



# TCDLA Board of Directors Meeting Minutes

Saturday, December 6, 2014  
Radisson Hotel  
Fort Worth, Texas

### Introduction

Emmett Harris, President calls the meeting to order at 10:30 am. A quorum was present. Emmett recognizes all the past presidents, guests and new board members.

### Roll Call:

#### Officers

<u>P</u> Emmett Harris, President	<u>P</u> Deandra Grant	<u>P</u> Clay Steadman
<u>P</u> Sam Bassett, Pres-Elect	<u>P</u> Melissa Hannah	<u>A</u> George Taylor
<u>P</u> John Convery, 1st VP	<u>P</u> Theodore Hargrove, III	<u>P</u> Gary Alan Udashen
<u>P</u> David Moore, 2nd VP	<u>P</u> Jo Ann Jacinto	<u>A</u> Oscar Vega
<u>P</u> Mark Snodgrass, Treasurer	<u>P</u> Steve Keathley	<u>E</u> Charles Coby Waddill
<u>P</u> Kerri Anderson-Donica, Secretary	<u>P</u> Laurie Key	
<u>P</u> Michael Gross, <i>Voice</i> Editor	<u>E</u> Jeanette Kinard	
	<u>P</u> Adam Kobs	
	<u>P</u> Jani Maselli Wood	
	<u>A</u> Michael McDougal	
	<u>P</u> George Milner, III	

#### Associate Directors

<u>A</u> Roberto Balli
<u>P</u> Robert Barrera
<u>P</u> Curtis Barton
<u>P</u> Michael Head
<u>P</u> Susan Kelly
<u>P</u> Bradley Lollar
<u>E</u> Louis Lopez
<u>P</u> Hiram McBeth
<u>P</u> Audrey Moorehead
<u>P</u> Jeremy Rosenthal
<u>P</u> David Ryan
<u>P</u> Frank Sellers
<u>P</u> Monique Sparks
<u>P</u> Courtney Stamper
<u>P</u> Mark Thiessen

#### Directors

<u>P</u> Susan Anderson	<u>P</u> Angela Moore
<u>P</u> Marjorie Bachman	<u>P</u> David O'Neil
<u>P</u> Heather Barbieri	<u>E</u> Anthony Odiorne
<u>P</u> Rick Berry	<u>P</u> Stephanie Patten
<u>E</u> Fred C. Brigman, III	<u>E</u> Oscar Pena
<u>E</u> F. Clinton Broden	<u>A</u> Bruce Ponder
<u>P</u> Jim Darnell	<u>E</u> Carole Powell
<u>P</u> Nicole DeBorde	<u>E</u> Bennie Ray
<u>A</u> Emily Detoto Munoz	<u>P</u> Ray Rodriguez, Jr.
<u>P</u> Robert Fickman	<u>P</u> Sarah Roland
<u>P</u> Don Flanary	<u>P</u> John Hunter Smith
<u>E</u> Steven Gordon	<u>E</u> Ed Stapleton

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

**Past Presidents in Attendance:** Tim Evans, Ron Goranson, William Harris, Dan Hurley, Craig Jett, Ed Mallett, Bobby Mims, Gerry Morris, Vincent Perini

**Guests:** Chris Abel, Kristin Brown, Cynthia Hampton, Keith Hampton, Nathan Miller, Chris Reyes, Cassie Gotro, Teana Watson, Carmen Roe, Jaimie Gandara, Bill Trantham, Larry Boyd, Lance Evans, Ginger Hurley

**Staff:** Patricia Cummings, Joseph Martinez, Melissa Schank, Rick Wardroup, Mari Flores

**President's Comments, *Emmett Harris***

Emmett asked past presidents to stand and recognized each president and thanked them for their presence and institutional knowledge, good faith and dedication to TCDLA.

**Recognition of Fallen Heroes, *Emmett Harris***

A moment of reflection was given for David Ingram from Longview and George Milner Jr. from Dallas.

**MOTION: Minutes – September 13, 2014**

**Motion to adopt the minutes from the TCDLA Board Meeting on September 13, 2014 in Dallas made by Mark Snodgrass, seconded by Susan Anderson - motion carries.**

**DWI Conflict**

Emmett reported that the executive committee met with Gary Trichter to discuss the possible DWI conflict. The executive committee concluded there was a conflict of interest. A letter has been written to Gary and he has been given until January 5, 2015 to appeal the decision.

Patricia gave an overview of the TCDLA Conflict of Interest Policy and Procedures. Legally, the board is essentially an “appellate court” whose duty it is to review the decision of the executive committee should either of the affected parties decide to appeal. As a consequence, at this point there is nothing for the board to consider and/or act on regarding the executive committee’s report and findings.

