

**OFFICIAL MINUTES
STATE BAR OF TEXAS
BOARD OF DIRECTORS MEETING
Fort Worth, Texas
October 4, 1996**

The Board of Directors of the State Bar of Texas met in regular session on October 4, 1996, at the Worthington Hotel in Fort Worth, Texas. The meeting of the Board was called to order by Chair Lynne Liberato, and the roll was called by Executive Director Antonio Alvarado. Those members having excused absences from the meeting were Immediate Past President David Beck, Kelly Frels, Alan Hart, Dan Naranjo, Delia Reyes, Peter Vogel, and James Wester. The invocation was conducted by Brooks Harrington of Fort Worth.

1. **SWEARING IN OF NEW DIRECTORS/PRESENTATIONS**

Chair Liberato introduced the two new public members, Cynthia Cabaza and Geraldine Mauthe. Justice John Cornyn administered the oath of office to Cabaza and Mauthe, as well as to Reb Gregg, who was absent from the swearing-in ceremony conducted at the 1996 Annual Meeting. The traditional new directors' gifts were presented to Cabaza and Mauthe.

2. **APPROVAL OF ITEMS ON THE CONSENT AGENDA**

Approval of the following items was adopted by unanimous consent:

A. Minutes of Board meeting conducted on *June 20, 1996*

B. Ratification of actions taken by the Executive Committee at the meetings conducted on:

- 1) *July 18, 1996:* Approved minutes of the Executive Committee meeting held on *April 11, 1996.*
- 2) *September 12, 1996:* Approved minutes of the Executive Committee meeting held on *July 18, 1996.*

Approved Grant Review Committee's recommendation that the following grant applications be approved for submission to the Texas Bar Foundation: (A) "Lawyering In The 90's" -- A Statewide Professional Development Conference for Young Lawyers (\$25,000) Sponsor: Texas Young Lawyers Association; (B) Symposium on Excellence in the Profession with a Focus on Diversity (\$33,352) Sponsor: Opportunities for Minorities in the Profession Committee of the SBOT, Minority Involvement Committee of the TYLA, and Office of Minority Affairs of the SBOT

C. Appointments to the following:

- 1) **Delegates and alternates to the 1997 Fifth Circuit Judicial Conference:**

<u>Delegates:</u>	<u>Alternates:</u>	<u>Others:</u>
David Beck	Jim Branton	Colleen McHugh
Otway Denny	Mike Crowley	Frank Newton
Bill Jones	William Mateja	Antonio Alvarado

- 2) **1996-1997 Special Committee to Nominate ABA Delegates:**

David Beck, Chair

(appointed by Pres. McHugh:)

(... by Chair Liberato:)

Paul D. Carmona (Austin)
Charles R. "Bob" Dunn (Houston)
Peggy E. Foreman (Houston)
Richard Pena (Austin)

Joel M. Androphy (Houston)
Harry Gee, Jr. (Houston)
Paula Larsen (Dallas)
Jerry N. Smith (Amarillo)

- 3) Texas Board of Legal Specialization, to complete the following unexpired terms of --

Jorge C. Rangel, term expiring June 30, 1998 - *Harry Gee, Jr. (Houston)*
Tom Cunningham, term expiring June 30, 1999 - *Walter L. Sutton, Jr.*

(Dallas)

- 4) Texas Rural Legal Aid, for two-year terms effective January 1, 1997 - December 31, 1998:

Reappointments:

Viviana S. Patiño (El Paso)
Roger H. Reed (McAllen)
Ed McConnell (Amarillo)

New Appointment:

Ernesto Dominguez (McAllen)

- D. Authorization to transfer \$77,347.21 from the Texas Law Center Fund to the General Fund.

