

## State Bar of Texas Board of Directors Meeting - 09/10/2020

CHARLIE GINN: OK. Good morning. It is 9:03 and I am calling the meeting to order. All directors will be unmuted for roll call. With our agenda posting, we invited members of the public to sign up to give their comments and to view a broadcast of the board of directors meeting, which is live on YouTube at [www.youtube.com/statebaroftexas](http://www.youtube.com/statebaroftexas). The instructions on how to sign up to speak at today's meeting were posted, and they were available until 5 p.m. yesterday afternoon. Members of the public will have an opportunity to speak at the beginning of our meeting today, directly after a report from our executive director Mr. Trey Apffel. We will go over the procedures for that here in just a few minutes. They will mimic the procedures that we did on our July 27 board meeting. For members of the public, we do thank you for being here and being with us. Please note that this meeting will be recorded and that the recording will be made available to the public. Mr. Executive Director, please call the roll.

TREY APFFEL: Mr. Agosto.

BENNY AGOSTO JR: Present.

TREY APFFEL: Mr. Alexander.

JERRY ALEXANDER: Present.

TREY APFFEL: Mr. Allison.

JEFFREY ALLISON: Present.

TREY APFFEL: Mr. Almanzan.

ANDRES ALMANZAN: Present.

TREY APFFEL: Mr. Baruch.

CHAD BARUCH: Present.

TREY APFFEL: Miss Bihm.

KATE BIHM: Present.

TREY APFFEL: Miss Brooker.

REBEKAH STEELY BROOKER: Here.

TREY APFFEL: Mr. Calvillo.

DAVID CALVILLO: Here.

TREY APFFEL: Mr. Carlos Cardenas.

CARLOS EDUARDO CARDENAS: Here.

TREY APFFEL: Mr. Luis Cardenas.

## State Bar of Texas Board of Directors Meeting - 09/10/2020

LUIS CARDENAS: Here.

TREY APFFEL: Mr. Cook.

DEREK COOK: Here.

TREY APFFEL: Miss Cordova.

DEBORAH CORDOVA: Here.

TREY APFFEL: Mr. Crain.

ROBERT CRAIN: Here.

TREY APFFEL: Miss Davis.

CHRISTINA DAVIS: Present.

TREY APFFEL: Mr. Dawson.

ALISTAIR DAWSON: Present.

TREY APFFEL: Mr. Dokupil.

MICHAEL DOKUPIL: Here.

TREY APFFEL: Miss Hernandez Ferrier.

MARIA HERNANDEZ FERRIER: Present.

TREY APFFEL: Miss Borunda Firth.

SYLVIA BORUNDA FIRTH: Present.

TREY APFFEL: Mr. Fischer.

STEVE FISCHER: Here.

TREY APFFEL: Mr. Flores.

VICTOR FLORES: Here.

TREY APFFEL: Miss Forbes.

LUCY FORBES: Present.

TREY APFFEL: Mr. Ginn.

## State Bar of Texas Board of Directors Meeting - 09/10/2020

CHARLIE GINN: Here.

TREY APFFEL: Miss Goldsberry.

SHARI GOLDSBERRY: Here.

TREY APFFEL: Mr. Gravely.

MARC GRAVELY: Here.

TREY APFFEL: Mr. Harris. Miss Harrison.

BRITNEY HARRISON: Here.

TREY APFFEL: Judge Hatch.

LES HATCH: Here.

TREY APFFEL: Miss Hoggard. Miss Humphry will be joining us shortly. Mr. Hurst.

MICHAEL HURST: Here.

TREY APFFEL: Mr. Kolodoski.

MATTHEW KOLODOSKI: Here.

TREY APFFEL: Justice Lehrmann.

DEBRA LEHRMANN: Here.

TREY APFFEL: Miss Cortes Mares.

YOLANDA CORTES MARES: Present.

TREY APFFEL: Mr. McDougal.

LARRY MCDUGAL: Here.

TREY APFFEL: Miss Carra Miller.

CARRA MILLER: Here.

TREY APFFEL: Miss Emily Miller.

EMILY MILLER: Here.

TREY APFFEL: Judge Morales has an excused absence. Miss Mount. Miss Murphy.

## State Bar of Texas Board of Directors Meeting - 09/10/2020

KATHRYN MURPHY: Here.

TREY APFFEL: Mr. Naylor.

STEPHEN NAYLOR: Here.

TREY APFFEL: Miss Rispoli.

JEANINE NOVOSAD RISPOLI: Here.

TREY APFFEL: Miss Roe. Mr. Schramek.

ADAM SCHRAMEK: Here.

TREY APFFEL: Miss Scott.

MARY SCOTT: Here.

TREY APFFEL: Mr. Sergi.

DAVID SERGI: Here.

TREY APFFEL: Mr. Sims.

ALAN SIMS: Here.

TREY APFFEL: Mr. Jason Smith.

JASON SMITH: Here.

TREY APFFEL: Mr. Michael Smith. Mr. Todd Smith.

D. TODD SMITH: Here.

TREY APFFEL: Mr. Sorrels.

RANDALL SORRELS: Here.

TREY APFFEL: Miss St. Yves. Mr. Tolchin.

ANDREW TOLCHIN: Here.

TREY APFFEL: Mr. Vargas.

SANTOS VARGAS: Here.

TREY APFFEL: Mr. Vasquez.

## State Bar of Texas Board of Directors Meeting - 09/10/2020

G. MICHAEL VASQUEZ: Here.

TREY APFFEL: Miss Welborn.

AMY WELBORN: Here.

TREY APFFEL: Mr. Wester.

JAMES WESTER: Here.

TREY APFFEL: Miss Pack Wilson.

KIMBERLY PACK WILSON: Present.

TREY APFFEL: Judge Yeary.

KEVIN PATRICK YEARY: I'm here.

TREY APFFEL: Mr. Chair, we have a quorum.

CHARLIE GINN: Thank you, Mr. Executive Director.

LYDIA ELIZONDO MOUNT: Mr. Chair?

CHARLIE GINN: I'm sorry?

LYDIA ELIZONDO MOUNT: This is Lydia Mount.

CHARLIE GINN: Yes ma'am. Gotcha, Lydia.

LYDIA ELIZONDO MOUNT: I was kind of present for roll call.

CARMEN ROE: I know. Mine also wasn't called, but Carmen Roe's here for roll call.

CHARLIE GINN: Director Mount and Director Roe, we will - the record will reflect you're both here. I'm glad to see you both. Thanks for being here. At this point, I would ask my friend, Director Steve Naylor, to come and lead us in the invocation. Steve, if you'd unmute yourself please. Thanks.

STEPHEN NAYLOR: Thank you Mr. Chair. Heavenly Father, we thank you for this day and for allowing us to be here to be a part of it. As we move forward today with the business of this board, I pray that each of us keep in mind that we represent all of the lawyers and citizens in the state of Texas. I pray that we are able to put our personal agendas aside and rely instead on you and your guidance in the decisions that are made here today. I pray that as we have our discussions, we are all patient, courteous, and respectful of others and their opinions. I pray that each of us commit to the mission of the State Bar of Texas, and to making the State Bar of Texas the best it can be. It is in your name we pray these things. Amen.

## State Bar of Texas Board of Directors Meeting - 09/10/2020

CHARLIE GINN: Thank you, Steve. And I'd ask my friend, Director Amy Welborn, if she would come and lead us in the pledges. The flags will be on your screen. Director Welborn, Amy, if you'd please unmute yourself and lead us in the pledges. Thank you.

AMY WELBORN: I pledge allegiance to the flag of the United States of America, and to the republic for which it stands, one nation, under God, indivisible, with liberty and justice for all. Honor the Texas flag. Pledge allegiance - honor the Texas flag. I pledge allegiance to thee, Texas, one state, under God, one and indivisible.

CHARLIE GINN: Thank you, Amy. At this point, before we hear from our members of the public in just a few moments, we're going to invite our Executive Director, Trey Appfel, to bring us his report. Trey, the floor is yours.

TREY APFFEL: Thank you, Mr. Chair, and welcome, everyone, to the meeting this morning. Thank you to the directors, state bar members, and the public for your thoughtful input on the issues being discussed today. I want to make it clear as we start our meeting this morning that the state bar has a long-standing commitment to diversity, equity, and inclusion efforts. Recognizing that historical and continuing discrimination based on race, sex, and sexual orientation can impede career opportunities of Texas attorneys and their ability to provide quality legal services, the state bar created the office of minority affairs in 1991 to implement and carry out initiatives to further the bar's commitment to a fair and equal legal profession for minority, women, and LGBT attorneys. The office works with the state bar's diversity in the profession, women in the profession, and Texas Minority Counsel Program's steering committees, and hosts a variety of projects and programs relating to diversity, equity, and inclusion. All Texas attorneys may participate in the office's programs. In 2007, after the hard work of a diversity task force created by former State Bar Presidents Eduardo Rodriguez and Martha Dickie, the state bar's mission statement, our purpose clause, was expanded to include the following words: and promote diversity in the administration of justice and the practice of law. 2020 - I promise will be another milestone year in the advancement of the bar's diversity, equity, and inclusion efforts. We are moving forward today with positive and meaningful action in this area. Today we will hear reports from President Larry McDougal and President-elect Sylvia Borunda Firth on their efforts, and the board will be asked to approve the roster for the task force on diversity, equity, and inclusion, which was authorized on July 27 that the special-called meeting at that time. We will also hear from Director Carmen Roe on the roster for the board work group to review public and member input on diversity and inclusion issues, which was also established at the July 27 special board meeting. This board took a number of other actions on July 27, including a requirement that directors receive implicit bias training by December 31, and we are working on a program to accomplish that objective. This board also submitted a request to the state bar's MCLE committee to study whether to make implicit bias training part of our MCLE requirements. So these and other efforts will help ensure that diversity, equity, and inclusion issues stay at the forefront of the bar's work going forward. I look forward to your comments today, and we look forward to working with you as we move forward. Thank you, Mr. Chair.

CHARLIE GINN: Thank you, Mr. Executive Director. As we move towards the portion of our meeting where we hear from the public, I want to just mention a few things. When I spoke to you on the July 27 meeting, I asked that you remember the words of President - Immediate Past President Victor Flores - that everywhere we go we scrub floors and open doors, and we have another opportunity to do that today. We have an opportunity to do that by listening, by hearing, by understanding, and I hope we take that opportunity. For our members of the public, you will have three minutes in which to speak. If you're on video, please make sure that you have - didn't use the same email address and name that you

## State Bar of Texas Board of Directors Meeting - 09/10/2020

registered under, and signed up under, when you try to enter the room, when we let you in, so we can ensure you are who you say you are for security reasons. If you are calling in on the phone, please make sure you use the phone number and name that you registered under - so, again, for those same security reasons. If you're on a video call - when you have used two minutes of your time, and you have one minute remaining, I will stand up behind the podium to give you an idea. And then once you reach the time limit, I'll ask you to please finish your thought. We want to hear what you have to say, we're excited to hear what you have to say, but we want to be respectful of the other members of the public that have signed up. If you're on the phone, I will give you an oral warning when you have one minute remaining. One thing I want to clarify for everyone - the State Bar of Texas - I know that several of our speakers are here today to talk about the ABA Model Rule 8.4(g). At today's meeting, the board is going to consider referring that rule for review, as requested by state bar members at the prior board meeting in July. But that's what it would be. It would be referring it to the committee for review. There will not be a vote today on the State Bar of Texas adopting the ABA model rule. We cannot do that today. That's not the purpose of today with the ABA model rule so I wanted to clear up any confusion about that. Today's vote is about whether or not to refer that to the committee for review. We do appreciate the public interest in this topic, though, and we think it's important that we hear from all sides. We called this special meeting today because of a motion that was made at the July 27 meeting. When we are through with public comments, we will move into closed session, and we'll talk about the details of that once we're through with our public comments. As of 5:00 p.m. yesterday, 50 members of the public had signed up, and so if you'd be respectful of your three minutes, again, members of the public, we would appreciate that. With that, I believe that we're ready. Cris Houston, are you on our Zoom call?

CRIS HOUSTON: Yes, Mr. Ginn. Hello.

CHARLIE GINN: All right. The floor is yours, Ms. Houston. You have three minutes. Thank you.

CRIS HOUSTON: Greetings. I'm Cris Houston. Thank you for allowing me to voice my support for both of Board Member Dawson's motions. Justice will not be served until those who are unaffected are as outraged as those who are - Benjamin Franklin. My people and I live in a perpetual state of fear in America because of people with the mentality of Larry McDougal. I'm a Black woman, a person who has been terrorized, dehumanized, degraded, derided and discriminated against, like those who were the subject of President McDougal's harmful and offensive social media posts. You will be asked to approve board member Dawson's motions for multifaceted reasons. I appeal to your conscience. Others will support Mr. Dawson's motions by relying upon board policies and case law. Steve Fischer alleged that those of us who called for board - President McDougal's resignation or removal are in the minority. I urge you to be as outraged by the pain that we, the minority in the Bar, feel and to send the clear message that President McDougal's behavior will not be tolerated by the State Bar of Texas. Several words come to mind when I think of President McDougal's posts - fear, degradation, discrimination, dehumanization, criminalization, brutalization, derision. Imagine President McDougal making his online comments while face-to-face with Black, Latino, Asian, white and other Texas Bar members or members of the community at large who support the Black Lives Matter movement, such as the poll worker pictured in his post. What might they feel - degradation, dehumanization, discrimination, criminalization? Imagine President McDougal making his online comments while face-to-face with our former colleague who lost her law license because of her battle with drug addiction and mental illness. What might she feel - derision, degradation, dehumanization, discrimination? Imagine President McDougal making his pro-police brutality comments while face-to-face with the family of the deceased George Floyd or to the paralyzed Joshua Blake or to his children who witnessed a policeman shoot him in the back seven times. What might they feel - fear, degradation, dehumanization, criminalization,

## State Bar of Texas Board of Directors Meeting - 09/10/2020

discrimination, brutalization at the hands of the police? The fear that perpetually torments my people and me is that we may one day be George Floyd, Joshua Blake, Breonna Taylor, Botham Jean or Sandra Bland simply because we were born Black in America. Mr. Dawson is correct. The facts show that President McDougal cannot exercise the judgment needed to enunciate the policies and positions of the State Bar of Texas or the board.

CHARLIE GINN: Ms. Houston, please finish your thought.

CRIS HOUSTON: Therefore, I respectfully urge the board to support Mr. Dawson's first and second motions. Thank you.

CHARLIE GINN: Thank you, Ms. Houston, for your time and for your comments. Our next speaker is Jen Jenkins. Are you on our call?

JENNIFER JENKINS: Yes. Good morning.

CHARLIE GINN: Good morning. The floor is yours, ma'am.

JENNIFER JENKINS: Thank you. Greetings My name is Jennifer Jenkins. Thank you for allowing me to voice my support for the board member Mr. Dawson's motions. Moving forward, there has almost never been a time that the services of the State Bar of Texas have been more needed, more desperately needed than they are now in the year 2020. It is imperative that our leadership within the State Bar that represents all attorneys and the work that we do as attorneys mirror not only the membership of the state bar but the people that we so importantly serve. Mr. McDougal has shown both through his actions, his lack of action - his inaction - and his words that he is not the leader that we need to move us forward as a state bar. It is imperative that every single one of Mr. Dawson's motions be approved and moved on because we cannot do the work that is necessary without those motions. It is also imperative that, as a state bar, we never come back to the moment that we are in now with our lack of leadership and our lack of morality, our lack of concern, our lack of empathy and our lack of support for the community and the state, the citizens that we serve. I ask that this board seriously consider not only the motions that Mr. Dawson has made but make the changes that are necessary to move forward. Again, mirroring the words of Mr. Benjamin Franklin, justice will not be served until those that are unaffected are as outraged as those who are. This is a time of fear in America, and this is a time of crisis. The leadership of the State Bar of Texas must reflect the community that it serves. With that, I yield. Thank you.

CHARLIE GINN: Thank you, ma'am, for your comments and for your time today. Mr. Bob Bennett, are you on our call?

BOB BENNETT: I am. Thank you, Mr. Chairman.

CHARLIE GINN: You have the floor, sir. Your time starts now.

BOB BENNETT: Thank you, Mr. Chairman. Thank you, board of directors. You have seen my written statements, and I am in support of not sending this rule to the committee. You have attorney general opinion. You have statements by others who are constitutional lawyers that this will not stand up, and it would not be anything but a large mess as far as grievances are concerned. So I would urge you not to refer the rule from ABA 804 to a committee but end it now. Second, I am speaking for my good friend

## State Bar of Texas Board of Directors Meeting - 09/10/2020

Larry McDougal, who is not a racist, and is not going to be able to fix every wrong of society. I understand what you're saying. I understand the pain that you feel. I understand the emotion that's attached to it. But to go back eight and longer years and pick up somebody's emails when he was not president certainly impinges upon the right of freedom of expression, and so I'd ask for you to keep the motion of Dawson tabled and to not take away Larry's right to be the spokesman for the State Bar of Texas. Thank you very much.

CHARLIE GINN: Thank you, Mr. Bennett, for your comments and for your time this morning. Tamika Harris, are you with us?

TAMIKA HARRIS: Are you able to hear me?

CHARLIE GINN: Yes, we are. The floor is yours, ma'am.

TAMIKA HARRIS: OK. Thank you. My comments are directed to the board. I mean, we have hashed over the Larry McDougal situation. We know what he is. We know what he believes in. But my concern with the board and discussing what actions to take was what actions were not taken, what was not discussed, which was the integrity of the bar. So the board's inaction on it sends a message to me, everybody who looks like me, everybody whose skin is not white, that we don't belong in the state bar, we are not valued as attorneys. Nothing less than the removal of Larry McDougal is just and acceptable. There are other options that were available. The board did have the power to remove him, did not hear any statements on changing the policy manual or amending the rules so that this situation would never happen again. And where we are now with Director Dawson's motion is just that motion is too little, too late. The message is sent. The damage is done. Now, 400 years ago, my people were brought here in chains without a choice. Now as a lawyer, 400 years after that, I'm sitting here without a choice to be a member of the bar who does not wish me to be a member, who does not wish to include me, who does not wish to uphold the integrity of the profession, the Constitution of Texas and the Constitution of the United States of America. Well, I, for one, refuse to live on the state bar plantation so thus, I would request that the board look at amending the policy manual and amending the rules. And if we're not - if the board is not going to do that, then those of us who are members will have to do that, and we'll have to seek alternative measures such as creating our own voluntary bar, which will include us. Thank you. I have nothing further.

CHARLIE GINN: Thank you, Ms. Harris, for your time and for your comments today. Dan - is it Japhet? Pardon me. I'm sure I've mispronounced it.

DAN JAPHET: Can you hear me now?

CHARLIE GINN: Yes, we can, sir. The floor is yours.

DAN JAPHET: Thank you. Following that is very powerful. I have to admit that, you know, the fact that we decided that we're not going to just remove the guy is the beginning, at least, of the conversation of how we can fix this from now on out. My problem and my question is this - if we keep on chipping away at the guy's authority or the position's authority to a point to where everybody is OK with it - in other words, we're OK with him having that authority - what are we going to do in a year or two years when things change and maybe politics have changed, memberships have changed, alliances have changed, and all of a sudden, you've got a state - a board president who can't do anything? Are we going to come back and give him back that power? Is this going to be one of the deals where it's going to be kind of a

## State Bar of Texas Board of Directors Meeting - 09/10/2020

who's in charge, who's in control gets to say who gets to say what? Because that's kind of what you're doing, and it's kind of one of the points that's been made about the arbitrary nature of the state bar to begin with. You know, are we going to let our people vote and their vote count? Or are we going to let them vote and then, if we don't like what they say, go back and try to change those votes? Which is another thing that seems to be happening right now. So my comment is simply this - be real careful of what you do we take away the man's authority because you're not taking away his authority. Remember that. It's not his authority. You're taking away the position's authority. And I ask that you take that into consideration before you do anything. Thank you.

CHARLIE GINN: Thank you, sir, for your time and for your comments this morning. Roshan Mansinghani, Roshan Mansinghani, are you with us?

ROSHAN MANSINGHANI: I am.

CHARLIE GINN: The floor is yours.

ROSHAN MANSINGHANI: Thank you. My name is Roshan Mansinghani. I'm an attorney practicing in Dallas, and I appreciate the opportunity to speak to this committee. My comments are directed to the proposed ABA Model Rule 8.4, and I have strong concerns about this rule. I believe that this rule violates the free speech that attorneys have. It is very broad, and, in particular, and what I think is somewhat pernicious about this rule is that its breadth cannot be determined from the text of the rule itself, but you must go read the commentary to the rule to then understand that the vague terms that are used in the rule have an application that is much broader than what anyone would have anticipated. In particular, the rule, essentially, on its face, claims to be a nondiscrimination rule, and in that vein, it is certainly something that I think should be promoted. But what it will turn into, in my humble opinion, is a speech code for lawyers, and, depending on whatever is the politically correct sentiment at the time, it can be used to persecute those that may have a position that is different than what is that in the majority. This is exactly what lawyers should be fighting and not enacting as a speech code for their own profession. The rule extends to even conversations people would have at a meeting of lawyers, not even in the actual practice of law - for example, in the representation of clients or in the courtroom - but what they may say at a bar meeting. This turns our freedom-loving country into an Orwellian country that I think none of us would like to live in. The rule has been rejected by many states because of these exact same issues, and I believe that our state should follow suit in that regard. I do not believe the rule is worded in a way that lawyers can understand what it actually means, what it actually applies to, and thus, it is vague and inappropriate, especially because it does relate to regulating the speech of lawyers. Ultimately, I do believe that there are problems in our society dealing with discrimination that can and should be addressed, but this is not the way to do it. We cannot regulate free speech in order to silence voices we may not like to hear. If the rule was intended simply to prevent a lawyer from, for example...

CHARLIE GINN: Please finish your thought, sir.

ROSHAN MANSINGHANI: Looks like my time is up but I appreciate - I believe my sentiments have been expressed, and I thank you so much for your time and your consideration.

