

**OFFICIAL MINUTES
STATE BAR OF TEXAS
BOARD OF DIRECTORS MEETING
Hyatt Regency Hotel
Austin, TX
January 23, 2004**

The Board of Directors of the State Bar of Texas met in a regular session on January 23, 2004 at the Hyatt Regency Hotel in Austin, Texas. The meeting was called to order at 9:00 a.m. by Chair Kim J. Askew, and the roll was called by Executive Director Antonio Alvarado. A quorum of voting Board members was present. Invocation was presented by Board Member Roland K. Johnson.

Present:

Board Members: Patricia O. Alvarez, Kim J. Askew, Fred E. Aurbach, D.D.S., W. Mike Baggett, H. Mack Barnhart, Blair A. Bisbey, Michael J. Black, Mina A. Brees, Russell G. Burwell III, Linda R. Butter, Judge Jim Coronado, Jennifer G. Durbin, Michael A. Elliott, William D. Elliott, Kelly Frels, Roland Garcia, Jr., Tom Godbold, Terri L. Hagan, Guy N. Harrison, Pauline E. Higgins, 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, Jeffrey R. Parsons, Velva L. Price, Mickey R. Redwine, Vianei Lopez Robinson, Renato Santos, Jr., Charles W. Schwartz*, W. Steven Steele, Andrew L. Strong, Mark A. Shank, Amy Dunn Taylor, Betsy Whitaker, and James C. Winton

Liaisons*: Justice Michael H. Schneider, Judge Sharon Keller

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

Excused Absences:

Ralph H. Brock, Ophelia F. Camina, Glenn A. Perry, Patricia J. Williams, Marshall C. Wood; Liaisons Judge Molly M. Francis and Judge Walter S. Smith, Jr. (Judge Lee Yeakel attended for Judge Smith.)

(* = *nonvoting*)

I. CONSENT AGENDA ITEMS

Upon motion made by Pauline E. Higgins and seconded by Vianei Lopez Robinson, the following items on the Consent Agenda were approved:

- A. Minutes of Board meeting conducted on *September 19, 2003*
- B. Ratification of actions taken at the following Executive Committee meetings:

November 4, 2003: Approval of minutes for the September 2, 2003 Executive Committee meeting.

January 6, 2004: Approval of minutes for the November 4, 2003 Executive Committee meeting. (*Other action items taken under separate reports.*)

- C. Appointments by President Betsy Whitaker to the following entities:

1. **College of the State Bar:** to complete Scott D. Allen's unexpired term through June 14, 2004:

Katherine D. Julia (Edinburg)

2. **Texas Access to Justice Commission:** to complete Heather Way's unexpired term through June 2005:

~~Karin R. Crump (Austin)~~ Patsy Pei-Ling Yung (Irving)

3. **Texas Legal Services Center:** *for a three-year term effective January 1, 2004 through December 31, 2006:*

Timothy W. Floyd (Lubbock)

D. Appointments by President-elect Kelly Frels to the **Texas Bar Foundation's Board of Trustees:**

for three-year terms, effective June 2004 to June 2007:

lawyers:

Claude E. Ducloux (Austin)

David S. Huntley (Houston)

Amy Dunn Taylor (Houston)

public member:

John F. Landgraf (Odessa)

as liaisons, 2004-2005:

Mark N. Osborn (El Paso)

Paula W. Hinton (Houston)

E. 2004-2005 Preliminary Calendar/Holiday Schedule (**See Exhibit A.**)

F. Section Related Items:

1. Revisions to bylaws – State Bar Appellate Section for the addition of language, which specifies that voting may be conducted via electronic transmission, a provision that sets forth the methods (including electronic transmission) by which notice may be made to members and to change Secretary to Treasurer, the officer who would serve in place of the Vice-Chair (**See Exhibit B.**)
2. State Bar Family Law Section request to hold its annual meeting in conjunction at Marriage Dissolution instead of in conjunction with the State Bar's June 2004 Annual Meeting (**See Exhibit C.**)
3. State Bar General Practice, Solo & Small Firm Section request to increase dues from \$17 to \$20 (**See Exhibit D.**)
4. Revisions to bylaws – State Bar Legal Assistants Division to provide for a new class of membership and to provide election procedure to fill director vacancy (**See Exhibit E.**)
5. State Bar Oil, Gas & Energy Resources Law Section 2004-2005 participation in the Rocky Mountain Mineral Law Foundation (**See Exhibit F.**)

6. Revisions to bylaws - State Bar Sexual Orientation & Gender Identification Issues Section proposes to delete two statements that are not required to be contained in a section's bylaws, to move one section to another part of the bylaws and to renumber accordingly (**See Exhibit G.**)

G. Other Items:

1. State Bar Legislative Timetable (**See Exhibit H.**)
2. Resolution honoring Robert Ray Pearson (El Paso) (**See Exhibit I.**)
3. LegalSpan Application Service Provider Agreement (**See Exhibit J.**)

