

**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)	Joel M. Androphy (Houston)
Charles R. "Bob" Dunn (Houston)	Harry Gee, Jr. (Houston)
Peggy E. Foreman (Houston)	Paula Larsen (Dallas)
Richard Pena (Austin)	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:

<u>Reappointments:</u>	<u>New Appointment:</u>
Viviana S. Patiño (El Paso)	Ernesto Dominguez (McAllen)
Roger H. Reed (McAllen)	
Ed McConnell (Amarillo)	

- 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

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</u> THE SECTION TO <u>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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ORGANIZATIONAL STRUCTURE STATE BAR OF TEXAS BOARD OF DIRECTORS

OFFICERS

President	M. Colleen McHugh
President elect	W. Frank Newton
Immediate Past President	David J. Beck

EXECUTIVE COMMITTEE

M. Colleen McHugh, President	Guy N. Harrison, Elected Member
W. Frank Newton, President elect	Bill Jones, TYLA President
David J. Beck, Immed. Past President	Romeo Lopez, Public Member
Lynne Liberato, Chair of the Board	William B. Mateja, TYLA President elect
Otway B. Denny, Jr., Immed. Past Chair of the Board	Jan Soifer, Elected Member
Robert S. Anchondo, Minority Member	Robert A. Watson, Elected Member
E. A. "Trey" Apffel III, Elected Member	James W. Wester, TYLA Immed. Past President
David L. Evans, Elected Member	Elizabeth D. Whitaker, Elected Member

EX OFFICIO MEMBERS OF EXECUTIVE COMMITTEE

Antonio Alvarado, Executive Director
Steven Young, General Counsel
Justice John Cornyn, Texas Supreme Court Liaison

ELECTED DIRECTORS OF THE BOARD

Lynne Liberato, Chair of the Board

Robert A. Allen	Roberto D. Guerra	Stephen N. Smith
E. A. "Trey" Apffel III	Guy N. Harrison	Jan Soifer
Steve C. Ashley	T. Alan Hart	Randall O. Sorrels
Patricia Reed Constant	David E. Holt	Roy T. Sparkman
Bonnie C. Ericson	Ralph C. Jones	Jack W. Thompson
David L. Evans	Edward E. Lindsay	Peter Vogel
Kelly Freis	John R. Mercy	Robert A. Watson
Robert H. Frost	Randall R. Moore	Elizabeth D. Whitaker
Charles R. Gregg	Dan A. Naranjo	Hector M. Zavaleta
Ellen Elkins Grimes	Mark L. Perlmutter	

MINORITY MEMBERS OF THE BOARD

Robert S. Anchondo	Thelma Elizalde	Nelda F. Harris
	Carroll G. Robinson	

PUBLIC MEMBERS OF THE BOARD

Cynthia D. Cabaza	Wes Jurev	Romeo Lopez
Geraldine S. Mauthe	Delia M. Reyes	Bruce A. Smiley

TEXAS YOUNG LAWYERS ASSOCIATION MEMBERS OF THE BOARD

Bill Jones, President	William B. Mateja, President elect
James Wester, Immediate Past President	

LIAISON MEMBERS TO THE BOARD

Justice John Cornyn, Supreme Court Liaison
Presiding Judge Michael J. McCormick, Court of Criminal Appeals Liaison [eff. 10/96]
Chief Judge Norman W. Black, Federal Judicial Liaison
Judge Michael Keasler, Judicial Section Liaison [9/96 - 9/97]
Dennis P. Duffy, Out of State Lawyer Liaison

EX OFFICIO MEMBERS OF THE BOARD

Antonio Alvarado, Executive Director
Steven Young, General Counsel

filed
19:17

ITEM 17.F

WILLIAMS, BIRNBERG & ANDERSEN, L.L.P.
ATTORNEYS AT LAW

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September 18, 1996



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MATT E. RUBIN
MITCHELL KATINE

DAVID A. HANNAH
LOU W. BURTON
JOHN C. GRECO
LYNNE M. JUREK
JOHN W. MAHONEY
MICHAEL H. LASTER

VIA AIRBORNE DELIVERY

Ms. Patricia H. Hiller
Executive Assistant to the Board
State Bar of Texas
1414 Colorado
Austin, Texas 78701

Re: Board of Directors meeting scheduled for October 4, 1996
Request approval to create the Gay and Lesbian Issues Section of the State Bar

Dear Ms. Hiller:

In accordance with our prior communications, enclosed please find additional material for the upcoming Board meeting and the Board's consideration of my request to obtain approval to create the Gay and Lesbian Issues Section of the State Bar of Texas.

Thank you for your cooperation and assistance.

Sincerely yours,

WILLIAMS, BIRNBERG & ANDERSEN, L.L.P.

By:


Mitchell Katine

MNK:hba:hiller.ltr
tc
Enclosures

**CONSIDERATION OF REQUEST FOR APPROVAL TO CREATE THE
GAY AND LESBIAN ISSUES SECTION OF THE STATE BAR OF TEXAS**

This letter is intended to present the pros and cons of creating a Gay and Lesbian Issues Section of the State Bar of Texas. It is intended to supplement the material previously submitted.

