

**OFFICIAL MINUTES
STATE BAR OF TEXAS
BOARD OF DIRECTORS MEETING
Austin, Texas
April 17, 1998**

The Board of Directors of the State Bar of Texas met in regular session on April 17, 1998 at the Marriott at the Capitol Hotel in Austin, Texas. The meeting was called to order by Chair Guy Harrison, and the roll was called by Executive Director Antonio Alvarado. All Board members and liaisons attended the meeting. The invocation was conducted by Rabbi Kerry Baker of the Congregation Kol Halev.

1. APPROVAL OF ITEMS ON THE CONSENT AGENDA

Upon motion made by Immediate Past President M. Colleen McHugh and seconded by Judge Robert Anchondo, the following items on the Consent Agenda were approved:

A. Minutes:

- 1) Minutes of Board meeting conducted on *January 16, 1998*
- 2) Ratification of actions taken by the Executive Committee at the meeting conducted on *February 21, 1998*: approved (1) minutes of the August 15, 1997 Executive Committee meeting; (2) motion "that the Executive Committee reaffirm the previous retention of Broadus A. Spivey and Lonny D. Morrison in connection with the representation of the Bar in Cause No. 96-61134, which is presently pending in Harris County, Texas in the 215th District Court, as counsel for the State Bar in connection with that lawsuit, and further, that Scott Rothenberg be retained to represent the Bar in connection with that same lawsuit, together with Mr. Spivey and Mr. Morrison."

B. Appointments by the President:

- 1) Commission for Lawyer Discipline:
 - a) for terms September 1, 1998, through August 31, 1999:
Chair: David L. Evans (Fort Worth)
Vice Chair: Peggy Foreman (Houston)
 - b) for three-year terms September 1, 1998 through August 31, 2001:
Robert Frost (Dallas)
Dan Naranjo (San Antonio)
- 2) Law Focused Education, Inc., for two-year terms effective:
 - a) April 1998 through April 2000:
Dr. Mary Black (Austin)
Lou DeSantiago (El Paso)
Rhonda Haynes (Austin)
Virginia James (Richardson)
Samuel Milledge (Houston)
Cindy Polinard (McAllen)
 - b) (retroactively) May 1997 through April 1999:
David Kent (Dallas)
Lilly Plummer (Odessa)
- 3) Resolutions Committee, for terms expiring at the 1998 Annual Meeting:
 - a) Temporary Committee:
Temp.-chair: SBOT Immediate Past Chair of the Board
- Lynne Liberato (Houston)

Temp. Vice-Chair: TYLA Immediate Past Chair
- Baldemar Garza (Rio Grande City)
Temp. Secretary: Local Bar Assn. (of host city)
-Deborah Sundermann
Temp. Parliamentarian: Carlos Villarreal
Alternate: Cynthia Cabaza (Weslaco)
Alternate: Carroll Robinson (Houston)

b) Review Committee:

Lynne Liberato (Houston)
Dan Pozza (San Antonio)
Bill Jones (Houston)

- 4) Texas Equal Access to Justice Foundation (IOLTA), for three-year terms July 1, 1998 through June 30, 2001:**
Richard A. Royds (Austin)
Mrs. Charles W. Wilson (Public Member, Marshall)
- 5) Texas Legal Protection Plan, for three-year terms June 1, 1998 through May 31, 2001:**
Robert Clines (Bedford) Ray Rische (Austin)
Richard Geiger (Dallas) Addison Terry (Dallas)
- 6) Texas Real Estate Broker/Lawyer Joint Committee, to complete Darren G. Woody's unexpired term through August 31, 2003:**
Jerry Prager (Dallas)

C. Other Items:

- 1) Addition to State Bar Rules: Article III, Section 8, regarding policies and procedures for collection of occupation tax, for submission to the Supreme Court (See Exhibit A.)**
- 2) TYLA President's appointment of sergeants-at-arms to serve at 1998 Resolutions Committee: (*all of Corpus Christi*)**

Arnold Gonzales, Jr.	Ruben Lerma
Liana Gonzales	Diana Martinez
Martha Huerta	Beverly Swallows
- 3) Recipients for the pro bono and Garms awards to be presented at the Annual Meeting:**
 - a) Pro Bono Award: West Texas Legal Services' Private Attorney Involvement Program of Lubbock**
 - b) Frank J. Scurlock Award: Thomas J. Brandt, Jr. (Houston)**
 - c) The J. Chrys Dougherty Legal Services Award: Raymond L. Gill (San Juan)**
 - d) W. Frank Newton Award: The Law Firm of Nix, Patterson & Roach, L.L.P. (Daingerfield)**
 - e) The Nancy Garms Memorial Award: Hugh C. Akin (Dallas)**
- 4) Courtesy resolutions for 1998 Annual Meeting (See Exhibit B.)**
- 5) SBOT 1998-1999 holiday schedule (See Exhibit C.)**

2. CHAIR OF THE BOARD ELECTION

Chair Harrison indicated that Roberto "Bobby" Guerra had withdrawn his name for consideration in the Chair of the Board election. The remaining candidates for 1998-1999 Chair of the Board were (in order of balloting):

Elizabeth "Betsy" Whitaker
Roy Sparkman
Ralph "Red Dog" Jones

The candidates chose not to be present during the voting. **President Richard Pena abstained from the vote. Betsy Whitaker won the election.**

3. REPORT FROM THE PRESIDENT

A. General Report

President W. Frank Newton reported that John McKay (President of the Legal Services Corporation), Richard Royds (Chair of the Board of the Texas Equal Access to Justice Foundation), and Bar leaders had met and agreed to coordinate activities and planning. The service care providers will meet on May 8-9 for a planning session to focus on the use of the filing fee fund.

