



TCDLA Board of Directors Meeting Minutes

Saturday, September 28, 2013
Sheraton Arlington
Arlington, Texas

Introduction

Bobby Mims, President calls the meeting to order at 10:00 am. A quorum was present. Bobby recognized all the past presidents, guests and new board members.

Roll Call:

Officers

P Bobby Mims, President
P Emmett Harris, Pres-Elect
P Sam Bassett, 1st VP
P John Convery, 2nd VP
P* David Moore, Treasurer
P Mark Snodgrass, Secretary
P Michael Gross, *Voice*
Editor

P Melissa Hannah
P Theodore Hargrove,
III
E Jo Ann Jacinto
P Laurie Key
P Jeanette Kinard
P Adam Kobs
A Michael McDougal
P* Patrick Metze
P* David O'Neil

E Jani Wood

Associate Directors

P Robert Barrera
E Curtis Barton
P Donald Flanary, III
P Steve Keathley
P Bradley Lollar
E Louis Lopez
P Hiram McBeth
P Michael McCrum
P George Milner, III
P* Angela Moore
E Simon Purnell
P Jeremy Rosenthal
P David Ryan
E Edward Stapleton, III
A John Stickels
P Oscar Vega

Directors

P John Ackerman
E Susan Anderson
P Marjorie Bachman
P Heather Barbieri
P Rick Berry
P Fred C. Brigman, III
P F. Clinton Broden
P Jaime Carrillo
P Jason Cassel
E Harold Danford
P Nicole DeBorde
P Emily Detoto Munoz
P Robert Fickman
P Steven Gordon
E Deandra Grant

E Anthony Odiorne
P Shawn Paschall
P Stephanie Patten
P Oscar Pena
A Bruce Ponder
E Carole Powell
E Bennie Ray
P Ray Rodriguez, Jr.
P Sarah Roland
P John Hunter Smith
P Clay Steadman
P George Taylor
E Gary Alan Udashen
P William Vitz
P Charles Coby Waddill
A James Whalen

Key: P = Present; *via phone, E = Excused Absence; A = Unexcused Absence

Past Presidents in Attendance: Richard Anderson, Tim Evans, Ronald Goranson, William Harris, Michael Heiskell, Robert Hinton, Scrappy Holmes, Dan Hurley, Craig Jett, Robert Lerma, Edward Mallett, Vincent Perini, Stanley Schneider

Staff: Joseph Martinez, Melissa Schank, Rick Wardroup, Mari Flores, Nitu Gill

MOTION: Minutes, June 15, 2013

Approve minutes from June 15, 2013, TCDLA Board Meeting in San Antonio. Motion made by Bob Hinton, seconded by Sam Bassett – motion carries.

Recognition of Fallen Heroes and Heroines, *Bobby Mims*

Recognition for fallen members: Richard Rodriguez - Harlingen, Kevin Clancy – Dallas, Susan Stone – Austin. Please also keep our members who have had family losses in your thoughts: Susan Johnston, Harold Danford, Simon Purnell, A moment of silence was given.

President State Bar of Texas, *Buck Files*

Buck gave thanks to President Bobby Mims and the support TCDLA has given Buck. Buck gave an update on his communication and meetings throughout the state as liaison.

Texas Weighted Caseload Study, *Jim Bethke*

Jim gave background of the Texas Indigent Defense Commission. Jim introduced Anthony Odiorne and Don Hase (chair of the committee). Don Reported on the new statue and suggested a resolution asking for more transparency.

MOTION: Resolution Implementation of the Fair Defense Act and a Call for Transparency in Appointment of Indigent Counsel.

WHEREAS, the Texas Criminal Defense Lawyers Association (TCDLA) is the nation's largest statewide organization of criminal defense lawyers, with more than 3,400 criminal defense lawyer members in the State of Texas; and

WHEREAS, a significant number TCDLA's members provide criminal defense assistance to indigent defendants by appointment method in the state courts of Texas; and

WHEREAS, the Texas Indigent Defense Commission (TIDC) has undertaken to implement the purposes of the Fair Defense Act (FDA) and to examine the statistics of indigent defense appointment of counsel as required by its implementing legislation; and

WHEREAS, it is necessary that the TIDC obtain data from attorneys, county officials and Judges in order to evaluate and thereby provide transparency to the public in the appointment of counsel for indigent defendants; and

WHEREAS, the appointment of indigent defense counsel is implemented by many different schemes in almost as many different ways as there are counties in Texas; and