A chronology of events is available upon request.

**MOTION: Cease Discussion**

**Motion to cease discussion on the floor made by Jim Darnell seconded by Coby Waddill – 4 oppose – motion carries**

**Completion of 13 Years of Service**

Emmett presented Joseph Martinez with a gift from the TCDLA Board of Directors. Joseph thanked the board for the past 13 years filled with excitement and passion that he and Bertha have shared. A standing ovation was given by the Board.

**Executive Director’s Report, *Joseph Martinez***

- **Quarterly Report** – Joseph thanked all the speakers and course directors for the past 3 months. We have put on 13 seminars. This is an amazing amount of training. We are scheduled to do approximately 56 seminars. Sarah Roland and John Hunter-Smith have

come up with a cle solely dedicated to successful defense for child physical abuse and murder cases.

The past year TCDLA and CDLP ranked as the third largest CLE provider with 36,777.25 total cle hours. First were the State Bar of Texas and second University of Texas Law School. We are working very hard to economize all seminar expenses and have had some unpleasant comments.

We have not heard if we have received the grant from the SBOT regarding the Crimmigration seminar. We are looking to submit to the Dallas Bar and SBOT Foundation, ideas are welcomed.

- **Staff anniversaries** - Joseph recognized Craig Hattersley for seven years, Joshua Teneyuca for three years and Carlos Ancira for one year.
- **Seminars, *Melissa Schank***  
Melissa encouraged everyone to attend and support the following seminars and have a successful year:
  - Voir Dire 3/5-6, Trial College 3/22-27 and MSE 3/26-28
- **Membership, *Melissa Schank***  
Current membership is 3235 at the same time last year 3228 increased due to several renewing early before dues increase. Review the expired list emailed, also included in packets is an expired members lists for past year – please help to encourage reinstatement for members in your area. Board comp membership list are in packets contact those you sponsored who have not renewed. Each board member gets three board comps to distribute annually for new members.
- **Publications, *Rick Wardroup***  
All publications will be updated after legislation. We are starting to update. We rely on board members to help update. We will need volunteers, especially for cheat sheets. Rick requested suggestions for new publication or one that has not been updated recently.
- **Capital Assistance, *Rick Wardroup***  
Rick is working on the Capital Case Litigator Initiative program. This is a federally funded program where we train the entire capital defense team with faculty from all over the US. We will accept 15 teams. The CCLI program will be in San Antonio Feb 9-11, 2015. Just had a Capital and Mental Health training in November with over 70 attendees.

#### **Budget and Finance Committee, *Mark Snodgrass***

Mark stated financially TCDLA is in good shape. The end of 2014 fiscal year ended August 31, 2014. Reserves current have \$280,000 in account. FY2015 is off to a good start prominently due to members renewing membership in advance with the lower dues. Staff is doing a good job on keeping expenses down and Mark thanks Mari and everyone for all the good work.

#### **CDLP Committee, *Jani Maselli Wood***

Jani reported we have trained a lot of people in the past month. She thanked speakers who have volunteered their time. Jani encouraged all board members to speak once, especially in the rural areas. Jani and Sam are working on next year's theme seminar, if you have any thoughts contact her.

Jani thanked all the CDLP course directors for their work on seminars from 9/1 to November 15, 2014.

- 9/5 – Training Your Team to Win - Fredericksburg – Harold Danford, Kelly Pace, Clay Steadman
- 9/18 – Effective Representation for Indigent Defense – New Braunfels – Gerry Morris, Patricia Cummings, David Michael Gonzalez, Michael Dobbs, Gina Jones
- 9/19 – Forensic Evidence & Expert Witnesses - El Paso - Jaime E. Gandara, Dan Marquez, Bill Cox, Rick Wardroup
- 10/08-09 – Innocence Clinic - Dallas - Natalie Roetzel, Nick Vilbas
- 10/09-10 – 12th Annual Forensics – Dallas – E.X. Martin, Larry Renner, Rick Wardroup, Philip Wischkaemper
- 10/10 – Training Your Defense Team to Win - Abilene - Kelly Pace, Jeffrey Propst
- 10/16-17 – Winning Warriors Defender Trial Tactics co-Sponsored w/HCCLA - Houston – Tyler Flood
- 10/30 – Criminal Law Power Update - Laredo - Claudia V. Balli, Roberto Balli, Oscar O. Pena, Rey Rodriguez
- 11/13-14 – Nuts N Bolts - San Antonio – Bob Featherston
- 11/14 – Training Your Defense Team to Win - Galveston - Taylor Schwab, Jani Maselli Wood

CDLP Stats for this fiscal year 2015: 9/1/14 to 11/15/14

- 8 seminars
- trained 576 at CDLP seminars, cle: 63.50 including 3 ethics hours
- 14 course directors
- 66 speakers
- capital attorneys trained 0, cle: 0 including 0 ethics hours

### **Voice for the Defense, *Michael Gross***

*Voice for the Defense* is doing great. Michael recognized Jeremy Rosenthal for taking on the online blog and Grant Scheiner for the online issues. Submit articles, board members responsibilities are to write two articles during their term.