- E. Amendments to the bylaws of the following committees/sections:

- 1) *Administrative & Public Law Section* - Article V, dealing with absences from council meetings (See exhibit A.)
- 2) *Appellate Practice & Advocacy Section* - Article V, Section 5, regarding submission of records to the State Bar's Accounting Department (See exhibit B.)
- 3) *Aviation Law Section* - Article VII, Section 9, regarding submission of records to the State Bar's Accounting Department (See exhibit C.)
- 4) *Construction Law Section* - Section 9, regarding submission of records to the State Bar's Accounting Department (See exhibit D.)
- 5) *General Practice Section* - changing name to General Practice, Solo and Small Firm Section (See exhibit E.)
- 6) *James Watson Inn* - regarding submission of records to the State Bar's Accounting Department (See exhibit F.)
- 7) *Oil, Gas and Mineral Law Section* - Article VI, Section 2, regarding submission of records to the State Bar's Accounting Department (See exhibit G.)
- 8) *State Bar College* - amendment to Regulations of the College of the SBOT concerning ethics requirement (See exhibit H.)



3. CHAIR OF THE BOARD ELECTION


Chair Lynne Liberato indicated that second-year directors who want to be considered as candidates for the 1997-1998 Chair of the Board election need to write a letter of intent and address it to the Chair before the January 1997 Board meeting.

4. REPORT FROM THE LEGISLATIVE POLICY COMMITTEE

Trey Apffel, chair of the Legislative Policy Committee, reviewed the proposals and recommendations of the committee. Charles Awalt from the General Practice Section was present and spoke in opposition to the proposed filing fees legislation (proposal No. 1). Resulting motions and Board actions are summarized in the following chart:

PROPOSAL	Committee Recommendation
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PROPOSAL		Committee Recommendation
 BOARD PROPOSED		
<p>(proposals 1-2):</p> <p><u>TWO SEPARATE MOTIONS WERE MADE ON EACH PIECE OF LEGISLATION:</u> <i>ON BEHALF OF THE LEGISLATIVE POLICY COMMITTEE, TREY APFFEL MOVED (1) THAT THE FOLLOWING PROPOSALS <u>ARE CONSISTENT</u> WITH SECTION 15.01.03 OF THE LEGISLATIVE POLICY OF THE BOARD, (2) THAT THE BOARD <u>SUPPORT AND SPONSOR</u> THE PROPOSED LEGISLATION AS A PART OF THE BAR'S LEGISLATIVE PROGRAM/PACKAGE:</i></p> <p><u>BOARD ACTIONS:</u> <i>Both motions passed.</i></p>		
1	Relating to additional court filing fees to provide civil legal services to the indigent	<i>Support</i> - State Bar as sponsor
2	Relating to access to criminal record history information for the State Bar of Texas	<i>Support</i> - State Bar as sponsor
 FAMILY LAW SECTION PROPOSED		
<p>(proposal 3):</p> <p><u>TWO SEPARATE MOTIONS WERE MADE ON THE PROPOSED LEGISLATION:</u> <i>ON BEHALF OF THE LEGISLATIVE POLICY COMMITTEE, APFFEL MOVED (1) THAT THE FOLLOWING PROPOSAL <u>IS CONSISTENT</u> WITH SECTION 15.01.03 OF THE LEGISLATIVE POLICY OF THE BOARD, (2) THAT THE BOARD <u>OPPOSE</u> THE PROPOSED LEGISLATION AND THAT IT NOT BE INCLUDED AS A PART OF THE BAR'S LEGISLATIVE PROGRAM/PACKAGE:</i></p> <p><u>BOARD ACTIONS:</u> <i>Both motions passed.</i></p>		
3	Relating to ad litem in family cases	<i>Oppose</i> - with the understanding that this is not to be considered the State Bar's position on any bill filed independently of the Bar, as those bills will be individually reviewed upon filing
<p>(proposals 4-8):</p> <p><u>TWO SEPARATE MOTIONS WERE MADE ON THE GROUP OF LEGISLATION:</u> <i>ON BEHALF OF THE LEGISLATIVE POLICY COMMITTEE, APFFEL MOVED (1) THAT THE FOLLOWING PROPOSALS <u>ARE CONSISTENT</u> WITH SECTION 15.01.03 OF THE LEGISLATIVE POLICY OF THE BOARD, (2) THAT THE BOARD <u>SUPPORT AND SPONSOR</u> THE PROPOSED LEGISLATION AS A PART OF THE BAR'S LEGISLATIVE PROGRAM/PACKAGE:</i></p> <p><u>BOARD ACTIONS:</u> <i>Both motions passed.</i></p>		
4	Relating to Alternative Dispute Resolution (Family Code §3.522 and	<i>Support</i> - State Bar as sponsor