CHARLIE GINN: Thank you for your time, sir, and for signing up to speak and for your comments. Mr. Earl Spielman, are you on our call? Mr. Spielman, if you're with us...

EARL SPIELMAN: I'm here.

## State Bar of Texas Board of Directors Meeting - 09/10/2020

CHARLIE GINN: OK. Good deal. Yes, sir, the floor is yours.

EARL SPIELMAN: OK. Thank you. Good morning. Thanks for allowing me to speak in regards to the motion presented by Alistair Dawson, the bar director from the District 4 of Houston, and it also pertains a little bit to 8.4 as well. I just want to say that I have personally known Larry McDougal in a professional capacity for over 30 years. As such, I can personally attest that never once have I ever heard a disparaging, unprofessional or pejorative word uttered by this man. I actively practice in all of the courts of Fort Bend County as well as the entire state. I've had occasion to (inaudible) with President McDougal in many of these courts so I can say that I've spent enough time with him to know what he says, what kind of person he is and whether he is someone that can be trusted and will advance the wishes and needs of the members of the state bar. Let me say this as well - Larry was elected by the members of this state bar. Many of these are from the southeast part of this state. Many of the voters have written to the bar in support of Larry. They, indeed, are happy that he got elected. I am aware that many members of the bar also wanted Larry to resign, which he did not do. Asking Larry to resign over something misconstrued 12 years ago is fundamentally unfair. Since this executive committee cannot remove President McDougal, there are many that are trying to make him so uncomfortable that they think he will just up and resign, and that is not in his nature. Larry is no quitter, and he is a fighter. Rather than make President McDougal use his talents, which are many, in fighting with the committee and board, many of us think that his resources would be better utilized working for the betterment of the constituents of this organization. I'm not saying that the members who voice a contrary position of mine, that their thoughts are invalid, nor do I wish to minimize their perceived pain. Rather, I would ask them to look beyond what harm they may have incurred and understand that Larry possesses the ability to appreciate the needs of the entire State Bar of Texas and, in particular, the criminal defense of municipal justice bar members and what their needs are. I ask that this toxic cancellation culture not permeate into our arena. This current zeitgeist is not healthy for us members as an aggregate. I ask that we come together and let Larry do his job unrestrained. Thank you very much.

CHARLIE GINN: Thank you, Mr. Spielman, for your time and for your comments today. Josh Blackman, are you on our call?

JOSH BLACKMAN: Yes. I'm here. Can you hear me OK?

CHARLIE GINN: We can. The floor is yours, sir.

JOSH BLACKMAN: Thank you for the opportunity to speak. My name is Josh Blackman. I am a constitutional law professor at the South Texas College of Law in Houston, but I'm here in my capacity as a member of the bar. Today, I would like to briefly discuss the proposal to refer ABA Model Rule 8.4G to a committee for study. In the current moment, I appreciate the bar's desire to take steps to promote racial and other types of equality, but moving forward with 8.4G would fail to achieve those goals. Specifically, the adoption of this controversial rule would be challenged immediately in court. I suspect the same plaintiffs who challenged the integrated bar will line up for an encore suit, and a Texas attorney general who ruled the proposal unconstitutional has hinted he will file suit as well. If a single district court enters a preliminary injunction, the validity of the rule would remain in doubt for years, and the bar may unwittingly set a precedent in the 5th Circuit or the Texas Supreme Court. Throughout this entire time, the bar will be enjoined from taking the important steps that it needs to take, and in the process, acrimony will build among members of the bar about this divisive rule. My suggestion - take the easier route. Consider a narrowly tailored rule that addresses the specific problems attorneys face in the

## State Bar of Texas Board of Directors Meeting - 09/10/2020

legal practice in Texas. Don't overshoot and rubber stamp an ABA-drafted, burdensome regulation on the freedom of speech and the free exercise of religion. Thank you for your consideration.

CHARLIE GINN: Thank you, Mr. Blackman, for your time and for your comments this morning. Jessica Lewis, are you with us? Ms. Lewis, if you would unmute yourself. All right, Ms. Lewis. We will come back and try to make sure you're on here in just a few minutes. Rich Robins, are you with us? Mr. Robins, if you would unmute yourself. Oh, there's - we had him. Lewis, are you with us? I saw your name pop up.

JORDAN LEWIS: I'm here. It's Jordan Lewis.

CHARLIE GINN: All right. The floor is yours, sir.

JORDAN LEWIS: Yes. My name is Jordan Lewis. I'm a member of the Texas Bar, and I'm here to stand with the other attorneys and voices today who are speaking out against the proposed addition of Model Rule 8.4G the Texas Disciplinary Rules of Professional Conduct. First and foremost, this rule unfairly targets lawyers of faith and conscience. It suppresses free speech, and it's duplicative of other rules which already make it inappropriate for lawyers to discriminate press in the course of their professional representation. It's expansive and too broad since it essentially covers all conduct and not just professional conduct, but moreover, it is completely inappropriate. It basically takes one set of values and favors them over other sets of values, values and systems of morality that are the foundation of our civil society, of billions of people around the world. It targets multiple faiths, and, basically, it does so under the guise - the well-meaning guise - of, you know, fighting discrimination and harassment. Discrimination, harassment, racism, bigotry are evil things, and we should do everything we can as a society to stamp them out, but suppressing speech and abridging the constitutional rights of our attorneys in Texas or in our country is completely inappropriate. Moreover, attorneys are supposed to espouse and fully flesh out the ideas of our society, and this rule will especially be chilling on that speech. It will create tension and fear among the bar, and it will render us unable to fully engage in our civic society or in our representations or in our communities or even in politics. So I am firmly against it, and I encourage other members of the bar and I request that these esteemed directors follow suit with many other states in rejecting this model rule. Thank you so much.

CHARLIE GINN: Thank you, Mr. Lewis, and I'm sorry I got your name wrong there. It's Jordan, not Jessica. I apologize for that.

JORDAN LEWIS: No problem.

CHARLIE GINN: I mentioned this at the last time we spoke. People mispronounce my name all the time, and so I'm sorry if I do that today. We are working through this the best we can, and our state bar staff is doing an incredible job. I understand that we have Rich Robins on the phone. Mr. Robins, are you with us? Mr. Robins, if you're on, if you would unmute yourself. If you're here, the floor is yours. And, Mr. Robins, if you want to try to hit star 6 and 7 to unmute, that might work, too.

RICHARD ROBINS: Can you hear me, sir?

CHARLIE GINN: I can. The floor is yours. Your time starts now. Thank you.

RICHARD ROBINS: Thank you very much. I would like to call in to offer support for the bar's concern about serving the public as well as possible. I think there's a win-win situation for all of us here,

## State Bar of Texas Board of Directors Meeting - 09/10/2020

especially the African American community, if we can refrain from muzzling Larry McDougal. He has said repeatedly that he wants grievance reform, so it'll be a lot less intimidating for lawyers to accept cases and causes that need lawyers' involvement. The African American community has various members who have complained to me that they very much fear the grievance process because it is so easy for someone to use the Internet now to file a frivolous grievance against an attorney whom they want to stip and not have to pay, for example, or an attorney who didn't lie for them in court when they wanted. And it's something that really makes a lot of us endure a chilling effect. Larry McDougal's grievance reforms that one can find at the website [texasbarsunset.com](http://texasbarsunset.com), which I maintain - they would make it so that we would see a return, perhaps, to yesteryear. In 1992, nearly 100% of civil defendants in Texas had legal counsel. Would anybody care to guess what that percentage is now? It's 25%, according to the Bureau of Justice statistics and the Association of State Courts. Larry McDougal wants it to change. The situation that we have is just not tenable. And everybody stands to gain if we can keep Larry McDougal. The people who are concerned about him - they are more than welcome to keep airing their concerns if he does anything else that bothers them.

CHARLIE GINN: Mr. Robins, you have one minute remaining.

RICHARD ROBINS: Thank you very much. It's worth taking a chance on this true leader because when is the last time that we had a president say that he wanted to do things that would benefit the entire legal profession, such as grievance reform? With that, I would like to conclude by saying, let's not muzzle our president. Let's not restrict his powers. Let's get together and rabble rouse in favor of grievance reform that would help the entire community, not just of Texas lawyers but of Texans and people who invest in Texas from abroad. Thank you very much.

CHARLIE GINN: Thank you, sir, for your time and for your comments this morning. Cynthia Owens, are you with us?

CYNTHIA OWENS: I'm here.

CHARLIE GINN: Yes, ma'am. The floor is yours.

CYNTHIA OWENS: All right. Thank you. And thank you for the directors holding this for us to speak again. I have two issues. One is that I submitted an article by Harper's Magazine that said there's a sinister chilling effect that takes place when we try to just have people fired or muzzled, especially if they're into the field and the colleges, even. And it's a very short article and was signed. It's coming out in October in Harper's. And this is a chilling effect. I think it's having a chilling effect on having some people want to run now. But others would say, I don't want to be under this intense scrutiny for my whole life. And it's a very good article, and I hope you read it. My second issue is the muzzling effect. We had Larry McDougal speak. I did as CLE chair to the Harris County Bar and then to a Texas traffic lawyer bar after he was elected, and he ran on a platform - not just the grievance reform, but he ran on many things - on the health program we have with the state bar and many other things to improve the focus on the small businesses and sole practitioners. And I've never seen anyone do this to his extent. And we voted for him not just who he was. We voted for him on his platform. And the State Bar Executive Committee may not agree with his platform, but he should be allowed to run on what we elected him to run on for and not be muzzled. And I fully believe and know him so well that he will comply with anything you ask him to. But don't muzzle him, please. So I thank you again. And I'm an attorney in Harris County.

## State Bar of Texas Board of Directors Meeting - 09/10/2020

CHARLIE GINN: Thank you, miss, so much for your time and for your comments today. Alex Wathen - I'm sure I mispronounced your name, and I apologize. Are you with us?

ALEX WATHEN: Good morning. I'm Alex Wathen. I'm a solo practitioner in Houston practice, primarily bankruptcy and appellate law. And I'm here to talk about two things - mostly, my support for Larry McDougal and what he's doing to help this. And I'm also openly bisexual. I also grew up in a Swedish-speaking household. In some ways, English is my second language. Because I'm a man, and I'm mostly of European ancestry - I actually have some Jewish ancestry, I found out recently with a DNA test - I may not seem like the average most diverse person. But I actually had a same-sex partner who died of AIDS in 2002, before I married in 2012 - I'm sorry, before I married my current wife. So I try to think I can see this from both perspectives. I really support Black Lives Matter. I thought about coming here with a Black Lives Matter mask, but that's not really the decorum we should have here. But I think we need to accept Larry's apology. We realize this is stuff, remarks said on, I think, Facebook - I haven't I read remarks, but I've read his apology - five and 12 years ago. And, you know, we all can make mistakes sometimes. I have a big mouth, too. And this reminds me of the cancel culture we have in this country. Whoopi Goldberg said something very unflattering about George W. Bush in 2004 when he was running for re-election, and she was speaking at a Democratic fundraiser. And, yes, her remarks were kind of a kind of sexualized joke that she shouldn't maybe have said on national television. But she had a hard time finding work for five years after that. She then, I guess, landed a major TV show, and she's back in the mainstream. But I think it's wrong that Whoopi Goldberg couldn't find work for five years because we are so sensitive and will not forgive it when people make mistakes and what they say. And we need to be forgiving her mistakes. I hope that Larry's agenda will go on, that we do not censure Larry. And I hope that Sylvia will then take over Larry's agenda and continue it. I also would like to say that I'm a little concerned about the rule. You know, I don't want anything that hurts speech. We have to be thick-skinned and be able to handle stuff that sometimes is offensive to us. But a marketplace of ideas where everybody gets hurt and no one is afraid to speak is what's really important. I'd like to thank you for listening to me. And I hope you make the right decision. Thank you. Bye.

CHARLIE GINN: Thank you, sir, for your comments and for your time this morning. Mr. Mike Shut.

MIKE SHUT: Thank you. Thank you so much for your service to Texas lawyers. I know it's not easy to sit through these comments and review all the documents, but we're grateful for your service. I've been a member of the state bar since 1987, and I've taught professional responsibility in a couple of different law schools. And I just want to speak to Rule 8.4(g) and what the ABA is doing with it and just the harm that it could cause to Texas lawyers. I see it only tangentially connected to the other motions regarding the conduct of the state bar president. And there are other modes of addressing that that you're considering, and I'd like to speak only to Rule 8.4(g). As Professor Blackman and others have said, it is likely unconstitutional and vague. But the immediate practical problem, I think, for Texas lawyers comes with its breadth. Rule 5.08 in Texas currently addresses these issues and as far as I can tell have addressed - has addressed the issues of discrimination in Texas courts and in the profession very well. And it addresses - our current rule addresses words or conduct in connection with an adjudicatory proceeding which actually ties the disciplinary rule to issues of justice and fairness, which is what we're trying to do. But the ABA intentionally untethers the rule from justice and, quote, "addresses conduct in the course of representing a client." In the old rule - that moves from the old rule in the course of representing a client, like the Texas rule in an adjudicatory proceeding, and instead subjects a lawyer to discipline for conduct, quote, "related to the practice of law," which it defines in comment for as including such things as operating or managing a law firm or law practice, participating in bar association business or social activities in connection with the practice of law. This breadth makes every area of a

## State Bar of Texas Board of Directors Meeting - 09/10/2020

lawyer's life relevant to a grievance committee, and so there are two obvious consequences for Texas lawyers. First, much of Texas substantive law of employment discrimination, hostile work environment, can simply move to the disciplinary context, right? If you're managing a law office, now you're subject to grievance if you do something in the employment context that might be discriminatory. So grievance committees will become the arbiters of employment law, settlers of Twitter and Facebook disputes, censors of CLE panels, overseers of law firm recruiting events and cocktail parties and approver of nonprofit board mission statements. If you're reform-minded about the tendency of lawyers to use ethical rules as a sword, we should definitely reject this rule out of hand and not refer it to the committee. It's really a recipe for using the rules of professional conduct as a weapon. And finally and most troubling, as others have pointed out already, this will chill lawyers' speech. Every lawyer will think twice about her associations, her board service, her willingness to discuss any issue involving race, gender, class, money or any hot-button issue. Rather than advancing diversity and opening up healthy dialogue among Texas lawyers, this will actually reduce diversity and inclusion and actually shut down the conversation. So I urge the committee to refrain from referring the rule to the committee. Thank you so much.

CHARLIE GINN: Thank you, sir, for your comments and for your time this morning. Our next speaker is Hiram Sasser. Are you with us?

HIRAM SASSER: I am. Thank you very much. Can you hear me?

CHARLIE GINN: Floor's yours, sir.

HIRAM SASSER: I'm only speaking as to opposition of Rule 8.4(g). I think most lawyers when they started off going to law school, they went to law school because they had a particular passion about a certain issue. They wanted to make a difference. I think that there are probably a lot of lawyers at firms that have particular passions. Maybe someone has an environmental passion, ends up working on behalf of Exxon or British Petroleum when they spill oil in the Gulf or something like that. And they've had to, you know, take on another noble task, which is providing for their families. But I think many, many lawyers are looking for outlets to advance whatever their particular passion is. I know that for me, I happen to be fortunate. I represent people of faith on religious liberty cases all across the country and people of all faiths. And I get to pursue my passion in doing that representing a Native American sweat lodge, an Islamic cemetery, Jewish synagogues, various Christian denominations and that sort of thing. All of those religions do not agree on everything, obviously. And some of them have significant disagreement with what might be referred to as kind of a center-left worldview perspective. But nevertheless, you know, we fight for their religious liberty. And I think that lots of lawyers want to be able to pursue their passions. I think some lawyers wanted to represent Gitmo detainees and did so. And I think Rule 8.4(g) would prohibit those attorneys from pursuing some of those types of representations. I think it would prohibit lawyers from representing Gitmo detainees in pursuing their rights in court and various proceedings that they were subjected to. I think it would prohibit lawyers from representing lots of people of different types of face that may have views that are contrary to what probably is the majority view of most lawyers, which is probably a center-left position. And I think that Rule 8.4(g) will be a significant chilling on people pursuing those passions. And I'm hopeful that we can try to make room for people of all particular backgrounds. I think it's very, very important that lawyers have that opportunity to pursue their passion, the very reason they got into the practice of law. Whether that means saving the whales or that means fighting for voting rights, I think it's very, very important. Lawyers serve a very important role in all the various causes. And if I found out that Rule 8.4(g) would make a simple

## State Bar of Texas Board of Directors Meeting - 09/10/2020

exception for me but would prohibit my political opponent from advancing their cause, I would be as adamantly opposed to Rule 8.4(g) as if it only applied to me. Thank you.

CHARLIE GINN: Thank you for your comments and for your time today, sir. Jessica Lewis, are you with us?

JESSICA LEWIS: I am.

CHARLIE GINN: All right. You have the floor, ma'am.

JESSICA LEWIS: Yes. Thank you so much. Thank you for hearing our comments. This is a sad day, I think, for the Texas Bar. It is heartbreaking that any Texan, including Texas lawyers, feel less than. While I think that those who hold any such less than view of their fellow Texans are much fewer than some of these reports might make it seem, I regularly advocate for all people to be viewed as equal as they are in the eyes of God. But we as attorneys are both to be advocates and truth seekers. And in this instance, we who draft persuasive pleadings, I believe, should be able to filter through material that instead is directing us for maybe political and other reasons instead of getting us at that truth. I think those comments that I just made apply to several other things before the board today, but I'm here specifically to speak to ABA Rule 8.4(g). This rule is deeply flawed, and there is no reason it needs to go further. It has been considered in Texas and rejected. And this law makes it professional misconduct for a lawyer to engage in conduct related to the practice of law that he or she knows or reasonably should know - so no knowledge requirement - is harassment or discrimination on the basis of 11 different topics. This conduct related to practice of law includes verbal conduct, which means speech. And that's why it's been described as a speech code for lawyers. This rule has been forwarded under the mantle of anti-discrimination, and were that its main goal and effect, I would not be here sharing these comments. As a Christ follower, I believe that all people are created in the image of God, and that we are called to be an advocate for unity, healing the oppressed and the vulnerable. But the broad nature of this rule permits its application far beyond the scope of anti-discrimination laws which are already in place and applicable to lawyers. Instead, by its plain language and by including the scope of - in the scope of the rule of verbal conduct that manifests bias or prejudice towards others without even a knowledge requirement, this rule can expose attorneys for censure and disciplinary action for even - and as an example - sharing the Gospel at a law-related social gathering, which I've done before and will do again. I have a bias towards my religion because of the hope that I believe that it brings to each one of us. That example might sound extreme. But please consider, why would a body of lawyers support rule language that is so broad that it would provide for such a plain-language application? In other words, if the intent is more narrow, why is not the language? The drafters even had to turn to the comments to try to clarify the inapplicability of the rules of things like women's affinity groups and other diversity initiatives.

CHARLIE GINN: Please finish your thought.

JESSICA LEWIS: Yes. Thank you. I'll just wrap up by saying that that the Rule 8.4(g) is not a tool to fight injustice but rather a weapon at which injustice can be committed. And I believe that the - that more speech will allow these battles to be won in people's hearts instead of by threat of disciplinary action. Thank you.

CHARLIE GINN: Thank you for your time and for your comments. Melissa Threkill, are you with us?

MELISSA THREKILL: Yes. Good morning. Thank you for having me.

## State Bar of Texas Board of Directors Meeting - 09/10/2020

CHARLIE GINN: Good morning. You have the floor.

MELISSA THREKILL: OK. Thank you. I'm sure you guys are maybe tired of hearing this and dealing with this issue. And obviously, a lot of other lawyers are tired of hearing of it. They're - they like to refer to people like myself as a socialist. I'm part of some socialist anti-American mob. And, you know, I do have an issue with them classifying those of us speaking out against the - president McDougal's comments as, you know, some sort of anti-American, anti-First Amendment-type lawyers because I'm just practicing my First Amendment rights to voice my disappointment that we have a president who in my opinion is clearly racially biased. A lot of it wasn't political. The meme that he posted with a police officer on the neck of a suspect and then saying - and I paraphrase - you know, justice is sometimes delivered in the streets. For me to speak out against that meme as a lawyer is not a political statement. That's me saying as a lawyer that in no case at any time do I ever believe due process is ever served in the streets of this country. And that's not a political statement to say. That's a philosophical, maybe a sociological statement to make, but it's not political. And then the way he treated the bar member, a former colleague of ours, who I imagine has suffered because she was a methamphetamine addict and had issues, and the way he referred to her when he was a leader - somebody who allegedly cared about lawyers who suffered addiction - in a very sexist and nonchalant way - you know, to speak out against that behavior is not political either. That's totally unacceptable, especially from a leader. I think we should expect more from our leaders, and I think that we should speak out when they don't deliver. That is what democracy is. That's the beautiful thing of this country. And, you know, you guys will do whatever you need to do on the Dawson motion. Larry McDougal - he doesn't speak for me. He can go out there and, I guess, speak whatever he wants to say. But I don't think he is the finest example of what Texas has to offer. And I think it's a shame that he's the one that apparently it is the best that we have to offer. So I would encourage you guys to find a better way to, I guess, recruit presidents and interview them and do whatever you need to do to make sure that this doesn't happen again. Because I think out of all the lawyers in Texas, we have better representatives, including one of your board members from El Paso. He's also pretty poor representation of lawyers in Texas. And in regard to Rule 8.4(g), I think we have some bad legal analysis going on here. The rule clearly says that you'll represent whoever you want.

CHARLIE GINN: Please finish your thought, ma'am.

MELISSA THREKILL: Thank you. I will. And I would also recommend not taking any advice from Attorney General Ken Paxton. He should actually be disbarred. And that's one reason why I don't think grievance reform is necessary. Thank you.

CHARLIE GINN: Thank you, ma'am. Thank you for your comments, for your time. Mr. Bill Harger, are you with us?

BILL HARGER: Yes, I am.

CHARLIE GINN: All right. The floor is yours, sir.