Points In Favor of Creating the Gay and Lesbian Issues Section of the State Bar of Texas

1. There is a need for a section of the State Bar of Texas in order to foster interaction between lawyers who practice in this specialized field of law or who otherwise have common professional interests associated with these issues.
2. State Bar members have already approved a disciplinary rule relating to "sexual orientation". Rule 5.08 of the State Bar Rules of Professional Conduct states as follows:
 - (a) A lawyer shall not willfully, in connection with an adjudicatory proceeding, . . . manifest, by words or conduct, biased or prejudiced based on race, color, national origin, religion, disability, age, sex, or sexual orientation towards any person involved in that proceeding in any capacity. (Emphasis added).
3. Creation of a Gay and Lesbian Issues Section of the Bar would encourage more State Bar members to participate in the affairs of the Bar. As the activities of sections are encouraged, this new Section would allow State Bar members who sometimes feel ignored and unwelcome in Bar activities to be included and valued as members.

Points to Consider Opposed to Creation of a Gay and Lesbian Issues Section

1. Some opponents of the creation of this Section might argue that this Section could involve political matters. The proposed Section will refrain from political activity, as mandated by law, and as followed by all other State Bar sections. The "political activity" concern has not prevented the creation of other sections in Texas such as the American Indian Law Section, the Hispanic Issues Section, the Women and the Law Section, and the most recently created, Animal Rights Section. All of these Sections could include political activities if allowed. However, they function within the guidelines and rules of the State Bar of Texas and the law, and therefore, refrain from political activity. The Gay and Lesbian Issues Section of the State Bar of Texas would be no different than these other State Bar Sections and would operate within State Bar rules and the law.

Based on the foregoing, we would urge the State Bar of Texas to approve the creation of a Gay and Lesbian Issues Section.

Respectfully submitted,

WILLIAMS, BIRNBERG & ANDERSEN, L.L.P.

By: 

Mitchell Katine

IRELL & MANELLA LLP

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INCLUDING PROFESSIONAL CORPORATIONS

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September 16, 1996

VIA FEDERAL EXPRESS

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6671 Southwest Freeway, Suite 303
Houston, Texas 77074

Re: State Bar of California Committee on Sexual Orientation Discrimination

Dear Mitchell:

In connection with a proposal that the Board of Directors of the State Bar of Texas establish a permanent "Gay and Lesbian Issues" section of the State Bar of Texas, I write with information concerning a similar body established by the State Bar of California (the "SBOC"). In 1993, the SBOC established a permanent standing committee dealing with sexual orientation issues, its Committee on Sexual Orientation Discrimination ("CSOD").

As we discussed, I was one of the authors of the proposal to establish CSOD and, when it was established, served as its first Chair. I believe that the issues CSOD was established to address within the SBOC are equally relevant to the State Bar of Texas. Like California, Texas is a large state with a diverse and growing population. Among other things, I suspect that, as in California, a significant minority of the attorneys and consumers of legal services in Texas are gay, lesbian or bisexual. I also suspect that, as in California, sexual orientation issues arise with growing frequency in various areas of the law, including family law, employment law, constitutional law and the general administration of justice. It was these facts, together with a recognition that the legal profession has a duty to address issues of sexual orientation discrimination in a manner similar to discrimination based upon race, ethnicity, sex or disability, that led the SBOC to establish CSOD.

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I would therefore urge the State Bar of Texas to consider the proposed "Gay and Lesbian Issues" section very seriously. During the four years since its creation, CSOD has played a positive and helpful role within the SBOC, particularly in responding to the requests of other SBOC committees and sections for advice and assistance on sexual orientation issues. Should the State Bar of Texas establish the proposed section, I believe that its experience would be similarly positive.

1. Background: the SBOC.

As you may know, the SBOC is the mandatory, state-wide bar association in this State. The SBOC organization includes a number of sections and standing committees as well as several special boards, committees and commissions. As a general matter, SBOC sections are established to meet the needs of attorneys in particular practice areas. There are, for example, appropriately-named SBOC sections for business law, criminal law, environmental law, family law, general and solo practitioners, intellectual property law, labor and employment law, litigation, real property law, taxation and workers' compensation.

The standing committees of the SBOC are established to address matters of ongoing interest to a variety of practitioners. These include, for example, SBOC standing committees on the administration of justice, appellate courts, federal courts, group insurance programs, minimum continuing legal education, and professional responsibility and conduct. Finally, the various special boards, committees and commissions of the SBOC have been established in response to legislative delegation of certain regulatory and advisory functions to the SBOC.

As a mandatory, state-wide bar association, the SBOC has a special duty to remain accessible to, and to try to address the concerns of all attorneys in this State. In particular, the SBOC is required to ensure that it is open to women and members of various minorities in this State. Accordingly, within its structure, the SBOC has four standing committees which address issues relating to minorities, women and people with disabilities: (1) the Committee on Ethnic Minority Relations ("CEMR"), charged with issues relating to racial and ethnic minorities; (2) the Committee on Women in the Law ("CWIL"), charged with issues relating to women; (3) the Committee on Sexual Orientation Discrimination, charged with issues relating to lesbians, gay men and bisexuals; and (4) the Committee on Legal Professionals with Disabilities ("CLPD"), charged with issues relating to people with disabilities. The CEMR and CWIL have been part of the SBOC structure for over ten years. CSOD was established in 1993. CLPD was established in 1995.

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2. CSOD.

The SBOC Board of Governors approved the establishment of CSOD in March 1993. For your information, a copy of CSOD's charge and authority is attached.