PROPOSAL		Committee Recommendation
	§102.0085)	
5	Relating to payment of benefits to the conservator of a child	<i>Support</i> - State Bar as sponsor
6	Relating to the division of the community estate in divorces	<i>Support</i> - State Bar as sponsor
7	Relating to the right to establish the primary residence of a child as a jury issue	<i>Support</i> - State Bar as sponsor
8	Relating to costs in family law cases	<i>Support</i> - State Bar as sponsor
9	Relating to Alternative Dispute Resolution (Civil Practices and Remedies Code §154.053 and §154.073)	Withdrawn by Section
 REAL ESTATE, PROBATE AND TRUST LAW SECTION PROPOSED		
<p><i>(proposals 10-11):</i></p> <p><u>TWO SEPARATE MOTIONS WERE MADE ON THE GROUP OF LEGISLATION:</u> <i>ON BEHALF OF THE LEGISLATIVE POLICY COMMITTEE, APFFEL MOVED (1) THAT THE FOLLOWING PROPOSALS <u>ARE CONSISTENT</u> WITH SECTION 15.01.03 OF THE LEGISLATIVE POLICY OF THE BOARD, (2) THAT THE BOARD <u>SUPPORT</u> THE PROPOSED LEGISLATION AND <u>AUTHORIZE OR PERMIT THE SECTION TO SPONSOR</u> THE LEGISLATION:</i></p> <p><u>BOARD ACTIONS:</u> <i>Both motions passed.</i></p>		
10	Relating to the administration of decedent's estates, guardianships and incapacitated persons, and trusts	<i>Support</i> - Section as sponsor
11	Relating to durable powers of attorney	<i>Support</i> - Section as sponsor
<i>(proposal 12):</i>		

PROPOSAL	Committee Recommendation
<p><u>TWO SEPARATE MOTIONS WERE MADE ON THE PROPOSED LEGISLATION:</u> <u>ON BEHALF OF THE LEGISLATIVE POLICY COMMITTEE, APFFEL MOVED (1) THAT THE FOLLOWING PROPOSAL IS CONSISTENT WITH SECTION 15.01.03 OF THE LEGISLATIVE POLICY OF THE BOARD, (2) THAT THE BOARD REMAIN NEUTRAL CONCERNING THE PROPOSED LEGISLATION AND EXCLUDE IT FROM THE 1996 SB LEGISLATIVE PROGRAM/PACKAGE:</u> <u>BOARD ACTIONS:</u> <i>Both motions passed.</i></p>	
12	<p>Relating to separate and community property</p> <p><i>Neutral</i></p>

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5. REPORT FROM THE PRESIDENT

A. General Report

President Colleen McHugh expressed appreciation to the Board for its support of the filing fee add-on legislation and for the amount of energy it has expended in the legal services to the poor efforts. President McHugh encouraged an open line of communication and vowed to continue listening to the Board members and the lawyers of Texas before making decisions which affect their concerns.

President McHugh also expressed appreciation to Justice Cornyn for his time and interest in learning more about the State Bar, and indicated that some of the bills forthcoming from the Court's task forces would come through the Bar's legislative process.

B. Closed Session

The Board met in closed session as authorized by Texas Government Code, Section 551.074, for the purpose of discussing personnel matters involved with the decision including but not limited to the salary of the General Counsel. No vote was taken in closed session.

Upon return to open session, David Evans moved "on behalf of the members of the Board of Directors that we elect Steve Young General Counsel by acclamation and that his salary be set at \$90,000 per annum effective July 1, 1996." Properly seconded, the motion passed.