BILL HARGER: Thank you. I want to speak just very briefly about the McDougal matter and then also about 8.4(g). Regarding McDougal, I do not - even though I practice primarily in Fort Bend County, I do not know Larry McDougal. I've seen him speak, but I don't have a personal relationship with him. But from what I have been able to discern from the things that he's being castigated for right now, I have

## State Bar of Texas Board of Directors Meeting - 09/10/2020

researched what I could on the internet regarding his comments, et cetera. To me, 8.4(g) is a prime - or he's a prime example of why 8.4(g) is inappropriate. I mean, this man did not make racist comments that I've seen. He may have made some that I haven't seen, but all of the ones that I've looked at, which were particularly the ones I was directed to by the bar, were not racist. They were simply making expressions of opinion based on facts. And I'm going to go and address the elephant in the room - this Black Lives Matter thing. They will tell you - they're upfront about the fact they're a Marxist organization, pro-abortion. They're anti-nuclear family. I think that they're probably one of the most destructive forces for Black America that could possibly exist. And yet, McDougal is being crucified just because he expressed his views on an organization like that. I think that's a disgusting, dark stain on the state bar to be doing that. Now, regarding 8.4(g), I am very strongly opposed to it because I don't think there's - I don't see how anybody could question the fact that it is going to suppress free speech. I am also a Christian. And because I'm a Christian, I can't discriminate, and I don't discriminate. And 8.4(g) is redundant entirely because we already have ethical rules in place that guard against that kind of, you know, serious discrimination. This 8.4(g) is so vague - who gets to define what's harassing? Who gets to define what's discriminatory? I don't agree with Ken Paxton on everything, but Ken Paxton is our attorney general, and he was asked to review this right after it came out two years ago or four years ago.

CHARLIE GINN: Please finish your thoughts, sir.

BILL HARGER: It's an unconstitutional - 8.4(g) is unconstitutional. The Supreme Court has had two decisions since it came out that confirmed that it's unconstitutional. It's a suppression of free speech, and it's wrong, and I encourage the board and the bar to not further promote it.

CHARLIE GINN: Thank you, sir, for your time and for your comments this morning. Jonathan Saenz - and I'm - again, I'm sure I butchered your last name, and I apologize. Are you with us?

JONATHAN SAENZ: Good morning. It's Jonathan Saenz. I am with you.

CHARLIE GINN: All right. Thank you, sir. The floor is yours.

JONATHAN SAENZ: Thank you. My name is Jonathan Saenz, and I've been a licensed attorney in Texas for 16 years. I'm a proud graduate of the University of Houston Law Center, and I was recognized as a public interest law fellow. And for over a decade, I've been practicing as a non-profit pro bono lawyer protecting the rights of Christians and churches often on constitutional issues based on their biblical beliefs on marriage, sexuality and life. I'm speaking to inform you of my opposition to ABA Rule 8.4(g) and asking you to not refer it forward. Before I was a lawyer, I was a client on a religious belief issue, so I've dealt with these things before and had to go against the government. And it's because of lawyers that are in the position like I am now that my biblical beliefs were protected even though a government official went against me. And the notion was that I did not have a place to stand on those rights. ABA Rule 8.4 has been criticized by scholars as a speech code - people like Eugene Volkov of the Federalist Society, Michael McGinnis, the dean of the University of North Dakota School of Law, and many others. It's very clear that this proposed rule is problematic. As a matter of fact, the state legislature has already acknowledged this. In 2017, State Representative Matt Krause had language that was placed on Senate Bill 302 and Senate bill 303 making it clear that religious liberties should be protected and not infringed. But it was in response to concerns that ABA proposed rule that was being proposed in other states would come at us and would be proposed. And so the legislature has spoken on this issue, clearly rejecting the notion of 8.4(g). Other states have rejected - over 14 states that are abandoned or rejected

## State Bar of Texas Board of Directors Meeting - 09/10/2020

ABA rule while only two states, Vermont and New Mexico, have adopted it fully. And furthermore, we know that ABA Rule 8.4(g) could limit lawyers' ability to accept, decline or withdraw representation. As a matter of fact, Dean McGinnis, who teaches on professional responsibility, has made it clear that simply just - if you have an issue of - that is regarding non-limitation that model Rule 8.4(g) offers lawyers no actual protection against charges of discrimination based on their discretionary decision to decline representation of clients, including ones whose objectives are fundamentally disagreeable to a lawyer. That could apply to someone that's in a position like mine. I run a nonprofit organization called Texas Values. We are often involved in litigation and policy issues. And if this rule were to be adopted, lawyers like myself and others could be forced to represent people on issues of same-sex marriage and other issues of sexuality that are heavily litigated for which we have fundamental biblical beliefs against that. I ask you not to refer 8.4(g) model rule forward or to adopt it. Thank you.

CHARLIE GINN: Thank you for your time, sir, today and for your comments. Michael Simpson, are you with us? Mr. Simpson, if you are with us, please make sure you're unmuted.

MICHAEL SIMPSON: OK. Now I'm unmuted.

CHARLIE GINN: OK, perfect - sounds good. Yes, sir. The floor is yours.

MICHAEL SIMPSON: Thank you. Good morning to the board. Thank you for your service. Good morning to those who are joining us via the Internet. Thank you for this opportunity to speak. I wish to speak against referring Model Rule 8.4(g) any farther than it is right now. I believe the rule is broadly unconstitutional especially in its breadth and lack of definition of what harassment is. If somewhat - if I have the position that marriage is between one man and one woman and someone comes up and tries to argue that it's between anyone who wants to get married no matter who you love, is that harassment of me? I guess harassment is in the eyes of the beholder. We can't have that as the rule. We need to know firm standards. And I believe that if you go back and check the ABA comments, I think they've got something like 481 of them. Four hundred and seventy said don't do it. So I would exhort my executive members not to forward this anywhere. Just leave it. Let it die the death that it needs. And finally, the question of a speech. The solution to disfavored speech is more speech. If we can't convince each other by our speech, then we're pretty poor attorneys and we - or we lack logical arguments. So my basis on speech and concern is I'm a retired Green Beret. Both of my sons - two of my sons were Green Berets. One's retired and one died in Afghanistan defending speech and freedom. So that's what I've gotten in the mill. I did that before I was an attorney. Once again, thank you to the board for your service, and thank you for sitting through all of this. I yield my time.

CHARLIE GINN: Mr. Simpson, thank you for the time and for your words and for the service of yourself and your son and for your son's sacrifice for you and your family for us. We thank you for that.

MICHAEL SIMPSON: Thank you, sir.

CHARLIE GINN: Mr. Clare Smitham - pardon me, Ms. Clare Smitham. Are you with us?

CLARE SMITHAM: Yes, I am.

CHARLIE GINN: The floor is yours.

## State Bar of Texas Board of Directors Meeting - 09/10/2020

CLARE SMITHAM: Thank you. Good morning. My name is Clare Smitham and I'm a solo practitioner in Dallas, Texas. I also lead a faith-based legal aid organization that provides free legal advice to low-income Texans. Thank you for the opportunity to comment on a ABA Model Rule 8.4(g). I oppose the referral of this rule because it is ambiguous and overly broad. Half of my practice is dedicated to pro bono work. This work includes advising faith-based organizations. I also sit on the board of a local faith-based nonprofit. This rule may affect me in three ways. First, this rule may limit my ability to serve on the board of my faith-based nonprofit because I may be engaged in conduct related to the practice of law when I advise on their legal policies. If I draft a policy that is consistent with their religious position on sexual practices, could that be construed as conduct related to the practice of law that is discriminatory? Would I be disciplined for advising the organization? The rule is unclear. Secondly, this rule may limit my ability to speak publicly on sensitive social issues. If I speak against amending a nondiscrimination law on sexuality at a legislative hearing, would I be subject to disciplinary action? The rule is unclear. And finally, this rule may limit my ability to join and participate in social political and religious organizations. I am a member of a church that chooses its leaders according to its religious beliefs. Would I be subjected to discipline if the church only hires employees that believe marriage is between one man and one woman? The rule is unclear. As a woman of faith, I believe all people are created equally and deserving of respect. I'm against all discrimination but as written, this rule is dangerously unclear. It exposes attorneys to censure and disciplinary action. It goes beyond the scope of existing nondiscrimination laws. It chills free speech and it would prevent me from serving organizations that I believe in. For these reasons, I strongly oppose the referral of ABA Rule - Model Rule 8.4(g). Thank you.

CHARLIE GINN: Thank you, Ms. Smitham for your time and for your comments today. Hal Moorman, are you with us? Mr. Hal Moorman.

HAL MOORMAN: I am. Can you hear me?

CHARLIE GINN: The floor is yours, sir.

HAL MOORMAN: OK. Thank you. I appreciate all the time that the bar directors spend on this. And I oppose the adoption of this rule. Don't let the Texas Bar become the American Bar Association. This great bar association should not become part of the cancer culture. A culture that discriminates against others under the guise of nondiscrimination. Don't let our disciplinary committees become the speech police. Any space that would oppose the point of view advocated by this rule would create a violation of it, causing lawyers to be subject to sanctions. This isn't a rule against discrimination. It's a rule in favor of speech that some want to hear. As many have already said, it's probably unconstitutional. It's stifle speech. It's wrong. It's aimed at anyone who has a different opinion than certain people about lots of different issues covered by the rule. Conduct related to the practice of law is broad. That could be almost anything. As someone has already said if you're, you know, in a group of lawyers and you talk about something in the Bible, maybe you've violated that rule. Ask yourself, read the Bible and see if you think it violates the rule. You know, lawyers are believers in freedom. Obviously, under certain rules. But this rule goes way, way too broad. Please don't do this. It's wrong. It's harmful to people of faith and we're better than this. Thank you. I'm finished.

CHARLIE GINN: Thank you, Mr. Moorman, for your time and your comments today. Chris Kirby, the floor is yours. Pardon me, I guess it's not yours yet. Are you with us? Apologies. Chris Kirby? If you are with us and you are muted, you might mute yourself if you don't mind. You are with us?

## State Bar of Texas Board of Directors Meeting - 09/10/2020

CHRIS KIRBY: Thank you. Yes, I am with you. I'm trying to manage audio. Can you hear me now? Thank you.

CHARLIE GINN: We can. No problem. The floor is yours, sir.

CHRIS KIRBY: Thank you so much. And I will echo Mr. Ginn and the sentiments of others in just saying thank you so much to you and the rest of the board for taking these comments. I do you want to say that as a 30-year attorney, I have run a company that is heavily involved nationally in diversity and inclusion issues. And they are critically important to us and they're critically important to our clients and every person that should be on this call. I'm sure we all agree that bringing people together and trying to figure out how to build relationships across every divide is critically important to all of us. And in that spirit, I am also a huge advocate for free speech. For the ability to voice whatever opinions you have even if they're ones with which I disagree because only in the ability to speak into those things are we able to change the beliefs that are behind them. And my concern with 8.4(g) is precisely that it stifles speech. It stifles interaction. It stifles communication. It stifles dialogue. It stifles our ability to be the advocates that we want to be, not only for our class but also for those positions which we hold dear. I've heard a number of people over the course of this conversation talking about their religious beliefs and many of those are expressed as Christian beliefs which I share, deeply share. But I'm also greatly concerned about the stifling effect that this would have upon beliefs that are not my own. That are very different from my own. And I'm afraid that what happens is we get a situation where what's good for the goose is good for the gander. The stifling of the speech of those that have been speaking today in this season in our lives will be that of others in another season. And what will we do then? Relationships are what's going to fix the situation that we face in the Texas bar right now, not rules. Relationships will do that. And I too am troubled by some of the things that we've seen and heard. But I think in the midst of all of it, we need to recognize that this rule is not going to help. This rule is going to get in the way of what we're trying to accomplish. And what we've done instead is we've had one of those moments with yet, another cliché. We've thrown the baby out with the bathwater. We're so concerned about the current events that have brought us together around this and the comments and tweets and Facebook posts that have caused so much challenge that rather than talk about it, we want to institute a law that somehow criminalizes that behavior for those of us who practice law. I'm deeply disturbed by anything that is going to get in the way of our ability to be the people that we are in the profession that we've chosen. And for that reason, 8.4(g) is a troubling rule for me. In addition, as so many people have spoken already, we've seen, it's clearly an unconstitutional rule. It's overbroad. It's vague. It's not something that we ought to be bringing anywhere further than it has been. The comment was made in the last meeting to bring it up. I appreciate that comment. And now it's time for us to move on and let it lie where it is. In the two states that have adopted it, the 23 that have rejected it and let's add Texas to that list. Thank you.

CHARLIE GINN: Thank you, sir. Thank you for your time and your thoughts.

CHARLIE GINN: Mr. Eric Dick. Are you with us, sir?

ERIC DICK: Yes, sir.

CHARLIE GINN: All right. The floor is yours.

ERIC DICK: Sure. OK. So thank y'all, directors. I'm actually elected here in Harris County. I'm a trustee. I'm also a lawyer. Welcome to elected office. That's kind of the beauty of it is you get to hear a lot of

## State Bar of Texas Board of Directors Meeting - 09/10/2020

people's different opinions and that is that chore in the public service part of being elected. I'm going to speak about the issue with the bar president, Larry McDougal. I think it's an interesting issue. The way I see it is either, whether he's racist or not, you kind of got - you've got an issue there on the censorship, mainly the time frame to censure. My whole kind of thinking about this is if you're going to censure someone, you should at least do it. You should have the decency to censure somebody from the moment they took office to, you know, the day to censorship. I think you run into a lot of issues censoring someone for actions they've done before they got elected. I think you just have a lot of problems with that. So that's - if I was on this board, that's what I'd think about. That'd be my logic. Also, I just ask that y'all make reasonable decisions. Whatever decisions y'all make, make them make sense. What we don't want to have happen is a bar doing crazy things. We have a legislature that's not super attuned to lawyers and what we don't want to do is give more fuel to the fire to get rid of the bar. I actually like the bar. I would also encourage y'all, you know, maybe this is a good reason to open up the bar elections. If you don't like Larry McDougal, we only had, you know, the voting lawyers only had a choice between, you know, heads or tails. Heads - what won was Larry McDougal. Why don't we open it up? Why don't we let more people run for bar president the same as the other positions? And if we don't like Larry, we think he made statements that he shouldn't have made, maybe we - it would have been nice if we had more options. I'm not jealous of y'all's position in making these decisions but that is elected offices which y'all signed up for. And I ask whatever your end result be, whether if you're going to censure him or not, make it make sense. And please, if you are going to censure him, try to censure him for something he did while from the moment he was sworn in to the current date censure. Thank you.

CHARLIE GINN: Thank you, Mr. Dick, for your time and for your comments. Reed Smith, are you with us?

REED SMITH: I am.

CHARLIE GINN: All right. The floor is yours.

REED SMITH: Well, thank you. And I just want to join the numerous voices who are speaking in opposition of the referral of Rule 8.4(g). I think the people ahead of me have done a very good job of explaining the problems with it. But I want to address a slightly different issue. The possibility that someone may be thinking oh well, we can pass it as a meaningless gesture and we'll - or as a token gesture and it won't hurt anybody. One of my former clients represented a battered women's shelter. And one night, that battered women's shelter, whose clients were battered women who were escaping abusive relationships, turned away a man who identified as a woman, who had actually just been kicked out of another shelter for starting a drunken fight. After they turned that person away, the city sued them for nondiscrimination - for violating the city's nondiscrimination policy. When my client agreed to represent them and indicated in pleadings that their position was that they wouldn't accept anybody who was born a man because of the problems that would create for the battered women who attended their shelter, the city sued him. Their entire basis for suing him was because of his representation of the shelter. And you can and, you know, I'm sure plenty of people will disagree with the shelter's position. But I hope that the attorneys on this at this meeting would not disagree that that shelter deserved representation and that it was wrong for the city to go after a lawyer for representing them. In fact, that rule was found in a federal court to be unconstitutional when it was tried. But again, lawyers have a responsibility to speak up for the downtrodden and to speak out and to be informed in public debate. In fact, the majority of framers of the Constitution were lawyers. And so, lawyers have a very important role in public policy. And so, we need to be able to speak up on unpopular ideas because the ideas that are unpopular today, may be - may not be popular or may become popular in 20 years after there's

## State Bar of Texas Board of Directors Meeting - 09/10/2020

been debate. So again, this is a dangerous rule for the reasons that have been provided and passage of it would not - does not carry no risk. In fact, it carries significant risk. And that's all I have to say.

CHARLIE GINN: Thank you, Mr. Smith, for your time and for your comments. For planning purposes, I wanted to let our directors know who I know are watching diligently on their screens and I appreciate their attention. We are going to take a 10-minute break after three more members of the public have spoken and then we will resume hearing comments at that point. So everybody, just hold on just for a few more minutes and we'll get you a break. Our next speaker is Russell Parish. Mr. Parish, are you with us? If you're with us and you're muted, you might be muted automatically. If you would unmute yourself.

RUSSELL PARISH: Yes. Yes, sir. Thank you for the opportunity to speak. My name is Russell Parish and I'm a principal of the law firm of Parish and Wright in Austin, where many of our clients are rural Texans who have regulatory issues here and I speak for our entire law firm on this issue. Thanks to the bar in advance for allowing them to speak today item six. I speak against the so-called ABA Model Rule 8.4(g). The current rules are just fine as they are, nice and concise. And any motions to change them to restrict free expression are not justified by any current political anger. Candidly, the new proposal is only a model of left-wing political wokeness and PC virtue signaling as has been shown here today. Some seem to have seized on the, quote, "crisis moment we're having as an opportunity to push for longer speech codes." I believe y'all should not be taking up politicized anti-Christian, anti-free speech restrictions on lawyers. And this item should be removed from consideration immediately. It's unconstitutional on its face. One reason as some have already alluded to is it would make it a violation for Christian attorneys and other religious attorneys here in Texas to share their faith. The rule talks about, quote, "gender identity," which is in reality something only God decides. Biblically, Mark 10:6-9 clearly says, but at the beginning of creation God made them male and female. Moreover, American justice was founded upon freedom of speech, especially religious speech. This rule would discriminate against that and be the opposite of what it purports to intend to be. While I'm certainly proud to be persecuted for the cause of Christ, it should not be an organization I am required to pay dues toward who's doing the persecution. It's not right. It's not what America's about. Certainly, not what Texas is about. It might even result in a lawyer like me not being able to take and speak up for certain clients per some reading of the rules some who have said here today. Frankly, every single lawyer of every religion or creed in Texas should be concerned with any effort to stifle our speech. We do not forfeit our constitutional rights by pursuing a legal career. So I strongly implore you to remove your anti-freedom unconstitutional agenda item six and fully dismiss the misguided push here today toward Model Rule 8.4(g). Thank you so much for your time.

CHARLIE GINN: Thank you, Mr. Parish, for your time and for your comments. Mr. Mark Brown, if you would please unmute yourself and are you with us?

MARK BROWN: I am with you. Can you hear me?

CHARLIE GINN: We can. You have the floor, sir.

MARK BROWN: Thank you, Mr. Ginn. This is Mark Brown. I'm a lawyer in San Angelo. I participated in the July 27, 2020, all-day hearings by Zoom and I consider that a low point in the history of the State Bar of Texas. That was a special meeting. That wasn't a regular meeting of the board. And using Zoom, it's so easy for people to arraign for three minutes. It was a full day of forcing a member of the board to sit there and be shamed and humiliated because he had not done anything wrong as president. But

## State Bar of Texas Board of Directors Meeting - 09/10/2020

because some people disagreed with him, politically or ideologically. The self-righteous indignation that I heard on July 27 was completely out of proportion to any right to disagree with what Mr. McDougal has said as a lawyer practicing in Fort Bend County. The real wrongful behavior is the political and ideological action that the board allowed to take place that day. And I know it's a quandary. What do you do, especially with Zoom, when you can have 100 law sign up to talk? And it's something that we're going to have to deal with. But a mandatory membership deeds organization as Keller versus California said in 1990, cannot be political and ideological. Note on the agenda how many times the board has to consult with their lawyers about Keller questions. This political and ideological problem pervades the agenda today. At the bottom, 9 and 11, a task force on diversity, equity and inclusion and a board work group to review public and member input on those issues. That's political and ideological. That is not qualifying people to be licensed as lawyers or disciplining lawyers when they need to be disciplined. That is way outside the prerogatives of the board and you don't get to bootstrap by changing your mission statement because that does nothing. The Texas Supreme Court defines what the bar can do. The 8.4 model rule, that is ideological and political and many attorneys have very well and wisely spoken about that today. The social and political advocacy from the African-American law section and five other law sections demanding a lot of changes, those are political and ideological and actually violate the board's policy manual. Its own policy manual which prohibits law sections from engaging in political or social advocacy.

CHARLIE GINN: Please finish your thought, sir.

MARK BROWN: The demand for CLE mandatorily on implicit bias. That's political, not ideological. If we have any mandatory CLE, it should be on First Amendment protection of free speech because a lot of people on July 27 seem to be very ignorant about that subject. Thank you.

CHARLIE GINN: Thank you for your time and for your comments. Ms. Amy Welton, are you with us? Ms. Welton if you're with us, please unmute yourself.

AMY WELTON: Yes, sir. I'm with you. Thank you.

CHARLIE GINN: You bet. You've got the floor.

AMY WELTON: Thank you so much. I so appreciate the board of directors of the state bar having this event and allowing all of us to exercise our right of free speech, to discuss our position. As the representative of each one of us with our very different opinions, I'm very grateful that we live in a country where we are free to express our opinions. And I thank all the lawyers that are expressing their opinions in the comments, on the YouTube and in these comments that are being presented. What an incredible country we live in where we are free to say that without fear of any kind of recompense. I speak not to the issue with President McDougal. I speak only about the recommendation that ABA Model Rule 8.4 be adopted. And I have concerns that that is not a wise choice for lawyers who carry the beacon of liberty in our country. Lawyers who helped write the documents that guide us. The Constitution that each one of us has taken an oath to uphold. The Constitution of the United States and of Texas, both of which protect us. That we can speak freely in the marketplace of ideas about the things that are important to us. I got the oath. I went and looked on the back of my framed license and looked at that oath just to remind myself because I've always tried to make that a part of what I do. That I keep in mind what the founding things are. You know, being a lawyer is tough and sometimes you're not happy with what the other side is saying and you think what they are saying shouldn't be allowed. But I have learned many times in litigation that the other side has a point and it's important for me to hear

## State Bar of Texas Board of Directors Meeting - 09/10/2020

their ideas. In fact, our very system of justice, the rule of law is set up so that we hear things that our side doesn't want to hear so that we can all learn and be better. That concept, that idea is an idea that gives value to what every person says. Every person, every human being and what they say is important and has a purpose. In our Declaration of Independence, it says that we all have an unalienable right to liberty. I was very amazed when I was working on something and looked up liberty in the Black's Law Dictionary and liberty includes liberty of conscience. That each person has the right to think the way they think. That is foundational. And I think that the issue with the model rule and all of the comments by the legal scholars and people...