II. REPORTS

A. Nominations & Elections Subcommittee:

1. *Revisions to President-elect Election Guidelines:* N&E Subcommittee Chair Kelly Frels reported the subcommittee worked in coordination with the Policy Manual/Bar Refresher Subcommittee to present the proposed revisions to the guidelines for the 2004 President-elect elections. Additional revisions to the guidelines for the 2005 elections will be discussed at the April Board meeting, then voted on during the June Board meeting. **On behalf of the Nominations & Elections Subcommittee, Frels moved for approval of the proposed revisions to the Board Policy Manual regarding the 2004 President-elect campaign. The motion carried. (See Exhibit K.)**

2. *President-elect Nominees:* Frels reported the N&E Subcommittee selected Eduardo R. Rodriguez (Brownsville) and Richard T. Miller (San Saba) as President-elect nominees. **On behalf of the Nominations & Elections Subcommittee, Frels moved for approval of Eduardo R. Rodriguez (Brownsville) and Richard T. Miller (San Saba) as President-elect nominees. The motion carried.**

The two nominees were introduced – Miller by W. Mike Baggett and Rodriguez by Patricia O. Alvarez – and allowed to give acceptance remarks.

B. Administration Committee:

1. Contracts:

a) *Hart Agreement:* **On behalf of the Administration Committee, Chair Jarvis V. Hollingsworth moved to approve the Hart Agreement for the elections contract. The motion carried. (See Exhibit L.)**

b) *Lawriter:* Hollingsworth indicated the Bar is in various stages of negotiating contracts for the following contracts, and final approval may occur between Board meetings: Lawriter/Casemaker (Financing Agreement, Interim Agreement, Hyperlink, Agreement, and Primary Law Database Agreement) for online research and financed over five years by Lawriter (\$10,000/month + \$900,000 over the five-year period); Yellow Brix (to provide “cool stuff” on mybar.com site - \$1,000 for initial setup, \$1,900/month, and a month-to-month contract); and E-Filing RFP (link that will allow the Bar to get a royalty fee).

On behalf of the Administration Committee, Hollingsworth moved to approve the Lawriter and Yellow Brix contracts. The motion carried. (See Exhibit M.)

c) *Videoconference:* President-elect Frels, Operations Division Director Al Cumming, and Purchasing Manager Mary Mayles presented a demonstration of the videoconference initiatives. During Phase I,

the Bar will have five mobile units (Austin: Room 101 and 3rd Floor, Dallas, Houston, San Antonio) and will conduct training sessions on how to use the equipment and how to conduct videoconference meetings. Phase II will expand beyond the basics and tie in to public sites, including facilitating use by the law schools for student interviews, education service entities, and others.

On behalf of the Administration Committee, Hollingsworth moved that the Board cede authority to the Administration Committee to negotiate and finalize the E-filing, videoconference and other related contracts. The motion carried.

2. Litigation Update: Hollingsworth indicated four cases were dismissed since the last Board meeting – matters involving Carolyn Foster, Royce Mitchell, Hibernia National Bank, and the Pena case. Seven active matters remain against the State Bar.

3. Real Estate Study/Strategic Plan: Hollingsworth reported the annual evaluation of the Bar facilities used by Chubb in determining the premiums paid shows an improvement since 2002. Current evaluation score is 8.5 out of 10 possible points, which is highly effective. Administration Committee Facilities and Equipment Subcommittee Chair William Betts reviewed the charge of the subcommittee, necessitated by the Bar's facilities challenges. Options were discussed to relieve spatial congestion, maximize the Bar's real estate assets, improve the Bar's services to the public and bar members. The subcommittee continues to solicit input from Board members and will work with real estate consultants to develop long-range objectives, including using the Texas Law Center as the core facility. The subcommittee will also look at various options to fund necessary changes – including availability of tax exempt financing. The tax status of the State Bar needs to be considered, which will necessitate possible involvement of outside counsel. The ultimate goal is to have a strategic plan on real estate submitted to the Board in April.

4. Amicus Brief: Chair Askew invited public input concerning the UPL *amicus brief* issue, and indicated each speaker's comments were limited to five minutes. The following individuals signed in and addressed the Board on the *amicus brief* issue. (Five others signed in but did not speak.)

Against filing (7):

Tom Rogers (Jackson Walker, Austin)

David Genender (Baker Botts, Dallas)

Steve Amis (Farmers Insurance, Arlington)

Gary Mayton (Law Office of Kelly O'Cannin-USAA, San Antonio)

Frank Rivas (State Farm Insurance, San Antonio)

Eric Stahl (Vinson & Elkins, LLP, Dallas)

Joe Meynier (Progressive/Law Office of M. Joseph Meynier III, Houston)

Administration Committee Chair Hollingsworth presented background information about the UPL case, American Home Assurance Company, Inc., and Traveler Indemnity Company vs. UPL Committee, Cause No. 11-02-00212-CV. Three briefs were submitted on behalf of the UPL Committee and four on behalf of the insurance companies. Two main issues the courts will be asked to decide: (1) whether insurance companies may use captive staff counsel versus outside independent counsel to defend insured without engaging in unauthorized practice of law, and (2) whether the UPL Committee is open to an award of attorneys fees for having unsuccessfully defended Section 81.102 of the Texas Government Code. The job of the UPL Committee - a 9-member, Supreme Court-appointed committee – is to seek out and eliminate the unauthorized practice of law in the state of Texas. Under the State Bar Act, the State Bar is responsible for and pays the costs and expenses of the UPL Committee but plays no role in the decisions of who, when, how litigation is effected. The Office of Chief Disciplinary Counsel does not represent the committee, but meets from time to time with them to offer limited advice. Cases are handled on a pro bono basis, with attorneys being reimbursed by the State Bar for court, copying and overhead costs associated with administrative support. Hollingsworth indicated the Administration Committee UPL Subcommittee is charged to review the guidelines, determine the best way to support the UPL functions, address contingencies concerning who should represent the UPL Committee in the prosecution or defense of litigation,

and determine liabilities of the committee and the State Bar for the costs and fees that may be awarded against the UPL Committee in litigation.

