the Immediate Past President:** Immediate Past President Terry Tottenham reported that Arizona will adopt the Texas Lawyers for Texas Veterans program.

E. **Nominations & Elections Subcommittee:** Immediate Past President Tottenham reported that election season is over, both president-elect candidates ran great campaigns this year, and the President-elect race was won by Lisa Tatum from San Antonio. This was the first year that social media campaigning was allowed, and it went well.

F. **Commission for Lawyer Discipline/Chief Disciplinary Counsel Update:** Ron Bunch reported on end-of-year grievance statistics, attorney's fees collections, the grievance referral program, and the grievance symposium that was held on May 16. **[Exhibit E]**

G. **Texas Young Lawyers Association:** TYLA President-elect C.E. Rhodes reported on the TYLA activities over the past year and for the upcoming year, including "Answering the Call: Responding to a Texas Subpoena (Civil and Criminal)," "Peace of Mind: A Guide to Supporting Special Kids with Special Needs," "The Unconscious Truth – The Physical and Legal Effects of Underage Binge Drinking", and "Safeguarding Our Seniors", a video prepared by the Texas Young Lawyers Association designed to heighten awareness of the signs and symptoms of elder abuse.

H. Administration Committee: Travis Sales reported on the objectives of the Employment/Salary/Evaluation Subcommittee, which involved implementing and revising our affiliated entities board policy, and review of those entities that are not subject to the annual budget review process. Some concerns have been raised with a few of those entities, and the Administration Committee has given the reports and recommendations from the subcommittee to the chairs of each of those entities in order to allow those chairs to respond back to the committee before making any recommendations. Sales reported that the two items up for action involve the State Bar Employee Handbook – one relating to time-off benefits, and the other concerning the proposed LGBT Law Section’s changes to the Equal Employment Opportunity and Prohibiting Harassment in the Workplace policies.

On behalf of the Administration Committee, Sales moved for approval of the following:

1) Time Off Benefits – Replace the current Bereavement Leave Policy with the recommended Emergency Leave Policy incorporating the exact language from the HR Management Statutes Inventory, allowing the Executive Director the latitude to grant emergency leave for other reasons determined to be for good cause; no second needed. Motion carried.

2) Accept the proposed LGBT Law Section changes to the Equal Employment Opportunity and Prohibiting Harassment in the Workplace policies; no second needed. Motion carried. [Exhibit F]

Sales also reported, with regard to the San Antonio lease for the CDC office, that payment for the settlement has not yet been received, but as reported last time, it was an excellent result achieved by hard work from the Facilities & Equipment Subcommittee.

I. Audit and Finance Committee: Bert Jennings reported that as of April 30, the general fund had a budgeted net excess of revenues over expenditures of \$2,244,984. The financial audit will be conducted by Padgett, Stratemann & Co., LLP and is scheduled to begin on August 6, and the internal control audit, conducted by Maxwell Locke & Ritter, begins immediately after the financial audit field work is completed. Jennings noted that the proposed revision to the investment policy to add federally insured credit unions as a source for purchase of certificates of deposit is in compliance with the Public Funds Investment Act. Jennings also reported that the proposed revision to the Bar’s 4-Year internal control audit plan includes additional language providing that all bank accounts involved in the processing of collecting membership dues, legal services fees and occupation tax be audited on an annual basis.

On behalf of the Audit & Finance Committee, Jennings moved for approval of the following:

1) Revision to the State Bar’s Investment Policy; no second needed. Motion carried.

2) Revision to the State Bar’s Internal Audit Plan for FY 2011-2014 to include additional language; no second needed. Motion carried. [Exhibit G]

J. Client Security Fund Subcommittee: Roy Brantley reported on the reimbursement of funds for attorney fees from attorneys who have passed away or been disbarred. Brantley also noted that the Client Security Fund Subcommittee approved 98 applications this year, which amounts to \$640,000 being paid out.

K. Insurance/Member Benefits Subcommittee: Yvette Ostolaza reported that Beneplace issued an RFP to obtain proposals from professional liability insurance providers for consideration as a member benefit for all State Bar members. Of the five brokers that submitted proposals, USI is being considered as a State Bar preferred PLI provider in addition to Texas Lawyers’ Insurance Exchange. According to TLIE, when the Bar’s referral program is ABA-accredited, the discount on basic PLI coverage premiums for referral cases would be 70%, so the subcommittee will also be looking into obtaining ABA accreditation. Staff administered an RFP process to obtain competitive bids for defined medical benefit insurance and dental insurance, and the subcommittee has decided to issue an RFP for comprehensive health insurance instead of just defined benefits insurance. On an immediate

basis, Beneplace can add eHealth Insurance, a licensed health insurance agency, to the member benefits program at no cost to the Bar or its members.