As reflected in its charge, the focus of CSOD is on (1) the education of the bar and the public on legal issues relating to sexual orientation (including the provision of CLE-credit programming for attorneys), (2) the participation of lesbians, gay men and bisexuals in the SBOC and in the California legal profession generally, (3) the experiences of gay people in the California justice system, (4) the special needs of gay consumers of legal services in California, and (5) the analysis of legislation and legal reform proposals as they may relate to sexual orientation issues. In this respect, CSOD is like CEMR, CWIL and CLPD, each of which focus on similar matters as they relate to particular groups -- racial and ethnic minorities, women and people with disabilities, respectively.

CSOD has now been part of the SBOC for over four years. I believe that most within the SBOC, including the members of its Board of Governors during that time, would agree that CSOD has played a positive and helpful role within the SBOC. In particular, CSOD has been asked by several other SBOC sections and committees to provide advice and assistance with respect to sexual orientation issues. For example, CSOD assisted the SBOC Committee on Group Insurance Programs in negotiations with SBOC insurance carriers to include domestic partner coverage in SBOC-sponsored insurance offerings. In addition, CSOD has sponsored or co-sponsored CLE-credit programming on family law, employment law, discrimination, immigration and constitutional law topics. Most recently, in response to the request of the President of the SBOC, CSOD prepared a report and formulated recommendations concerning steps to be taken by attorneys in this State to comply with legal and ethical prohibitions on sexual orientation discrimination in the practice of law. That report and CSOD's recommendations were unanimously adopted by the SBOC Board of Governors this past month.

* * *

Please feel free to share this letter and the enclosed materials with the Board of Directors of the State Bar of Texas. I invite you and anyone from the State Bar of

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Texas to contact me if I can provide any further information or assistance. In addition, you should feel free to contact the current Chair of CSOD:

Wayne S. Braveman
Heller Ehrman White & McAuliffe
601 South Figueroa Street, 40th Floor
Los Angeles, California 90017
TEL: (213) 689-0200
FAX: (213) 614-1868

Once again, I hope that this information is helpful to you. I wish you and the State Bar of Texas the best as you address these important issues in your State.

Very truly yours,



Eric A. Webber

EAW:ap
Enclosures

cc: James F. Towery
Wayne S. Braveman
Myron Quon

NAME:

Committee on Sexual Orientation Discrimination and the Law

CHARGE:

- I. The first goal of the State Bar of California's Mission Statement is to "assure full and equal access of all persons, regardless of circumstances, to the legal system and the delivery of quality legal services." Accordingly, the Committee on Sexual Orientation Discrimination and the Law shall:
 - A. Examine and report to the Board of Governors on the prevalence of bias against lesbian, gay and bisexual litigants in the legal system. The Committee shall, in particular, examine the extent to which lesbian, gay and bisexual litigants are able to secure ethical, competent and professional legal services, and the extent to which lesbian, gay and bisexual litigants and attorneys encounter bias from judges, other attorneys and/or juries in the courtroom. In the event the Committee determines that lesbian, gay and bisexual litigants are less able than other litigants to secure ethical, competent and professional representation, and/or determines that lesbian, gay and bisexual litigants or attorneys face bias in the courtroom, the Committee shall recommend to the Board of Governors specific proposals for resolving those problems.
 - B. Propose specific rules of professional and judicial conduct which would define "unprofessional conduct" to include the exploitation of bias against lesbian, gay and bisexual litigants and attorneys; the disparate treatment of lesbian, gay and bisexual litigants in the provision of legal services; and the disparate treatment of lesbian, gay and bisexual litigants and attorneys in the courtroom.
- II. Another of the goals set forth in the State Bar of California's Mission Statement is to "assure the full and equal opportunity of all persons for entry into and advancement in the legal profession." Accordingly, the Committee on Sexual Orientation Discrimination and the Law shall:
 - A. Investigate and report to the Board of Governors upon the participation of lesbians, gay men and bisexuals in the legal profession. In particular, the Committee shall examine whether and the extent to which lesbians, gay men and bisexuals have the same access to the profession as other persons; and the extent to which

lesbians, gay men and bisexuals have opportunities for advancement within the profession which are equal to those afforded other attorneys. In the event that the Committee determines that lesbians, gay men and bisexuals do not have equal access to the legal profession, or face barriers to their advancement in the profession which other attorneys do not face, the Committee shall make specific recommendations to the Board of Governors for eliminating those barriers.

- B. Investigate and report to the Board of Governors as to whether lesbians, gay men and bisexuals in the legal profession are compensated, in terms of both income and job benefits, at the same levels as other attorneys employed in identical positions. In the event that the Committee determines that lesbians, gay men and bisexuals are not compensated equally to other attorneys holding identical positions, the Committee shall recommend to the Board of Governors specific steps for resolving pay and benefit disparities.
- C. Propose specific rules of professional and judicial conduct which would define "unprofessional conduct" to include disparate treatment of lesbian, gay and bisexual attorneys in employment.