The UPL Committee requested the State Bar file an *amicus brief* with the Texas Supreme Court supporting its position in the litigation. The Supreme Court is considering whether to accept writ and all briefs need to be filed. The Executive Committee discussed the issue during its January 6, 2004 meeting and decisions need to occur before the next Board meeting.

MOTION 1: On behalf of the Administration Committee, Hollingsworth moved that the Board authorize the Executive Committee to make a determination as to whether it is appropriate for the State Bar of Texas to file an *amicus brief* in this litigation on behalf of the UPL Committee.

Much discussion ensued with some Board members wanting the Board to make the final decision. Subsequent motions were made. Executive Director Alvarado interjected the case is of concern to the State Bar Board because in the remand from the Dallas Court of Appeals to the trial court, the fact issue under consideration is the payment of court cost and attorney fees of approximately \$500,000-\$600,000.

MOTION 2: Immediate Past President Guy Harrison moved to table the matter until a time certain, 4:30p this afternoon, or at the end of the agenda, to review the Board Policy Manual. Properly seconded, the motion carried.

At the end of the Board meeting, the motion previously tabled was put back on the table, withdrawn, then a substitute motion was offered.

MOTION 3: *Substitute Motion:* On behalf of the Administration Committee, Hollingsworth moved that the Board authorize the Executive Committee to take whatever action it deems necessary to protect the interest of the State Bar of Texas in regards to any potential liability for court costs and attorneys fees in the underlined case without taking a position for or against whether captive law firms constitute the unauthorized practice of law. Should the request for an amicus brief be pursued, then the Board reserves the right to consider such action at a future Board meeting.

After additional discussion, the following amended motion was made:

MOTION 4: On behalf of the Administration Committee, Hollingsworth moved that the Board authorize the Executive Committee to take whatever action it deems necessary to protect the interest of the State Bar of Texas in regards to any potential liability for court costs and attorneys fees in the underlying case without taking a position for or against whether captive law firms constitute the unauthorized practice of law. The motion passed.

Paula Hinton, Velva Price and Charles Schwartz did not participate during the voting on this issue.

5. **Closed Session:** The Board of Directors met from 2:37 p.m. to 3:34 p.m. in closed session, as authorized by Texas Government Code, Section 551.074, for the purpose of discussing personnel matters including but not limited to the evaluation of the Executive Director and the employment of the General Counsel candidate, Patricia A. Moore.

(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 personnel matters concerning the evaluation of the Executive Director and the employment of the General Counsel candidate Patricia A. Moore were discussed. No action was taken in closed session.

In open session, **President-elect Kelly Frels moved that the Board employ Patricia A. Moore as General Counsel of the State Bar of Texas at a salary based on \$120,000 per year commencing at the earliest**

possible date she is available. Properly seconded, and after clarifying the salary is \$120,000 per year, the motion passed. Moore made brief comments, including expression of appreciation to the Board for the vote of confidence.

C. Finance Subcommittee: Finance Subcommittee Chair William D. Elliott presented an overview of the Bar's financial condition - revenues and operating expenses are down, and auditors have given the Bar a clean bill of health and high marks. The subcommittee applauded the staff on managing the Bar's finances.

Elliott presented several action items for consideration. **On behalf of the Finance Subcommittee, Elliott moved to:**

- 1. Approve the Additional Brokers List for 2003-2004**
- 2. Accept the Financial Audit for year ending May 31, 2003**
- 3. Approve the Investment Transaction Report for quarter ending August 2003**

The motion carried. (See Exhibits N-P.) Pauline E. Higgins did not vote regarding the items presented.

D. Budget Subcommittee: Budget Subcommittee Chair Kelly Frels and Finance Division Director Michelle Hunter presented the State Bar budget for the 2004-2005 year. Frels highlighted several items, including a substantial reduction in the budget for the Office of the Chief Discipline Counsel and additions in the technology budget (\$400,000), Client Security Fund (\$200,000), Building Fund (\$100,000), \$250,000 to conduct a referendum in Fall 2004, increase in TYLA to facilitate more public outreach, \$30,000 for a legal services loan-repayment program and an additional \$20,000 for matching contributions. Hunter stated the proposed \$31 million balanced budget represents a 2 percent change in expense and revenue.

On behalf of the subcommittee, Frels moved that the Board ratify the action by the Executive Committee to publish the SBOT 2004-2005 proposed budget in the *Texas Bar Journal* with notice of public hearing. The motion carried. (See Exhibit Q.)