CHARLIE GINN: Please finish your thought ma'am.

AMY WELTON: ...Talk about the concerns about that. But I think our foundation in our country is lawyers helping people to speak of their conscience and do not vote in a way that takes that away. Thank you so much for your time and your service today.

CHARLIE GINN: Thank you, ma'am, for your time and for your comments. We are going to take a 10-minute break right now. We will come back. The time is 10:36 a.m. and we will come back at 10:46 a.m. Lyndel Vargas, you will be our first public member that we will hear from at that time. We will see everyone in 10 minutes. Directors, do not shut your Zoom accounts off, please. Just mute yourselves if you're not already. Thank you. We'll see you in 10 minutes. All right. It is 10:46 and we are back. We are calling our meeting back to order. I want to say thank you to the members of the public that have spoken so far and for members of the bar and the public that are watching that have not signed up to make comments. I know it's a busy time for everyone and taking the time out of your days to be here, we are appreciative of that. We do want to hear what you have to say. We appreciate the comments that you've made about thank you for letting you make these comments. We do this before every meeting. And a lot of times we're in person. But I want you to know the board of directors and the bar and the bar staff want to hear what you have to say and that's not going to stop or change. So just please be aware that we have another meeting coming up on September the 25. So be aware of that. We are going to go to our next public member. Our next speaker is Lyndel Vargas. Are you with us?

LYNDEL VARGAS: Yes. Good morning.

CHARLIE GINN: Good morning. The floor is yours.

LYNDEL VARGAS: My name is Lyndel Vargas and I practice in Dallas. Again, I'd like to thank you for the time that you're spending today to hear comments from bar members. I am here to make comments concerning Model Rule 8.4(g). I encourage you to not adopt it and frankly, not to even refer it on to committee. There are three main reasons for that. The first is that this proposed subsection seeks to regulate both, verbal and physical conduct of lawyers outside of the practice of law outside of our obligations to our clients, to the court and to the bar. This term related to the practice of the law is too broad. If I provide my legal skills and knowledge in volunteering for an organization that supports the LB - LGBT community. If I volunteer to support Planned Parenthood or a group that believes that abortion is murder. If I discuss, as people have mentioned, my religious beliefs at a bar association dinner or express beliefs in volunteering at Habitat for Humanity. That concern my views on civil marriage versus biblical marriage. These are my freedoms of speech under the U.S. and the state Constitution. And the way this is written, the bar is attempting to regulate that and could potentially determine that somehow I have engaged in misconduct in my private life. Secondly, a number of attorneys have already addressed the fact that there are laws already on the books concerning sexual harassment and unlawful

## State Bar of Texas Board of Directors Meeting - 09/10/2020

discrimination in many areas. Those apply to law firms and lawyers already. And as Mr. Schutt pointed out, Rule 5.08 addresses them already. It is not for the bar here to impair an attorney's ability to practice law when they are engaged in conduct that is not considered unlawful. But is an exercise of their freedom of speech, and both their religious or political views. The third reason that I strongly recommend that you do not proceed with this amendment is that this rule as proposed is extremely vague, and I believe that anyone could allege misconduct based upon...

CHARLIE GINN: Ms. Vargas, please finish your thought.

LYNDEL VARGAS: ...Based upon the fact that I am informed by my religious and political beliefs in everything I do. I do discriminate as to what I watch, what I participate in and where I spend my time and money. The word discriminate is not a bad word. Unlawful discrimination definitely needs to be stopped, but this rule amendment goes way too far. Thank you.

CHARLIE GINN: Thank you, Miss Vargas, for your time and for your thoughts this morning. Mr. Brian Russel, are you with us?

BRIAN RUSSEL: This is Brian Russell. Can you hear me?

CHARLIE GINN: We can, and the floor is yours, sir. You have three minutes.

BRIAN RUSSEL: Thank you, bar directors, for holding this meeting. I'm speaking to you on behalf of other lawyers who also have spoken in opposition to the referral of Rule 8.4(g). This is an unneeded rule, as many others have stated, and to the extent that it could be somehow cured, or modified, to not be unconstitutional - it would be reduced to, basically, what disciplinary Rule 5.08 already says. So I strongly urge that it not be referred to committee for further review. Just as a background on me, I'm a practicing lawyer in Austin. I have a small law firm and I also sit on the board of multiple Christian policy advocacy groups and Christian pro-life groups and Speech and Debate clubs. And in those roles, many times they are related to my practice of law because I'm a lawyer on those boards or involved in those organizations. And this proposed rule is definitely chilling on the advice that I would render to those groups as an attorney and my advocacy in the legislature and in many other places. As other people have stated very eloquently, it's very overbroad and provides no notice about what behavior, what words would be deemed to constitute harassment or otherwise, would subject a lawyer to disciplinary action. And I just want to point out too that think about where we've come from. It was only five years ago that the Obergefell decision was made by the US Supreme Court 5 to 4. It was just this year that the Bostock decision was made by the U.S. Supreme Court 6 to 3. This proposed model rule would target the views held by four or three members of the U.S. Supreme Court in dissent in those two cases and view them as being - putting those lawyers, in this case, U.S. Supreme Court justices, subject to discipline for having the views that they espoused in the dissents in those two cases. And I'd think that...

CHARLIE GINN: Mr. Russel, you have on minute remaining.

BRIAN RUSSEL: ...I think that's a very dangerous precedent and something that we should definitely reject immediately as lawyers. And for that reason, I urge you not to refer Rule 8.4(g) to the committee for further study. Thank you for your time.

## State Bar of Texas Board of Directors Meeting - 09/10/2020

CHARLIE GINN: Thank you, sir, for your comments and for your time and speaking with us today. Steve Campos, sir, are you on the call? It looks like it Mr. - no, that's Mr. Ball. Mr. Campos, are you with us? There you are. If you would on mute yourself, Steve.

STEVE CAMPOS: OK. I've unmuted.

CHARLIE GINN: The floor is yours, sir.

STEVE CAMPOS: Thank you, sir. Thank you all for allowing this debate and taking these comments from the public. I, as the previous attorney, I am a general practice lawyer in Austin as well. I mostly do family law and general civil law probate and that kind of stuff. But this concerns many of my friends, lawyer friends and I, the adoption of Rule 8.4(g) or even the referral of it because of what you've already heard. And how this can affect freedom of speech and religion and how that can be limited by a number of ways. And we've seen this kind of provision in other states, in other contexts result in the punishment of competing ideas where use of similar language has been used as a battering ram to quell any dissent or debate to a particular idea. For example, we saw the targeting of Christian bakers and photographers being forced to choose between A, violating their generally held religious beliefs and what is moral and be forced to participate in a gay wedding or B, refuse to participate and be sanctioned, sometimes with extraordinarily large fines. So how can this rule be applied to lawyers to affect us in the same way? Well, say a lawyer advocated against a transgendered biological male who is wanting to participate in female sports. In Texas, we saw that recently a transgender person who is a biological male went undefeated against all those female wrestling competitors for two years and he or she, the biological male won the girl's state wrestling championship two years in a row. We witnessed that similar kind of thing in a state track - girls track state meet where two biological males took first and second place in various track events and in the state finals against female competitors. So if I were to be against that as an advocate, this - it appears that this - there are a number of scenarios where this proposed rule could be interpreted to prevent us from being able to advocate a position contrary to that. And that is just one example of many. If you look at, you know, it's not just against transgenders. It's against people from other countries. Certainly, other - on discrimination of sexual identity and well, I won't go into the details of it. But what I'm concerned is the state bar is attempting, if we add this, it's attempting to solve a problem that really...

CHARLIE GINN: Mr. Campos, please finish your thought.

STEVE CAMPOS: ...Shouldn't be resolved in this context. We have these other rules that has been stated and I think that this is only going to create more litigation, constitutional challenges and we don't need to be involved in adding this to our rules in a way that doesn't really solve any problems that aren't already solved through other...

CHARLIE GINN: Mr. Campos, please finish your thought.

CHARLIE GINN: ...And I - thank you.

CHARLIE GINN: Thank you, sir, for the time and for your comments. Natalie Butler. Are you with us, Ms. Butler?

NATALIE BUTLER: Yes. Thank you.

## State Bar of Texas Board of Directors Meeting - 09/10/2020

CHARLIE GINN: Perfect. You have the floor, ma'am.

NATALIE BUTLER: I'm Natalie Butler. I appreciate the opportunity to comment today and thank you so much for your time and extending this meeting to allow us to comment. I would ask you to reject referral of the ABA Model Rule 8.4(g) to the committee for further consideration and to consider adopting in the Texas rules. I echo the comments made by other lawyers that this rule would have a chilling effect on the speech and conduct of attorneys. This rule would violate an attorneys free speech, free association, free exercise rights. The National Lawyers Association agrees with this position. Significantly, the attorneys general of four states, Texas, South Carolina, Louisiana and Tennessee have issued official opinions that this model rule isn't constitutionally vague and overbroad and violates the free speech, free exercise and free association rights of attorneys. Specifically, as many other attorneys have mentioned, the terms harassment and discrimination and related to the practice of law are constitutionally vague and could be used as weapons against opinions or beliefs of lawyers that other lawyers do not like or disagree with. In this extremely divisive time, it is incumbent on the Texas Bar board of directors to resist these calls to restrict speech or penalize certain types of speech. The bar should be champions of diverse opinions and the freedom of speech, even speech we disagree with. It is concerning that the comments to the model rule even goes so far as to potentially include, quote, "derogatory or demeaning verbal or physical conduct," closed quote. This is extremely broad and can encompass literally any type of speech or conduct that could be considered offensive. It is important to emphasize that speech does not lose its constitutional protections just because it is harmful, upsetting, misguided or offensive. Additionally, as other attorneys have mentioned the rule - the phrase related to the practice of law is extremely broad and as noted in comment four, participating in bar association, business or social activities in connection with the practice of law, could it be encompassed under this rule? And that is extremely broad and vague and could be concerning as many lawyers have already mentioned. It could, you know, could it encompass the CLE? Could it encompass teaching at a Sunday school class at your local church? It's just very broad and overly vague and I would just ask the board of directors to reject consideration or adoption of this model rule into the Texas rules. Thank you for your time.

CHARLIE GINN: Thank you for your time and for your comments. Ms. Donna Davidson, are you with us?

DONNA DAVIDSON: Yes, I am. Thank you so much.

CHARLIE GINN: You have the floor ma'am.

DONNA DAVIDSON: Thank you. I would first like to say thank you to everyone for being here this morning. I would also say that I echo many of the sentiments already discussed regarding Rule 8.4(g). But I'd like to come at it from a little bit of a different angle. You are acting as a legislative body essentially. I, as a former chair of the legislative and campaign law section of the state bar, am more around legislative and rulemaking bodies than most. And generally speaking, the conservative, not necessarily Republican as opposed to something else, but the conservative viewpoint is if nothing is wrong, if nothing is broken, you don't add to try to fix something that's not wrong. As it is also (inaudible). I'm a former candidate for judicial office. There are judicial candidates to assist in helping people also understand who are running for office, what they can and cannot say. What speech they may engage in to a limited extent in order not to show any kind of bias or predisposition to ruling a certain way. So given that all of that already exists, one of my mantras is if it ain't broke, don't fix it. And I don't think there's really any need to refer 8.4(g) anywhere further. I am not a member of the American Bar Association for a multitude of reasons, but one is that they do not represent my views. I

## State Bar of Texas Board of Directors Meeting - 09/10/2020

do not have the same choice with the State Bar of Texas. I am a proud member of the state of Texas. I'm also a proud native Texan. I also believe that we should lead the way. Texas does not have to follow anyone else in adopting or referring this rule. I think it should just die on the table, not be referred to any committee, no further action be taken. And in the interest of diversity, I am a proud daughter of Ignacio Garcia Junior and Josefina Garza Garcia. I wholeheartedly endorse having people see me as Donna Davidson, not as a Hispanic older, as you can tell by my gray hair, female. But I understand that diversity exists and needs to be embraced. And as a Christ follower, I do both. So if you would please, focus on diversity and not chilling speech. Thank you very much for your time.

CHARLIE GINN: Thank you, Ms. Davidson, for your comments and for your time this morning. Stephen Moll, are you with us?

STEPHEN MOLL: Yes, I sure am. Thank you, Mr. Chairman. I'd like to, as others have, thank the members of the board of directors for allowing me to speak this morning. I'm Stephen Moll, a lawyer in Houston, Texas where I've practiced and been a member of the Texas Bar for the last 30 years. I'm also the president of the Houston chapter of the Christian Legal Society. I am opposed to fast-tracking and adopting proposed ABA Rule 8.4(g). I don't believe at all for this to be a liberal or a conservative issue or a faith vs. anti-faith issue. But rather one that's clearly focused on the right of free speech. I believe the rule to be unconstitutional on its face. Moreover, the proposed rule threatens the individual liberty of Texas lawyers and is both, unconstitutionally vague and overbroad. In fact, as has been pointed out by others during this meeting, the rule is broad enough to extend beyond judicial proceedings to include participation in CLE panel discussions, scholarly writing and even informal conversations at law-related events. And so the rule in my view effectively suppresses the very type of open discussion we should be encouraging and violates our most fundamental constitutional rights while it's doing so. A South Texas professor, Josh Blackman, has urged states to pause before adopting this rule in light of its First Amendment implications. The late professor, Ronald Rotunda, a highly respected scholar in both, constitutional law and legal ethics warns that this ABA Model Rule 8.4(g) threatens lawyers First Amendment's rights. Rotunda and other constitutional scholars have advised that the ABA's efforts in adopting this rule raises problems of vagueness and overbreadth. And it's just recently been mentioned has very much a chilling effect on protected speech under the First Amendment. These are very serious matters. The rule could also restrict attorney's free exercise of religion by disabling an attorney from freely participating in religious organizations that hold Biblical viewpoints. It also could restrict an attorney's freedom to associate with political, social or religious legal organizations like the Christian Legal Society. The rule is also unconstitutionally vague because several phrases including the phrase conduct related to the practice of law.

CHARLIE GINN: Please finish your thought, sir.

STEPHEN MOLL: I will. Thank you. Again, these are serious problems that cannot be overlooked or understated. And it's my understanding that 11 states have rejected this. I suggest that the State Bar of Texas wait to see how those two states enforce the rule. And I respectfully request that the State Bar either defer or reject proposed Rule 8.4(g). Thank you very much.

CHARLES GINN: Thank you, sir, for your time and for your comments. Ms. Cecilia Wood, are you with us? Miss Wood, if you are here please make sure you're unmuted. And you are muted, Ms. Wood, so if you take yourself there, you are perfect. The floor is yours.

## State Bar of Texas Board of Directors Meeting - 09/10/2020

CECILIA WOOD: All right. Good morning. My name is Cecilia Wood. I'm an attorney practicing in Austin, Texas. I'm board-certified in family law, and I've been practicing for almost 34 years. But I've also done lots of criminal law and I, for many years, was known in Austin as the homeless attorney. So I'm very familiar with unpopular causes that tend to get other people upset. But as my son reminded me not too long ago, America is not a place. It's an idea. And we here in Texas know that Texas is the loudest voice for that dream. So I find it unimaginable that a self-regulating group of professionals who have sworn to uphold the Constitution to both the United States and the state of Texas, a group of professionals who is most equipped to effect peaceful change and to protect the most vulnerable citizens among us, a group of citizens, a group of professionals, that is most capable of standing for what is righteous and defending against what is not, and a group of professionals who do all of this using only the weapons of the spoken and written word, would willingly abdicate our constitutional rights and agree to be silenced. Now, we know that since the Bar is comprised of exclusively human beings, every member comes possessing their unique beliefs and their biases. And we learned all about this when we learned about voir dire. But in that situation, you have two hopefully competent and passionate attorneys who are looking out for the best interest of their client. And as a result, you get a group of people who are generally well-balanced and able to bring the best neutrality to making these important decisions for these people. But who will make these decisions about us? Who's going to decide which of us needs to be silenced, and if not, which of us needs to be sanctioned or even disbarred? We have to think about what would - where would we be right now if the unpopular voices in history had been silenced? Take John Quincy Adams, for example. What if he had said, you know what? I've been the president. I've been doing this since I was a kid. I'm tired of people criticizing me. Nobody ever seems to like me when I walk in a room. I'm not popular. I'm going to go home and let it go. But he didn't. He went to the legislature he went to Congress and he advocated tirelessly and cleverly. They passed a rule, and he got around it. And he never gave up on his mission of abolishing slavery. And as a result, we had a President Lincoln. We're concerned about public perception. I submit to you there's always going to be a group that doesn't like some group of lawyers. But if we allow ourselves to be manipulated by political correctness and to hide behind that and to trade our freedoms for popularity, they're all going to think that we are nothing but fools and cowards.

CHARLES GINN: Ms. Wood, please finish your thought.

CECILIA WOOD: Thank you.

CHARLES GINN: Thank you, ma'am. Jonathan Covey. Mr. Covey, are you with us?

JONATHAN COVEY: Yes, sir. I'm here. Can you hear me?

CHARLES GINN: We can. Your time starts now.

JONATHAN COVEY: Good morning, members of the board. Thank you for allowing me to speak. You have a very difficult job, and I very much appreciate what you do. My name is Jonathan Covey. I'm the Director of Policy at Texas Values. We're the largest organization in Texas that defends faith, family and freedom. I do have a law degree, although I have not sought licensure in Texas as of yet. But I'm here to talk to you today about Model Rule 8.4(G) and urge you against the referral of it because I know we're not adopting it yet, but I just want to take the opportunity to talk to you a little bit. It is a deeply flawed rule. And one of the big problems, as others have said, is expanding coverage to include all conduct related to the practice of law. The proposed rule encompasses nearly everything that a lawyer does, including conduct and speech protected by the First Amendment. We already have Rule 5.08 of the

## State Bar of Texas Board of Directors Meeting - 09/10/2020

Rules of Professional Conduct, which already deals with prohibited discriminatory activities. The Model Rule - this Model Rule would regulate lawyers' interactions with anyone while engaged in conduct related to the practice of law or in participating in business or social activities in connection with the practice of law. Lawyers are often asked to speak in various community groups about current legal issues from day-to-day or to participate in panel discussions. If some of that public speaking falls outside of the line of conduct related to the practice of law, while other public speaking falls inside the line, how is a lawyer to know which is which? Also, attorneys could be subject to discipline for guidance they offer when serving on the boards of congregations - for example, religious schools, colleges or other non-profit charities. With the current language on sexual orientation and gender identity, the Rule could also force Christian lawyers to conform to LGBTQ views in order to practice law. Many lawyers sit on the boards of their churches, on religious schools, on colleges, other religious nonprofits. As a volunteer on these religious institution boards, a lawyer may be - they may not be representing a client, but nonetheless, they may be engaged in conduct which qualifies as being related to the practice of law. And a lawyer should not be disciplined for volunteer legal work that he or she performs for their church or for their alma mater. Attorney General Ken Paxton wrote an opinion back in 2016 on this that said that this Model Rule threatens religious - threatens individual liberty for Texas lawyers and is constitutionally vague and overbroad. Many people have said that. So I would urge you to follow the Attorney General's legal opinion. I would urge you against the referral of this Model Rule. And I really do thank you for everything you do and for your time.

CHARLIE GINN: Thank you, sir, for your comments for your time today. Brad, I'm so sorry - is it Wiewel? Are you with us, sir.

BRAD WIEWEL: Can you hear me now?

CHARLIE GINN: I can, yes, sir. The floor is yours.

BRAD WIEWEL: Wiewel. Wiewel. All right, great, thanks, I appreciate it, Chairman. I'm Brad Wiewel, former President of the Austin Lawyers Association. That was a little while ago. I'm a board-certified estate planning and probate lawyer here in Austin. I'm a proud graduate of St. Mary's University School of Law. And at St. Mary's, back in my day - David Chamberlain would remember this, too - we had a professor of civil procedure named Orville Walker. And Mr. Walker would love to stay in the classroom, does that shock you, Mr. Wiewel? Does that shock you? And I would have to step back and say, I don't know if I'm really shocked about that or not, Professor. But I am shocked at this proposed rule. And I think many, many people are. I've been hearing from many, many folks about this. I'm a practicing lawyer. I'm not an academic. I'm not with an organization. I practice law and I see clients all the time. And I don't know what this proposed rule is going to do to my practice. But I don't want to have to worry about what it's going to do to my practice or other practices that are estate planning practices or family practices or criminal practices where you're dealing with people on the street, people who are citizens, people who have different views on many, many things. And if - one of my favorite quotes, and I think it's been part of the key to success at our practice, is the Lincoln quote that a lawyer should be known for the cases he or she doesn't take as opposed to the cases that they do take. And I don't know if this rule would force me to take a case with neo-Nazi who wants to leave their estate to a neo-Nazi organization that would discriminate against Jews, discriminate against Catholics, discriminate against gays. If they came into our office today, I could say, look, we don't want to take your case. We don't want to represent you. But under the terms of the rule, that strikes me as discrimination. And I think it is discrimination. But I think that this case, in my situation today without this rule looming over my practice, I can say, look, you know, we're just not a good fit for you, and go someplace else. And by the

## State Bar of Texas Board of Directors Meeting - 09/10/2020

way, here's the list of some other lawyers you can go see. You can go to Lincoln Referral. You can probably find somebody to help you. We're not going help you. We don't want to help you. But you're going to force me to help them. And you may not like it, and you may not have thought about it, but that's the ultimate answer here, is I'm going to have to do it, and nobody's going to like the result except the neo-Nazi. So I'm just asking you to think this thing through. I know what's going on. I know about the president's comments. I know this is a reaction to that. And there are a lot of reactions going on out there right now. And don't overreact. Be smart. Think about the lawyers who are out here making a living, helping the citizens of Texas do their best. And please do not refer this law any further. Thank you very much.