### **2015 Rusty Duncan, *Laurie Key and Lance Evans***

Laurie and Lance stated the agenda is 95% complete waiting on two speakers. Please take posters to market.

### **Committee Reports**

#### **Corrections and Parole, *David O'Neil and Curtis Barton***

David reported that Pamela Freeman was indicted for tampering with government documents.

The following draft Resolution was presented to the board for their consideration.

**MOTION: PROPOSED RESOLUTION FOR TCDLA TO SUPPORT AN INDEPENDENT STATE COUNSEL FOR OFFENDERS ESTABLISHED PURSUANT TO ABA made by John Convery seconded by Nicole DeBorde – Motion Carries.**

**GUIDELINES**

WHEREAS, the State Counsel for Offenders (SCFO) is designated to provide representation for indigent inmates confined in the Texas Department of Criminal Justice (TDCJ);

WHEREAS, SCFO representation includes, inter alia: trial defense representation to indigent inmates indicated for alleged offenses occurring in the Texas prison system; representation in appellate and habeas corpus matters; representation on time credit issues; and, representation in proceedings for the civil commitment of sexually violent predators;

WHEREAS, SCFO provides its services at substantial savings to the taxpayers of Texas;

WHEREAS, SCFO purportedly comes under the direct supervision and control of the Texas Board of Criminal Justice, who also sets the salaries for SCFO's personnel;

WHEREAS, SCFO does not have a line item appropriation by the legislature, though the original intent of the legislature in HB 80 (1990) was for it to have its own line item with the State Comptroller;

WHEREAS, SCFO the Texas Board of Criminal Justice apportions money for SCFO out of the funds appropriated by the legislature for TDCJ;

WHEREAS, SCFO must compete for its funding among other departments and priorities within TDCJ, including the Office of Inspector General (the office that investigates TDCJ Offenders who are indicted for crimes allegedly committed in TDCJ and who, once indicted, are represented by SCFO attorneys);

WHEREAS, SCFO salary structure establishes defense lawyer pay significantly less than prosecuting attorneys at the Special Prosecution Unit, the Attorney General's Office, and other State and County public defender offices;

WHEREAS, SCFO salary for attorneys not being on parity violates the ABA's Ten Principles of a Public Defense Delivery System and the National Right to Counsel Committee's recommendation;

WHEREAS, SCFO salary for non-supervising attorneys is set at three levels so an attorney with three years of experience makes the same as an attorney with substantially more years' experience;

WHEREAS, the Texas Board of Criminal Justice has not provided for any promotions beyond three years of experience, step increases, or increases in pay for SCFO attorneys based on longevity, productivity, performance, or any other criteria;

WHEREAS, the result of the pay structure for attorneys at SCFO perpetuates inadequate attorney salaries, precipitates attorney resignations, and destroys morale within SCFO;

WHEREAS, the failure to adequately fund SCFO has resulted in unacceptable attrition rates in all attorney sections, including excessive turnover rates in all sections;

WHEREAS, the turnover rate has created continued inadequate staffing rates that have seriously and adversely impacted the ability to provide effective legal representation;

WHEREAS, the inability to attract quality attorneys has resulted in SCFO reducing the