E. Technology Update/Debut of Websites: Technology Oversight Subcommittee Chair Mark Osborn presented an exciting demonstration, a debut of the revised State Bar website that includes extensive search engines, advance access to CLE materials, free legal research, and other interactive features to assist lawyers in the practice of law and the public in access to the legal system. The new website will be available by the end of next week, with subsequent enhancements scheduled to roll out according to plan. A standing ovation was given to the staff that worked specifically on the new sites – Brad Powell, Michelle Hunter, Julene Franki, Pat Nester, Kelley Jones King and others. Osborn also indicated the Technology Oversight Subcommittee reviewed the technology contracts proposed for approval by the Administration Committee.

F. Discipline/CAAP Subcommittee: Chair Askew commended the subcommittee members and Dawn Miller on the tremendous work done regarding the revisions to the disciplinary rules. Mark Shank reiterated the Supreme Court adopted the rules submitted with note of one technical correction. Shank and Lopez Robinson joined the Chair in thanking the subcommittee members and co-chair Terri Hagan for the work done.

G. Referral Fees: President Betsy Whitaker reported the Supreme Court invited Chair Askew, President-elect Frels, Executive Director Alvarado and her to meet and discuss the referral fee issue. The Court was very responsive to the State Bar's commitment to the process, the new technology efforts, and online referendum. The Task Force will look at the issues involved, submit a proposed rule to the State Bar Board at its April meeting, take a final vote at the June meeting for a recommendation to the Supreme Court, then conduct a referendum in the Fall of 2004. Task Force on Referral Fees Chair Richard Hile presented background information and reviewed the timeline that will be used to gather input about the issues. Six public meetings across the state will be held and comments can also be submitted via the Bar's website and other venues. The Task Force will conduct a survey of bar membership to determine the referral involvement generally and a second survey targeted at subsections of the bar to gather empirical data.

President Betsy Whitaker moved to approve appointment of the Task Force on Referral Fees and the revised schedule. The motion passed with several nay votes heard. (See Exhibit R.)

H. Referendum Issues: Mike Baggett indicated the Referendum Task Force Subcommittee will look at issues for inclusion in the referendum anticipated in the Fall of 2004, including the referral fee issue, Texas Disciplinary Rules of Professional Conduct, ABA Ethics 2000, Annual Meeting resolution dealing with no sex with clients, and items from the 1998 referendum that failed because of the 51 percent rule. Elimination of the 51 percent voting requirement to pass a referendum will make it easier to clean up items from past referenda and the use of technology should make it less expensive to conduct a referendum. Members should contact Baggett with questions and comments about the items and the process.

I. Legal Services Funding: Chair Askew invited public input concerning the legal services funding request, and indicated each speaker's comments were limited to five minutes. The following individuals signed in and addressed the Board on the funding issue. (Two others signed in but did not speak.)

For funding (7):

Pamela Brown (Co-chair, SBOT Legal Services to the Poor in Civil Matters Committee, Weslaco)
Carol M. Barger (Member, SBOT Legal Services to the Poor in Civil Matters Committee, Dallas)
Bill Whitehurst (Former SBOT President, Austin)
J. Chrys Dougherty (Former SBOT President, Austin)
Reggie James (Consumers Union SW Office, Austin)
Jim Harrington (Texas Civil Rights Project, Austin)
Charles Herring (Herring & Irwin, LLP, Austin)

Against funding (3):

Charles H. Awalt (Plano, via letter that was read by Joette Furlough) (**See Exhibit S.**)
Hugh Lindsay (Former Council of Chairs Vice-Chair, College Station)
Stephen J. Smith (Attorney at Law, Houston)

Tom Godbold, chair of the Board's Legal Services Funding Work Group, acknowledged the passion expressed for and against the \$1.35 million legal services funding request to TEAJF by the State Bar Standing Committee on Legal Services to the Poor in Civil Matters. Appointed at the Executive Committee at its January 6, 2004, meeting, Godbold indicated the Work Group's charge is to gather the facts about the issue to make the right decisions and report to be Board as quickly as possible. The Work Group will work with Justice Harriet O'Neill and the Texas Access to Justice Commission's consultant, Dennis Dorgan (authorized by the Board at its September 2003 meeting for \$20,000), to look at the big picture. Several questions need exploring: Can we legally spend mandatory bar dues for this purpose? Are funds available in the budget, reserves, or other sources for use in funding the request? The Bar is not a funding agency, so should we fund the request?

Godbold acknowledged the members of the Work Group, requested input from Board members and indicated a report may be ready by the April quarterly meeting.

Mina Brees moved that the Work Group get back to the Board with an action item so that we could vote on the request for funding, either up or down, in some way at least by the April Board meeting. Chair Askew ruled the motion out of order as the item was not posted for action. Chair Askew stressed the Work Group will report to be Board as quickly as possible.

Justice O'Neill echoed the comments made by Godbold and indicated that one of the comments made during the public input segment was that a lot of members of the Bar are not aware of what is happening. The Access to Justice Commission is trying to get more education to the membership, and one method used is public service announcements shown at every CLE seminar across the state.