CHARLIE GINN: Thank you, sir, for your time and for your comments.

BRAD WIEWEL: You bet.

CHARLIE GINN: Allan Tiller, are you with us?

ALLAN TILLER: Yes I am. Can you hear me?

BRAD WIEWEL: We can. The floor is yours, sir.

ALLAN TILLER: All right. Thank you very much. My comments are to urge the board to refrain from any kind of censure on or other punishment of Mr. McDougal for his online comments, and in an unofficial capacity, regarding the Black Lives Matter movement. My points are these; there should be no political litmus tests for serving as an officer of this Bar, or for that matter, for the right to practice as an attorney in the state. Although an officer of the Bar and understandably be prohibited from representing any particular view or opinion, is the position of the Texas Bar when it is not. There should be no attempt to restrict the free speech of a Bar officer or otherwise or to punish him for his political views. If the Bar finds that something an officer has said it is sufficiently offensive to remove the officer from his position, I am sure there are procedures for doing so. But so far, I have seen nothing that Mr. McDougal has written or said that comes close to justifying removal from office. The Black Lives Matter movement - it's frankly so amorphous it could mean about anything to anyone - what they want it to mean. But in any event, disagreement with the narrative of the movement is hardly limited to the fringes of the political spectrum, although, undoubtedly so, I'd like to characterize it as such. The power to remove an officer should not be abused by using it to punish those who do not tow the line with any particular political opinion or narrative. An attempt to strip the Bar president of his role as the principal spokesman for the bar is a very thinly veiled attempt to remove him from office while circumventing the procedures for doing so. And this circumvention should be seen for what it is and rejected. If the board wants to try to remove Mr. McDougal, then be forthright about it. But the board should also be forthright as to why they are attempting to remove him - essentially, because he expressed an opinion that challenges the prevailing political orthodoxy. By the way, I define orthodoxy as a political view for which the authority of government and powerful institutions, such as this Bar, is or might be used to suppress and punish those who hold inconsistent views. And some - the proposal to effectively strip Mr. McDougal of his role as a spokesman of the Bar is not merely an attempt to punish him for something he said that some members of the Bar find offensive, but more dangerously, to punish him for holding views that are not consistent with the prevailing political orthodoxy. There is a huge arena out there for discussing, arguing, advocating and voting on the political issues of the day, and Bar officers should not be prevented from privately participating in that arena, notwithstanding that their views may not comport with a particular political view. I know it's tempting and easy to conform to a prevailing orthodoxy, but

## State Bar of Texas Board of Directors Meeting - 09/10/2020

your role, as members of the board, as attorneys, and really as citizens of a free society, is not to conform, but to resist efforts to suppress political dissent expressed in a private capacity. I hope that you choose to not take the easy road and that you resist this motion to censor, effectively, Mr. McDougal. Do not let this board of directors become a board of inquisition, identifying and punishing heretics. Thank you for this opportunity to speak.

CHARLIE GINN: Thank you, sir, for your time and for your comments today. Jace Yarbrough, are you on the call? Jace Yarbrough, if you're with us, please unmute yourself. OK. We're going to - we will give you another opportunity, Mr. Yarbrough. Stephen Casey, are you on the call?

STEPHEN CASEY: Yes, sir, I am.

CHARLIE GINN: Your floor, sir.

STEPHEN CASEY: Thank you very much. I appreciate your time. Apologies for the lack of attorney attire today. I was anticipating this being further along on the agenda. I want to speak very practically and follow up, sort of like Mr. Wiewel. I have a general practice. I've been licensed since 2008. I clerked at the Texas Supreme Court and then opened up a private practice. I've represented people from all walks of life, many unpopular. I represented a lot of people during the housing collapse that were foreclosure defendants with their house on the line. So I've taken a lot of unpopular viewpoints and come in front of courts representing people who are debtors. The lack of popularity in my clients has also gone across to whenever there's been disputes between family members. I represented a couple that had - I want to say a non-cis, you know, oriented sister. And they were involved in a lawsuit. She personally sued me. That was dismissed under 91(A). But in her lawsuit and complaint, she alleged that I was disagreeing with her because of her sexual orientation. If Rule 8.4(G) were to pass, she could bring disciplinary actions against me. This type of disciplinary action would go in front of the State Bar instead of a court, which would be able to throw it out on free speech grounds. I, myself, have practiced constitutional law and speech grounds, prevailed in the District Court in Austin against the city of Austin when they attempted to silence the speech rights of some unpopular groups in the city of Austin. So I'm very familiar with the contours of free speech and religious speech. I think it's misguided to put this muzzle on the opportunity of attorneys, in a very practical sense, following up on what Mr. Wiewel said, when they're engaging in the daily practice of law against people who sometimes, in the court, are very unpopular. Thank you for your time.

CHARLIE GINN: Thank you, sir. And I'll tell you in COVID, attorney attire looks a lot different. So we appreciate you being here and for your time and for your comments. Jace Yarbrough, I understand that you're on the phone. So if you would hit - star or pound? - star 67 to unmute yourself we should be able to hear you. Star 67, Mr. Yarbrough.

JACE YARBROUGH: Hello, sir, can you hear me?

CHARLIE GINN: We can. You have the floor, sir.

JACE YARBROUGH: Great, thank you very much. Good morning, members of the board. My name is Jace Yarbrough. I'm a seventh-generation Texan, a recent graduate of Stanford Law School and an attorney practicing in our great state. Thanks for allowing me to comment on Rule 8.4(G). I oppose ABA Model Rule 8.4(G). I urge the board not to refer it to the TCAP committee. The Rule should be rejected, as other commenters have mentioned, because it threatens the legitimate and meaningful role that lawyers

## State Bar of Texas Board of Directors Meeting - 09/10/2020

often play as spokespersons and leaders in cultural movements. If ever adopted, this Rule would chill the legitimate expression of disfavored viewpoints by members of the Bar on a multitude of issues, some of them we aren't even aware of yet. ABA Model Rule 8.4(G) is sweeping in its jurisdictional claims over attorney speech, which it awkwardly terms verbal conduct. The Model Rule claims to regulate attorney speech during Bar Association, business or social activities in connection with the practice of law. And it does so regarding 11 protected classifications that are central to some of the most sensitive topics of today, And will no doubt continue to be so in the future. As to the settings to which the Rule would apply, consider a December 2016 Advisory Opinion from the Texas Attorney General, which has already been referenced in these comments. Quote, "Given the broad nature of Rule 8.4(G), a court could apply it to an attorney's participation in a continuing legal education panel discussion, authoring a law review article or informal conversations at a Bar Association event," end quote. As to the speech content to which the rule would apply, I'll also quote the late professor Ronald Rotunda who is a highly respected scholar both of con law and legal ethics. He mentioned that a quote - for example, "Blue lives matter, and we should be more concerned about black-on-black crime" - could be subject to discipline under Model 8.4g. And, in the same way, candid dialogues about illegal immigration, same-sex marriage...

CHARLIE GINN: You have one minute, sir.

JACE YARBROUGH: Thank you. Who is eligible to participate in women's sports? It'll likely involve discussions about national origin, sexual orientation and gender identity - all protected topics under the proposed rule. Rule 8.4g should also be rejected because it's unconstitutional. It would infringe on attorneys' First Amendment rights of freedom of speech, of religion, of association as multiple authorities have recognized. In addition to the Texas attorney general, another is Professor Eugene Volokh of UCLA School of Law. In conclusion, rule 8.4G should be rejected. It should not be referred to the DCAP committee. And once again, I appreciate the board allowing me to come on in and speak to this this morning. Thank you.

CHARLIE GINN: Thanks, sir, for your comments. Mr. Marty Leewright, are you on our call?

MARTY LEEWRIGHT: Yes.

CHARLIE GINN: All right. Your time starts now, sir. You have the floor.

MARTY LEEWRIGHT: All right. I appreciate the board of directors very much providing this opportunity for everyone to speak. And I want to - I signed up to speak about the issue involving Larry McDougal. And I want to maybe provide some historical perspective for everyone. I don't know Larry personally. I only know him through posts and various lists that we have now on social media and the state bar, and I've appreciated things that he has shared, he has taught me. Also, he attended the Trial Lawyers College in Wyoming, and I know that people are carefully screened for that opportunity. When I attended the first class and second class and then the graduate program in 1994, -5 and -6 at the Trial Lawyers College, there were 50 lawyers that were selected to go through that special experience each year. And I know that he was carefully screened, also. He is the subject of what I believe to be a high-tech lynching, and we've heard that term before. It seems like, now, with social media in this age - and I should back up a second. I'm a practicing lawyer in Fort Worth Texas, and I've been practicing for nearly 40 years. But social media has changed our environment. It's changed our culture. And now, I've noticed - I got on the Internet back in about 1989 to -92. Early on, we didn't have computers even in law school when I was in law school in the early 80s. But now, people can comment, people can pile on and people can engage in

## State Bar of Texas Board of Directors Meeting - 09/10/2020

almost mob mentality and social contagion in publicly shaming someone and really kind of lynching them on social media for something that maybe they said years ago. We look back and, you know, we have all this stuff now in memory and storage, and we can look back at what people said. And I just want to say that if any person that's casting the first stone - as the Bible says - there's probably a couple of us here that believe in the Bible - any person casting the first stone should be a person without sin - the person who has not made statements in the last five years or the last 30 or 40 years. We're all sinners, including me, and I have learned, and I have grown over the years. In the 1960s, I served two tours of combat - bloody combat - in Vietnam and in Cambodia. And on May 1 of 1970, I was in Cambodia in an invasion for about six weeks. And students in America and Kent State and other places were writing and protesting the war. I did not understand that. I did not have the big picture. I was an 18-year-old round pounder soldier, a combat engineer fighting for my life and my buddy's life in Vietnam. And I couldn't understand why people were not supporting us. But now, I...

CHARLIE GINN: Please finish your thought, sir.

MARTY LEEWRIGHT: ...Have the perspective of history and time. And I look back, and I understand it better now and why they were protesting. And I celebrate their First Amendment rights, just like everyone, including Larry McDougal. And I think we should all step back and take a longer look at this. And we can't judge everybody...

CHARLIE GINN: Mr. Leewright, please finish your thought.

MARTY LEEWRIGHT: ...By past conduct. We must look at them as a whole person, and we must look at their good conduct as well. Thank you so much for listening to me.

CHARLIE GINN: Thank you Mr. Leewright for your time and for your comments and for your service in our military. Our next speaker is Wes Schlenker. Are you on our call?

WES SCHLENKER: Yes, I'm here.

CHARLIE GINN: Yes, sir. The floor is yours, sir.

WES SCHLENKER: All right. I'm a transactional attorney practicing here out of my home in North Oak Cliff in Dallas, Texas. I am against referring the ABA Model Rule 8.4g to committee for review because I feel it's deeply flawed, and it endangers the very thing we're pledged to promote which is true diversity among Texas Bar membership. Now, I need to tell you that at the request of an African American friend, I attended a Black Lives

WES SCHLENKER: rally - a Black Lives prayer rally - in front of the Dallas police headquarters several weeks ago. So, obviously, I do not believe that Black Lives Matter is a terrorist organization - although, I have to confess that when one of the speakers asked us to raise our right fist to the air while we were praying, I just couldn't do it. Instead, I put both of my hands together over my head clasped as we were praying. So maybe I wasn't quite all in with Black Lives Matter, but I live in a neighborhood - I moved here 30 years ago - where more than 70% of the people are a minority. I was moving here while white flight was taking most people like me in the opposite direction. Three or four - three out of my four kids are graduating from DISD Dallas public school where they promote diversity just by being there. And yet, I am a person of faith and conscience. And I'm concerned that my religious beliefs - which should be constitutionally protected - would be interpreted under this rule as harassment. And you might think,

## State Bar of Texas Board of Directors Meeting - 09/10/2020

why? That's stretching it. I was watching the public comments that were scrolling underneath the YouTube stream. And while another speaker who shares my views who identified himself as a person of faith and conscience was speaking, one of the people commented publicly. He said don't hide your bigotry behind your faith. Identifying himself publicly as Caleb Carter. And another rolling comment came through - you cannot use religion as a cover for your racism, bigotry and misogyny. That came publicly from Elliot McCray. And then, stop quoting the Bible in a bar meeting - separation of church and state, sir. That came from Megan Becker on the scrolling comments underneath the YouTube stream. So I think that it's evident there is the assumption among many that my faith is synonymous with bigotry.

CHARLIE GINN: Please finish your thought, sir.

WES SCHLENKER: But I may not express it on a public forum or else it will violate the Constitution. I obviously don't agree with that, but I think that you can see why I am against this ABA Model 8.4g because I feel it is deeply flawed, and it endangers the very thing we've pledged to promote which is true diversity among Texas Bar membership. Thank you.

CHARLIE GINN: Thank you, sir, for your time and for your comments. For planning purposes, we have four more speakers, and then we will take a lunch break, directors. Then we'll talk about the times and that, and then after that we'll move to the next portion of the agenda which I anticipate will be our closed session. But just for planning purposes, we have four more directors and then we'll move - excuse me, four more speakers, and then we will move into closed session after our lunch break. With that, Michael Geller are you with us? If you are please unmute yourself.

MICHAEL GELLER: I'm here.

CHARLIE GINN: Yes, sir. Fantastic. The floor is yours, sir.

MICHAEL GELLER: Thank you. I appreciate the opportunity to address the board - Michael Geller, a practiced lawyer in Dallas. And I'm disappointed the board is even continuing this discussion. The whole exercise apparently due to Mr. McDougal's failure to appreciate the value of Black Lives Matter. This summer, the values of Black Lives Matter has been on full display. My father survived Auschwitz. And I know brownshirts when I see them even when they don't wear brown shirts. And I'm not confused by the brownshirts in the streets. Regardless of whatever altruistic value they use as cover, diners in Pittsburgh and Washington can't eat in peace unless they raise a fist or bow down on the ground in the face of BLM-clad agitators. July 11, State Bar leaders issued a statement denouncing Mr. McDougal comments. But where's the State Bar leader statement condemning the violence undertaken in the name of Black Lives Matter? Be careful of the company you keep. The board is affiliating my bar with the movement clearly associated with violence and conduct that is contrary to what the bar stands for - the adjudication of grievances through orderly legislation or through orderly courts, not anarchy in the streets. Is the bar board seriously entertaining the notion of dictating what Larry McDougal or any bar president has to believe or say to be elected to office or stay in office? And if he or she does not agree with the mantra of the day proposed to limit the powers of the president unless they wise up, I wonder - are you going to put that to a vote of the entire board membership - bar membership? And what vetting is proposed to make sure the most correct or coolest or with a person gets on the ballot? Just exactly how far do you propose to go back? You can save us all the trouble and take a page from the Academy Awards and develop a list of values and statements and principles to which any bar president candidate must swear allegiance. And does this bar really intend to require Mr. McDougal to quote, "attend and, most importantly, participate in an undoing racism course to understand the ramification of his

## State Bar of Texas Board of Directors Meeting - 09/10/2020

comment and the systemic racism and implicit biases that exist in his life and the lives of others" unquote? I don't even know what that means. Is the board seriously going to consider imposing two hours of implicit bias training as part of the 15 CLE hours requirement? Because I'm sure they've noticed that I will never ever attend an Orwellian indoctrination course as a licensing requirement. If you propose to get between

MICHAEL GELLER: me and my license to practice law, you can expect a fight. I'm looking to the board to administer the bar above the political fray, and I'm looking to the board to decline the pending motions. Thank you.

CHARLIE GINN: Thank you for your comments, Mr. M - for your time, sir. Mr. Moore - Joel Moore, are you with us? If you are, please unmute yourself.

JOEL MOORE: Yes, sir. Can you hear me?

CHARLIE GINN: I sure can. The floor is yours, sir.

JOEL MOORE: Thank you, sir. I anticipated that many comments today on agenda item 6F would be about the impact of proposed ABA Rule 8.4g upon attorneys. I'd like to focus my comments on the impact it would have on thousands of incorporated and unincorporated nonprofit organizations across the state of Texas directly or indirectly representing millions of Texans. 8.4g would subject attorneys to discipline for discrimination on the basis of sexual orientation or gender identity related to the practice of law - very broadly described in the comments. Most churches and Christian nonprofit organizations in the state of Texas hold beliefs based upon the Bible and thousands of years of history of the Christian church and thousands of years of Jewish history before that and believe that to adopt the sexual ethic or gender ethic contrary to God's design and his revelation in the Bible is to disobey their creator and their lord and savior. I know of no churches or Christian organizations in Texas that desire harm for people who adopt a sexual or gender ethic contrary to God's boundaries. To the contrary, Christians understand that God is love, and the clearest expression of God's love was to send his son to die on the cross - to take the punishment we deserve. Christians understand that they themselves are sinners and need of God's forgiveness. And the goal of identifying sin as sin is not to bring harm to people but to bring love to people by introducing them to an opportunity to repent of their various sins and to enter into a personal belief and relationship with Jesus Christ. If 8.4g were already adopted, perhaps I could be subject to discipline for saying what I just said here in this forum related to the practice of law. Yet, that kind of advocacy may be what is needed for an attorney to give effective assistance of counsel - as a zealous advocate for the thousands of Christian groups across the state of Texas who wish to defend the principle that many Christians have died a martyr's death to defend. How could the bar expect an attorney to be a zealous advocate when the content of their advocacy could be grounds for discipline? Christian organizations across the state of Texas will find law firm doors closed in their face as they are left to fend for themselves without legal counsel bold enough to risk discipline for their advocacy. 8.4g would certainly violate the constitutional rights of attorneys. But beyond that, it would also violate the principles of our profession related to increasing rather than decreasing access to legal services, thereby also burdening the First Amendment rights of all Christians through the back door. And thank you for your consideration.

CHARLIE GINN: Thank you, sir, for your comments and for your time. Justin Hodge, are you with us?

JUSTIN HODGE: Yes, I am.

## State Bar of Texas Board of Directors Meeting - 09/10/2020

CHARLIE GINN: All right, thank you, sir. You have the floor.

JUSTIN HODGE: Chairman, thank you very much for the opportunity to speak today. And for the board of directors, thank you for your patience. I know it's been a long morning. We really, sincerely appreciate you giving everyone an opportunity to speak. As a matter of introduction, I'm a partner with Marrs, Ellis and Hodge here in Houston, Texas. I'm a trial lawyer that defends against governments taking a private property across the state, and I protect property owners' rights of just compensation under the Fifth Amendment in Article 1, Section 17 of the Texas Constitution. I opted to get to select juries across the state and cross-examine adverse witnesses to protect property owners' rights. Now, I've been practicing law in the state of Texas for over 18 years, and I have served for the past three years as an adjunct law professor teaching constitutional law and eminent domain. First, I'd like to address Rule 8.4g and the proposed referral as a trial lawyer. I have some serious concern about that. The main reason I have concern about that is I agree with our current Rule 5.08. I think it very clearly states that we should not have bias or prejudice against race, color, national origin, religion, disability, age, sex or sexual orientation. And I agree with Rule 5.08 in the tenets that is described there. I also agree with the exceptions that are very clear in Rule 5.08 that, for example, allow us in jury selection during voir dire to question people, to find out what are their bias, what are their prejudice. And I think that's very very important especially in our practice of constitutional law in defending property owners' rights. We must find out what bias and prejudice potential jurors have. As written, Rule 8.4g is ambiguous. It's vague. It's overly broad and unclear, and it may likely be unconstitutional. I think we should continue to have a rule like Rule 5.08 that is narrowly tailored. It's concise. It's certain. It also allows us to have exceptions that root out bias and prejudice. As a adjunct law professor, I also would like to express concern because there are cases - for example, the 1992 Texas Supreme Court called Religious of Sacred Heart which involved the Duchamp Academy here in Houston, a Christian school, in the taking of the substitute facilities doctrine. It would be very hard to teach that class with a change to 8.4g. Also, first English Evangelical Lutheran Church versus the County of Los Angeles, a 1987 U.S. Supreme Court case that involved regulatory use limitations on a Christian camp - we would not be able to teach that case as written by the United States Supreme Court if 8.4G were adopted. Finally, and I say this with all sincerity, and I hope it's well received, tabling everything I just said in accomplishments as a profession, simply as an individual, I would just ask you to think about our free speech rights under 8.4G, to love our neighbors as we love ourselves, one of the greatest commandments, to really care about those who aren't like us, who may be different from us and provide love to them. That's very, very important to (inaudible) Christian (inaudible) and as a part of our faith. So with that, thank you very much again for your patience. Hope everybody enjoys their lunch, and thank you for the opportunity today.

CHARLIE GINN: Thank you, Mr. Hodge, for your time and your comments. Mary Castle, are you with us? If you are, you can unmute yourself. If you're on the phone, please hit star 67. I'm trying to find you on our video.