6. REPORT FROM THE PRESIDENT-ELECT

President-elect Frank Newton gave a status report on the case involving the Texas Equal Access to Justice Foundation, I.O.L.T.A. program, which has been reversed and remanded to the District Court. The panel of the Fifth Circuit Court of Appeals cited three reasons: (1) I.O.L.T.A. programs appear to be the alchemy game (you can't make gold out of nothing) and since you can't make money out of nothing and there is money in the I.O.L.T.A. programs, a property interest must exist. (2) Anomalies of banking law and the IRS Code cannot create property rights since that is a state function. (3) Interest follows principal, and since the principal belongs to clients, the panel has reversed Judge James R. Nowlin's summary judgment in favor of the Texas Equal Access to Justice Foundation, which was predicated on his fact determination that no property interest of client was implicated, should be reversed, and the case should be remanded to the District Court for further action.

Newton indicated that a motion has been filed for rehearing by the panel and also *en banc*, and that amici brief have been filed from 57 programs which have I.O.L.T.A. funds from 38 states, the ABA, and on behalf of the State Bar - President McHugh, joined by her colleagues in Louisiana and Mississippi. Newton reported that the Bar will petition the Supreme Court for *cert*. The current motion contains an actual request with respect to monies collected

and held, and when the remand takes place, Newton indicated that he will ask the Washington Legal Foundation to amend their pleading to refer to prospective application only, which would allow the Foundation to operate during the appeal process.

Newton stated that I.O.L.T.A. completes its collection period at the end of December and its funding period at the end of June. Accordingly, anticipating the earliest action by the District Court would take place in January or February, pessimistically speaking, Newton indicated that the Foundation would be able to operate one more year.

7. REPORT FROM THE EXECUTIVE DIRECTOR

[Executive Director Antonio Alvarado deferred his report.]

Associate Executive Director Lockridge reviewed in detail the ending figures for the 1995-1996 fiscal year and the current year's financial statements ending August 31, 1996. Variances and other areas of special interest were highlighted.

8. REPORT OF THE COMMISSION FOR LAWYER DISCIPLINE

Commission Chair Jerry Secrest indicated that the Board had taken a positive step in naming Steve Young General Counsel of the State Bar and has ensured the continuity of managing the disciplinary system. The Commission has passed its suggested rule changes to the Texas Disciplinary Rules and has sent them to the General Counsel Oversight Committee for review and to sections and committees requesting their input. Secrest also gave a status report on the disciplinary cases heard by the Commission and indicated that the Supreme Court has named two new public members to the Commission.

9. REPORT OF THE GENERAL COUNSEL

Steve Young thanked the Board for its confidence in naming him the State Bar's General Counsel. Young gave a "State of the Office of General Counsel" report and highlighted some of the goals of the office and the challenges, opportunities, facing the Bar concerning the grievance system. Young also expressed conviction that the roles of the General Counsel and the Chief Disciplinary Counsel should be handled by one person, and that the Board can count on him to fulfill those roles effectively.

10. REPORT FROM BOARD COMMITTEES

A. Board Ad Hoc Committee on Legal Services to the Poor

Betsy Whitaker reported that the Board Ad Hoc Committee on Legal Services to the Poor had met three times to review input received from Board members and other lawyers concerning the issue of legal services to the poor. Whitaker highlighted some of the common thoughts expressed by participants during the meetings, including (1) the dislike of having poor people shut out of their basic legal needs or their being taken advantage of, (2) the desire to do ones part, and (3) the pride in helping the poor in true need. The participants also expressed (1) the desire to choose to help (not to be told to help) and to have the choice of how to help, (2) the desire to not be excluded if not litigators or family litigators, (3) the desire to not be deprived from fee-paying opportunities, and (4) that the issue is something that the community as a whole has a stake in. Whitaker indicated that the next step in the process of developing a recommendation to the Board at its January meeting is for the directors to solicit input from constituents in their respective districts.

Bob Frost continued the report and reviewed methods that Board members could use in getting involvements from their constituents, getting their perceptions to the legal services to the poor issue and in developing incentives to get lawyers to report their legal services activities.