WHEREAS, there have been many complaints by TCDLA members to the TIDC about the way that some counties are implementing the appointment of counsel, that some of these complaints are about some Judges who allegedly make appointments of counsel with apparent favoritism to certain counsel, and that circumstances are that in some counties lawyers are handling more cases than is possible for any lawyer to render effective assistance of counsel, and that there are many TCDLA members who wish to accept appointment to indigent cases and who are as qualified as others who are appointed “off wheel” or out of order on the counties’ plan for indigent defense;

WHEREAS, TCDLA believes that statistics should be transparent and broken down by individual court; and that courts should always make “findings” on the record when a decision is made to appoint counsel for “good cause” and not use the rotation system or the “wheel” established by their plan as specifically required by Article 26.04(a) of the Texas Code of Criminal Procedure. The Fair Defense Act does give trial judges the power to make an “off-wheel” appointment based on “good cause,” but such instances should be rare and not the common practice. TIDC should require and publish statistics broken down by individual court to add transparency to the entire process so that the public (including TCDLA members) will always know which Judges are using “good cause” repeatedly to appoint certain attorneys rather than following the rotation system or the county plan for indigent defense; and these statistics should accurately reflect which courts are repeatedly not following the FDA’s rotation system.

WHEREAS, TCDLA desires the best possible defense for all persons accused of crimes; TCDLA believes this is the best way for the Criminal Justice System to work properly and fairly for all.

WHEREAS, TCDLA believes the best way to achieve this goal is for the FDA to be fully implemented and followed as it was originally intended with rotation of qualified counsel being the primary way attorneys are appointed for indigent criminal defendants in Texas. The FDA sought to provide effective, independent counsel for all indigent defendants accused of crimes and end the practice of patronage in appointment of counsel. When the FDA is followed as originally intended with rotation wheels being the primary means of appointing counsel, attorney workloads will be more balanced.

WHEREAS, TCDLA believes that instances of criminal defendants waiving their right to counsel should be rare, and statistics should be transparent and broken down by individual court so that the public can easily see which courts have a disproportionate amount of waivers of counsel.

NOW, THEREFORE, BE IT RESOLVED that the Texas Criminal Defense Lawyers Association calls on the TIDC to adopt measures to insure that court records are fully transparent, computer searchable and tabulated for each individual court, so that the public can easily determine which courts are complying with the letter and spirit of the Fair Defense Act and which courts are not; and that these statistics should capture and accurately report waivers of counsel, wheel vs. non-wheel appointments and whether findings of “good cause” are in the record.

Motion made by John Convery, seconded by Mark Snodgrass – motion carries.

CDLP Report, *Michael Gross*

Michael recapped the CDLP seminar stats for FY 2013. An update was given regarding the CCLI training and not doing a joint Capital seminar with CAIL. Michael thanked the CDLP committee and staff for all their work.

Executive Director's Report, *Joseph Martinez*

- Thanked the board, Buck Files and the SBOT.
- A report of cle credit providers was released reporting TCDLA/CDLP as third largest provider of CLE in the State of Texas – congratulations to all!
-
- **Staff Anniversary:** Joseph recognized staff Miriam Duarte, Database Coordinator for completing seven years and Julio Harros, Seminar Clerk for completing one year.

Seminar Report, *Melissa Schank*

TCDLA/CDLP will have 48 plus live cle events in FY14, CCLI will have 2-3 cle events in FY14 and FY15. TCDLA has 10 new online cle events with more to come.

Capital Assistance Report, *Rick Wardroup*

- **Publication Report**
New publications will be distributed in the next three weeks. We will also be updating the mobile app. The Losch Capital Defense Manual is being completed by the Gulf Region Advocacy Center, GRACE. We originally thought that the book would be ready for printing by the end of the summer but that date has been pushed back for a month or six weeks.
- **CCLI Training**
CCLI has been approved for FY14 and FY15. CCLI is the only program that has a bring your own case for those who are trying a capital case. Scheduled the first one in February 2014. Joseph thanks Rick for doing an outstanding job on the publications, the board applauded Rick.

Budget Committee Report, *David Moore and Mark Snodgrass*– David reported TCDLA had a great year. Discussed the FY13 profit and budget. David thanked the committee members and staff for spending many hours on preparing the budget.

MOTION: \$54,296 to deposit into the reserve account

It is recommended by the budget committee that the Board move \$54,296 from FY13 revenue to be transferred into the reserve account Motion made by Scrappy Holmes, seconded by Emmett Harris – motion carries.