MARY CASTLE: Hello. Good morning. My name is Mary Castle. I'm the policy advisor at Texas Values and also have a history of working at religious nonprofits. I am speaking in opposition to Rule 8.4G and for the following reasons - the first is that since this rule has been promulgated by the ABA, the United States Supreme Court has issued two major free speech decisions that seriously call into question its constitutionality. The first is National Institute of Family and Life Advocates v. Becerra, and there, the court ruled that state restrictions on professional speech are presumptively unconstitutional and subject to strict scrutiny because they are content-based restrictions on speech. The second case is a Matal v. Tam, and the federal law prohibits trademarks for disparaging speech, and this speaks to the fact that

## State Bar of Texas Board of Directors Meeting - 09/10/2020

you cannot simply prohibit speech just because it's disparaging or offensive. The second reason why this rule should not be adopted is the fact that it creates a threat to free speech that is compounded by the use of a negligence standard rather than a knowledge requirement, and while this may not be a perfect example, it reminds me of a time when I was president of the Federalist Society in law school, and I was notified three days before a public event that it had to be canceled. And this event was held just recently after the U.S. Supreme Court decision on Obergefell. And so the event was going to discuss Supreme Court decisions, and because that was a conservative organization, I was notified that my event might have to be canceled. Having such a rule that, you know, requires a negligent standard instead of a knowledge requirement does not really give a fair analysis of whether or not your free speech rights can be upheld. And lastly, this rule should not be adopted because 14 states have rejected and abandoned efforts to adopt an ABA model rule while only two states, Vermont and New Mexico, have adopted it in full. As so many states have decided not to adopt this rule and have found it controversial or have found it to not be representative of free speech rights, which is something that lawyers should stand for, then it might not be a good idea for Texas, which is a large state with many lawyers, to adopt this law. If I have more time, I would just like to remind the board that, you know, it's very important for us to have debate on both sides of the issue, and adopting this rule would not be fair, and it would not be very conducive of an environment where people can have different discussions on different views. Thank you for your time.

CHARLIE GINN: Ms. Castle, thank you for your comments and for your time and for speaking to our board this morning. With that, I am not aware of any other members of the public or the bar that wish to speak on this issue or at least that signed up by our deadline of 5:00 p.m. yesterday. At this point, in just a few moments, we're going to take a lunch break. Let me just give you some housekeeping comments for our board. If you're following along in our agenda, we've now moved to item No. 6, which is report from the chair of the board. On that, No. A was to consider the approval of the minutes from the July 27 meeting. Director Fischer had commented to us yesterday that we had inadvertently left off two friendly amendments that he had made, one that was accepted and one that was not. So what we are going to do - we're going to go back and look at those minutes, make sure everything is correct and then have that ready for your approval at the September 25 board meeting along with these minutes in two weeks at the September 25th board meeting. So we're not going to move forward on that action item. When we come back from lunch, we are going to open in open session very briefly and move into closed session. So we will essentially begin the next portion of our meeting in closed session. Members of the public and attorneys that are watching this online, understand that we will be in closed session for some time. The link will be live, but you won't see any of our faces on it or hear us until we come back from closed session. Directors, during open and closed session, the format that I'm going to ask you to follow in order to speak - because, again, we're doing this virtually, we don't have the benefit of the microphone in front of us - to use the raise your hand feature on Zoom. That's how we're going to do this. And so to prevent chaos from erupting, to be acknowledged to have the floor, I need to raise your hand on that feature. I will have a list in front of me on the iPad that will show what the order is, and I will call on you. The rules for that will be the same as we had at the last meeting. Those are this - I'm not going to institute a time limit on your comments unless it becomes abusive in nature both in the duration of your comments and if it becomes abusive in the type of comment that you're making. All right. The other limitation that I ask is that if you speak on an issue, that you allow everyone else to speak on that issue before you then come back and speak again. All right. I think those are going to be the rules that we follow today, and I hope you find them to be fair. So we will do - we will use those both in closed and in open session. If you have issues finding where the raise your hand function is on Zoom, you all should have my cellphone number. Call me at this lunch break, and we'll make sure we get you taken care of. With that, I believe it is 11:49. Let's call it 11:50. We will come back in 15 minutes.

## State Bar of Texas Board of Directors Meeting - 09/10/2020

Let's make it 20 minutes just so it's easy. We'll call it 12:10. We will come back at 12:10 to restart our meeting. And we will see you all then at 12:10. You - please don't turn off your computers. Just mute yourself and hide your video screens. Thank you very much. It is 12:10, and we are calling our meeting back in order. We are in open session. The state bar board of directors will now recess the open meeting and reconvene in closed session pursuant to Texas Government Code Section 551.071 to seek advice of board counsel regarding board counsel's analysis of Director Dawson's July 27, 2020, motion regarding the spokesperson duties of the state bar president and a revised motion sent to board counsel by Dawson, continue discussion regarding options available to the board, and Keller analysis of action items requested of the state bar president by the African American Lawyers Section AALS on July 13, 2020, and Section 551.074 to deliberate regarding personnel matters. At this time, we are going to have a five-minute recess for our moderators Chelsea and Jennifer to put all members of the 2021 board including section representatives and board liaisons into a breakout room for the closed session. All other individuals including nonessential staff and other guests will remain watching the broadcast. For our public's knowledge, we are going to put within - when we anticipate we're five or 10 minutes away from coming back on, we will put a screen up notifying you of that so you'll have an understanding. We don't know how long we'll be in closed session, but we will try to give you a five-to-ten-minute warning on our broadcast. Any director - once we go into closed session, we'll continue with our communications. So with that, we'll take a five-minute break just to get us all into closed sessions. Directors, you should not have to do anything. Please stay on. OK. It is 3:18 p.m., and the open session of the board of directors meeting will now reconvene. During the closed session, only matters relating - regarding board counsel's analysis of Director Dawson's July 27, 2020, tabled motion regarding the spokesperson duties of the state bar president, and a revised motion sent to board counsel by Dawson; continued discussion regarding options available to the board and tailored analysis of the action items requested by the state bar president, by the African-American lawyer section on July 13, 2020, and Section 551.074 to deliberate regarding personnel matters, as well as our legal counsel update on the MacDonald case, were discussed. No action was taken in closed session. So now we're going to move to item number F. If you are a member of the public or a member of the bar, and you've been watching this afternoon, I want to say thank you for your time. We've been working diligently. We took one short five-minute break, but we've been in active discussions since, and so I want to thank you for your patience with us as we move forward on this. I will turn it over to Director Dawson for his comments regarding his motion before we move forward. Director Dawson, you have the floor.

ALISTAIR DAWSON: Thank you, Mr. Chairman. I think everyone knows, or those that have been following this unfortunate saga, that I do not believe that President McDougal should be the spokesperson for the bar. He has exercised extraordinarily bad judgment on several occasions, and in some cases showed no judgment whatsoever. And I think that from what we have heard today in part, and what we heard from the people who appeared before us on July 27, he has lost credibility with a significant section of the bar and - another reason why I do not believe that he should be the spokesperson for the bar. Ideally, he would agree and would agree not to be the spokesperson, but he has not so agreed. And so I brought the motion that I presented to the board on July 27: to take away his ability to serve as the spokesperson for the bar under the rule - state bar rules and under our policy. And I earnestly believe that that is - believed at the time that that was a good thing for the bar. As you all will recall, there was a long discussion of that motion during the closed session. I was not present for most of that discussion. I had a summary judgment hearing that I had to attend, and so I rejoined the meeting shortly after the closed session completed. You all will remember that one of the things that came up was the question of whether my motion had been submitted to legal counsel in writing for them to analyze, and it had not at that point in time. I then modified the motion to - in a way that I thought was fair to - rather than taking away President McDougal's abilities to speak altogether, I changed it to say that any of his

## State Bar of Texas Board of Directors Meeting - 09/10/2020

communications in his capacity as the president of the State Bar of Texas would have to be approved ahead of time. And I submitted that motion as requested by this board to legal counsel for consideration a few weeks ago, two or three weeks ago. To me, I've always earnestly believed that the state bar should have the authority to determine who is authorized and who is not authorized to speak on its behalf. It's hard for me to imagine that we do not have that authority. But as I have said, I'm not a First Amendment lawyer. I don't do much, if any, First Amendment work. Since this issue has come up, I have studied the First Amendment cases on this subject. I've read them. I've analyzed them. I am not giving legal counsel, that's not my job here. I'm a director and a director only. I'm aware that there's a Fifth Circuit case called *Wilson v. Houston Community College*, which holds that the board member of Houston Community College was protected by the First Amendment, and he could not be censured for his criticism of the Houston Community College. And that's a Fifth Circuit decision. There's also another Fifth Circuit case that says that an elected official - and it's arguable that Professor - I mean, President McDougal is an elected official - that if there's any impingement on an elected official's First Amendment rights, it's analyzed under a strict scrutiny standard, which is much more difficult to meet than the balancing test that is applied to governmental employees. Some people believe that my proposed motion would violate President McDougal's First Amendment rights. I have concluded, after much thinking and debating and kind of, frankly, sleepless nights, that bringing my motion would expose the state bar and all of my directors to a retaliation lawsuit brought by President McDougal for violating his First Amendment rights under the *Wilson* case and under the case that imply - that uses the strict scrutiny standard. And I have also concluded that it is highly likely given President McDougal's conduct that he would bring such a claim. It would be rare for a state bar president to sue his fellow directors, but I think that there is a substantial likelihood that if my motion passed that such a claim would be brought. In addition, there are some directors who are concerned that this motion might impact the pending McDonald lawsuit against the state bar. I have given all this a lot of thought and a lot of consideration and a lot of study. I have concluded that I owe a fiduciary duty to the State Bar of Texas, which means that I have to do what I think is best for the state bar. And I have determined that the potential collateral damage that could result from this motion that I have presented might exceed the good that would come from it. And so with great reluctance - and I mean great, great reluctance - I move to withdraw both the motion that I made on July 27 and the first of the two motions that I submitted in writing for the board's consideration. I do have two motions to make. But before I get to that, I want to apologize. I want to apologize to our members, and I want to apologize to the public. First of all, I want you all to know that I didn't come to this decision until late yesterday afternoon. And I really wrangled with it. I kept trying to figure out a way to justify taking on this risk. And I ultimately couldn't come up with a convincing argument to myself that it was worth the risk that I would be putting the state bar and my fellow directors in. And that's why, had I known earlier, I would have let people know. And people who have spoken today, I apologize that it took so much of your time and now I'm making this motion to withdraw. This really is something I have been grappling with for weeks. But I also want to apologize to our members and to the public that we are in this situation. Upon reflection, President McDougal should never have been nominated for state bar president. That's on us. That's on the nominations and election committee that put forth his name and it's on us as a board because we approved it. That was our error, and that's our mistake. And I can tell you that we will learn from that. And it's not a mistake that I think will ever be made again. But it's still a mistake that we made. It is also our mistake, in my judgment, that we don't have anything in our governing documents to address a situation like this. We don't have anything in our policy manual or we haven't gone to the Supreme Court to ask for rules that allow us to discipline a recalcitrant director or officer. And that's on us. And so that - I apologize that really, given the First Amendment issues and the potential for a retaliatory lawsuit and given the limitations in our governing documents, our hands are tied. But a lot of that is our fault. And again, I do believe that we can and will make amends for the future. But that doesn't take away

## State Bar of Texas Board of Directors Meeting - 09/10/2020

where we find ourselves now, where we have a disenchanted segment - a significant disenchanted segment of our bar. And you are right to be upset. You are right to be angry. You are right to be disappointed. And there's a myriad of other emotions that I'm probably missing. And I just want to give you my earnest apology that we are where we are today and that we cannot do more. I promise you, if there was any way to do more, I would be advocating it. I promise you. But I haven't found that path just yet. But I do have two motions that I would like to make. And Mr. Chairman, I don't know if you want to take them in tandem or you want to take them one at a time. You can...

CHARLIE GINN: Why don't, just for simplicity's sake, Director Dawson, why don't we take them one at a time if you're okay with that.

ALISTAIR DAWSON: I'm okay with that. I move that the Policy Manual Committee submit to this board a code of conduct to be followed by all officers and directors of the State Bar of Texas on a prospective basis, including potential consequences for violations of the code of conduct. And that this code of conduct be presented to this board for consideration when it's available, when that work is finished by the Policy Manual Committee.

CHARLIE GINN: Coming from the floor, it does require a second. Is there a second to Director Dawson's motion?

ANDRES ALMANZAN: Second.

UNIDENTIFIED PERSON #1: Second.

UNIDENTIFIED PERSON #2: Second.

UNIDENTIFIED PERSON #3: Second.

UNIDENTIFIED PERSON #4: Andy Almanzan.

CHARLIE GINN: I see Andy Almanzan's hand up. Director Almanzan seconds. Is there any discussion? And again, what we'll do on the discussion is I'll look to see your hand raise. Jason, I see your hand raised but I don't think it was about this, unless I misunderstood. Am I correct in that assumption?

JASON SMITH: No, it is about the - I wanted to talk about his motion to withdraw his motion.

CHARLIE GINN: Well, right now we can do that. We've already - he's made a second motion here that's had a second. So you can comment on that in just a moment. But he has withdrawn his motion and so there's no action that's required beyond that to have the motion withdrawn. Do you have a comment about the motion now that he's just made and it was seconded?

JASON SMITH: I'm going to refrain from commenting at this time.

CHARLIE GINN: OK. And, Jason, what I'll do is after this vote, I'll let you make a comment about the withdrawn motion. Is that OK? I'm assuming so. Jason, I didn't hear you. OK. Mr. Schramek. Director Schramek.

## State Bar of Texas Board of Directors Meeting - 09/10/2020

ADAM SCHRAMEK: Yes. Thank you. Thank you, Mr. Chair. For those of you who know, I'm Adam Schramek from the - from Austin. I'm one of the directors from the Austin area, and I'm also the chair of the policy subcommittee this year. Accordingly, this motion implicates the committee and all of my committee members. We very much - or let me say - I very much support this effort. I think we need a strong code of conduct. I think we need very clear rules. I think it's going to be good for the state bar. At the same time, it raises some of the difficult thorny issues we've been talking about, which is, you know, how far can you really - how far can you go with code of conduct? How much can you really, you know - what are the boundaries there? It raises very important legal and constitutional issues. Accordingly, we don't want to be in a position of coming with a code of conduct that we later find out is unenforceable or we have to delay a meeting, et cetera. So what we want to do is have legal research done on the front end so that we know the boundaries of the policies that we can propose to this board. And the reason I'm bringing this up now is I'd like to make just a friendly amendment to Mr. Dawson's motion that says that the policy committee is authorized to bring legal counsel in connection with its efforts.

CHARLIE GINN: Director Dawson, do you accept the friendly amendment?

ALISTAIR DAWSON: I do.

CHARLIE GINN: And Director Almanzan, do you still maintain your second with the friendly amendment?

ANDRES ALMANZAN: Yes, I do.

CHARLIE GINN: All right. Is there any further discussion on this motion? All right. Hearing none, we'll start with a general vote and if it becomes nays, we'll go roll call. All those in favor of the motion as presented, please respond by saying aye.

UNIDENTIFIED PERSON #5: Aye.

UNIDENTIFIED PERSON #6: Aye.

UNIDENTIFIED PERSON #7: Aye.

UNIDENTIFIED PERSON #8: Aye.

UNIDENTIFIED PERSON #9: Aye.

UNIDENTIFIED PERSON #10: Aye.

CHARLIE GINN: Any nays?

UNIDENTIFIED PERSON #11: Nay.

CHARLIE GINN: All right. And...

UNIDENTIFIED PERSON #12: Nay.

CHARLIE GINN: I've heard...

## State Bar of Texas Board of Directors Meeting - 09/10/2020

UNIDENTIFIED PERSON #13: Nay.

CHARLIE GINN: ...Two nays.

UNIDENTIFIED PERSON #14: Nay.

CHARLIE GINN: And...

UNIDENTIFIED PERSON #15: There's more.

CHARLIE GINN: All right. Then I think we'd probably better do a roll call vote because I'm hearing two or three but I'm not sure on the numbers. So let's do a roll call vote just for procedure so there's no issue. I'll ask Director - excuse me - Executive Director Trey Apffel to call a roll for the vote. Directors, please unmute yourselves and be prepared to respond by saying yay or nay. Once you've voted, please mute yourself so we can cut down on feedback.

TREY APFFEL: Mr. Agosto.

BENNY AGOSTO: Yay. Yes.

TREY APFFEL: Mr. Allison.

: (BELL DINGING)

TREY APFFEL: Mr. Almanzan.

ANDRES ALMANZAN: Yay. Yes.

TREY APFFEL: Mr. Baruch.

CHAD BARUCH: Yes.

TREY APFFEL: Ms. Bihm.

KATE BIHM: Yes.

TREY APFFEL: Ms. Brooker.

REBEKAH BROOKER: Yes.

TREY APFFEL: Mr. Calvillo.

DAVID CALVILLO: Yes.

TREY APFFEL: Mr. Luis Cardenas.

LUIS CARDENAS: Yes.

## State Bar of Texas Board of Directors Meeting - 09/10/2020

TREY APFFEL: Mr. Cook.

DEREK COOK: Yes.

TREY APFFEL: Mr. Crain.

ROB CRAIN: Yes.

TREY APFFEL: Ms. Davis.

CHRISTINA DAVIS: Yes.

TREY APFFEL: Mr. Dawson.

ALISTAIR DAWSON: Yes.

TREY APFFEL: Mr. Dokupil.

MICHAEL DOKUPIL: Yes.

TREY APFFEL: Ms. Hernandez Ferrier.

MARIA HERNANDEZ FERRIER: Yes.

TREY APFFEL: Ms. Borunda Firth.

SYLVIA BORUNDA FIRTH: Yes.

TREY APFFEL: Mr. Fischer.

STEVE FISCHER: Abstain.

TREY APFFEL: Mr. Flores.

VICTOR FLORES: Yes.

TREY APFFEL: Ms. Forbes.

LUCY FORBES: Yes.

TREY APFFEL: Ms. Goldsberry.

SHARI GOLDSBERRY: No.

TREY APFFEL: Mr. Gravely.

MARC GRAVELY: No.

## State Bar of Texas Board of Directors Meeting - 09/10/2020

TREY APFFEL: Mr. Harris.

AUGUST HARRIS: Yes.

TREY APFFEL: Ms. Harrison.

BRITNEY HARRISON: Yes.

TREY APFFEL: Ms. Humphrey. (Inaudible). Mr. Hurst.

MICHAEL HURST: Yes.

TREY APFFEL: Ms. Cortes Mares.

YOLANDA CORTES MARES: Yes.

TREY APFFEL: Mr. McDougal.

LARRY MCDUGAL: Abstain.

TREY APFFEL: Ms. Carra Miller.

CARRA MILLER: Yes.

TREY APFFEL: Ms. Mount.

LYDIA MOUNT: Yes.

TREY APFFEL: Mr. Naylor.

STEVE NAYLOR: Yes.

TREY APFFEL: Ms. Rispoli.

JEANINE RISPOLI: Yes.

TREY APFFEL: Ms. Roe.

CARMEN ROE: Yes.

TREY APFFEL: Mr. Schramek.

ADAM SCHRAMEK: Yes.

TREY APFFEL: Ms. Scott.

MARY SCOTT: Yes.

## State Bar of Texas Board of Directors Meeting - 09/10/2020

TREY APFFEL: Mr. Sergi.

DAVID SERGI: Yes.

TREY APFFEL: Mr. Sims.

ALAN SIMS: Yes.

TREY APFFEL: Mr. Jason Smith.

JASON SMITH: Yes.

TREY APFFEL: Mr. Todd Smith.

TODD SMITH: Yes.

TREY APFFEL: Mr. Sorrels.

RANDY SORRELS: Yes.

TREY APFFEL: Ms. St. Yves.

DIANE ST. YVES: Yes.

TREY APFFEL: Mr. Tolchin.

ANDREW TOLCHIN: Yes.

TREY APFFEL: Mr. Vargas.

SANTOS VARGAS: Yes.

TREY APFFEL: Mr. Vasquez.

MICHAEL VASQUEZ: Yes.

TREY APFFEL: Ms. Welborn.

AMY WELBORN: Yes.

TREY APFFEL: Mr. Wester.

JAMES WESTER: Yes.

TREY APFFEL: Ms. Pack Wilson.

KIM PACK WILSON: Yes.

## State Bar of Texas Board of Directors Meeting - 09/10/2020

CHARLIE GINN: OK. The yeas have it. The motion is passed. Director Dawson, would you please outline - oh. Before we do that, Director Smith, you had a comment about the withdrawal of the original motion we were discussing. What was your comment, sir? I just wanted to make sure we kept it clean on what we were discussing. Jason, if you're trying to talk, I can not hear you.

JASON SMITH: Yes. The comment that I'm trying to address is I don't - it is not clear whether or not we have the power to take any action with regard to President McDougal's actions. The Wilson v. Houston Community College case was a case that, on request for a rehearing en banc, was split 8-8. So there was no definitive decision in that case. It is my understanding as being appealed to the U.S. Supreme Court. So we may be able to revisit it. However, I - this motion I don't believe - the reasons I was going to support this motion didn't have to do with comments that President McDougal said as a private citizen, but rather he just hasn't been an effective communicator. He's given - he gave a non-apology, then he gave what I thought was a contrite apology and then another non-apology speaking as the president of the state bar. And I believe that the inconsistent communication, just how he was communicating, was - doesn't reflect well on the bar. And I believe that we could take away the spokesperson responsibilities for anyone, even Trey Apffel, the executive director, if they weren't an effective communicator - not what he's saying, but how he's communicating. So - but I think that it is probably prudent to wait for the Supreme Court to speak to Wilson if they're going to. And so let's move forward from there.

CHARLIE GINN: Thank you, Director Smith. Director Dawson, you had a second motion you were going to present.

ALISTAIR DAWSON: I do, Mr. Chairman. Thank you. I move that the policy manual committee present to this board with its recommendations for changes in the policy manual and/or the state bar rules that might enable this board to impeach, remove from office, suspend or take any other disciplinary action against any officer or director of the State Bar of Texas on a prospective basis and that we authorize the policy manual committee to coordinate with legal counsel as needed to address any legal questions that might arise in connection with analyzing the issues raised by this motion.

CHARLIE GINN: All right. Coming from the floor from a director, it does require a second. Do we have...

UNIDENTIFIED PERSON #1: I second. I...

ROB CRAIN: Second.

CHARLIE GINN: OK. Director Rob Crain, thank you very much - is our second. I know we had several there. I'm going by the first one I see. So thank you, Director Crain. Is there any discussion?

YOLANDA CORTES MARES: Yes. Can you please restate the motion.

CHARLIE GINN: And Yolanda, that's great. Let's make sure, if you don't mind, so we don't go into chaos, that we're using that raising your hand function so I can keep everybody in order.

UNIDENTIFIED PERSON #2: I can't find that.

CHARLIE GINN: Yolanda, that was fine. I'm not getting on you - just helping me keep everybody straight. Alistair, would you please restate the motion?