III. Another of the goals set forth in the State Bar of California's Mission Statement is to "maximize the accessibility to the governance of the legal profession for all lawyers and thus assure such governance is reflective of the full diversity of the profession." To that end, the Committee on Sexual Orientation Discrimination and the Law shall:

- A. Examine and report to the Board of Governors upon the status and participation of lesbians, gay men and bisexuals in State Bar activities. Specifically, the Committee shall examine current State Bar efforts to encourage lesbians, gay men and bisexuals to participate in State Bar activities, and to serve as members of State Bar committees, commissions and sections; examine the current level and nature of any participation by lesbians, gay men and bisexuals in State Bar activities and on State Bar committees, commissions and sections; and examine the effectiveness of current methods used to encourage lesbians, gay men and bisexuals to participate in and contribute to the governance of the State Bar. In the event that the Committee determines that lesbians, gay men and bisexuals do not participate in State Bar activities and on State Bar committees, commissions, and sections in proportion to their representation in the membership

of the State Bar, the Committee shall make specific recommendations to the Board of Governors for increasing the participation of lesbians, gay men and bisexuals in State Bar activities and on State Bar committees, commissions and sections.

- B. Examine and report to the Board of Governors upon any problems of communication between the State Bar and lesbian, gay and bisexual bar associations; lesbian, gay and bisexual lawyers; and lesbian, gay and bisexual persons who need or use legal services. Specifically, the Committee shall examine and advise the Board of Governors regarding the efforts of State Bar divisions, departments and programs in providing information and services to lesbian, gay and bisexual persons who need or use legal services.

- IV. Another of the goals set forth in the State Bar of California's Mission Statement is to "respond to the public's need for information about law, lawyers and the legal system." Accordingly, the Committee on Sexual Orientation Discrimination and the Law shall:

- A. Promote the visibility, within the lesbian, gay and bisexual community, of the legal profession, the existence of gay-sensitive attorneys within the State Bar's membership, and the various programs maintained by the State Bar of California to insure full access to justice on the part of all Californians.

- V. Another of the goals set forth in the State Bar of California's Mission Statement is to "provide benefits, programs and services which promote professional growth and enhance the quality of life of the members." Accordingly, the Committee on Sexual Orientation Discrimination and the Law shall:

- A. Work with the staff of the State Bar of California to insure that the State Bar offers continuing legal education programs of special interest to lesbian, gay and bisexual attorneys, or to attorneys of any sexual orientation who serve lesbians, gay men and/or bisexuals with legal problems. Specifically, the Committee shall offer, for continuing legal education credit, no fewer than one program each year at the annual convention of the State Bar of California which addresses an issue or issues of particular concern to lesbian, gay or bisexual attorneys, or to attorneys who serve lesbian, gay and bisexual clients. Examples of such education programs include: AIDS and the Law, the prosecution of hate crimes committed against lesbian, gay or bisexual people, the drafting of property

ownership agreements for unmarried couples, child custody litigation involving a lesbian, gay or bisexual parent, second parent adoption, etc.

MEMBERSHIP:

Eight members shall be appointed for an initial one year term (six lawyers and two public members) and eight members shall be appointed for an initial two year term (six lawyers and two public members). Thereafter, all Committee appointments shall be for a two year term. Bay Area Lawyers for Individual Freedom, Los Angeles Lawyers for Human Rights, the Bay Area Lesbian-Feminist Bar Association, the Bar Association of San Francisco's Committee on Lesbian and Gay Issues, and other Bar associations who draw their members primarily from the lesbian, gay and bisexual community, shall be contacted and asked to recommend persons for appointment to the Committee. Members of the Board of Governors, geographically-organized voluntary Bar associations and minority Bar associations shall also be asked to recommend persons for appointment. The Committee shall be comprised of equal numbers of men and women, and equal numbers of persons from northern California and southern California. Affirmative steps shall be taken to insure participation on the Committee by African Americans, Asian Americans, Native Americans, Latin Americans and persons with disabilities, and to insure the representation on the Committee of diverse practice areas in both the private and public sectors. A Chairperson and Vice-Chairperson will head the Committee; the Chairperson will head the Committee for one year, at the end of which the Vice-Chairperson will succeed to the Chairperson's position and a new Vice-Chairperson will be selected. The Chairperson and Vice-Chairperson shall always be of opposite genders. After the initial appointments are made, all appointments to the Committee shall be made at the March meeting of the Board of Governors.

ACTIVITIES:

- I. The Committee on Sexual Orientation Discrimination and the Law will meet six times a year. Two of the meetings will be held in the San Francisco Bay Area, two of the meetings will be held in the Los Angeles area, one of the meetings will be held in Sacramento and one of the meetings will be held in San Diego.
- II. The Committee on Sexual Orientation Discrimination and the Law will submit to the Board of Governors written reports on its work, findings and recommendations in the following areas: (a) equal access of all persons, regardless of circumstances, to the legal system and the delivery of quality legal services; (b) equality of opportunity of all

persons for entry into and advancement in the legal profession; and (c) the accessibility to the governance of the legal profession for all lawyers and the assurance that governance of the legal system is reflective of the full diversity of the profession. Each report will be presented orally to the Board of Governors by the Committee's Chairperson. All written reports will be distributed for comment to appropriate Bar divisions, committees and sections, and to all interested lesbian, gay and bisexual Bar Associations, ethnic minority Bar Associations and geographically-organized voluntary Bar Associations.

- III. The Committee on Sexual Orientation Discrimination and the Law will work with all relevant State Bar personnel, and all other State Bar divisions, committees and sections in order to promote the public visibility of State Bar programs which help assure the access of Californians to the legal system and which promote the professional growth and enhance the quality of life of State Bar members.

**MOTION APPROVING THE CREATION OF THE
GAY AND LESBIAN ISSUES SECTION OF THE STATE BAR OF TEXAS**

I, _____, move that the State Bar of Texas create a Gay and Lesbian Issues Section.