J. State of the Bar and Bar Management: State Bar Auditor Tom Clowe indicated he was hired six weeks ago “to assist the Bar to evaluate the business practices of the Bar relative to the hope that greater productivity and services to the members and the people of Texas could be achieved.” Clowe indicated that he met with staff, attorneys, members of the judiciary and Legislature, and other contacts. The Bar is doing well, is not under distress, but the focus is to take the next step to excellence. Issues addressed include the need for the Bar to do more - intensify efforts to reach out to constituents (local bars, governmental and educational entities, other countries, business and civic groups) and become a more active participant on behalf of the membership. Internally, Clowe indicated staff is dedicated, loyal, know their jobs, has a long tenure, and with more timely decisions and better communication can do a better job. Clowe recommended to leadership and the Executive Committee a need to designate a chief of staff, thereby creating an opportunity for a more efficient, productive and streamlined organization that may be more economical. The need for leadership continuance is great as the continuous, yearly change in leadership can be confusing to staff. The Bar needs to take a big business approach to taking care of its clients – the lawyers and their clients. Clowe believes that an adjustment in the culture, a devotion to greater productivity and the best product possible can be accomplished through leadership continuance with a focus on excelling.

K. Appeals/Grant Review Subcommittee:

1. Appeals: Chair Steven Steele reported two of the four appeals received were withdrawn. **On behalf of the subcommittee, Steele moved to approve the action by the subcommittee to uphold the decision of the TBLS and MCLE Committee. The motion carried.**

- a) Mark Sokolow – TBLS Certification in Commercial Real Estate Law (Upheld decision of TBLS)
- b) McChord Carrico – Denial of MCLE Accreditation for “Public Contract Code and Competitive Public Bidding in Louisiana” appealed by McChord Carrico to receive credit for the attended course (Upheld decision of MCLE Committee)

2. Grants: Steele reported the subcommittee approved submission of the application to the Texas Bar Foundation by the Texas Young Lawyers Association: “Just Hang Up” Public Service Announcement in the amount of \$50,000.

L. Commission for Lawyer Discipline: Commission Chair Mark D. White reported the Commission is ready to go with the new rules and has already received about 150 new rules cases. White highlighted significant changes made at the Office of the Chief Disciplinary Counsel, including personnel, processes and infrastructure. Elimination of the investigatory panel hearing has a huge impact on operations in the office. The new Supreme Court Order provides that the Commission is not a governmental body and is not subject to the Open Meetings Act, which eliminates the need for a quorum, allows meeting in panels and by telephone, and provides more efficient operation. The 2004-2005 budget for the ODCD includes a \$960,000 decrease from the 2003-2004 budget, a net reduction of 16 FTE in administrative staff, slight increase in attorney staff, and closing of field offices. The Commission will present a request at the April Board meeting to amend the Internal Operating Rules.

Administration Committee Chair Hollingsworth reiterated efforts to negotiate terms to terminate the leases for the CDC satellite/field offices. **Hollingsworth moved that the Board cede to the Administration Committee, based on reports received from Al Cumming and his staff, the authority to finalize negotiations on outstanding leases.** Leon Mitchell stated that if authority is given to the committee to decide these issues, the meeting conducted by the Administration Committee needs to be held as a public meeting, subject to the Open Meetings Act. Hollingsworth concurred and stated that particular item will be posted. **The motion passed.** Hollingsworth also informed the Board of possible litigation stemming from the El Paso lease.

M. Policy Manual/Bar Refresher Subcommittee: Chair Mina Brees referred to proposed changes to the Board Policy Manual, requested additional input from Board members, and indicated the Board will be requested to act on subcommittee recommendations at the April and June Board meetings. Results from the Bar Refresher survey distributed to Board members will be revealed at the April meeting.

N. TYLA Update: TYLA President-elect David R. McAtee highlighted a few of the TYLA programs aimed at investing in its members, including distribution of TYLA membership cards and survivor kits to each young lawyer Bar member. Projects used to leverage the work of TYLA members include the immigration program, water projects [in the process of filing for a 501C(3) status], brochure marketing TYLA programs/projects, and the TBF grant request.

O. Texas Bar Foundation: TBF Chair Justice Carolyn Wright presented an overview of the Foundation's activities, and indicated gifts received from Fellows are permanently restricted to the Foundation's endowment, not available for grants and operating expenses. Gifts from Life Fellows are available for other uses. Board members were encouraged to submit nominations for Fellows. The Foundation is looking forward to working with the State Bar in the loan forgiveness initiative.

P. Executive Director Update: Executive Director Antonio Alvarado highlighted salient achievements of the Bar, including one by the Law Related Education Department for the "We the People" program. For the first time, newly licensed members of the Bar received certificates and licenses during the New Lawyers Induction ceremony instead of having to wait months after the ceremony. Alvarado also mentioned the proposed Chief of Staff position, Ray Pearson celebration, online dues statement, loan repayment program, Hungarian delegation visit, new initiatives for sections (increase membership, enhance services, collaborate on common goals), and Sharon Swartmore, Army JAG Legal Administrator killed in Iraq.

Q. Solicitation of Candidates to Serve as Chair of the Board, 2004-2005: Chair Askew announced five position statements were submitted from second-year Board members seeking the 2004-2005 Chair of the Board position: W. Mack Barnhart, William D. Elliott, Roland Garcia, Jr., Paula W. Hinton, James C. Winton. Comments were heard from each candidate. President-elect Frels stressed the need for the candidates to commit to take the Bar to the next level, be willing to be a part of the team, and stay consistent in pursuit of the goals set by the Bar.