required qualifications for attorneys,  
WHEREAS, SCFO has to hire attorneys for the criminal trial section with no criminal trial experience to be assigned a full caseload of enhanced felony cases;  
WHEREAS, SCFO has to hire attorneys for the general legal and immigration section with no immigration law experience;  
WHEREAS, SCFO has to hire attorneys for the appellate section who have no trial experience or appellate experience;  
WHEREAS, SCFO has to hire attorneys with no trial experience to represent inmates accused of being sexually violent predators that face a potential life time confinement in civil commitment;  
WHEREAS, the trial section is appointed to represent clients accused of felony offenses in counties across the State of Texas which requires driving in State vehicles for hours to visit clients who are often reassigned to a new prison unit after the alleged offense occurs;  
WHEREAS, the trial section has to travel to the county of the offense (in many cases hundreds of miles away) for scene visits and court appearances;  
WHEREAS, SCFO will not provide the attorneys in the Civil Commitment Section with funds for overnight travel to meet with clients in person, many of whom are located well outside the Huntsville area;  
WHEREAS, both the high attorney attrition rate and the office policy that the client is represented by the office, not the assigned attorney, has resulted in horizontal representation where many, if not most, inmates have different attorneys representing them throughout their legal proceeding, which practice is discouraged by the American Bar Association;  
WHEREAS, inadequate salaries have been a continuing problem at SCFO for decades;  
WHEREAS; the Texas Board of Criminal Justice not only hires and oversees the Director of the SCFO, but also hires and oversees other TDCJ Department Directors, including the Office of Inspector General, ;  
WHEREAS, the Texas Board of Criminal Justice does not require any specific years of experience representing criminal defendants or commitment to indigent representation;  
WHEREAS, the Texas Board of Criminal Justice allows candidates from TDCJ and the Parole Office to qualify for employment as the Director of SCFO;  
WHEREAS, the Director for SCFO is considered a Division Director in TDCJ and attends TDCJ Executive Committee Meetings sharing information about office policies, caseload, case management, and other internal issues with TDCJ and the Texas Board of Criminal Justice;  
WHEREAS, the Director of SCFO has presented legal motions and orders for the court to the TDCJ General Counsel Director for that directors approval before allowing them to be filed in court;  
WHEREAS, this level of comingling and comfort with executives in TDCJ allows the Texas Board of Criminal Justice and TDCJ to interfere with attorney client relationships and legal strategies;  
WHEREAS, a SCFO attorney was forced to resign from SCFO in order to continue representation of the indigent client after she was directed to uncommit herself from representing the client and the Director of SCFO testified in State District Court that the former SCFO attorney could provide more legal services for an indigent client in pro

bono representation than SCFO attorneys could provide for the same client;  
WHEREAS, the Office of Inspector General (OIG), who also conducts investigations into criminal matters of SCFO clients indicted for criminal offenses in prison, has investigated SCFO employees;  
WHEREAS, OIG investigated and conducted the disciplinary hearing of a SCFO attorney Section Chief and recommended termination, which ultimately resulted in the attorney's resignation;  
WHEREAS, had the attorney who was disciplined by OIG attempted to defend his representation he would have divulged attorney-client information to OIG, who had also investigated the client for the alleged criminal offense that was the basis of the attorney-client relationship;  
WHEREAS, OIG personnel and investigator office spaces are adjacent to, and in the same building as, SCFO (and were moved into those spaces during a prior investigation of a SCFO employee);  
WHEREAS, the ongoing investigation and the shared location with OIG Investigators in SCFO work environment has an adverse impact on morale within SCFO;  
WHEREAS, the location of OIG Investigators in office spaces adjacent to SCFO creates at least an appearance that privileged attorney client information may be jeopardized;  
WHEREAS, OIG's location adjacent to SCFO employees and privileged files, their investigation of SCFO employees, and their disciplinary action against an SCFO attorney, seriously undermines the client confidence in the sanctity of the attorney client privilege;  
WHEREAS, and considering the foregoing, there is not only an appearance of a conflict of interest, but an actual conflict of interest in having the Texas Board of Criminal Justice as the oversight organization for SCFO;  
WHEREAS, there is a prosecutorial counterpart to SCFO criminal trial and civil commitment sections, which counterpart is known as the Special Prosecution Unit (SPU);  
WHEREAS, SPU does not come under the supervision of the Board of Criminal Justice, but is funded by a Governor's Grant;  
WHEREAS, the oversight of SPU rests with a Board of Texas Criminal District Attorneys; and  
WHEREAS, attorneys at SPU make a substantially higher salary than attorneys at SCFO and are eligible for regular salary increases;  
WHEREAS, attorney attrition rates at SPU are substantially less than at SCFO;  
WHEREAS, all of the aforementioned has created a climate that is not conducive to professional and zealous defense representation, client trust, or the appearance of fairness;  
WHEREAS, the structure and operations for SCFO does not meet the recommendations of the American Bar Association's Ten Principles of Public Defense Delivery System and the best practices determined by the Texas Indigent Defense Commission;  
WHEREAS, many of the aforementioned conditions have been ongoing for many years; and,  
WHEREAS, TCDLA has previously approved a "Resolution to Support an Independent State Counsel for Offenders Established Pursuant to ABA Guidelines, and to

Encourage TCDLA Members Not to Accept Employment with State Counsel for Offenders Until Such Office is Created;  
BE IT THEREFORE RESOLVED THAT TCDLA, by and through its Board of Directors, urges the reorganization of SCFO to be independent of the Texas Board of Criminal Justice and TDCJ, pursuant to guidelines recommended by the American Bar Association. BE IT FURTHER RESOLVED THAT after this reorganization, the reorganized entity be directed by a person who has significant experience of at least ten years of representing criminal defendants or in indigent representation

**By Laws, Adam Kobs and Coby Waddill**

Emmitt Harris recognized and congratulated Coby Waddill for being elected judge in Denton County. The board gave applause.