President Newton also reported that on April 15, several leaders - Beverly Tarpley (Chair, standing committee on Legal Education and Admission to the Bar), Jim White (special consultant to the ABA) and Herman Hill Kay (Dean at Bolta and Chair of the Diversity Subcommittee of the Legal Education) - and the Texas deans met to discuss answers to continuing diversity difficulties in the law schools in Texas.

B. Minority Directors

Ellen Grimes, chair of the Board Minority Representation Committee and the Ad Hoc Committee to Select Minority Directors, gave an overview of the selection process. Grimes indicated that the committee had recommended four nominees to President Newton for consideration for appointment to the minority director positions being vacated by Robert Anchondo and Nelda Harris. The four nominees were Andrea Pair Bryant (Austin), Jim Coronado (Austin), Daniel Hu (Houston), and TJ Johnson (Plano). Included in the Ad Hoc Committee's recommendations were suggestions (1) that the appointment process be completed before the expiration of the general election period to allow those nominees not selected a chance to run in the general elections, and (2) that the pool of nominees be tapped for possible committee or program appointments.

President Newton indicated that he had appointed Andrea Bryant and Daniel Hu as the two minority directors. Upon motion by Carroll Robinson and second by TYLA President Bill Mateja, the appointments were ratified.

4. NOMINATIONS AND ELECTIONS COMMITTEE

Reporting as Chair of the Nominations and Elections Committee, Immediate Past Chair of the Board Lynne Liberato moved the following recommendations on behalf of the committee:

- A. **Amendment to the purpose clause of the Nominations and Elections Committee [Board Policy Manual, Appendix E], "to allow the Nominations and Elections Committee to make recommendations pertaining to the general elections, not just to make recommendations relating to the Ppresident-elect." The motion carried. (See exhibit D.)**

- B. "Beginning with the next election for Board membership that the ballot mailing include biographical information about each director candidate in contested races." The motion carried. Liberato indicated that the inserts would also include pictures of the contested candidates.

5. REPORT FROM THE EXECUTIVE DIRECTOR

A. General Report

Executive Director Tony Alvarado highlighted several items that were included in the latest edition of the *SBOT Executive Reporter*, a newsletter that he initiates for Board members: the SBOT website, Books and Systems Director Sue Mills' 25 years of service to the Bar, and the financial disclosure filing deadline (April 30).

Alvarado invited Board members to attend the activity based costing workshop scheduled for Saturday morning. He also indicated that information about the reorganization process was included in the *Executive Reporter* and that the appropriate Board committee(s) would be kept informed about the reorganization efforts.

B. Financials

(February financial statements were included in the Board packets.) Executive Director Alvarado reviewed the financial statements ending March 31, 1998 and highlighted variances and other areas of special interest.

6. REMARKS FROM THE GENERAL PUBLIC

Visually impaired attorney Robert Stiles Patterson appeared before the Board to share a copy of the letter he had presented to the Supreme Court requesting reinstatement to the Bar with a waiver of dues because of his impairment.

7. REPORT FROM THE LAWYERS' ASSISTANCE PROGRAM

Past Chair of the Board Michael Crowley and Texas Lawyers' Assistance Program Director Don Jones gave a brief report on the program, which has been evaluated by the ABA as the premier assistance program in the nation.

8. REPORT FROM THE PRESIDENT- ELECT & BUDGET COMMITTEE

A. General Report

President-elect Richard Pena talked about (1) the visits to remote areas of the state that he and TYLA President-elect JoAnn Merica (along with Executive Director Alvarado and Local Bars Coordinator Karla Staha) have undertaken in an effort to outreach and address some of the issues and concerns of lawyers, (2) committee appointments, (3) communication plan (including a newsletter) to educate the lawyers and the public, and (4) the retreat/workshop planned for the Board on June 12 during the Annual Meeting in Corpus Christi.

B. Proposed SBOT 1998-1999 Budget

President-elect Pena indicated that the proposed, zero-based budget incorporates performance measures and would be presented by Executive Director Alvarado.

Executive Director Alvarado's presentation encompassed the purposes and goals of the State Bar, and also introduced the revised staff mission:

The mission of the staff
of the State Bar of Texas
is to serve our diverse membership and the public
in a fiscally and socially responsible manner
with programs adopted by the Board of Directors
to enhance the quality, integrity, and understanding
of and access to the legal system.

Executive Director Alvarado highlighted the trends, major events, and leading indicators affecting the Bar, and indicated three particular changes to the proposed budget, which were not included in the January presentation: (1) clearinghouse technology component (Lawyer Referral and Texas Lawyers Care), (2) communications plan (including a newsletter, radio PSAs, consultants fees, blast fax/e-mail capability, video), and (3) performance pay program (salaries and compensation). Elizabeth Lang-Miers (Chair, Coordination With Other Professional Groups Committee) also addressed the clearinghouse and hotline components of the budget.

David Keltner moved for approval of the 1998-1999 SBOT budget [for presentation to the Supreme Court]. Seconded by Jack Thompson, the motion carried on a show of hands. (See exhibit E.)

9. REPORT FROM THE ADMINISTRATIVE OVERSIGHT COMMITTEE

(Closed Session)

The Board met in closed session to discuss the following items as authorized by Texas Government Code, Section 551.074: (1) the evaluation, duties and compensation of the General Counsel; (2) the evaluation, duties and compensation of the Executive Director. No vote was taken in closed session.