## State Bar of Texas Board of Directors Meeting - 09/10/2020

ALISTAIR DAWSON: I will. And since I have it typed out, it will be an exact duplicate. I move that the policy manual committee present to this board with its recommendations for changes in the policy manual and/or the state bar rules that might enable this board to impeach, remove from office, suspend or take any other disciplinary action against any officer or director of the State Bar of Texas on a prospective basis and that we authorize the policy manual committee to coordinate with legal counsel as needed to address any illegal questions that might arise in connection with analyzing the issues raised by this motion.

CHARLIE GINN: All right. Upon hearing that, I see - Yolanda, you've got your hand raised. Thank you very much. Yolanda, you've got the floor.

YOLANDA CORTES MARES: Thank you. How does this differ from the last motion you had passed?

ALISTAIR DAWSON: So in my estimation, the last motion establishes a code of - would ask the policy manual to come up with a code of conduct that all officers and directors must follow. We have a code of conduct for when you're at CLE events, but we don't have a specific code of conduct for officers and directors just in connection with performing their duties as officers and directors. And then this - I mean, I don't know. I'm not on the policy manual committee, but what - as I appreciate it, they would come up with - here's some, I guess, possibilities. Under these circumstances, you might impeach a president or an officer. And here's the procedures you would have to go through if you wanted to impeach, or cause to - force the resignation of, or remove from office. Here's the circumstances under which you might suspend somebody. Here's the circumstances where you might publicly reprimand somebody or privately reprimand somebody. I mean, they would come up with the various what I'll call disciplinary options and the circumstances that might give rise to those disciplinary options. But I don't want to presuppose that that's what I have in mind, but it'll be up to the policy manual committee to make whatever recommendations can be made. And frankly, I haven't studied this. It may require changes in the state bar rules, which may require us to have to go to the Supreme Court and ask them to promulgate new rules. That may be, I don't know. But I would hope that what we would get back from the policy manual if both of these motion - policy manual subcommittee. If both of these motions passes, here's what we recommend with respect to a code of conduct, and here's what would have to happen to implement these disciplinary actions that could be taken against officers and directors.

YOLANDA CORTES MARES: If I may - Chair?

CHARLIE GINN: Yes. Please.

YOLANDA CORTES MARES: Thank you. I'm currently on the policy manual subcommittee, and so the clarification was helpful to me, personally. However, it would appear that because the former motion passed, which was the motion that approved a code of conduct, that would - and that also would require legal opinion and the expenditure for that legal opinion, that this motion then infers that the code of conduct that passed does not relate to a code of conduct that would pertain to the officers and directors of the State Bar of Texas. And therefore, your request requires a second legal opinion referring to a code of conduct, specifically that authorizes a disciplinary action against the state bar board of directors or officers. And so what I wanted to clarify was if that is exactly your intent: to have two separate legal opinions, two separate expenditures for two separate legal opinions, or whether your motion for a - the initial motion for a code of conduct includes the proposed disciplinary action against a state bar board of director or officer. And if so, is this motion really necessary?

## State Bar of Texas Board of Directors Meeting - 09/10/2020

ALISTAIR DAWSON: Well, I see that. I mean, I will just tell you. I really - it's up to the policy manual committee because I'm asking them to come back with their recommendations. I think that the - there are two separate issues. There's one issue that has to do with establishing a code of conduct, and Director Schramek has said that that may require legal opinions. He's in a better position than me to know that. And if it does, then I - then we have already authorized the policy manual subcommittee to seek those legal opinions. I think the discipline could be related to the code of conduct or could be unrelated to the code of conduct. For example - just giving you a hypothetical - you might come back and say any officer director who's caught embezzling from the state bar is - will be removed from office. That may not be in the code of conduct - do not embezzle. So I see them as different. And if it requires two sets of legal expenses then I - then - if that's what the policy manual committee decides, that it needs legal consultation on two different issues, then I would request that we authorize the policy manual to - subcommittee to incur those expenses because I think it's money well spent.

CHARLIE GINN: OK. We - and we have a second. Is there any other discussion on this motion? All right.

STEVE FISCHER: Hey. Hey.

CHARLIE GINN: Seeing none - seeing no hands raised - all those in favor...

STEVE FISCHER: This is ridiculous.

CHARLIE GINN: I'm sorry?

STEVE FISCHER: I've had my hands raised for an hour. Jesus.

CHARLIE GINN: All right. Director Fisher, we have asked you a couple of times now...

STEVE FISCHER: I can't use that. I don't see it on there. OK?

CHARLIE GINN: Director Fisher. Director Fisher.

CHARLIE GINN: I would ask that you - I'm not trying to avoid you. I couldn't see your window on the screen that I'm looking at. So because I don't see all the hands in front of me on the screen, that's why I asked that you use the Zoom feature. I can tell you that if you click on the button participants, there is a button that says raise your hand. That can help you do that. However...

STEVE FISCHER: I got it.

CHARLIE GINN: ...However, thank you for getting my attention. I'll give you the floor.

STEVE FISCHER: OK. First, I wanted to speak on the other - on this motion to withdraw, so I don't know - you know, I was waiting in line for that. And then, I can just tell you briefly on this that if Mr. Dawson doesn't know what would be in there, what we could discipline somebody for, maybe - because of the mistake he made on the last motion - that he would think this out, write it out, do some research and then present it. That's all I have on that. But I do want to be recognized on the other thing where he withdrew his motion - just like Jason Smith had the right to speak on it.

## State Bar of Texas Board of Directors Meeting - 09/10/2020

CHARLIE GINN: All right. We'll tell you what. As soon as we get done with this motion, just like I did for Director Smith...

STEVE FISCHER: Thanks.

CHARLIE GINN: ...I'll come back around to you. OK?

STEVE FISCHER: Thanks.

CHARLIE GINN: And I see you - so you found the button. I appreciate you doing that for me.

STEVE FISCHER: Think so, yeah. Thanks.

CHARLIE GINN: It's just a lot easier to keep everybody straight. Thank you. OK, is there any other discussion on the motion that Alistair Dawson just made? Hearing none, seeing none. All those in favor, please say aye.

UNIDENTIFIED PEOPLE: Aye.

CHARLIE GINN: Any nays?

UNIDENTIFIED PEOPLE: Nay.

CHARLIE GINN: All right, I hear two nays. Majority takes it. Motion passes. And the two nays I heard were Yolanda and Shirley - Shari Goldsberry. If there was another nay, I didn't hear it. Please let me know. Otherwise...

STEVE FISCHER: Yes.

CHARLIE GINN: ...Motion carries.

STEVE FISCHER: Me also.

CHARLIE GINN: Is that - who is me? I'm sorry.

STEVE FISCHER: Steve.

CHARLIE GINN: Steve. Got it, three. Thank you very much.

LARRY MCDUGAL: Chairman, I abstain.

CHARLIE GINN: And Larry?

LARRY MCDUGAL: Abstained.

CHARLIE GINN: Abstained. And President McDougal, you - I wanted to - just for the record, you abstained on the previous motion, correct? You did not say nay, you abstained. Correct?

## State Bar of Texas Board of Directors Meeting - 09/10/2020

LARRY MCDUGAL: That's correct.

CHARLIE GINN: OK. I just want to make sure. I want it for our record keeping. OK. Motion passes. Director Dawson, do you have any other motions to present?

ALISTAIR DAWSON: I do not. Thank you, Mr. Chairman.

CHARLIE GINN: All right. Director Fischer, if you'd like to be heard on the withdrawn motion, you may do so at this time.

STEVE FISCHER: Yes. I'm just going to respond to Mr. Dawson's comments and his apology. He said he has a fiduciary duty, and we've spent a fortune on two or three meetings based on what he was going to present. And he should have done his research for this. I promise...

VICTOR FLORES: Mr. Chair, I have a point of order.

CHARLIE GINN: I'll listen to - what's the point of - hold on Director Fischer. What's the point of order?

VICTOR FLORES: Just to clarify which motion Director Fischer abstained on previously.

STEVE FISCHER: Number two. Number one was withdrawn.

CHARLIE GINN: About the code of conduct - hold on. Who - and listen. I should have laid this rule out first. Let me just do it now. And I did this last week, and I made a mistake. All comments are directed towards me - not each other. We're not going to have directors commenting at each other - especially not in a way that's not respectful. So you're certainly able to direct all comments towards me, and I'll do my best to answer it. And if we need to go to that director to answer it, we can. Director Flores, the motion that Steve Fischer - Director Fischer abstained from was the first one that was made - the second motion in the list which was the code of conduct. Does that answer your question, Vic?

VICTOR FLORES: So not the motion to withdraw, correct?

CHARLIE GINN: Director Fischer, is that correct?

STEVE FISCHER: That is correct.

CHARLIE GINN: All right.

VICTOR FLORES: OK, that's it.

CHARLIE GINN: All right. Thank you very much, Vic. Go ahead and start, Fischer.

STEVE FISCHER: OK. In the big picture, we have elections here. And Larry was elected - and me, to some extent - to promote and help lawyers - things that we should have been working on instead of this. Health insurance - we haven't even met on that. Grievance reform - even some of the disciplinary council admits that our stuff is necessary. Back burner...

VICTOR FLORES: Mr. Chair, I have a point of order.

## State Bar of Texas Board of Directors Meeting - 09/10/2020

STEVE FISCHER: ...You want to just censor me. Why don't you just say it?

CHARLIE GINN: Director, hold on. Hold on, Director Fischer. We have a point of order. Immediate past president, inspector general lawyer Victor Flores.

VICTOR FLORES: I just want to know how this relates to the motion to withdraw. And I have concerns that we're stepping outside of the scope of public notice.

CHARLIE GINN: I'll accept the point of order.

STEVE FISCHER: I will get to that. I will get to that.

CHARLIE GINN: I'll accept the point of - hold on, Director Fischer. I accept the point of order. And you have the floor based on the motion to withdraw. That was actually - and it's really no motion withdrawn. It's just a motion that never went forward at this point. So you can speak to that. But please try to keep your comments focused on that and that alone, please.

STEVE FISCHER: Right. And the reason why I brought those things up is that there are elections. Whether Mr. Dawson - whatever he did that stopped Larry getting elected - he'd made his shot. Larry got elected based on something he did - which I disagree with - 2015. But we've wasted so much time on Mr. Dawson's motions and having two or three meetings devoted to what they can do to Larry. Just like this next - this last motion - it's all motivated by censoring his speech. I don't agree with Larry on BLM, but he has that right to speech. We've wasted a bunch of resources doing this. The way to remove somebody is not to elect him in the first place. His statements were there for years. So, you know, please do not waste any more bar resources on preventing Larry or anybody from having their political opinions. Thank you.

CHARLIE GINN: Thank you, Director Fischer. Director Vargas, I see that you've got your hand raised.

SANTOS VARGAS: Yes, Mr. Chair. I just want to take the opportunity, actually, to thank Mr. Dawson for the incredible courage that he displayed. And also to thank all the directors for their courage and the depth to which they analyzed these issues. It's taken a lot of time. It's taken resources. But these are important issues that we need to deal with as directors. We're elected to call all the hard shots, and that's what we've been doing. And so I'd like to thank Director Dawson. I'd like to thank all the directors for everything they've put into this. And I just want to say that instead of taking an approach that he's trying to censor or do anything else, he's trying to, in my estimation, correct something that was a wrong. And the courage that it's taken for him to do that, I want to thank him for that. Thank you, Director Dawson.

ALISTAIR DAWSON: Thank you, Director Vargas for your comments. Director Crain, you have the floor.

ROB CRAIN: And Mr. Chair, if we were going to go through the motions before open discussion, I'd like -

ALISTAIR DAWSON: We are, Director Crain, but if you've got - I mean, I allowed Director Vargas and Director Fischer. So what I'd like to do is continue the motions and then go into open discussion at that point, if we need to. But go ahead.

## State Bar of Texas Board of Directors Meeting - 09/10/2020

ROB CRAIN: No, no, no. Let's do that. Let's follow your order.

ALISTAIR DAWSON: Thank you, sir I appreciate it. OK. Are there any other motions on Item F? And Director Dawson, you said you had no more. Correct?

ALISTAIR DAWSON: I have no more, Mr. Chairman.

ALISTAIR DAWSON: All right. Thank you. So let's go to item number G, consider and discuss referral, the ABA Model Rule 8.4(g) to the DCAAP committee for study and recommendation. I want to make sure that I'm very clear on this to our membership, and I don't know that I was earlier today. So let me just be as crystal clear as I can. All right? The DCAAP committee cannot adopt Model Rule 8.4. It can only make a recommendation to the board regarding the rule. Then based on that recommendation that DCAAP would make, it would then be up to the board to make a recommendation in the form of a resolution, if any, to the CDRR for consideration. If the board today votes to refer the rule to the DCAAP committee for study, the DCAAP would review all input, they would including all the comments made today before making any recommendation. If a vote is made to send this Model Rule to DCAAP, the board is not adopting it, it is not sponsoring it, it is not endorsing it. It is purely sending the rule to the DCAAP committee to look at and to review. It is not an endorsement. It is not a statement that says we believe this is anything but a rule that we wanted to look at and examine and then refer to the board. And then the board's reaction to that would then be a majority vote would need to take place where it would be sent to CDRR for recommendation. If DCAAP wants to look at this rule on their own, they're allowed to do that without direction from the board. My understanding is if the CDRR wants to look at this rule, they can do that on their own without a referral from the board. So I just wanted to be very clear on that, that no vote to adopt this rule is going to be taken today, and any vote taken today is not going to result in the endorsement of the rule. So just so we're all aware of that. That said, do we have any motions regarding the Model Rule 8.4(g) of the ABA model?

JASON SMITH: Yes, Mr. Chair. This is Jason Smith from Fort Worth, and I have a motion to refer ABA Model Rule 8.4(g) to the DCAAP committee for study and recommendation as required by the Texas Government Code State Bar Act.

ALISTAIR DAWSON: Thank you, Director Smith. Is there a second?

ANDY ALMANZÁN: I second. Andy Almanzán.

ALISTAIR DAWSON: All right. Having a second, is there discussion? And let's do this - So I know there will be, so let's do this by using that raise your hand feature please. Director Schramek, I've noticed your hand first. Before we go to you, we're going to use the same rules that we did in closed session. I will allow you to speak on the topic more than once, but only after everyone else that has spoken gets a chance to. I will not limit your time to speak, as long as it does not become abusive. And I apologize for not laying this out earlier. All comments directed to the chair, please. Director Schramek, you have the floor.

ADAM SCHRAMEK: Thank you. Yes. So I wanted to talk a little bit about - you know, we had a lot of people this morning, a lot of members of the public that had very strong opinions on this ABA Model Rule. And a lot of people brought up the fact that we also have 5.08 in our Texas Disciplinary Rules, and it's titled Prohibited Discriminatory Activities. And there is a lot of overlap between 5.08 and this ABA Model Rule. But the ABA Model Rule, of course, is much more expansive. I think that by referring this to

## State Bar of Texas Board of Directors Meeting - 09/10/2020

the DCAAP committee, they can take this Model Rule, look at our 5.08, and see whether or not 5.08 can be strengthened, whether there are concepts that need to be added to 5.08 that are missing. Just a very cursory review of 5.08 reflects that it doesn't have all the categories of discrimination that's listed in the ABA Model Rule. Maybe nothing comes out of this more than adding two more bases of discrimination, such as discrimination on socioeconomic status or gender identity. Maybe that's the only thing they recommend. Maybe they look at 5.08 and see that it's limited to discrimination in connection with an adjudicatory proceeding and say you know what, that's pretty narrow. Not all lawyers are litigators like I am. What about lawyers who work in the corporate boardroom? What about deal-makers when they're negotiating deals? Maybe those prohibited discriminatory activities should also be applied in a broader context. That's the sort of analysis that I think DCAAP should undertake not just an up or down on the ABA model rule. If you ask me right now to up or down the ABA Model Rule, I'll have a thumb down. I believe in its purpose, but I think it's poorly worded. I think it's overly broad. And as a litigator, I see all sorts of problems, but the concepts are good. The purpose is the right purpose. It's trying to do good, and it's trying to advance the legal profession, and it has things that we can take from it and make our 5.8 better. That's why I'm voting for it. And so I would like to ask for a friendly amendment for Mr. Smith to say including a review of 5.08 in his motion, so that he reviews the ABA model. But also in connection with that, they review 5.08, and we let DCAAP decide, come back to us with what changes, if any, should be made.

CHARLIE GINN: Mr. Smith, do you accept - director Smith, do you accept the friendly?

JASON SMITH: I accept the friendly amendment.

CHARLIE GINN: All right. And there was a second. Director Almanzan, do you accept the friendly?

ANDY ALMANZÁN: Yes, I do accept it.

CHARLIE GINN: All right. Director Fischer, you have the floor. Director Fischer, if you'd unmute yourself - you're talking, but we can't hear you it.

ROSS FISCHER: Myself - there we go. I actually agree with what Adam said. We definitely need to do something, as a state bar, that protects minorities and protects LGBT people. And we really need to do something. I understand that this here - measure is probably going to fail. It's probably going to invite lawsuits which are very expensive. So I'll vote to send it to DCAAP and hope - and we don't need a motion. There's other things I'd like people to consider, and I know it's sort of short notice. I think I've mentioned it before. But I think - and DCAAP can consider this. I don't need to make an amendment or whatever.

CHARLIE GINN: Director Fischer, this is just about the motion for sending the model rule to DCAAP with the friendly amendments. So if it's outside of that...

ROSS FISCHER: It's not.

CHARLIE GINN: ...You'll have an opportunity for discussion. But if it's outside of that, please hold until then.

ROSS FISCHER: It's not. I'm going to say that in that rule, G, engage in conduct that the lawyer knows or reasonably should know is harassment of discrimination. I think everybody has that in front of them -

## State Bar of Texas Board of Directors Meeting - 09/10/2020

that to make this legal, to give it some teeth and some strength, I would like to commissioner - DCAAP to consider that after - should know - we should know - is violative of Article 3A of the Texas Constitution which guarantees some rights and of any others and many other civil rights acts, statutes and it's harassment. I think, once again, we don't have to - it doesn't matter for us to vote on it. And I will send it to that. I will vote to send that committee. But there's things we can do, including the Texas Lawyer's Creed, to effectuate this and make sure that people who are disadvantaged or been discriminated against have that. The way it is now, it's dead, but we can send it anyway. But I'd like that, and I'd like to offer ways that we can effectuate this and not violate the Constitution and not get us in legal trouble. Thanks.

CHARLIE GINN: All right. Thank you, Director Fischer. Salvia. David, I think you're on mute.

DAVID CALVILLO: Yes.

CHARLIE GINN: There you are. Thank you, sir.

DAVID CALVILLO: So I have comments about the motion generally - the referral to the DCAAP committee. Is this the appropriate time Mr. Chair?

CHARLIE GINN: It is. Yes, sir.

DAVID CALVILLO: All right. I have strong reservations about the adoption of rule 8.4(g). My perspective is a little different. It's not from a from a free speech standpoint but rather from my position having served as - on the grievance committee. I served on the grievance committee for six years in the region in Hidalgo County and Cameron County and Willacy County in the Rio Grande Valley. Three of those years, I served as the chair. And in looking at the text of this rule 8.4(g), I see that there is an opportunity for a lot of mischief and a lot of misunderstanding and uneven application of this rule. It's not clear for enforcement. And so from that perspective, I have a lot of problems with it. In addition, 14 states - I know this question has come up. Fourteen states have rejected or abandoned efforts to adopt this rule while only two states have adopted it in its entirety, Vermont and New Mexico. Two other states, Maine and Pennsylvania, have adopted highly modified versions of rule 8.4(g). And as it was pointed out earlier, one of them, the state of Pennsylvania, has actually been sued over that. So I think we're looking at the possibility that this rule will not pass muster, will not pass scrutiny by the committees. Director Smith has urged us to trust the process, and I agree with him. In the end, I'll support the motion. But I did want our DCAAP committee and the CDRR committee, when they review this record, that they see that there are some strong reservations, not just the constitutionality that our AG, our attorney general, has raised but also from an in the weeds, nuts and bolts application of the disciplinary rules from a procedural standpoint, sitting there making decisions day in and day out. There is an opportunity for a lot of mischief. And so I would like them to consider that as they look at the two that have been recommended as part of this motion. So that what I have to say.

CHARLIE GINN: OK. Thank you, Director Calvillo. Directors, there is - there are two things that need to happen. And I know we need further discussion on this, and so if you'll permit me to do something a little unorthodox. We lose our feed here in the next few minutes - 15 minutes and we have to get a new feed. OK. We also need to take another item out of order. We are not done discussing this. And so if you will permit me, unless there is a strong objection, we need to take one item out of order and then reset our live feed, so we don't lose everyone. So what I'd like to do, unless there's a strenuous objection, is take the report from Carmen Roe, which is item eleven, very quickly. And then, get a new feed and then

## State Bar of Texas Board of Directors Meeting - 09/10/2020

come right back to this discussion. I say that because we still have five hands that are raised right now on this issue. So Director Smith, this is your motion. Do you have any issues with me tabling this just for a few moments until we can come back to it?

JASON SMITH: No objection.

CHARLIE GINN: OK. Thank you very much. Are there any objections to me doing that on the board? Hearing none, we will do that. Director Roe, you have the floor on item 11.

CARMEN ROE: Thank you so much. Thank you, Chairman Ginn. I appreciate it. I'll be brief. I'm excited to talk with the board and the members about the State Bar Texas - State Bar of Texas justice and leadership workgroup. At our last July 27th meeting, the board heard from 61 speakers and accepted hundreds of letters and remarks from the public. The board voted, at that time, to approve a motion to create this workgroup, and it is to include directors as well as various members who are interested in these issues, which include diversity and inclusion and the suggestions that were made in writing as well as the oral remarks to the State Bar of Texas. In your meeting materials, you have a roster and a fiscal impact statement for this work group. It also includes a mission statement in the background information that I just gave to you. The work group, at this time, consists of 13 individual members from across the state that were selected for their leadership in their community giving us greater reach across the bar. The creation of the group is not anticipated to have any fiscal impact as there are no in-person meetings. So there will be no travel, and no meals and no lodging. The work group will start immediately after the board does approve it and will continue its work until it is complete, but not later than June 30th, 2021, whichever comes first. So at this time, I would move that the board approved the roster of the justice and leadership workgroup as presented in your materials.