MOTION: Executive Session

It is moved to go into executive session made by Bobby Mims, seconded by Mark Snodgrass – motion carries.

Board comes out of executive session.

MOTION: FY13 Staff Bonuses

It is moved to approve \$43,400 allocated for FY13 staff bonuses made by Bill Harris, seconded by John Convery – motion carries.

MOTION: FY14 Budget

Motion to approve the FY14 Budget made by Richard Anderson, seconded by Robert Hinton – motion carries.

MOTION: Hire New Position - Governmental Relations Director

IT IS MOVED that the Board of Directors form a special sub-committee of the President, Bobby Mims; the TCDLA Legislative Committee Chair, Mark Daniel; the Executive Director, Joseph Martinez, and TCDLA Legislative Advisor, Allen Place. This sub-committee shall solicit for and recommend the employment of a qualified individual to serve as a Governmental Relations Director for TCDLA. The position will be posted for public notice in accordance with the rules and by-laws of the association and applicable state and federal laws. The salary and benefits shall be commensurate with the experience and qualifications of the candidate.

IT IS FURTHER MOVED THAT the Board of Directors delegate the final decision to employ such individual as may be recommended by the subcommittee to the TCDLA Executive Committee as it is constituted as of September 27, 2013.

Motion made by San Bassett, seconded by Marjorie Bachman – motion carries.

Rusty Duncan 2014, Heather Barbieri, Jason Cassel and Mike Heiskell

The course directors met and have a complete agenda. All speakers are being confirmed. The theme this year is Casino with a Casino night party Friday evening with hopes of having more camaraderie and meeting new people. There is also an Amtrack that is secured, advertisement will go out soon.

MOTION: Resolution for Louise and George Gilkerson, Dan Hurley

Whereas George Gilkerson, a charter member and the 4th president (1974-75) of the Texas Criminal Defense Lawyers Association, has shown his absolute commitment to service in the pursuit of justice and professional excellence he has willingly shared with this Association in its basic mission, Be it therefore resolved that the Association would like to honor our beloved on the occasion of their 70th wedding anniversary.

Motion made by Dan Hurley, seconded by Tim Evans – motion carries unanimously.

MOTION: TCDLA Resolution Calling for the Legislature to Enact Critical Legislation to Correct Deficiencies in the Texas Death Penalty Law

WHEREAS, the Texas Criminal Defense Lawyers Association (TCDLA) is the nation's largest statewide organization of criminal defense lawyers, with 3,400 criminal defense lawyer members in the State of Texas; and

WHEREAS, TCDLA provides training and assistance to capital defense team members through its Criminal Defense Lawyers Project; and

WHEREAS, a significant number TCDLA's attorney and affiliated members defend death penalty cases at the trial and post-conviction levels; and

WHEREAS, the American Bar Association has issued a comprehensive report, Evaluating Fairness and Accuracy in State Death Penalty Systems: The Texas Capital Punishment Assessment Report, An Analysis of Texas' Death Penalty Laws, Procedures and Practices (September 2013);

WHEREAS, the report was compiled by a "blue ribbon" assessment team consisting of: Prof. Jennifer Laurin, of the University of Texas School of Law; Ron Breaux, a partner at Haynes and Boone, LLP; Paul Coggins, a partner at Locke Lord, LLP, and former U.S. Attorney for the Northern District of Texas; Royal Ferguson, founding Dean of the UNT Dallas College of Law, and former U.S. District Judge in the Western District and Northern District of Texas; and the Hon. Deborah Hankinson, former Justice on the Fifth District Court of Appeals in Dallas; Prof. Ana M. Otero, of the Thurgood Marshall School of Law at Texas Southern University; Charles T. Terrell, chairman of Unimark Insurance Agency and former chairman of the Texas Department of Corrections; and Mark White, former Governor of the State of Texas; and

WHEREAS, the Texas Capital Punishment Assessment Report devotes a chapter to each of the following areas: (1) overview of the state's death penalty, (2) law enforcement identifications and interrogations, (3) collection, preservation, and testing of DNA and other types of evidence, (4) crime laboratories and medical examiner offices, (5) prosecution, (6) defense services, (7) the direct appeal process and proportionality review, (8) state habeas corpus proceedings, (9) clemency, (10) capital jury instructions, (11) judicial independence and vigilance, (12) treatment of racial and ethnic minorities, and (13) mental retardation and mental illness; and