(Open Session)

Upon return to open session, Robert Anchondo, Chair of the Administrative Oversight Committee, gave an overview of the responsibilities of the committee and indicated that the General Counsel Oversight Committee and the Commission for Lawyer Discipline had been included in the discussions concerning the General Counsel's evaluation. Anchondo presented a summary of the rankings and input received regarding the Executive Director and the General Counsel.

A. General Counsel

On behalf of the Administrative Oversight Committee, Anchondo moved that Steve Young continue employment with the State Bar as General Counsel and that his salary be adjusted to \$100,000. The motion carried with some opposition noted.

B. Executive Director

Anchondo indicated that some of the concerns about the Executive Director were the result of the implementation of reorganization. The Administrative Committee had recommended to Executive Director Alvarado that a process be undertaken with the committee to funnel information about the reorganization efforts to the Board.

On behalf of the Administrative Oversight Committee, Anchondo moved that Antonio Alvarado continue employment with the State Bar as Executive Director and that his salary be adjusted to \$119,080, plus a car allowance of \$600 per month, for a total of \$126,280. The motion carried with no opposition noted.

10. REPORT OF THE COMMISSION FOR LAWYER DISCIPLINE

Commission Chair Charles Smith indicated that the Commission docket is down to 35 cases as a result of streamlining the process and assigning investigators and lawyers to work on the cases at the lowest level in the investigatory panels. Filings remain at approximately 9,500; sanctions, 500-550; disbarments, suspensions, and resignations in lieu of disbarments, 200-250. The Commission is in the process of forming an executive committee to handle matters between commission meetings.

11. REPORT OF THE GENERAL COUNSEL

General Counsel Steve Young reported completion of (1) a statewide case audit and review (with 266 cases in litigation and 329 in the evidentiary process remaining, both at the lowest level in years), and (2) Professional Enhancement Program (PEP) coordinators workshop. The seventh annual investigators conference is scheduled in May. Thirty-five cases are being handled by special counsel.

12. REPORT FROM OTHER BOARD COMMITTEES AND MEMBERS

A. Ad Hoc Benchmark Committee

Roy Sparkman, chair of the Ad Hoc Benchmark Committee, highlighted some of the items contained in the data compiled as a result of input received from various benchmark partners across the nation. Recommendations from the committee will be presented at the June Board meeting.

B. Regarding Section Representation

Tim Sulak, chair of the Interim Section Coordination Committee and member of the former Ad Hoc Section Study Committee, reported that a consensus of the Council of Chairs resulted in the recommendation for the creation of a standing committee called Section Representatives to the Board. Sulak reviewed the requirements to become a member of the proposed committee: member of the Bar, member of at least one section of the Bar, and not serving as a member or a liaison to the Board of Directors. The committee would consist of six members: one of whom would represent sections of 500 members or less; two, sections with 501-2000 members; and three, sections with over 2000 members. A committee member must belong to at least one section of the size which he or she would represent, and no member shall be disqualified because of a change in section size. Each committee members should become familiar with issues of concerns of the sections which he or she represents.

Sulak indicated that the recommendation is an addition to language in the Policy Manual that would create the committee and the framework of the committee. The proposal also recommends that the President appoints as committee members the persons recommended by the Council of Chairs. Expenses of the members would not be reimbursed by the State Bar, but would be reimbursable by the sections. Sixty percent of the expenses would be reimbursed in equal shares by sections with more than 2000 members and 40 percent would be reimbursed by sections having 501-2000 members, with an overall annual expense request not to exceed \$12,000.

Motion 1:

Speaking as President-elect and not as chair of the James Watson Inn, Richard Pena recommended "that a standing committee be created as the Section Representatives to the Board Committee and policy manual section 6.01.01C be amended to add such committee and to add a further subsection setting forth the criteria for appointment, size, methodology of appointment and payment of expenses as set forth in the plan designated 'Plan B' presented by Richard Orsinger at the time of the report of the Ad Hoc Section Study Committee." Sulak moved adoption of President-elect Pena's recommendations. The motion was seconded by Nelda Harris. Robert Watson proposed an amendment to have the committee fully funded

out of the General Fund of the State Bar of Texas. Sulak and Harris accepted the friendly amendment. Upon a call to vote, and a subsequent show of hands, the motion failed 21:20.

Motion 2:

Betsy Whitaker moved to resubmit the recommendation *without* the funding amendment. Seconded by Hector Zavaleta. On a show of hands, the motion carried 25:16. (See Exhibit F.)

C. Appeals Committee

1) Appeal by Bryant Berry, Jr.

John Mercy reported that the Appeals Committee had met with and considered the appeal by Bryant Berry, Jr. to the Texas Board of Legal Specialization (TBLS). **On behalf of the committee, Mercy moved that the Board uphold the decision by TBLS to not recertify Mr. Berry. The motion carried.**

2) MCLE Appeals Process

Mercy moved for Board approval of the process by which appeals can be taken from the MCLE Committee. Mercy clarified that if the process is approved, the MCLE Committee will promulgate some regulations in conformity with this policy to allow appeals from their decision-making process so that the people could have some recourse. **Roberto Guerra recommended that the effective date of the new process be 30 days from Board approval, which was acceptable to Mercy and Judge Ernie Armstrong (chair of the MCLE Committee). The motion carried. (See exhibit G.)**

D. Client Security Fund Committee

Steve Smith reported that approximately \$312,000 has been paid out of the Client Security Fund during the current fiscal year and approximately \$160-170,000 is expected in restitution.