Chair Askew indicated the Policy Manual requires that at the January meeting, the Board selects the method by which the Chair will be voted on at the April meeting, whether by show of hands or written ballot. The Chair determined, on a poll of the Board members, the consensus is to conduct the vote by written ballot.

R. Annual Meeting Resolutions Committee Sergeant-at-Arms: Per Board policy, Chair Askew requested the TYLA President to furnish a sufficient number of TYLA members to act as sergeants-at-arms at the Resolutions Committee at the 2004 State Bar annual meeting.

There being no further business, the meeting was adjourned at approximately 5:30 p.m.

EXHIBITS ATTACHED

- EXHIBIT A: 2004-2005 Preliminary Calendar/Holiday Schedule
- EXHIBIT B: Appellate Section - revision to bylaws
- EXHIBIT C: Family Law Section - request re annual meeting
- EXHIBIT D: General Practice, Solo & Small Firm Section – dues increase
- EXHIBIT E: Legal Assistants Division – revision to bylaws
- EXHIBIT F: Oil, Gas & Energy Resources Law Section – participation in Rocky Mountain Mineral Law Foundation

EXHIBIT G: Sexual Orientation & Gender Identification Issues Section – revision to bylaws
EXHIBIT H: Legislative Timetable
EXHIBIT I: Resolution honoring Robert Ray Pearson
EXHIBIT J: LegalSpan Application Service Provider Agreement
EXHIBIT K: President-elect Guidelines – revision to Board Policy Manual
EXHIBIT L: Hart Agreement
EXHIBIT M: Lawriter Contract
EXHIBIT N: Additional Brokers List for 2003-2004
EXHIBIT O: Financial Audit for year ending May 31, 2003
EXHIBIT P: Investment Transaction Report for quarter ending August 2003
EXHIBIT Q: SBOT 2004-2005 Proposed Budget
EXHIBIT R: Task Force on Referral Fees & Revised Schedule
EXHIBIT S: Legal Funding Issues Letter by Charles H. Awalt

U:\WPDOCS\MINUTES\MINUTES - 2004\BOD - JAN\BOD04JANm.doc

Resolution

Resolved by the members of the Sexual Orientation and Gender Identification Issues Section of the State Bar of Texas,

Whereas the State Bar Board of Directors Policy Manual S5.01.04 no longer requires that the provisions of bylaws sections 8.3 and 8.4 be a part of the section bylaws,

Therefore, be it resolved that: (1) current bylaws sections 8.3 and 8.4 be deleted; (2) current bylaws section 1.3 be renumbered as section 8.3; and (3) current bylaws section 8.5 be renumbered as section 8.4.

Adopted by the section council and membership on June 13, 2003, by a unanimous vote.

/s/ John Nechman

Chair

June 13, 2003

Date

/s/ Kent Rutter

Acting Secretary

June 13, 2003

Date

Appendix

Text of Sections Affected

Section 1.3. No positions may be taken by the section or its membership in the name of the section that advocates or advances a political or social position. [renumbered as section 8.3]

Section 8.3. The jurisdiction of the section is not in substantial conflict, nor substantial overlap, with the jurisdiction of any other section, standing committee, or special committee of the State Bar of Texas. [deleted]

Section 8.4. The section will not act as a political or social advocacy group and shall comply with all State Bar of Texas policies and the State Bar Act, and within the guidelines of *Keller-Gibson* case law. [deleted]

Section 8.4. As required by Part VI, subsection 6.02.08 D of the State Bar of Texas Board policy manual, the provisions of Part VI, subsections 6.02.08 A, B, and C, and any future amendments, are adopted and attached to these bylaws as an appendix. [renumbered as section 8.4]

BYLAWS OF THE SEXUAL ORIENTATION AND GENDER
IDENTIFICATION ISSUES SECTION OF THE STATE BAR OF TEXAS

ARTICLE I

Name and Purpose

Section 1.1. This section shall be known as the Sexual Orientation and Gender Identification Issues Section of the State Bar of Texas.

Section 1.2. The purpose of the section is to:

- (1) promote the study of gay, lesbian, bisexual, transgendered, and HIV law;
- (2) study and report on laws, decisions, and governmental regulations as they may affect the rights, responsibilities, and needs of gay, lesbian, bisexual, or transgendered identified people, as well as persons who are living with HIV;
- (3) provide a common meeting ground and forum for members of the profession interested in the legal problems of people who identify as gay, lesbian, bisexual, or transgendered, as well as people who are living with HIV; and
- (4) take action regarding these matters, subject to these bylaws and the laws, rules, and regulations of the State of Texas.

~~[-Section 1.3. No positions may be taken by the section or its membership in the name of the section that advocates or advances a political or social policy position. -[renumbered as Section 8.3]]~~

ARTICLE II

Membership

Section 2.1. Each member must pay annual dues of \$10.00. Each associate member who is also a member of the Law School Division of the State Bar of Texas must pay annual dues of \$5.00. Each associate member who is not also a member of the Law Student Division of the State Bar of Texas must pay annual dues of \$10.00. The council may authorize a waiver of the first year's dues for newly inducted members of the State Bar of Texas.

Section 2.2. Any member of the State Bar of Texas, on payment of the current year's dues, shall be enrolled as a member of this section; thereafter, dues must be paid in advance each year.