On behalf of the Insurance/Member Benefits Subcommittee, Yvette Ostolaza moved for approval of the following:

1) Texas Lawyer's Insurance Exchange (TLIE) and USI as member benefit providers for professional liability insurance; no second needed. Motion carried.

2) Adding eHealth Insurance to the State Bar of Texas Member Benefits Program; no second needed. Motion carried. [Exhibit H]

L. Professional Development Subcommittee: Allan DuBois reported that the PDP Subcommittee met jointly with the CLE Committee on April 27, and a recommendation was made to strongly advertise the Casemaker legal research service. Also, a new book for TexasBarBooks was approved, and several new ideas were discussed for webcasts and courses.

M. Technology Oversight Subcommittee: Damon Edwards reported that the Technology Oversight Subcommittee met on June 7th, and the subcommittee discussed and approved planned maintenance upgrades to the Texas Law Center telephone system.

O. Supreme Court Liaison: Justice Phil Johnson reported that the Court submitted its budget to the legislature, and the Supreme Court Advisory Committee will review it and get input back to the Court. The Court has also received recommendations from the Family Law Section regarding the self-represented litigants and uniform forms.

P. Federal Judicial Liaison: Judge Fred Biery reported on various court vacancies across Texas and the generational change that is happening in the courts.

Q. Judicial Section Liaison: Justice Liz Lang-Miers noted that there continues to be issues regarding the separation of the judicial branch, and issues concerning budget, and she appreciates the support the State Bar of Texas gives to members of the judiciary.

R. Out-of-state Lawyer Liaison: Scotty Holloman thanked the Board for the opportunity to serve.

S. Executive Director: Michelle Hunter presented Chris Slack, network administrator for the State Bar, with the Employee of the Quarter Award.

There being no further business, the meeting was adjourned at 4:26p.m. **[Exhibit I]**²

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

² Exhibit I is the State Bar Committee and Section End of Year Reports and is for information only.

**Administration Committee
Employment/Salary/Evaluation Subcommittee**

Employee Handbook Changes

Attachments

1. Staff Recommendations
2. Employee Handbook Policies with recommended changes
 - a. Emergency Leave
 - b. Equal Employment Opportunity Policy
 - c. Prohibiting Harassment in the Workplace

Attachment 1

Employee Handbook Changes - Staff Recommendations

Staff conducted a rigorous review of Federal Law, State Law, the State Auditor's Texas Human Resources Management Statutes Inventory and contacted other state agencies. As a quasi-state agency, the State Bar is permitted to purchase benefits through the State of Texas benefit plans as long as the State Bar complies with the established rules regarding those benefits. Therefore, staff is committed to following the leave provisions in Chapter 11 of the State Auditor's Texas Human Resources Management Statutes Inventory.

After review, staff found that the State Bar is allowed to do the following:

Time Off Benefits

- Bereavement Leave – Attached is a staff recommended Emergency Leave Policy incorporating the exact language from the HR Management Statutes Inventory. This will allow the Executive Director the latitude to grant emergency leave for other reasons determined to be for good cause. This Emergency Leave Policy would replace the current Bereavement Leave Policy.

Employment Policies & Employment Conduct

- Staff recommends the proposed LGBT Law Section changes. Legal Counsel confirms that the recommended changes follow current Federal and State Law. A redline of each policy is attached.

Attachment 2a

BEREAVEMENT LEAVE

~~EMPLOYEES WHO HAVE A DEATH IN THEIR FAMILY MAY BE ABSENT FROM WORK FOR UP TO THREE DAYS AT THEIR REGULAR RATE OF PAY. IF MORE THAN THREE DAYS ARE REQUIRED, THE EMPLOYEE MAY REQUEST ANNUAL LEAVE OR PERSONAL PAID TIME OFF.~~

~~FOR PURPOSES OF THIS POLICY, FAMILY INCLUDES THE EMPLOYEE'S SPOUSE, THE EMPLOYEE'S PARENT OR PARENT-IN-LAW, BROTHERS, SISTERS, GRANDPARENTS, GRANDCHILDREN AND CHILDREN.~~

EMERGENCY LEAVE

An employee is entitled to leave with pay for a death in the employee's immediate family. An employee's immediate family is defined as employee's spouse, as well as the employee's and spouse's parents, children, brothers, sisters, grandparents, and grandchildren.