Smith indicated that the proposed revisions to Part V of Board policy will conform the policy manual with actual practices. **On behalf of the committee, Smith moved that the Board amend the Client Security Fund provisions in the policy manual as proposed. The motion carried. (See exhibit H.)**

E. General Counsel Oversight Committee

Robert Frost stated that the General Counsel Oversight Committee will not make any recommendations about Texas Disciplinary Rules of Professional Conduct Rule 5.07 because there are adequate, existing disciplinary rules to deal with the reprehensible conduct as outlined in 5.07.

The committee will make a recommendation in June about the advertising rules for inclusion in the Fall referendum, pending input from various sources. Mitchel Winick, chair of the Advertising Review Committee, presented an overview of the pending advertising rules and indicated that the increased use of the Internet has precipitated a revision to the rules.

F. Grant Review

1) Grant Applications

Jan Soifer reported that the Executive Committee had not met since the grant applications had been received and that the Texas Bar Foundation had already made awards to TYLA on the three grants requested, pending Board approval.

Soifer presented an overview of the grants that had been submitted for review by the Grant Review Committee and, on behalf of the committee, moved that the following grants be approved for submission to the Texas Bar Foundation and that the requirement of the Executive Committee approval be waived:

- a) "Lawtalk: An Automated Legal Line" (\$3,000) Sponsor: TYLA Legal Services to Low Income Texas Committee
- b) "Re-Entering the Workforce: A Guide for People with AIDS" (\$5,000) Sponsor: TYLA
- c) "Steppin' Out/Your Rights and Responsibilities" (\$30,000) Sponsor: TYLA

The motion carried. (See Exhibit I.)

2) Grant Review Policy Revision

Soifer highlighted the problem of the current grant review process, which requires Executive Committee review of proposed grants before submission to the Board for approval. TYLA President Bill Mateja moved that the Board approve Lynne Liberato's suggestions for revision of the grant review process, as outlined in the memo included in the Board packets, subject to input concerning an appeals process to the Board. The motion carried. (See Exhibit J.) Tim Sulak suggested that the Policy Manual Committee would need to review the final recommendation for inclusion in the manual.

G. Regarding the Out-of-State Lawyer Liaison

General Walt Huffman, Out-of-State Lawyer Liaison, reported that letters received in response to his communication with the out-of-state lawyers indicated (1) that the State Bar is the best bar to which those members belong and (2) that some of those lawyers were happy to learn that there was someone representing their interest before the State Bar Board of Directors. General Huffman clarified that those members are not really represented on the Board because the Out-of-State Lawyer Liaison has no vote. The one-year term of the Out-of-State Lawyer Liaison has also added to the lack of representation. General Huffman suggested that during the Sunset review process, strong consideration be given to the term and voting status of the Out-of-State Lawyer Liaison so that out-of-state lawyers can be represented by a voting member on the Board. In the interim, General Huffman recommended that the Out-of-State Lawyer Liaison position be made a three-year tenured position.

David Holt moved to amend subsection 9.03.05 of the Policy Manual by adding the following two sentences:

The term of appointment shall be for three years. The member presently serving shall fill out the term until the end of the 1999-2000 Bar year, with the president appointing the first full three-year term to begin with the year 2000 annual meeting.

The motion was seconded by Jack Thompson. President Richard Pena interjected that he had also appointed General Huffman to serve a second year. The motion carried. (See exhibit K.)

H. Long Range Planning

Kelly Frels reviewed the report of the Long Range Planning Committee as contained in the Board packets. Items included in the report were: amendment to the Long Range Strategic Plan, recommendations for a Chair-elect of the State Bar Board, discussion about website and Long Range Plan implementation, evaluation of the State Bar organization structure in regards to sections and divisions, inclusion of statements about the financial impact and relationship to State Bar goals with proposals coming before the Board, roles of the staff and Board, and frequency of Board meetings. (See exhibit L.)

(1) Long Range Goals

President-elect Pena spoke in favor of the amendment to the Long Range Strategic Plan. On behalf of the Long Range Planning Committee, Frels moved that the Long Range Strategic Plan be amended as follows:

GOAL #6: **The State Bar must foster the relationship of the legal profession with the public through community service and education on the Justice System.**

TYLA President-elect JoAnn Merica offered a friendly amendment to broaden the goal from "education on the Justice System" to "education on the legal system and the administration of justice." The friendly amendment was accepted. On the call to vote, the motion as amended passed. (See exhibit M.)

(2) Chair-elect of the Board

Robert Watson presented the proposal to create a new Board position - Chair-elect. Second-year directors would submit their names in April to be considered for election in June during the Annual Meeting to serve as Chair-elect during his or her third year, and would serve as Chair (nonvoting) in the fourth year.

On behalf of the Long Range Planning Committee, Kelly Frels moved the adoption of the amendment to the State Bar Rules, subject to passage during the Fall referendum. The motion passed. (See exhibit N.)

(3) Fiscal Impact/Relation to Goals Statements

On behalf of the committee, Frels moved "approval of Board policy [subsection 4.07.02A(2)] which would require on items coming before the Board a financial impact statement and a statement of the State Bar goals to be furthered by the proposed agenda item." The motion carried. (See exhibit O.)

I. Legal Services

(1) Resolution on Legal Services for the Poor, Voluntary Legal Services and Community Service

The following paragraphs summarize Frels' proposal regarding the resolution on legal services for the poor, voluntary legal services and community service:

The resolution on legal services for the poor, voluntary legal services and community service is the ultimate compromise on reporting legal services to the poor, other volunteer legal services, and community service by Texas lawyers. The final language of this resolution was worked out through discussion and written communications among Frank Newton, President of the SBOT; Guy Harrison, Chair of the SBOT Board; Harriet Miers, Chair of the LSPCM Committee; and Kelly Frels, Chair of the Board committee. The whereas provisions set out the reasons for the adoption of the resolution, and the resolution speaks for itself. The pros and cons are listed and the financial impact and noncompliance with the SBOT Long-Range Strategic Plan are stated.