Adam and Coby solicited any amendments or modifications to the current board. Adam distributed copies and Melissa will send on the board listserv. Review the suggested changes. All are in infancy stage. Timeline: board will need to vote in March for them to be presented to membership within 75 days of the annual meeting.

1. Board of Directors: Each past president of the Association shall have the right to be heard on any issue before the Board.
2. Nominations Committee: Each member shall be an attorney who is a current member of TCDLA and has a minimum of five years of practice in criminal law.
3. Nominations Committee: member in good standing may seek election for the position as ~~an officer, other than President~~ Secretary, director

**Amicus, Angela Moore**

Angela gave an update on the recent Amicus activities. Contact Angela if you have a blood draw going in front of the Court of Criminal Appeals. Bring any amicus matter you have to the committee. The committee has included Patricia Cummings as General Counsel for input. Any issues the committee cannot agree on they will bring to the executive committee.

**Strike Force, Nicole DeBorde**

Strike force was busy this past quarter. The committee has gotten involved with Montgomery County, they were unaware of how broken the system was. The committee will rewrite the purpose and send to office so the website can be updated.

**DWI Committee, Mark Thiessen**

Thanked everyone that spoke on the Stuart Kinard Advanced DWI seminar thanked Michael Gross, Adam Kobs and Mark Stevens for being course directors and doing a fantastic job. Mark also thanked board members who came out and supported the seminar.

Mark thanked Patricia Cummings, Larry Boyd, Grant Scheiner, Doug Murphy, Gary Trichter, and Troy McKinney regarding ALR Witness fee issues. The Intoxlyzer 9000 has come out and will be used summer 2015.



Mark invited everyone to attend the TCDLA DWI Defense Project, May 1, 2015 in Arlington that Larry Boyd, Deandra Grant and Abe Factor will be hosting.

**General Counsel and Legislative Report, *Patricia Cummings and Allen Place***

Patricia stated that the legislative team is in place, Allen Place, David Gonzalez and Kristen Etter comprise the team for this legislative session. A large number of bills have been filed. The TCDLA team are reviewing, drafting and monitoring bills. The committee wants to encourage participation by the membership particularly by those who have expertise areas in which committees will conduct hearings. The legislative team will be very conscious of everyone's time and assistance.

We received approval from the criminal justice section of the bar to fund a study regarding the costs of implementing the Michael Morton Act. The cost of the study is \$43,000. The study involves two parts – the first part is a survey of prosecutors and defense lawyers and the second part involves focus groups comprised of those two groups. Part one has been completed. Patricia thanked everyone who participated in the survey as well as the criminal justice section of the state bar for providing the funding for the study.

TDS and Texas Appleseed are also writing a report regarding the implementation of the Michael Morton Act. Their study is much broader in that it is not limited to costs. This study focusses on general policies regarding how the act is implemented by prosecutors in the 254 counties across the state.

Allen Place reported that the unknown in the coming legislature is the lieutenant governors new hires. Allen gave an update on the house and senate. He thanked Emmitt Harris for his leadership.

**Old and New Business**

**National Association for Criminal Defense Lawyers Association, *John Convery***

John recognized Gerry Morris, TCDLA Past President as the incoming president for NACDL. NACDL will have an event in 2016, more information to come. The board applauded.

**American Bar Association, *John Convery***

Cynthia Orr has been appointed co-chair ABA Criminal Justice Section Counsel this year. They will have a spring cle in San Antonio sometime in May. The board applauded.

**Body Cameras by Police, *Angela Moore***

Does the organization want to take a position on the body cameras advocated to police departments. It was suggested to refer to the committee to have more information to make a decision. This will be referred to the executive committee.

Emmett closed by thanking everyone and recognized everyone in our group as the best and brightest in this area of practice. We do it better because we associate with each other, combine efforts and unify together. He asked everyone to think about what made them want to be on the

TCDLA board and a member of this association and the responsibilities you have committed to. We are an association with possibilities which are limitless and can do great things.

**MOTION to adjourn at 12:10 pm. Made by Craig Jett, seconded by Sam Bassett – motion carries.**

Respectfully submitted,  
Kerri Anderson-Donica  
TCDLA Secretary