WHEREAS, TCDLA agrees with the Texas Capital Punishment Assessment Team that so long as Texas imposes the death penalty, its system for doing so must be comprised of sufficient checks and balances to ensure fairness in selection of offenders to receive the death penalty, reduce to the extent possible the risk of executing the innocent, and preserve public confidence in the administration of criminal justice; and

WHEREAS, the Texas Capital Punishment Assessment Team found that while Texas has made some progress in improving fairness in its use of the death penalty in the last several years, there are a number of areas in which Texas' death penalty system falls far short of providing sufficient checks and balances to ensure fairness, reduces the risk of executing the innocent, and preserves public confidence in the administration of criminal justice; and

WHEREAS, the Texas Capital Punishment Assessment Team has observed that, "in many areas, Texas appears out of step with better practices implemented in other capital jurisdictions, fails to rely upon scientifically reliable methods and processes in the administration of the death penalty, and provides the public with inadequate information to understand and evaluate capital punishment in the state"; and

WHEREAS, the Report makes more than 90 recommendations for improving the capital punishment system from the point of investigation through execution; and

WHEREAS, the Report's recommendations for reform come at a time when Texas has executed 505 men and women since re-imposition of the death penalty since the U.S. Supreme Court's decision in *Furman v. Georgia*, 408 U.S. 238, 239 (1972); and

WHEREAS, Texas has seven executions scheduled between now and February 5, 2014; and

WHEREAS, there are 276 men and women remaining on Texas' death row; and

WHEREAS, there are three death penalty cases currently in trial in the Texas courts; and

WHEREAS, as a result, TCDLA and its members are intimately familiar with the inequities and problems afflicting the Texas capital justice system; and

WHEREAS, TCDLA agrees with the Texas Capital Punishment Assessment Team's conclusions regarding the deficiencies in the Texas capital punishment system; and

WHEREAS, TCDLA agrees with the Texas Capital Punishment Assessment Team's recommendations for improvement of the Texas capital punishment system; and

WHEREAS, there exists a substantial risk, in Texas that the death penalty continues to be imposed in an arbitrary, capricious and discriminatory manner;

WHEREAS, 12 prisoners on Texas death row have been exonerated on grounds of innocence; and

WHEREAS, there has been a substantial change in due process protections in capital cases, including an increase in the number of capital crimes such that the Texas statute now fails to genuinely narrow the class of offenders eligible for imposition of the death penalty, the "future dangerousness" special issue causes jurors to miscomprehend their capacity to impose a life sentence where a mitigating circumstance is found, and that the Texas statute misleads jurors about their individual capacity to affect capital sentencing decisions;

NOW, THEREFORE, BE IT RESOLVED that the Texas Criminal Defense Lawyers Association calls on Texas Governor Rick Perry and upon the Texas Legislature to work together to enact critical legislation to correct the above deficiencies as outlined by the American Bar Association. The TCDLA urges lawmakers to act with urgency and dispatch to correct the capital murder statute and procedure so as to insure fair and impartial administration of the death penalty. The TCDLA adopts and recommends that the Texas Capital Punishment Assessment Team's 90 recommendations for improvement of the Texas capital punishment system be implemented so that the risk that innocent persons are executed is minimized.

Motion to adopt the resolve send a copy to every legislator in house and senate and governor's office, motion made by Mark Daniel seconded by Mark Snodgrass – motion carries.

Forensics Commission, *Bobby Mims*

Bobby read the names who were submitted to the forensics commission. We are waiting to see who is appointed by the governor.

Amicus Committee, *Angela Moore*

Joined NACDL for Amicus. Continued working with Michael Mowla on requests.

Family Violence, *Sam Bassett*

Email Sam if you are interested in this issue to form a committee.

Federal Assistance, *Jason Cassel*

CJ panel rates are being cut \$15 per hour. There are budget cuts around the country, offices are being cut. Payments are being delayed to attorneys. John Convery has been instrumental with NACDL and working with CJ issues. Offering scholarships through TCDLEI and offering online cle for Federal topics specifically – looking for speakers. Build up relationships with TCDLA.

Robb Fickman suggested TCDLA write a letter pointing out the dangers to the system and mirror Bobby Mims presidential address.

Hall of Fame and Lawyer of the Year, *Scrappy Holmes*

Committee needs to meet and will do so in the near future.

Nominations, *Emmitt Harris*

Emmitt has formed his committee and are including all ethnicities, gender and location- who will meet at the December board meeting. Emmitt is also working on a Storytelling event – more to come.