Respectfully submitted,

By: _____

APPROVAL

The creation of a Gay and Lesbian Issues Section of the State Bar of Texas was approved by the State Bar of Texas Board of Directors on the _____ day of _____, 1996, by a vote of _____ to _____.

Chair of the Board

Secretary

MNK:hba:approve.sec
tc

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July 20, 1996

JUL 25 1996

Ms. Kathy Casarez
State Bar of Texas
Section Coordinator
P O Box 12487
Austin, Texas 78711

Re: Creation of State Bar gay and lesbian issues section

Dear Kathy:

Enclosed please find the following documents for the creation of a gay and lesbian issues section of the State Bar of Texas:

1. Statements from 65 State Bar members acknowledging that they will apply for membership in the gay and lesbian issues section if it is created. For your convenience, I have prepared a typed list of each person's name, State Bar number, and address.
2. Statement of need of justification for the creation of the gay and lesbian issues section of the State Bar of Texas.
3. Proposed Bylaws of the section, with list of proposed committees, and proposed two year budget attached..

Please acknowledge receipt of the enclosed material by return correspondence, and please let me know the schedule and procedure which will now occur in the approval process. Please let me know if you need anything further from me in order to proceed. Thank you for your professional assistance and handling of this matter.

Sincerely yours,
Williams, Birnberg & Andersen, L.L.P.

By:


Mitchell Katine

**STATEMENT OF NEED OR JUSTIFICATION
FOR THE CREATION OF
THE GAY AND LESBIAN ISSUES SECTION
OF THE STATE BAR OF TEXAS**

A Gay and Lesbian Issues Section of the State Bar of Texas is needed to enhance the skills of lawyers interested in legal issues related to gay, lesbian, bisexual, transgender and HIV matters.

Texas is generally regarded as having one of the largest gay, lesbian, bisexual, transgender, and HIV positive populations in the United States. The body of statutes and case law affecting gay, lesbian, bisexual, transgender, and HIV positive citizens continues to grow. Most law schools now offer courses dealing with these matters. Over the past ten years, the legal issues related to gay, lesbian, bisexual, transgender, and HIV positive issues have become more complex and command greater public attention.

Today's gay, lesbian, bisexual, transgender, and HIV legal issues include: divorce and child custody, privacy and confidentiality, employment and disability, estate planning and financial arrangements, real estate and tax, military, insurance, public benefits, housing, criminal, and constitutional and public policy matters.

Although this section is titled the Gay and Lesbian Issues Section, the legal concerns of citizens who identify as either bisexual or transgendered are often similar to those who identify as either gay or lesbian and warrant the inclusion in this Section.

Although HIV infection is primarily a heterosexual disease on a world wide basis, it is still primarily an infection which attacks the gay population in the United States. HIV continues to present serious legal issues related to confidentiality, employment, housing, and insurance discrimination, testing, immigration, health law, and other legal matters which warrant its inclusion in this section.

The objective of the Gay and Lesbian Issues Section of the State Bar of Texas will be to educate the legal community and the citizens of Texas from a non-partisan position and provide legal information relevant to the general theme of gay, lesbian, bisexual, transgender and HIV matters and the law.

OTHER BAR ASSOCIATIONS

The Gay and Lesbian Issues Section of the State Bar of Texas will not be the first legal organization to address gay, lesbian, bisexual, transgender and HIV related legal issues. Among the other legal associations are:

1. The Bar Association for Human Rights of Greater Houston, Inc.
2. The Lesbian and Gay Law Association of Greater New York
3. The Gay and Lesbian Law Association of Miami
4. The National Lesbian and Gay Law Association

5. Lambda Legal Defense and Education Fund
6. The State Bar of California Standing Committee on Sexual Orientation Discrimination.
7. The International Conference on Transgender Law and Employment Policy, Inc.
8. The Los Angeles County Bar Association Sexual Orientation Bias Committee.
9. The Lesbian and Gay Bar Association of Washington, D.C.

PUBLICATIONS

1. Lesbian, Gay Men & The Law, a legal textbook edited by William Rubenstein and published by NewPress, 1993.
2. Journal of Law & Sexuality, a law journal published by Tulane University.
3. AIDS Law and Policy, a legal textbook published by The John Marshall Publishing Company in Houston, Texas.
4. The Los Angeles County Bar Association Report on Sexual Orientation Bias, published in 4 S. Cal. L. Rev. & Women's Studies, No. 2 (Spring 1995).

PROPOSED

**BYLAWS OF THE GAY AND LESBIAN ISSUES SECTION
OF THE STATE BAR OF TEXAS**

ARTICLE I

Name and Purpose

Section 1. This section shall be known as the Gay and Lesbian Issues Section of the State Bar of Texas.

Section 2. The purpose of this 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 and 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 the bylaws of this section and the laws, rules, and regulations of the State of Texas.

ARTICLE II

Membership

Section 1. Each member of the section must pay to the Treasurer of the section annual dues of \$10.00.

Section 2. Any member of the State Bar of Texas upon request to the Secretary of the section and upon payment to the Treasurer of dues for the current year shall be enrolled as a member of this section; thereafter, dues must be paid in advance each year beginning on July 1.

Section 3. Any member of this section whose annual dues are more than six months past due ceases to be a member of this section. Enrolled members whose dues have been paid constitute the membership of this section.