Several matters not specifically mentioned in the resolution are worthy of note. First, nominal payments made for the purpose of insuring the client's ownership in the representation are to be encouraged. So long as the nominal payments are not retained by the lawyer but are paid or given to a 501(c)(3) nonprofit organization, the otherwise free service will be reportable as legal services for the poor category. Second, this resolution does not address or conflict with the 50 hour aspirational goal for legal services to the poor in any way. Third, the printing of the reporting forms have been held so this year's reports can use the new reporting categories.

Motion 1:

On behalf of the Legal Services Committee, Frels moved "that the Board approve the Resolution of Legal Services to the Poor, Voluntary Legal Services and Community Service and that the two paragraphs [stated above] be included in the minutes of this meeting."

Jan Soifer spoke in opposition of the motion, stating that the Board's focus should be on improving delivery of legal services as opposed to the divisive issue of the definition of pro bono. Soifer suggested holding discussions and conducting a study about the possibility of eliminating the requirement to report pro bono hours, on how to gather more reliable data about the legal services being provided to the poor, and on how to encourage more lawyers to provide legal services to the poor.

Motion 2:

Soifer moved "that we table this resolution until the June meeting and that we focus in the next three months on whether or not we can eliminate reporting altogether and that we focus on the suggestions that we've come up with to eliminate pro bono reporting, come up with other ideas on how to improve delivery of legal services to the poor. Chair Harrison indicated that the motion to table was out of order. Soifer offered a motion to postpone to the June meeting the vote on the main motion. The motion was seconded by Nelda Harris.

Vote on Postponement:

After much discussion, the call to vote on the motion to postpone failed.

Vote on Main Motion:

On a call to vote on the main motion to approve the resolution, the motion passed. (See exhibit P.)

(2) Clearinghouse Referral Line Proposal

On behalf of the Legal Services Committee, Frels moved "that the Board approve the SBOT clearinghouse referral line pilot proposal as set out in the description attached to this report." The motion passed. (See exhibit Q.)

13. ANNUAL MEETING RESOLUTIONS COMMITTEE

Executive Director Alvarado indicated that any resolutions received that was not in compliance with the filing requirements must be brought to the attention of the Board for a possible waiver. Two resolutions had been received: one from the Texakana Bar Association, which had been withdrawn; and the other by the General Practice, Solo and Small Firm Section, which, according to Corporate Counsel Michelle Hunter, did not meet the filing requirements. Executive Director Alvarado indicated that unless a motion was made, he would not go forward with distribution of the resolution. Chair Harrison stated that the resolution, which had been filed in an untimely manner, would not be put forward for a lack of a motion.

14. REPORT FROM STATE BAR COMMITTEES, SECTIONS, & DIVISIONS

A. Professionalism

Berry Crowley, Chair of the Professionalism Committee, and Earl Hale presented a resolution to promulgate and implement a voluntary mentoring-type program of additional training of new lawyers by participating employers

in the state of Texas. The Protocol for Relationships in Ethics and Professionalism Program (PREP) had been favorably previewed by the members of the Supreme Court and would not have any fiscal impact on the Bar.

Scott Rozell moved for adoption of the resolution. Seconded by David Keltner, the motion passed. (See exhibit R.)

B. Proposed New Sections

1) Insurance Law Section

Ernest Martin, Michael Quinn, and Michael Huddleston joined forces to present the proposal for the new Insurance Law Section.

John Mercy moved “that we refer the creation of the section to the Section Coordination Committee for determination of whether or not this overlaps with some of the other sections that we currently have or whether it should be part of a broader section.” President Newton, on a point of order, indicated that under current rules, only the Board could make that determination. Chair Harrison clarified that the Board could refer any item for study to any committee and receive a report from that committee, if the item was seconded and approved. **The motion was seconded by Ed Lindsay.**

Mandy Newberger from the Consumer Law Section, spoke against the proposal. **Upon the call to vote and a subsequent show of hands, the motion passed.**

2) Sexual Orientation and Gender Identification Issues

Mitchel Katine indicated that the proposed section had been presented to the Board last year and had failed by one vote. The name had been changed, but the purpose of the proposed section remains the same: “The studying and reporting of laws, cases and statutes in the area of gay, lesbian, bisexual, transgendered and HIV law; and to provide a common meeting ground and forum for State Bar members interested in this area of the law, to meet and provide an opportunity for professional development.” Katine indicated that the proposal for the new section has met all the current requirements for the creation of a new section. Charles Spain and Larry Sauer, from the Individual Rights and Responsibilities Section (IRR), also spoke in favor of the proposed section.

Motion 1:

John Mercy moved “that the creation of this section be referred to the Section Coordination Committee for determination as to whether or not there is overlap between this section and other sections that currently exist and whether or this should be a separate section or part of another section.” The motion was seconded by Ed Lindsay.

Peter Vogel spoke in opposition of the motion and the delay, and stated that a representative from the section with the greatest possibility of overlapping (IRR) with the proposed section had spoken in favor of the new section. Several other members spoke in opposition to the delay in voting the section up or down.

In response to an inquiry, Chair Harrison clarified that the Section Coordination Committee had been created at the January 1998 Board meeting.

After much discussion, upon the call to vote and on a subsequent show of hands, the motion to refer failed.