Voir Dire – Psychodrama, Round top III – *John Ackerman*

The event is scheduled for October 23-27, 2013. This is one of the most incredible programs that TCDLA has put on. Included with the tuition is housing and meals from a 5 star chef. This training will make you a better attorney and make the quality of defense better for the state of Texas. If you can't come get someone else to come and assist in any way you can. Targeted number of attendees is 60.

Corrections and Parole, *David O'Neil*

The committee name has been changed to represent the committee and represent the vision better. Members of the committee have been named.

Memo Bank, *Tip Hargrove*

Up and running collecting memos and posting on website.

Prosecutorial, *Sarah Roland*

Sarah told everyone the purpose of the committee – that they are a resource for TCDLA to help instill and maintain integrity in the criminal justice system and to have members contact us if they feel they need assistance.

Rural Practice, *Clay Steadman*

Getting the committee going adding committee members.

Veterans, *John Hunter-Smith*

John Hunter-Smith described the purpose of the committee as assisting our veteran clients. He anticipates putting on a seminar in 2014.

Voice for the Defense Magazine, *Grant Scheiner*

We need articles and photos, it is mandatory to submit an article. We are moving to do an online electronic version.

Legislation, *Allen Place*

Allen would like to remind each of you about the last meeting in March regarding reciprocal discovery, thanked everyone for taking the time to debate, discuss and volunteer – this made a difference and one of the best efforts from our members! Troy spent countless hours wearing down the legislature and volunteering. Allen thanked Mark Daniel for taking the numerous calls, emails and complaints; he has given a tremendous amount of time to this session. Bobby Mims was very involved in the session, he met with Michael Morton. Bobby took him to lunch and has developed a relationship which turned the tides. Applause was given to these individuals. Thanks to Robb Fickman for opening the door with Raley and Morton.

Mark Daniel thanked Allen Place and then talked about the articles that will be written in the Voice. Mark also gave comments regarding redaction – forcible message “don’t be the guy that ruins it for every criminal defense lawyer.”

TDCAA, *Bobby Mims*.

Mr. Rob Kepple complained to Executive Director Joseph Martinez about a grievance that TCDLA had filed on Polk County District Attorney Lee Hon. President Mims advised that he would not discuss internal TCDLA policies with anyone outside of the organization but would investigate the allegations and later advise the TDCAA President. When the alleged grievance was filed the President of TDCAA was the subject of these allegations.

Mr. Hon was allegedly involved in improper ex parte communications with Judge Elizabeth Coker of the 258th District Court of Polk County. The Judge was texting questions to an Assistant DA Kassey Jones, who was an assistant prosecutor under Mr. Hon. This trial was being defended by a TCDLA member. It was learned that DA Hon had passed notes from Judge Coker to the Assistant DA trying the case after reading the notes. The DA's investigator disclosed this misconduct to the defense lawyer who took no action because his client was acquitted.

At the March 2013 Board of Directors meeting a motion was made by Troy McKinney, Chair of Judicial Integrity Committee, to authorize the filing of grievances on Judge Elizabeth Coker and

Judge Kassey Jones, the former Assistant DA involved in the improper ex parte acts. The committee elected to refrain from filing these grievance with the Judicial Conduct Commission as there were already pending grievances being heard and it was determined that TCDLA's participation was unnecessary and not TCDLA grievance was filed. Responsive to the TCDLA complaint President Mims requested that the March 2013 minutes be reviewed to determine if a grievance had been authorized against DA Hon. There were no written minutes memorializing the grievance but the recordings were reviewed by staff and it was determined that there was not authority to file a grievance against the District Attorney.

President Mims directed the Prosecutorial Misconduct Committee Chair Sarah Roland to conduct a full investigation of the circumstances of this alleged misconduct by Mr. Hon. Additionally, President Mims directed the committee to counsel with former President Bob Hinton and make a recommendation. It was discovered that a TCDLA member had filed a grievance against DA Hon purporting to be acting on behalf of TCDLA. A copy of this grievance was obtained from the member and it was determined that this was an unauthorized act.

President Mims and Executive Director met personally with TCDLA President David Escamilla and TDCAA Executive Director Rob Kepple and provided them with a copy of a letter of clarification that was also filed with Ms. Linda Acevedo Chief Disciplinary Counsel of the State Bar of Texas. Copies of the letter of clarification were also provided to the member who filed the unauthorized grievance. After the meeting all parties advised that TCDLA's response was proper and the two organizations were in proper equipoise.

MOTION to adjourn at 12:17 pm. Made by Jason Cassel, seconded by Sarah Roland– motion carries.

Respectfully submitted,
Mark Snodgrass
TCDLA Secretary