ARTICLE III

Officers

Section 1. The officers of this section are as follow: Chair, Vice-Chair, Secretary, and Treasurer.

Section 2. There shall be a Council which shall consist of the Chair, Vice-Chair, Secretary, and Treasurer, and all former Chairs, all of whom are members, ex-officio, together with four other members to be elected by the section as provided in these bylaws.

Section 3. The Chair, Vice-Chair, Secretary, and Treasurer must be nominated and elected at each annual meeting of this 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 of the section, and until their successors have been elected and qualified.

Section 4. At the organizational meeting of the section, or if none is held, then at the first annual meeting of the section, two members of the Council shall be nominated and elected to serve for one year, and two for two years (year, as herein used, meaning a term beginning at the close of the annual meeting at which the members of the Council were elected and ending at the close of the first or second annual meeting of this section, respectively). Thereafter, upon the expiration of each of these initial terms, two members of the Council shall be elected at each annual meeting of the section 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 of the section.

Section 5. If any elected member of the Council fails to attend three successive meetings of the Council, the office held by that member is automatically vacated, and the Council shall fill the vacancy for the unexpired term.

ARTICLE IV

Nomination and Election of Officers

Section 1. Nominations. Before the first session of each annual meeting of the section the Chair shall appoint a nominating committee of three members of the section. That nominating committee shall make and report nominations to the section for the offices of the Chair, Vice-Chair, Secretary, Treasurer, and members of Council. Other nominations for the same office may be made from the floor.

Section 2. Elections. All elections must be by written ballot unless otherwise ordered by resolution duly adopted by the section at the annual meeting at which the election is held.

ARTICLE V

Duties of Officers

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

Section 2. Vice-Chair. Upon the death, resignation, or during the disability of the Chair, or upon 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 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 4. Treasurer. The Treasurer is the custodian of all financial books, papers, 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 accounting department on a monthly basis all bank statements, along with all cancelled checks and deposit slips and the check register.

ARTICLE VI

Duties and Powers of the Council

Section 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 the bylaws of this section. The Council shall authorize all commitments or contracts which require the payment of money, and shall authorize the expenditure of all funds.

Section 2. The Chair may appoint committees from section 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 3. The Council, during the interim between annual meetings of the section, may fill vacancies in its own membership or in the offices of 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 of the section or until their successors have been elected and qualified.

Section 4. Members of the Council when personally present at meeting of the Council shall vote in person, but when absent may communicate their vote, in writing, regarding any proposition, to the Secretary and have the vote counted with the same effect as if cast personally at the meeting.

Section 5. The Chair of the section may, and upon 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 upon which the Council may be authorized to act, and the members of the Council may vote regarding that proposition by communicating their vote, in writing over their respective signatures, to the Secretary. 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 of these bylaws constitutes the vote of the Council the same as if the vote was conducted under Article VI, Section 4 of these bylaws.

ARTICLE VII

Meetings

Section 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 2. Special meetings of the section may be called by the Chair at a time and place determined by the Chair.

Section 3. The members of the section present at any meeting constitute a quorum for the transaction of business.

Section 4. A binding action of the section requires a majority vote of the members present.

Section 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, provided that the action must also be submitted for approval to the Board of Directors of the State Bar of Texas.

ARTICLE VIII

Miscellaneous Provisions

Section 1. The fiscal year of the section is the same as that of the State Bar of Texas.

Section 2. No salary or compensation may be paid to any officer or member of this section except that actual expenses of the section's officers may be reimbursed if approved by the Council.

ARTICLE IX

Amendments

These Bylaws may be amended at any annual meeting of the section by a majority vote of the members of the section 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 the _____ day of _____, 1996, by a vote of _____ to _____.

Chair

Date

Secretary

Date

**PROPOSED COMMITTEES FOR
THE GAY AND LESBIAN ISSUES SECTION
OF THE STATE BAR OF TEXAS**

1. Continuing Legal Education Committee
2. Newsletter Committee
3. Membership Committee
4. Annual Meeting Committee
5. Financial Operations Committee
6. Public Information and Speakers Committee
7. Pro-Bono Committee

**PROPOSED 2-YEAR BUDGET
GAY AND LESBIAN ISSUES SECTION
STATE BAR OF TEXAS**

FIRST YEAR

Revenue

Dues 200 members @ \$10	\$2,000
Annual C.L.E. conference	<u>4,000</u>
TOTAL REVENUES	\$6,000

Expenses

Stationery, Postage	\$ 400
Newsletter	1000
Annual C.L.E.	<u>4000</u>
Subtotal	\$5,400
Allowance for unexpected expenses	600
TOTAL EXPENSES	\$6,000

SECOND YEAR

Revenue

Dues 200 members @ \$10	\$2,000
Annual C.L.E. conference	<u>4,000</u>
TOTAL REVENUES	\$6,000

Expenses

Stationery, Postage	\$ 400
Newsletter	1000
Annual C.L.E.	<u>4000</u>
Subtotal	\$5400
Allowance for unexpected expenses	600
TOTAL EXPENSES	\$6000

GAY AND LESBIAN STATE BAR SECTION
ATTORNEY STATEMENTS RECEIVED

[redacted to omit State Bar member number and address]