Motion 2:

Vogel moved "for the creation of this section." Seconded by Soifer, the motion passed on a show of hands. (See exhibit S.)

15. **REPORT FROM THE TEXAS YOUNG LAWYERS ASSOCIATION**

TYLA President Bill Mateja distributed copies of "The Constitution of the United States of America", a TYLA project in cooperation with the Texas Education Agency, and made possible by a grant from the Texas Bar Foundation and additional funding by the State Bar.

16. **REPORT FROM THE SBOT INSURANCE TRUST**

Brooks Davis presented a brief report about the activities and status of the SBOT Insurance Trust.

There being no further business, the meeting was adjourned.

EXHIBITS ATTACHED

- EXHIBIT A: Addition to State Bar Rules: Article III, Section 8, regarding policies and procedures for collection of occupation tax
- EXHIBIT B: Courtesy resolutions - 1998 Annual Meeting
- EXHIBIT C: SBOT 1998-1999 holiday schedule
- EXHIBIT D: Amendment to Board Policy Manual, Appendix E - Nominations and Elections Committee purpose clause
- EXHIBIT E: 1998-1999 SBOT Budget
- EXHIBIT F: Amendment to Board Policy Manual, Section 6.01.01C - Section Representatives to the Board Committee
- EXHIBIT G: Amendment to MCLE appeals procedures
- EXHIBIT H: Amendment to Board Policy Manual, Part V - Client Security Fund
- EXHIBIT I: Grant Applications:
 - a) "Lawtalk: An Automated Legal Line" (\$3,000) Sponsor: TYLA Legal Services to Low Income Texas Committee
 - b) "Re-Entering the Workforce: A Guide for People with AIDS" (\$5,000) Sponsor: TYLA
 - c) "Steppin' Out/Your Rights and Responsibilities" (\$30,000) Sponsor: TYLA
- EXHIBIT J: Amendment to Board Policy Manual - grant review process
- EXHIBIT K: Amendment to Board Policy Manual, subsection 9.03.05 - re term of office for Our-of-State Lawyer Liaison
- EXHIBIT L: Long Range Planning Committee Report
- EXHIBIT M: Amendment to Long Range Strategic Plan - Goal #6
- EXHIBIT N: Proposed amendment to State Bar Rules - Chair-elect of the Board position
- EXHIBIT O: Amendment to Board Policy Manual, subsection 4.07.02A(2) - fiscal impact/relation to goals statements
- EXHIBIT P: Resolution of Legal Services to the Poor, Voluntary Legal Services and Community Service
- EXHIBIT Q: SBOT Clearinghouse Referral Line Pilot Proposal
- EXHIBIT R: Resolution for Protocol for Relationships in Ethics and Professionalism Program (PREP)
- EXHIBIT S: Creation of the Sexual Orientation and Gender Identification Issues Section

ORGANIZATIONAL STRUCTURE STATE BAR OF TEXAS BOARD OF DIRECTORS

OFFICERS

President	W. Frank Newton
President elect	Richard Pena
Immediate Past President	M. Colleen McHugh

EXECUTIVE COMMITTEE

W. Frank Newton, President	Roberto D. Guerra, Elected Member
Richard Pena, President elect	David E. Holt, Elected Member
M. Colleen McHugh, Immediate Past President	Bill Jones, TYLA Immediate Past President
Guy N. Harrison, Chair of the Board	Romeo Lopez, Public Member
Lynne Liberato, Immed. Past Chair of the Board	William B. Mateja, TYLA President
Robert S. Anchondo, Minority Member	Jo Ann Merica, TYLA President elect
Robert H. Frost, Elected Member	Stephen N. Smith, Elected Member
	Jan Soifer, Elected Member
	Roy T. Sparkman, Elected Member

EX OFFICIO MEMBERS OF EXECUTIVE COMMITTEE

Antonio Alvarado, Executive Director
Steven Young, General Counsel
Justice Craig T. Enoch, Texas Supreme Court Liaison

ELECTED DIRECTORS OF THE BOARD

Guy N. Harrison, Chair of the Board

Joel M. Androphy	Guy N. Harrison	Scott E. Rozzell
Steve C. Ashley	David E. Holt	Stephen N. Smith
Patricia Reed Constant	Ralph C. Jones	Jan Soifer
Bonnie C. Ericson	David E. Keltner	Roy T. Sparkman
Kelly Frels	Edward E. Lindsay	Timothy M. Sulak
Sharon N. Freytag	John R. Mercy	Jack W. Thompson
Robert H. Frost	Dan A. Naranjo	Peter Vogel
Charles R. Gregg	Kerry L. Neves	Robert A. Watson
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March 30, 1998



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JON ELIOT KING
OF COUNSEL

VIA OVERNIGHT DELIVERY

State Bar of Texas
Ms. Pat Hiller
Executive Assistant to the Board
1414 Colorado, Suite 301
Austin, Texas 78701

Re: Creation of new section
Agenda item for April 17, 1998 meeting

Dear Ms. Hiller:

In accordance with our prior discussions, enclosed please find over 200 signed petitions for the creation of the "Sexual Orientation and Gender Identification Issues Section" of the State Bar of Texas. Also enclosed is our proposed By-Laws, committees, and budget. I believe this satisfies all of the State Bar requirements for the creation of a new section.

I will be attending the April 17, 1998 Board meeting and will be prepared to present the new section request after 2:00 p.m.