Section 2.3 Any member of the Law Student Division of the State Bar of Texas or other person interested in the work of the section, on payment of the current year's dues, shall be enrolled as an associate member; thereafter, dues must be paid in advance each year. The words "member" and "membership," as used in these bylaws, do not include associate members unless otherwise specified.

An associate member may not vote or serve as an officer, member of the council, or committee member.

Section 2.4. Any member or associate member whose annual dues are more than six months past due ceases to be a member or associate member. Enrolled members whose dues have been paid pursuant to section 2.2 constitute the membership of the section.

ARTICLE III

Officers

Section 3.1. The officers are the chair, vice-chair, secretary, and treasurer.

Section 3.2. There shall be a council which shall consist of the chair, vice-chair, secretary, treasurer, and the three most recent past chairs, all of whom are ex officio members, together with four other members to be elected by the section as provided in these bylaws.

Section 3.3. The chair, vice-chair, secretary, and treasurer shall be elected at each annual meeting of the section, to hold office for a term beginning at the close of the annual meeting at which they were elected and ending at the close of the next annual meeting, or until their successors have been elected and qualified.

Section 3.4. Two members of the council shall be elected at each annual meeting for terms of two years beginning at the close of the annual meeting at which they were elected and ending at the close of the second succeeding annual meeting, or until their successors have been elected and qualified.

Section 3.5. If any officer or member of the council fails to attend three successive meetings of the council, the position held by that officer or member of the council is automatically vacated unless the council determines by a record vote that good cause exists for one or more of the absences. The council shall fill the vacancy for the unexpired term pursuant to section 6.3, except that a vacancy in the position of one of the three most recent past chairs shall remain vacant.

ARTICLE IV

Nomination and Election of Officers and Members of the Council

Section 4.1. Nominations. Before each annual meeting, the chair shall appoint a nominating committee of three members. That nominating committee shall make and report nominations to the section for the offices of the chair, vice-chair, secretary, treasurer, and members of the council. Other nominations for the same positions may be made from the floor.

Section 4.2. Elections. All elections must be by written ballot unless otherwise ordered by a resolution duly adopted by the section at the annual meeting at which the election is held. Elections for members of the council shall not be held for specific positions, *i.e.*, places one through four, but instead shall be held generally.

Section 4.3. Whenever a vacancy occurs in the first year of the two-year term of a member of the council, there shall be an election to fill the unexpired term at the next annual meeting, regardless of whether the council acts to fill the vacancy pursuant to section 6.3. When it is necessary to hold an election to fill an unexpired term, all newly elected members of the council shall draw straws to determine who will fill the unexpired term.

ARTICLE V

Duties of Officers

Section 5.1. Chair. The chair shall: (1) preside at all meetings of the section and of the council; (2) formulate and present at the annual meeting of the State Bar of Texas a report of the work of the section for the past year; and (3) perform other duties customary for the chair.

Section 5.2. Vice-chair. On the death, resignation, or during the disability of the chair, or on the chair's refusal to act, the vice-chair shall perform the duties of the chair for the remainder of the chair's term except in case of the chair's disability and then only so long as the disability continues.

Section 5.3. Secretary. The secretary is the custodian of all books, papers, documents, and other property of the section. The secretary shall keep a true record of the proceedings of all meetings of the section and the council, whether assembled or acting under submission. The chair, vice-chair, and secretary shall prepare a summary or digest of the proceedings of the section at its annual meeting. In conjunction with the chair and the vice-chair, the secretary, as authorized by the council, shall attend generally to the business of the section.

Section 5.4. Treasurer. The treasurer is the custodian of all financial documents and funds of the section. The treasurer shall deposit the funds of the section in a separate account in any bank to be selected by the council, generally in the city where the treasurer resides, and shall make disbursements from funds as directed and authorized by the council on checks signed by the treasurer or either the chair or vice-chair. The treasurer shall keep an accurate record of all funds appropriated to and expended for the use of the section. The treasurer shall submit to the State Bar of Texas accounting department on a monthly basis all documents the State Bar of Texas requires to be submitted.

ARTICLE VI

Duties and Powers of the Council

Section 6.1. The council shall have general supervision and control of the affairs of the section subject to the rules governing the State Bar of Texas and these bylaws. The council shall authorize all commitments or contracts which require the payment of money and shall authorize the expenditure of all funds.

Section 6.2. The chair may appoint committees composed of members to perform duties and exercise various tasks as the chair may direct, subject to the limitations of these bylaws and rules governing the State Bar of Texas.

Section 6.3. The council, during the interim between annual meetings, may fill vacancies in its own membership or in the offices of vice-chair, secretary, and treasurer, or, in the event of a vacancy in both the office of chair and vice-chair, then in the office of chair. Members of the council and officers so selected serve until the close of the next annual meeting, or until their successors have been elected and qualified.

Section 6.4. Members of the council, when physically present or participating by telephone at meetings of the council, shall vote in person, but when absent may communicate their vote regarding any proposition to the secretary in writing and have the vote counted with the same effect as if cast personally at the meeting.