1	Martha Amanda Fitzwater	Austin
2	Christine Lynn Cordell	Houston
3	Sheila R. Haley	Houston
4	Clyde Hill Williams	Houston
5	Larry Stephen Perry	Houston
6	J. Patrick Wiseman	Austin
7	Randall D. Chapman	Austin
8	Julie Marie Oliver	Austin
9	Mitchell Katine	Houston
10	Jessica R. Jones	Houston
11	John Christopher Greco Jr.	Houston
12	Lawrence W. "Larry" Sauer Jr.	Austin
13	Judith A. "Judy" Doran	Austin
14	Henry John Albach IV	Dallas
15	Cameron M. Cunningham	Santa Rosa, California
16	Shelia Enid Cheaney	Austin
17	John Edward Collins	Dallas
18	Beatrice Mladenka-Fowler	Houston
19	David W. Hannah	Houston
20	William F. "Bill" Goodman	San Antonio
21	David Alfred Kahne	Houston
22	Douglas Caddy	Houston
23	Charles L. Stewart	Dallas
24	Christopher V. Bacon	Houston
25	Michael E. Alexander	Houston
26	Steven E. Kirkland	Houston
27	Gerald Mark "Gerry" Birnberg	Houston
28	David A. "Dave" Jones	Houston
29	Priscilla E. Magouirk	San Antonio
30	Donald Ray "Don" Poston Jr.	Houston
31	David Marc Baldwin	Dallas
32	Debra Danburg	Houston
33	Barry S. Baumgarten	Houston

34	Charles A. Spain	Houston
35	John Sidney Adcock	Houston
36	Veronica F. Jacobs	Houston
37	Yolanda Denise “Loni” Clay	Houston
38	Alice S. Wilson	Houston
39	Samuel Gutierres	Houston
40	Penelope T. “Penny” Leuchtag	Houston
41	Richard F. Vachris	Houston
42	Dale Allen Carpenter II	Houston
43	T. Allen Rasmussen	San Antonio
44	Donna Marie Aversano	Houston
45	Marion S. Friedman	Houston
46	Susan I. Rokes	Houston
47	Diana Carol Johnson	Houston
48	Connie Moore	Houston
49	Debra E. Hunt	Houston
50	Clyde R. Leuchtag	Houston
51	David J. Elliott	Houston
52	Michael Joseph Garrett	Houston
53	James R. “Jim” Cochran Jr.	Richardson
54	Laurie Rayson Eiserloh	Austin
55	Betty Luke	Dickinson
56	Lee McCreary Taft	Dallas
57	Joel Lloyd Lazarine	Dallas
58	Richard H. Peeples	Dallas
59	James A. Deets	Dallas
60	John Rogers	Dallas
61	Margaret A. “Maggie” Harris	Houston
62	Katherine L. Butler	Houston
63	K. Susie Adams	Houston
64	Elena-Faye Di Iorio	Bellaire
65	Tobin Andrews Sparling	Houston

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JUL 29 1996

July 26, 1996

Ms. Kathy Casarez
State Bar of Texas
Section Coordinator
P O Box 12487
Austin, Texas 78711

Re: Creation of State Bar gay and lesbian issues section

Dear Kathy:

Enclosed please find seven (7) more statements for the creation of the gay and lesbian issues section of the State Bar of Texas.

I will continue to forward the statements to you as I receive them, but please do not delay in submitting the necessary paperwork to the Board of Directors, as I would like to get the Section approved and created as soon as possible.

Thank you for your professional assistance and handling of this matter.

Sincerely yours,

Williams, Birnberg & Andersen, L.L.P.

By:


Mitchell Katine

GAY AND LESBIAN STATE BAR SECTION
ATTORNEY STATEMENTS RECEIVED

[redacted to omit State Bar member number and address]

Second set sent to State Bar on 7-26-96:

66	Linda Farin	Austin
67	Richard A. Holmes	Austin
68	Phillip W. Lacy	Houston
69	Tom R. Doyal	Austin
70	Daniel K. Redman	Austin
71	Suzanne Bryant	Austin
72	Lester L. "Sonny" Hood III	Austin



State Bar Board Meets —

Fort Worth

— Adopts Legislative Program

THE STATE BAR BOARD OF DIRECTORS APPROVED a legislative package that includes a proposal to add filing fees to civil cases to help fund legal services to the poor. The proposal includes adding a \$25 dedicated fee for civil cases at the appeals and Supreme Court level, \$10 to the district court level, and \$5 for family law, county court, and justice of the peace cases. If passed by the Texas Legislature, the proposal could raise more than \$4 million for legal services to the poor programs.

Trey Apffel of Texas City, chair of the Board Legislative Committee, reminded the board that it had adopted the "Texas Plan for Donated Legal Services" during the last bar year and that this proposed filing fee add-on was part of that proposal.

"This proposal fits in the goal of improving legal services

to the public," said Apffel, in making the committee's recommendation that this proposal be part of the State Bar's legislative package.

Charles Awalt of Dallas, representing the State Bar General Practice Section, spoke against the proposal. After reminding the board that a similar proposal was turned down prior to the last legislative session, Awalt said, "The General Practice Section does not believe this is a proper function of the State Bar of Texas, a mandatory state bar.

"We believe there are constitutional questions regarding this

proposal ... and that it is essentially a discriminatory tax levied on litigants." Awalt ended by explaining that the tax is a regressive tax and that the section he represented, "objects to this proposal carrying the implied support of Texas lawyers."