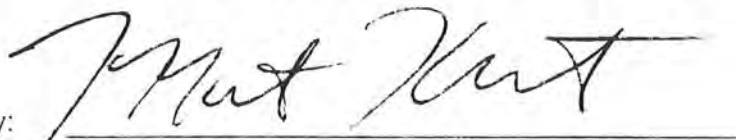
If you need any further information or if you have any questions, please give me a call.

Thank you for your assistance.

Sincerely yours,

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

By:



Mitchell Katine

PROPOSED

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

ARTICLE I

Name and Purpose

Section 1. This section shall be known as the Sexual Orientation and Gender Identification 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.

Section 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.

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. The initial officers of this section shall be:

Chair	Mitchell Katine
Vice chair	Ann Pike
Secretary	Charles Spain
Treasurer	William R. Thompson III

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.

Section 6. The initial executive council members shall be:

- | | |
|----------------------------|---------------------|
| 1. Mitchell Katine | 5. Matthew Eastus |
| 2. Ann Pike | 6. Connie Moore |
| 3. Charles Spain | 7. Martha Fitzwater |
| 4. William R. Thompson III | 8. Suzanne Bryant |

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.

Section 3. The jurisdiction of this 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.

Section 4. The section will not act as a political or, social advocacy group and shall comply with all State Bar policies, the State Bar Act and within the guidelines of *Keller-Gibson* case law.

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 _____, 1998, by a vote of _____ to _____.

Chair

Date

Secretary

Date

PROPOSED COMMITTEES FOR
THE Sexual Orientation and Gender Identification 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
Sexual Orientation and Gender Identification 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>
<u>Subtotal</u>	\$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>
<u>Subtotal</u>	\$5400
Allowance for unexpected expenses	600
TOTAL EXPENSES	\$6000

STATEMENT FOR CREATION OF NEW SECTION

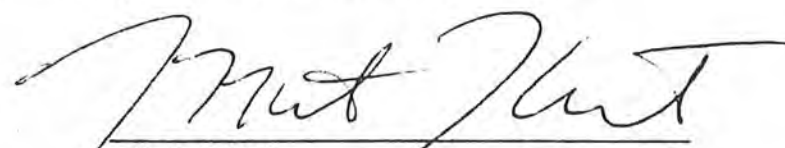
**THE SEXUAL ORIENTATION AND GENDER
IDENTIFICATION ISSUES SECTION
OF THE STATE BAR OF TEXAS**

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.

The contemplated jurisdiction of this section is not in substantial conflict, nor substantially overlap, with the jurisdiction of any section, standing committee or special committee of the State Bar of Texas.

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



Mitchell Katine

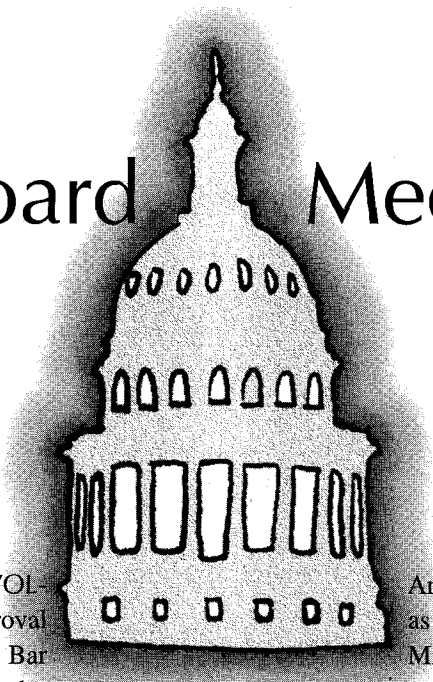
3-30-98

Date

***PETITION SIGNERS
WITH ADDRESSES REDACTED
COMING SOON***

**ACTUAL *SIGNATURES*
ARE ON FILE
AT THE
STATE BAR OFFICES**

State Bar Board Meets in Austin



WITH THE ADOPTION OF A NEW VOLuntary pro bono reporting form and approval of a clearinghouse referral line, the State Bar Board of Directors jump-started the implementation of the Three-Year Goals for Legal Services to the Poor.

BY KELLEY JONES KING

In what was a compromise between all groups interested in the definition of pro bono, the voluntary reporting form sent to Texas lawyers in May included expanded reporting options. In addition to reporting pro bono that falls within the strict guidelines adopted by the Board in 1992 and included in section six of the preamble to the Texas Rules of Professional Conduct, lawyers have the opportunity to report free legal services or those done at a substantially reduced fee that the benefit the public, and contributions of time for the public that are not legal services.

According to Kelly Frels, chair of the Board Legal Services Committee, discussions about voluntary pro bono reporting ranged from keeping it the way it was to doing away with it completely. "It was decided that until we have a better feel for what other data is out there, we should not do away with reporting," explained Frels.

Austin director Jan Soifer opposed the negotiated resolution, saying she believed the State Bar ought to be doing more to improve legal services to the poor, not discussing the definition of pro bono or what qualifies for reporting.

One of her primary reasons for seeking a delay in the adoption of the resolution was that the voluntary reporting done in the past few years has garnered incorrect statistics. She was also concerned that the new format would send Texas lawyers the message that the State Bar of Texas believes community service is as important as legal services to the poor.

The board also approved a clearinghouse referral line pilot project whereby qualified callers will be referred to appropriate local service providers for their particular legal matter. The clearinghouse and referral line are part of the Three-Year Goals for Legal Services. This pilot project will be part of the existing State Bar Lawyer Referral Service and will be evaluated on its effectiveness at the end of the year.