Other members of the ad hoc committee, including Bobby Guerra, Wes Jurey, and Mark Perlmutter, also discussed methods of getting lawyer and community involvement in the project.

B. Grant Review Committee

Jan Soifer reported that the Grant Review Committee had reviewed four grant proposals:

- 1) **“Lawyering In The 90’s” -- A Statewide Professional Development Conference for Young Lawyers (\$25,000) Sponsor: Texas Young Lawyers Association (See exhibit I.)**
- 2) **Statewide Voter Education Program: VoTexas Project (\$15,000) Sponsor: Texas Young Lawyers Association (See exhibit J.)**
- 3) **“Grievance Symposium, 1997” -- (\$40,000) Sponsors: Office of General Counsel (SBOT), Commission for Lawyer Discipline, General Counsel Oversight Committee (State Bar Board Committee), Texas Center for Legal Ethics and Professionalism, Disaster Response Committee (SBOT) (See exhibit K.)**
- 4) **Symposium on Excellence in the Profession with a Focus on Diversity (\$33,352) Sponsor: Opportunities for Minorities in the Profession Committee of the SBOT, Minority Involvement Committee of the TYLA, and Office of Minority Affairs of the SBOT (See exhibit L.)**

Committee recommendations concerning grant Nos. 1 and 4 had been submitted to the Executive Committee, which acted at its September 12, 1996 meeting; and grant Nos. 2 and 3 had been received subsequent to that meeting. Because of a timing issue, all four grants have already been submitted to and [partially] funded by the Texas Bar Foundation, subject to approval by the Board.

Accordingly, **Soifer, upon recommendation by the Grant Review Committee, moved approval [of submission to the Texas Bar Foundation] of the four grant applications and moved to waive the requirement of the Executive Committee’s approval of [grant] Nos. 2 and 3. The motion passed.**

C. Discussion from Board Members

Carroll Robinson indicated that the Board, at its June 20, 1996 meeting, had approved the aspirational Guidelines for Reviewing Qualifications of Candidates for State Judicial office, and that one of the issues raised by lawyers around the state was the issue of candidates asserting endorsement by the State Bar upon meeting the aspirational criteria. Robinson gave an example of a judicial candidate who had recently distributed literature attesting endorsement by the Bar.

Robinson requested that the Board send to the appropriate staff the issue of developing a procedural mechanism in dealing with candidates who publicize claims of endorsement by the State Bar. Chair Liberato deferred the issue to the Executive Director and the General Counsel to review Robinson’s concerns and to present a report at the next Board meeting.

11. REPORT FROM STATE BAR COMMITTEES/SECTIONS/DIVISIONS

A. Section Updates

- 1) Appellate Practice & Advocacy Section

Richard Orsinger, chair of the Appellate Practice & Advocacy Section, indicated that the Texas Lawyers Creed, which was promulgated by the Texas Supreme Court, was more appropriately suited for litigators, generally, and that a creed more appropriately suited for appellate practice was needed. A set of standards of appellate practice, developed by one of the section's committees and subsequently endorsed by the section's council on August 9, 1996, will be presented to the Board for its evaluation and approval at the Board's January or April 1996 meeting.

Orsinger stated that Chief Justice Thomas Phillips and Justice John Cornyn had already expressed generally favorable response to the standards; and Presiding Judge Mike McCormack had indicated that if the Supreme Court wants to implement the standards, the Court of Criminal Appeals would be in unanimously support. Justice Phillips granted the section permission to promulgate the standards informally at the judicial conference recently held in Corpus Christi.

Orsinger clarified that the standards are not grievance or liability standards. Four areas are covered in the standards: (a) lawyers duty to the client, (b) lawyers duty to the court, (c) lawyers duty to other lawyers, and (d) the courts' treatment of lawyers.

Chair Liberato announced that an ad hoc committee composed of David Evans, Randy Sorrels and Randy Moore, has been appointed to review the proposed appellate standards and report at the next Board meeting.