Section 6.5. The chair may, and on the request of any member of the council shall, submit or cause to be submitted in writing to each of the members of the council any proposition on which the council may be authorized to act. The members of the council may vote regarding that proposition by communicating their vote to the secretary in writing over their respective signatures. The secretary shall record the vote of each member of the council and keep on file the written and signed votes. A vote conducted under this section constitutes the vote of the council the same as if the vote was conducted under section 6.4.

Section 6.6. Meetings of the council may be called by the chair at a time and place determined by the chair.

Section 6.7. A majority of the members of the council, excluding the three most recent past chairs, constitutes a quorum for the transaction of business. A binding action of the council requires a majority vote of the members of the council, including the three most recent past chairs, present and voting.

ARTICLE VII

Section Meetings

Section 7.1. The annual meeting of the section must be held during the annual meeting of the State Bar of Texas, in the same city as the annual meeting of the State Bar of Texas, with the program and order of business as may be arranged by the chair.

Section 7.2. Special meetings of the section may be called by the chair at a time and place determined by the chair.

Section 7.3. The members present at any meeting constitute a quorum for the transaction of business.

Section 7.4. A binding action of the section requires a majority vote of the members present and voting.

Section 7.5. Any recommendation or declaration of the section regarding existing or proposed legislation, or regarding proposed governmental regulations or administration, in order to constitute the action of the section, must first be approved by two-thirds of the members of the council and then be approved by a majority of the members of the section present and voting; provided that the action must be submitted for approval to the board of directors of the State Bar of Texas.

ARTICLE VIII

Miscellaneous Provisions

Section 8.1. The fiscal and membership year of the section is the same as that of the State Bar of Texas.

Section 8.2. No salary or compensation may be paid to any officer or member of the council. The council may approve a request for reimbursement for actual expenses submitted by any member or associate member, including an officer or member of the council.

~~[-Section 8.3. The jurisdiction of the section is not in substantial conflict, nor substantial overlap, with the jurisdiction of any other section, standing committee, or special committee of the State Bar of Texas.- [deleted]]~~

~~[-Section 8.4. The section will not act as a political or social advocacy group and shall comply with all State Bar of Texas policies and the State Bar Act, and within the guidelines of Keller-Gibson case law.-[deleted]]~~

[+Section 8.3. No positions may be taken by the section or its membership in the name of the section that advocates or advances a political or social policy position.+]

Section [-8.5-] [+8.4+]. As required by Part VI, subsection 6.02.08 D of the State Bar of Texas Board policy manual, the provisions of Part VI, subsections 6.02.08 A, B, and C, and any future amendments, are adopted and attached to these bylaws as an appendix.

ARTICLE IX

Amendments

Section 9.1. These bylaws may be amended at any annual meeting by a majority vote of the members present and voting, provided each proposed amendment must have been approved by two-thirds of the members of the council. No amendment may become effective until approved by the board of directors of the State Bar of Texas.

Adopted on June 12, 1998, by a vote of 8 to 0.

/s/ Anne M. Pike
Vice-Chair

June 17, 1998
Date

/s/ Charles Spain
Secretary

16 June 98
Date

Bylaws previously approved by the State Bar board of directors on April 17, 1998.

Amended on June 11, 1999, by a unanimous vote.

/s/ Charles Spain
Chair

17 June 99
Date

/s/ John Adcock
Secretary

June 17, 1999
Date

Amendments approved by the State Bar board of directors on September 24, 1999.

Amended on June 23, 2000, by a unanimous vote.

/s/ Charles Spain
Chair

23 June 00
Date

/s/ John Adcock
Secretary

June 23, 2000
Date

Amendments approved by the State Bar board of directors for approval on September 22, 2000.

Amended on June 14, 2002, by a unanimous vote.

/s/ John Nechman
Vice-Chair

June 14 2002
Date

/s/ Charles Spain
Acting Secretary

14 June 2002
Date

Amendments approved by the State Bar board of directors on September 20, 2002.

Amended on June 13, 2003, by a unanimous vote.

/s/ John Nechman
Chair

June 13 2003
Date

/s/ Kent Rutter
Acting Secretary

13 June 2003
Date

Amendments submitted to the State Bar board of directors for approval in January 2004.

APPENDIX

6.02.08 Finances

A. Each section is authorized to collect membership dues and govern expenditures of dues income. The establishment of or any revision in the section dues requires approval by the State Bar Board of Directors. Each section shall submit to the Executive Director by July 15 each year a complete financial report for the preceding fiscal year ending May 31 and a section budget for the current fiscal year.

B. Section funds can only be invested within the parameters outlined in the State Bar of Texas Investment Policy as set forth in section 10.05 of the State Bar Board policy manual.

C. Each section shall deposit dues income into either a branch of the State Bar of Texas banking depository, or an alternative banking depository meeting the requirements of subsection B above. In the event a selects the alternative depository, it shall instruct the depository to provide directly to the State Bar a duplicate of the bank statements, canceled checks, and deposit slips. Any expense incurred in providing duplicates to the State Bar shall be borne by the section. Upon request by the section treasurer, the accounting department of the State Bar shall prepare a monthly and year-to-date section financial report. Any section may opt to have the State Bar manage section funds, including depositing dues, managing operating expenses, issuing checks, and preparing financial reports and budgets. This optional latter service will be provided by the State Bar at no charge to sections having less than 250 members. Larger sections electing this service may be charged a *per capita* fee per member not to exceed \$1.