In other actions, the State Bar Board:

■ Approved the appointments of Daniel Hu of Houston and

Andrea Bryant of Austin to three-year terms as minority directors on the Board. The ad hoc Minority Representation Committee also recommended that nominees for minority directors be made at the January board meeting so those who are not selected may be encouraged

to seek election to open seats on the board.

■ Approved, beginning in 1999, the inclusion of a photograph and short biographical information with ballots for State Bar directors.

■ Approved the proposed 1998-99 budget for presentation to the Supreme Court of Texas for approval. According to President-elect Richard Pena, the State Bar is moving toward an activity-based budget which should make it clearer and easier to track the cost of each State Bar project. "The State Bar of Texas is financially sound. It is sensitive to saving and to no dues increase for the next few years," said Pena. "The State Bar of Texas does many things well but we can improve."

■ Approved raises for State Bar Executive Director Tony Alvarado and General Counsel Steve Young. After hearing a report from Robert Anchondo of El Paso regarding the evaluations of the two bar executives, the board approved raising Alvarado's salary to \$119,080 a year plus a car allowance of \$600 a month and Young's annual salary to \$100,000.

■ Approved the creation of the Section Representation to the Board Committee. The six-member committee will be made up of one representative from small sections, two representatives of medium-sized sections, and three representatives from large sections. The committee will attend meetings as non-voting members of the board, with their incurred expenses paid by the sections.

■ Approved amendments to the MCLE appeals process for programs that did not receive accreditation after going through the committee review process. The amendment sets out a timeline and procedure for appeals which includes 15 days to file an appeal with the MCLE director. The committee then has 30 days to prepare and certify a record of proceedings and file an answer with the State Bar Board of Directors Appeals Committee. The Appeals Committee will review written briefs and may hear oral arguments, but will only consider evidence previously submitted to the MCLE Committee. The appeals com-

mittee will make a recommendation regarding the appeal to the full board. Within 15 days after the board has made a decision, the executive director shall notify in writing the appealing party and the director of the MCLE department. For more information about MCLE accreditation, contact MCLE director Nancy Smith at (800)204-2222, Ext. 2109.

■ Approved items to be sent to State Bar members for referendum. Items approved by the Board must be certified for inclusion by the Supreme Court of Texas. The Board approved the creation of a chair-elect position on the State Bar Board of Directors but postponed for further study and comment proposed changes and additions to the Texas Rules of Professional Conduct Section Seven (the Advertising Rules). Proposed Advertising Rules changes address new technologies and marketing methods including the Internet, CD-Roms, and Infomercials. The Board will decide in June whether to include these changes in the scheduled November referendum.

■ Approved extending the term of the out-of-state liaison position on the board from one year to three years. Out-of-State Liaison Maj. Gen. Walter Huffman told the board the out-of-state liaison deserves to be a voting member on the board since there are more than 5,000 licensed Texas attorneys who practice outside the state. In the meantime, he believes the liaison ought to serve a three-year term like other directors so he or she would have time to make a contribution.

■ Added a new goal to the State Bar Long Range Strategic Plan:

The State Bar must foster the relationship of the legal profession with the public through community service and education on the justice system.

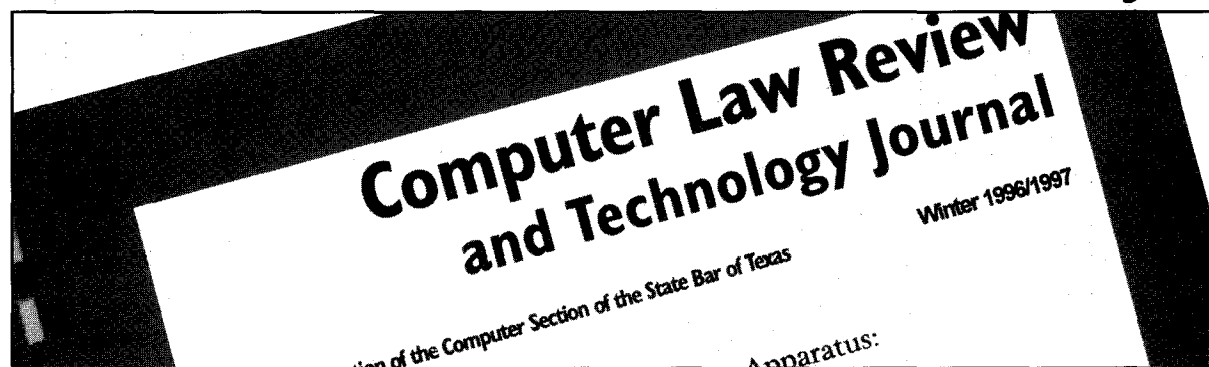
■ Referred the creation of a new section, the Insurance Law Section, to the Council Coordination Committee for review of whether its proposed purpose overlapped any other section. Proponents of the new section purported that insurance law is a separate field whose practitioners identify themselves as insurance lawyers. A representative of the Consumer Law Section spoke against the creation of the new section saying proposed topics were already included in the Consumer Law Section.

■ Approved the creation of the Sexual Orientation and Gender Identification Section. Proponents of the new section explained to the board that the section is substantive and will not be involved in social advocacy. Proponents presented a petition signed by more than 250 lawyers who expressed an interest in joining the section. Some of the issues to be covered by the section, according to its proponents, include: sexual harassment, HIV status and whether a disability exists, estate planning, labor law, insurance law, and real estate.

According to Charles Spain of Houston, the section will focus on a different spin to these traditional areas of law that other sections simply do not have the time to devote to them.

Attorneys interested in joining the section should contact Kathy Casarez, State Bar section coordinator, P.O. Box 12487, Austin 78711 or call (800)204-2222, Ext. 1519.

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