2) General Reports

General reports concerning section activities were heard from the chairs of the Business Law Section (Michael Tankersley) and the Family Law Section (J. Lindsey Short, Jr.). A written report from the chair of the Alternate Dispute Resolution Section (Suzanne M. Duvall) was distributed to Board members.

B. Creation of New Section

Mitchell Katine, Charles Spain, and Connie Moore spoke in support of the creation of the Gay and Lesbian Issues Section.

Reb Gregg moved the adoption of the section. Much discussion ensued. **Upon the call for the vote and subsequent hand count, the motion failed - 19 against, 17 for.**

12. REPORT FROM THE TEXAS YOUNG LAWYERS ASSOCIATION

TYLA President Bill Jones gave a report about the activities of the TYLA and show videos concerning three of its projects.

13. REPORT FROM LIAISONS

Supreme Court Liaison Justice John Cornyn reported that the Legislature during its last legislative session had appropriated funds for the creation of the Commission on Judicial Efficiency, which resulted in the formation of several task forces dealing with funding parity, information technology, diversity (staff), and judicial selection. Justice Cornyn indicated that one of his goals as Supreme Court Liaison is to try to get the judiciary and the State Bar to communicate better than in the past.

Judge Bill White, attending his last Board meeting as Court of Criminal Appeals Liaison, indicated that he was also retiring from the Court at the end of the year. Chair Liberato presented Judge White with a plaque commemorating his contributions to the Board while serving as liaison. (Judge Mike McCormick will replace Judge White as the Court of Criminal Appeals Liaison.)

Judge Norman Black, Federal Judicial Liaison, expressed disappointment at the results of the Board's vote concerning the creation of the Gay and Lesbian Issues Section.

Judge Michael Keasler was introduced as the new Judicial Section Liaison, and was presented with the customary cufflinks.

Dennis Duffy, Out-of-State Lawyer Liaison, in addressing the Board's vote to disallow the creation of the new section, stated that the Board makes public policy, and it should decide issues on the merits of the policy and not just who Board members represent.

14. REPORT FROM THE GENERAL PUBLIC

No representatives were present on behalf of the general public.

There being no further business, the meeting was adjourned.

EXHIBITS ATTACHED

Bylaw Amendments (Exhibits A-H)

- EXHIBIT A: *Administrative & Public Law Section* - Article V, dealing with absences from council meetings
- EXHIBIT B: *Appellate Practice & Advocacy Section* - Article V, Section 5, regarding submission of records to the State Bar's Accounting Department
- EXHIBIT C: *Aviation Law Section* - Article VII, Section 9, regarding submission of records to the State Bar's Accounting Department
- EXHIBIT D: *Construction Law Section* - Section 9, regarding submission of records to the State Bar's Accounting Department
- EXHIBIT E: *General Practice Section* - change name to General Practice, Solo and Small Firm Section
- EXHIBIT F: *James Watson Inn* - regarding submission of records to the State Bar's Accounting Department
- EXHIBIT G: *Oil, Gas and Mineral Law Section* - Article VI, Section 2, regarding submission of records to the State Bar's Accounting Department
- EXHIBIT H: *State Bar College* - amendment to Regulations of the College of the SBOT concerning ethics requirement

Grant Applications (Exhibits I-L)

- EXHIBIT I: "Lawyering In The 90's" -- A Statewide Professional Development Conference for Young Lawyers (\$25,000) Sponsor: Texas Young Lawyers Association
- EXHIBIT J: Statewide Voter Education Program: VoTexas Project (\$15,000) Sponsor: Texas Young Lawyers Association
- EXHIBIT K: "Grievance Symposium, 1997" -- (\$40,000) Sponsors: Office of General Counsel (SBOT), Commission for Lawyer Discipline, General Counsel Oversight Committee (State Bar Board Committee), Texas Center for Legal Ethics and Professionalism, Disaster Response Committee (SBOT)
- EXHIBIT L: Symposium on Excellence in the Profession with a Focus on Diversity (\$33,352) Sponsor: Opportunities for Minorities in the Profession Committee of the SBOT, Minority Involvement Committee of the TYLA, and Office of Minority Affairs of the SBOT

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