Ralph C. "Red Dog" Jones and Nancy and Frank Newton.

Fifth Circuit Rules Against Texas IOLTA Program

The Fifth Circuit Court of Appeals ruled Sept. 12 that clients have a property right in interest earned on funds placed in IOLTA accounts.

The opinion in *Washington Legal Foundation et al. v. Texas Equal Access to Justice Foundation, et al.* calls into question the basic premise of the Interest on Lawyers' Trust Accounts Program (IOLTA). The program, up until now, has taken funds that are either too small or held for too short a time to earn interest for a client, and placed them in a pooled trust account with interest going to the foundation which makes grants to 501(c)(3) organizations that provide civil legal services to the poor.

The Fifth Circuit reversed the case and remanded it to the district court, which had ruled that the program was constitutional and that funds generated in IOLTA accounts do not belong to the client or the lawyer. The Texas program has filed for a rehearing before the Fifth Circuit, but is not optimistic that one will be granted.

Frank Newton, chair of the foundation board of directors, said that the foundation hopes that after the case is sent back to the district court, the U.S. Supreme Court will accept cert. The ruling in the Fifth Circuit is opposite of findings in the First and 11th circuits which have found IOLTA programs constitutional.

Nationally, Newton said, "this case takes on tremendous importance."

Hughes & Luce will continue its pro bono representation on the foundation's behalf. Haynes and Boone appellate specialist Lynne Liberato will also assist in the appeals process and in the development of a plan if the Texas IOLTA program has to be suspended.

Newton added that the court's decision could have far-reaching repercussions for traditional banking practices: "If the analysis of the Fifth Circuit is right, then every bank customer, could call their bank every day and tell them what to do with the float earned on their money."

Betsy Whitaker, a director from Dallas who chairs the Board Ad Hoc Committee on Pro Bono, told directors that the State Bar must decide whether it wants to be a follower or leader in the question of provision of basic legal services to the poor.

"We must do something to ensure that people who cannot afford legal services do not have the door shut on them," she said.

Jan Soifer of Austin commented that the crisis of funding for legal services to the poor "is not just a problem for lawyers, it is a societal problem and society must pay. When the government quits paying, the revenue has to come from somewhere and this is the only place where we have a political chance of getting funding."

Robert "Bobby" Guerra of McAllen, spoke for most directors when he said, "This will be difficult, but what else can we do? This proposal will not fix the problem, it will only help the problem. We have an obligation to ensure that pro bono legal services are available to people throughout the state."

The State Bar legislative package will also include proposals regarding access to the criminal histories of those lawyers involved in suspected barratry cases and for those persons involved in the unauthorized practice of law and proposals from the Family Law Section. The Real Estate, Probate and Trust Law Section will be allowed to carry some legislative proposals in its own name.

All legislation approved by the State Bar Board must meet the criteria established in the State Bar Policy Manual (Section 15.01.03). Policy requires: a) proposed legislation must fall within the purposes, expressed or implied, of the State Bar; b) adequate notice and opportunity must be given for presentation of opposing opinions and views; c) the proposed legislation cannot present the prospect of substantial division among the bar; d) the proposals must be in the public interest; e) the primary purpose of proposed legislation cannot be economic benefit for members of the State Bar; and f) the proposed legislation cannot promote or impede the political candidacy of any person or party to promote a partisan political purpose. For information about the State Bar Legislative Program or Legislative Policy, contact the State Bar Governmental Relations Office at (800)204-2222, Ext. 6026.

The Ad Hoc Committee on Pro Bono reported on meetings it held with directors throughout the state to discuss the pro bono issue. Directors were then asked to return to their communities and work with their constituents, bar leaders, legal services providers, and social agencies to seek the best methods of ensuring access to the judicial system for all — regardless of ability to pay.

"We are in a time of change," said Betsy Whitaker, as she reminded directors of tremendous cuts in federal funding to legal services and the constitutional challenge to the IOLTA program. "This time of flux is an exciting opportunity for us. We have an opportunity to listen to what lawyers are saying regarding pro bono.

"Lasting and satisfying change does not happen when the State Bar issues an edict. We must listen creatively and hear what we can do to help the lawyers of this state. We can come up with a program that can be a model for other states who are also grappling with this problem."

Whitaker told the board that in preliminary meetings the committee found a large degree of consensus in what is being said throughout the state regarding the provision of legal services to the poor. Directors were asked to report back on discussions within their districts so that a comprehensive report about proposed solutions to the legal services issue can be prepared.

Other issues discussed at the board meeting included:

- Steve Young of Austin, formerly first assistant general counsel, was named general counsel of the State Bar of Texas.

- An Appellate Practice Lawyers' Creed is under consideration by the Appellate Practice and Advocacy Section of the State Bar, according to Richard Orsinger of San Antonio. A final version will be presented to the State Bar Board for comment and approval.

- The State Bar Board refused to create a Gay and Lesbian Issues Section. Mitch Katine, Charles Spain, and Connie Moore explained the purpose of the new section and how far-reaching gay and lesbian issues can be within any area of the law.

"This section would be the next step in helping clients who have often been overlooked," explained Katine. "This section will help lawyers and will also help a portion of the profession that has felt disenfranchised from the State Bar."

Directors voting against the establishment of the section expressed concern that there were already too many sections, that this area of law should be incorporated within sections already in existence, and that, for many, their constituents would find this section highly controversial and inappropriate.

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