An employee who has a death in their family may be absent from work for up to three days at their regular rate of pay. If more than three days are required, the employee may request annual leave or personal paid time off.

In addition to granting employees emergency leave for the death of an employee's family member, the Executive Director may grant emergency leave for other reasons determined to be for good cause.

Attachment 2b

EQUAL EMPLOYMENT OPPORTUNITY

The State Bar complies fully with nondiscrimination provisions of all state and federal rules, laws, guidelines, regulations, and executive orders by ensuring that all employees and applicants receive equal opportunity for employment. No person shall be discriminated against with regard to recruitment, selection, appointment, training, promotion, retention, termination, or performance review or any other employment action in terms of race, religion, color, national origin, sex, disability, military service/veteran status, sexual orientation, [gender identity](#), [gender expression](#), or age. No retaliation will be taken against any employee for reporting a complaint or concern under this policy.

The Director of Human Resources has been designated as the Americans with Disabilities (ADA) coordinator in compliance with the non-discrimination requirements contained in section 35.107 of the Department of Justice regulations. The State Bar does not discriminate on the basis of disability in the admission or access to, or treatment or employment in, its programs or activities. The State Bar will make reasonable accommodations to qualified individuals with known disabilities unless doing so would result in undue hardship to the State Bar. Information concerning the provisions of the Americans with Disabilities Act, and the rights provided there under, is available from the ADA coordinator.

Appropriate disciplinary action, up to and including termination, will be taken against any employee for engaging in conduct in violation of this policy, regardless of whether the conduct also violates applicable law.

The State Bar will provide an employment discrimination training program for all employees as required by Section 21.010 of the Texas Labor Code. The training program will meet the following requirements:

1. The training program will provide the employee with information regarding the State Bar's policies and procedures relating to employment discrimination, including employment discrimination involving sexual harassment.
2. Each employee must attend the required training program not later than the 30th day after the date the employee is hired by the State Bar and shall attend supplemental training every two years.
3. The State Bar shall require each employee who attends the required training program to sign a statement verifying the employee's attendance at the training program. The statement shall be filed in the State Bar's personnel file for such employee.

Attachment 2c

PROHIBITING HARASSMENT IN THE WORKPLACE

Harassment or discrimination based on race, sex, color, religion, national origin, age, military and/or veteran status, sexual orientation, [gender identity](#), [gender expression](#), disability, or any other characteristic protected by applicable federal, state or local law, is unacceptable and will not be permitted at the State Bar. Harassment includes discriminatory intimidation, insult, and ridicule where:

- the conduct has the purpose or effect of creating an intimidating, hostile, or offensive work environment;
- the conduct has the purpose or effect of unreasonably interfering with an individual's work performance; or
- the conduct otherwise adversely affects an individual's employment opportunities.

The State Bar's Equal Employment Opportunity Policy and state and federal law prohibit sexual harassment. The State Bar will not tolerate sexual harassment of any employee. Sexual harassment involves unwelcome and unsolicited sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature where:

- submission to such conduct is made either explicitly or implicitly a term or condition of employment;
- submission to or rejection of the conduct is used as the basis for an employment decision affecting the employee (e.g., demotion, promotion, performance evaluation or compensation); or
- the conduct or speech has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile or offensive working environment. Conduct that is expressly prohibited in the workplace or involving co-workers not at the workplace includes: verbal abuse of a sexual nature; unwanted physical contact or contact of any nature, including flirtation, touching or propositions; displays of sexually suggestive, demeaning, insulting or intimidating objects, pictures or photographs ; sexually insulting or suggestive comments about an individual's body or clothing; and/or written, recorded or electronically stored or transmitted messages which are sexually suggestive, or in any manner demeaning, intimidating or insulting.

RESPONSIBILITIES

All employees and other individuals employed by or associated with the State Bar are responsible for maintaining a workplace free of harassment and/or discrimination. Any person may file a harassment and/or discrimination complaint regarding incidents experienced personally or observed in the workplace. It is the responsibility of all personnel to bring complaints to the State Bar's attention so that it can help resolve them. Never assume that the State Bar is aware of inappropriate conduct that you have witnessed or experienced.

Any individual found to have violated the policy prohibiting harassment will be subject to appropriate disciplinary action up to and including termination, regardless of whether or not such conduct is in violation of applicable state or federal law. Any employee who believes they have been the subject of sexual or other harassment, or discrimination should follow the appropriate steps as addressed in the Complaint Procedure Policy within this Handbook.