CHARLIE GINN: Is there a second?

ANDREW TOLCHIN: I second.

CHARLIE GINN: All right. Thank you, Director Tolchin. Is there any discussion? Hearing none, all those in favor say aye.

UNIDENTIFIED PEOPLE: Aye.

CHARLIE GINN: Any opposed? Hearing none - passes unanimously, so approved. Thank you very much. So at this point, just to be safe, what we're going to do - and members of the public - you're just going to have to refresh your computer screen here in a few minutes. It will be the same website. It'll be the same link. It'll be the same video feed, but they only allow so many hours in a row of filming, and we've used that time again. So we're going to get on a new stream here in just a few minutes. Directors, I know you've been going hard. Why don't we take a 10-minute break so we can get the new live feed on? Chelsea, I don't think they're going to have to do anything with their Zoom. Correct? Do not touch your Zoom. Do not get off. You can hide your screen and go mute. We will take a 10-minute break. Why don't we call it 4:20 - 4:15. We'll come back at 4:15, and we'll get going on the new live feed, and we'll take it back up with Director Smith's motion. Thank you very much. All right. Welcome back. We should be on a feed - a new feed. So we have another eight hours' worth of tape we can run, so - protein bars. OK. Director Smith, we're going back to your motion. Director Forbes, the floor is yours.

## State Bar of Texas Board of Directors Meeting - 09/10/2020

LUCY FORBES: Thank you, Chair Ginn. OK, the way this motion is worded - I have significant reservations, and I cannot agree to it. I can agree to reviewing 5.08 but not the way this motion is worded. The ABA model rule was adopted in August of 2016. Since then, through my personal research, I found that the United States Supreme Court has issued two opinions that lead me to believe it would likely be held unconstitutional. We heard from a constitutional scholar from the preeminent South Texas College of Law who raised persuasive, significant constitutional and other concerns, and we also received an opinion from the attorney general echoing the concerns. Rather than - for DCAAP - so based on all this, I believe that, based on my fiduciary duty to the bar, this would represent misspent bar fees including additional legal fees on researching the legality of it. And the time spent, DCAAP could spend its time on procedures and the grievance process that may lead to inequitable results for our African-American, minority and certain practice area colleagues. They are disproportionately affected. That time could be spent addressing those important issues that affect the daily practice of attorneys and the public's trust in our delivery of legal services. DCAP could also spend its time to educate lawyers and the public on the significant changes the legislature made in 2017 to the grievance process. So while I think it's a good idea to review the disciplinary Rule 5.08 to narrowly and strictly tie it to what our purpose is, which is to discipline - I mean, our purpose under the State Bar Act is to discipline lawyers. So it needs to be very narrowly tied. So for these reasons I do agree with Director Schramek and Calvillo, that a review of that 5.08 might be advisable, but I cannot agree to send 8.4G to DCAP; it would be a waste of resources. Thank you.

CHARLIE GINN: Thank you, Director Forbes. Director Hurst, the floor is yours, sir.

HURST: Thank you, Mr. Chair. And I sat here all day and listened to the amazing comments from the public. I've listened to the great research that Ms. Forbes has done and the advocacy of Mr. Schramek, Mr. Calvillo, Ms. Forbes and others. And I generally am in agreement with all three of them with one exception. I do think that 5.8 is the place to address our concerns. I do believe that - well, I do have serious concerns about the possible constitutionality of 8.4 in light of the cases that I've heard. I do believe that in the interest of everything that we've been doing, in the interest of the public, that we should in fact refer 5.8 and 8.4 to the committee - to the DCAP committee - so that we may evaluate and let them do their magic in the chemistry room or the kitchen or whatever have you and make their recommendation. I think that we need to give them all tools at their disposal to evaluate. And that's where I leave that. So I'm in favor of sending it to DECAP with the concern about the constitutionality and with my strong belief in support of what Mr. (unintelligible), Mr. Calvillo and Mr. Schramek say about 5.8 being the way to address it. Thank you very much for your time.

CHARLIE GINN: Thank you, Director Hurst. Director Bim?

BIM: Thank you, Chair. I believe that this referral is appropriate because it's so critical that we understand that some of the harassment that our membership endures is not part of an adjudicatory proceeding but is often just part of an immutable characteristic that they have going through life. And when I found that there were allegations that a member of the Texas Bar had physically assaulted another member not pursuant to an adjudicatory proceeding but simply as a virtue of her sex and that there was nothing in the state bar rules that would provide that those two people acting in their professional capacities who were not employer and employee - there was no relationship that would provide this person with any way to potentially call this attention to the bar - that disturbed me. It disturbed me greatly, and so I disagree with Rule 8.4G as it is written. I do believe that it is overbroad and would likely be held to be unconstitutional. But I do believe that we as a bar need to do better and that we need to provide some relief in our disciplinary proceedings for activities that may not

## State Bar of Texas Board of Directors Meeting - 09/10/2020

necessarily be part of an adjudicatory proceeding, as Director Schramek said, but that may be a function of their work as a lawyer. And for that reason, I support this referral with the understanding, as others have said, that hopefully we can find some middle ground here. Thank you.

CHARLIE GINN: Thank you, Director Bim. I think Director Cortes Mares - Yolanda, the floor is yours.

YOLANDA MARES: Thank you, Chairman. For those of the members of the public that are not familiar with what 5.08 states, 5.08 is a Texas Disciplinary Rule of Professional Conduct. And it has two parts to it. Part A state's a lawyer shall not willfully, in connection with an adjudicatory proceeding except as provided in Paragraph B, manifest, by words or conduct, bias or prejudice based on race, color, national origin, religion, disability, age, sex or sexual orientation towards any person involved in that proceeding in any capacity. I won't read Paragraph B, but Paragraph A seems to be what we are all focusing upon. As a member of the DCAP subcommittee, I can say that DCAP does not need a motion to consider, on its own, any changes to or any - actually, any recommendations for changes to Rule 5.08. I am not personally in favor of ABA model Rule 8.4G for the reasons stated by these other directors, but I am in favor of revisiting 5.08 of our own rules to determine whether or not there can be some improvement, as Director Schramek indicated - and Director Forbes has very eloquently indicated. But I do not believe that there is a motion that is needed for the DCAP committee to consider any recommendations in connection with 5.08. Thank you.

CHARLIE GINN: Thank you, Yolanda. Director Naylor - also the chair of the DCAP committee - you have the floor, sir.

STEVE NAYLOR: Thank you, Mr. Chair. Sorry, I was trying to get it going. I agree with Director Forbes. And I agree that it would be a complete waste of time a waste, of state bar assets, to spend all this time looking at the ABA rule. If the idea - and I agree. And in this sense, I agree with Director Calvillo and Schramek and the others. But if the goal is to revise 5.08, why are we referring the ABA rule? Just refer us, the DCAP committee, to look at Rule 5.08, or someone come up with a proposal for 5.08. If 5.08 has that many problems, why hasn't someone made this proposal already? But all the time and resources that the DCAP committee is going to be spending to start with the ABA rule and then start revising it and then merging the two rules, as Lucy Forbes - Director Forbes said, we could be using that for other things that are, right now, affecting our members. And as - we have a fiduciary duty to our members to not involve them in litigation that is - we all know we're going to lose and not to waste their assets. We could be using this to focus on the diversity or the inclusion or anything else. But let's short circuit it and focus on the rule that everybody wants changed. Or better yet, somebody give us a proposal for a change to that rule. Make the recommendation. So I will be voting against it. I hope others will, but, you know, I'll accept the board's vote, as I always do. Thank you, Mr. Chair.

CHARLIE GINN: I'm on mute. I apologize. Director Vinny Augusto - thank you, Steve. Director Augusto, you have the floor.

VINNY AUGUSTO: Thank you very much. I wanted to be very clear that I believe this motion is unnecessary. I am against the ABA Model Rule 8.4G not because the Texas attorney general said it, it's wrong or not, because of that opinion but because I have studied it myself, we have heard opinions and thoughts here today and because I have listened to people smarter than I, that are professionals in constitutional law - like South Texas College of Law professor Josh Blackman and the United States Supreme Court opinions. And because they believe it is wrong - Professor Blackman gave us a very eloquent opinion about it today - and others. And then I listened to our member, Steve Naylor, and what

## State Bar of Texas Board of Directors Meeting - 09/10/2020

he has just said. I'm glad I'm following you, Steve, because I believe it's unnecessary. And I'm not in support of this. I'm not going to vote to send it. What I'm interested in is what Steve said, which is if we have things that need to be fixed, grievance reform - that I believe is very necessary for us in this day - then we can deal with the rules we already have, the Professional Responsibility Rules 5.08. It's already in place. I - like others, have mentioned, I also had the blessing of being a chair of a grievance committee here in Houston. And I saw, firsthand, some of the problems that come up with grievances that are filed and the limitations that lawyers have in defending themselves. So I am for grievance reform. And I believe wholeheartedly that the way to address some of our issues is - and our professional responsibility is to deal with fixing those rules. And 5.08 is a good way for us to deal with. But that's not the motion we have. What I do believe is that we have to deal with improving our Texas rules, bring grievance reform, which is something that is still before us as a duty and responsibility we have as board members, and listen to Steve Naylor and others that have said we're against it. And I am against it, and I'm voting against it.

CHARLIE GINN: Thank you, Director Augusto, for your comments. Director Almanzan. Andy, the floor is yours, sir.

ROBERT ALMANZAN: Yes, sir.

CHARLIE GINN: You're off mute.

ROBERT ALMANZAN: I appreciate it. Thank you very much. I personally am in favor of the referral. Again, we're talking about a referral. It's just the first part of the process. And with all due respect to everyone else that has spoken, it sounds like DCAP is probably going to, at least sua sponte, look at 5.08 anyway. All due respect, would it really hurt to also open up Model Rule 8.4G? Is this going to be like a gender reveal fire that's going to happen if they actually open up the ABA rule and look at it at the same time and in connection with looking at 5.08? I do believe that 8.4 is broader and more - has a more encompassing reach. Maybe that's problematic, maybe it's not. And even if the committee later or ultimately recommends adopting a modified version or a variant of the rule, that might happen, too. But I don't think that it's that adverse or consequential to not even take a look at 8.4. It's almost like let's just burn it already. I don't think we need to burn the book, and I don't think it would hurt to look at it while you're looking at 5.08. Thank you.

CHARLIE GINN: Thank you, Andy. Director Surgey. David Surgey, you have the floor, sir, whenever you're off mute.

DAVID SURGEY: So this is one of those rare times where I find myself in agreement with Attorney General Paxton - very rare times. I think this is, unfortunately, ill-drafted, unconstitutional. It's vague, ambiguous, but there are pieces of it that might be savable. And so I'm in favor of reviewing it but taking the best parts of it because infringing on religious liberty, infringing on the thought that someone may feel compelled not to litigate or advocate for a particular purpose regardless of how repugnant other people may see that to be - and I have to go back to the supreme court case of the National Socialist Party of America v. Skokie, where the U.S. Supreme Court tells us even if it is repugnant, you still have that right of speech. You still have that right to put forth those ideas in that marketplace of ideas. And so I do not want to have a rule that prohibits that speech, that religious liberty, regardless of how we look at. So at the end of the day, I believe it is unconstitutional of this draft that I would be against referring the entire rule. But I think that we can pick it apart and make it better. So I would not vote for referring the ABA rule, but I would vote for amending and reviewing our current Rule 5.04. Thank you.

## State Bar of Texas Board of Directors Meeting - 09/10/2020

CHARLIE GINN: Thank you, David. Direct - excuse me, President elect Sylvia Borunda Firth. I apologize; you're president elect, not a director - your floor, ma'am.

SYLVIA FIRTH: Thank you. Thank you, Charlie. I just want to say that I'm in favor of referring the matter to the DCAP committee because it's being done at the request of our membership. We seem to have a short memory about our last meeting where we heard from lots of people about this - the ABA rule. And while I tend to agree with everyone that, as drafted, it's a problem. And I think that - I don't think we're asking the DCAP to give us an up or down ruling on it. I think we're asking them to have a look at the rule. And as Director Surgey said - and also Schramek - let's pick what's the best from it and see if we can make it work within our system. So we're not limiting them to the constraint of the way the ABA drafted the rule. We're saying this is something we want you all to consider and come back with the best that's possible and legally supportable. We're not going to go out and do something reckless. So I am in favor of the motion with that understanding, that the DCAP will have a broader look-see than just an up or down vote on the model rule. Thank you.

CHARLIE GINN: Thank you, Madam President elect. Director Diane St. Yves. Diane, it's your floor whenever you unmute yourself.

DIANE ST YVES: Thank you, Chair. This is a - this issue is not one that we wanted. This is one that we were given unwillingly. We wanted to do grievance reform. We didn't want to have to spend our time doing this, but President McDougal has tossed this in our lap. And now we have to deal with it - that we have to figure out how we can, going forward, solve these problems. We're only asking for the referral. Eight point four G refer to DCAP, of which I'm a member. And we look at that in conjunction with 5.08, see what needs to be done and make recommendations. That is what is being asked of us, and that's what we have to do. We also have to do that in conjunction with our other jobs of grievance reform. This is something that needs to be done. President McDougal reached out to me on grievance reform before everything happened, back in June, asked me to chair the task force. And I agreed willingly, wholeheartedly. And I am still there. But since June, I have not heard a peep from President McDougall about that task force. So this is one of the steps we have to take. Is it a waste of time? Absolutely not. Is it necessary? Absolutely. Is this whole issue, these special meetings, what we as DCAP members wanted to do? Absolutely not. But President McDougal has put us in this position. And we need to look at this. And we need to do something to address these issues that are now in front of us - and need to be addressed now. I yield the floor.

CHARLIE GINN: Thank you, Director St. Yves. Director Dawson, as soon as you unmute yourself, you have the floor, sir.

DIRECTOR DAWSON: Thank you, Mr. Chairman. So I just want to reiterate some of what other people have said. Number one is we are not passing on the propriety or constitutionality of the ABA rule Rule 8.4 today. All we're doing is asking the DCAP committee to consider that rule along with 5.08 and determine whether any changes need to be made in the rules and, if so, to come back to this group, to this board, with whatever recommendations they may have. So I think it's premature to judge whether the ABA rule is constitutional or not constitutional. We should judge it when we get back from the committee - whatever recommendation, if any, that they make. So I support the referral, and I look forward to hearing the results of their work.

## State Bar of Texas Board of Directors Meeting - 09/10/2020

CHARLIE GINN: Thank you, Director Dawson. Director, Steve Fisher, you have the floor, sir. Steve, your muted.

STEVE FISHER: Right, it was very convincing arguments that we shouldn't refer this because of the waste of time and resources, but I really believe we're only going to spend probably about an hour on it before we realize that it is - as stated, it's not going to work - so good arguments, but I'm still in favor of it. Thank you.

CHARLIE GINN: Thank you, Director Fisher. Director Harris - fellow member Harris, the floor is yours, sir.

AUGUST HARRIS: Yes, I'm going to support the motion because I believe in the process. This is about trusting the process, letting voices be heard, thinking thoughtfully about what's in 8.4G, what's in 5.08 and how we can come up with something, if we do, that better serves both the members and the public. I represent the public on this board, and so that guides my concern. And I've heard everybody's comments in that regard. And I understand that 8.4G, as written, might serve as a chilling document for representation. But if there is something good that can come out of it that serves the membership and the public better than what we have now, then let's let the process discover that. I trust the process, and I will support the motion.

CHARLIE GINN: Thank you, August. Immediate past President Mr. Randy Sorrels, the floor is yours, sir.

RANDY SORRELS: Thank you. I'm confused on how to vote because I want the committee to do the very best they can on all the rules, not just this rule. So look at everything they should consider on all the rules to improve all the rules to make them better for Texas lawyers - I'm convinced we have a committee that will do that. So whether I vote yes or no, I don't know that that makes a difference because I think this committee is going to do their very best to improve all rules anyway - including this rule. Thank you.

CHARLIE GINN: Thank you, President Sorrels - Director Smith and then Mares and I think we've heard from everyone. Director Smith.

JASON SMITH: Thank you, Mr. Chair. I'm Jason Smith. I am a trial lawyer and board certified civil appellate lawyer, since 1997, who has handled discrimination cases and civil rights cases. I'm very familiar with this area of the law. At the last meeting - at the July meeting - special meeting, we heard from more folks than we're probably ever going to hear from, who were hurt and who - by the comments of President McDougal and who thought that they were racist. They talked about problems and discrimination in the practice of law. They - we have a duty not only to protect First Amendment rights but we have a duty to protect 14th Amendment right to equal protection of the laws and for individuals to be free from discrimination. I appreciate the comments of everyone who took the time to share their views. I think they had some good ideas. No version of Rule 8.4G should punish zealous advocacy by lawyers. But right now it is perfectly acceptable under the disciplinary rules for a employer who's a lawyer with less than 15 employees to say he's going to fire someone because they're pregnant or because they're gay or because they're Black. It is perfectly legal for a lawyer to say, I'm not going to represent you because you're Hispanic. If we adopt Rule 8.4G and we make modifications to protect people, then we can have a better bar. And we can respond to the dozens and dozens of people who shared story after story about discrimination in the practice of law. Moreover, we cannot crawfish on what we did. We passed this referral to another committee unanimously in July, but now we're changing even though the language of 8.4G is not vague or overbroad to the extent it doesn't limit zealous

## State Bar of Texas Board of Directors Meeting - 09/10/2020

advocacy. There is a body of case law that defines what discrimination is and defines what harassment is. That will be very clear. There were folks in 1964 who said that the Civil Rights Act of 1964 was vague. We've passed it, and we've developed standards that folks can follow. We need to take action so the public and the bar membership know that we as the governing board of the State Bar of Texas are willing to take action regarding racism, sexism and other isms that unfortunately occur in the practice of law. And as a Christian, Christianity nor any of the other great religions condone discrimination. And so I don't believe that the right to worship the God that you please, certainly, is going to be used by anyone that I know of any type of faith or lack of faith as an excuse to discriminate. So I hope that everyone vote - like we did before, votes to refer this for study. I hope we have a robust process where many of the people who spoke today provide their input and their good ideas so we can have a full discussion and make sure we don't do anything that will have unseen consequences. But I don't think we should be scared off from standing up to discrimination in the practice of law as the membership and the public is demanded. I ask that you move to - I ask that you support the motion to refer this to DCAP and that we send the message that discrimination has no place in the practice of law in Texas.

CHARLIE GINN: Thank you, Director Smith. Director Mares, I'm going to give you the final comments on this, and then we're going to move for a vote. You have the floor, Yolanda.

YOLANDA MARES: Thank you, Mr. Chairman. I call for the question.

CHARLIE GINN: OK, I think it's best to do a roll call vote at this point, so I'm going ask our executive director to lead us in that roll call vote. Trey, please.

TREY APFFEL: Mr. Augusto.

VINNY AUGUSTO: Nay, no.

TREY APFFEL: Mr. Allison. Mr. Almanzan.

ROBERT ALMANZAN: Yes, in favor, yay.

TREY APFFEL: Mr. Baroot.

MR BAROOT: Vote yes.

TREY APFFEL: Ms. Bim.

BIM: Yes.

TREY APFFEL: Ms. Broker.

MS BROKER: Yes.

TREY APFFEL: Mr. Calvillo.

CALVILLO: Yes.

TREY APFFEL: Mr. Louis Carnes.

## State Bar of Texas Board of Directors Meeting - 09/10/2020

LOUIS CARNES: Yes.

TREY APFFEL: Mr. Cook.

MR COOK: Yes.

TREY APFFEL: Mr. Crane.

ROB CRANE: Yes.

TREY APFFEL: Ms. Davis.

MS DAVIS: Yes.

DAWSON: Mr. Dawson.

DAWSON: Yes.

TREY APFFEL: Mr. Docubill. Ms. Hernandez-Sperrier.

MS HERNANDEZ-SPERRIER: No.

TREY APFFEL: Ms. Maroon de Fir.

MS MAROON DE FIR: Yes.

TREY APFFEL: Mr. Fisher.

ROBERT FISHER: Yes.

TREY APFFEL: Mr. Flores.

MR FLORES: Yes.

TREY APFFEL: Ms. Forbes.

LUCY FORBES: No.

TREY APFFEL: Ms. Goldsberry.

MS GOLDSBERRY: No.

TREY APFFEL: Mr. Gravely. Mr. Harris.

AUGUST HARRIS: Yes.

TREY APFFEL: Ms. Harrison.

## State Bar of Texas Board of Directors Meeting - 09/10/2020

MS HARRISON: Yes.

TREY APFFEL: Ms. Humphrey. Mr. Hurst.

MR HURST: Yes.

TREY APFFEL: Ms. Cortez Mares.

YOLANDA MARES: No.

TREY APFFEL: Mr. McDougal.

LARRY MCDUGAL: No.

TREY APFFEL: Ms. Cara Miller.

MS CARA-MILLER: Yes

TREY APFFEL: Ms. Mount.

MS MOUNT: Yes.

TREY APFFEL: Mr. Naylor.

STEVE NAYLOR: No.

TREY APFFEL: Miss Risply.

MS RISPLY: Yes.

TREY APFFEL: Miss Roe. Mr. Schramek.

ADAM SCHRAMEK: Yes.

TREY APFFEL: Ms. Scott.

MS SCOTT: Yes.

TREY APFFEL: Mr. Surgey.

DAVID SURGEY: Yes.

TREY APFFEL: Mr. Simms.

MR SIMMS: Yes.

TREY APFFEL: Mr. Jason Smith.

## State Bar of Texas Board of Directors Meeting - 09/10/2020

JASON SMITH: Yes.

TREY APFFEL: Mr. Todd Smith.

TODD SMITH: No.

TREY APFFEL: Mr. Sorrels.

RANDY SORRELS: Yes.

TREY APFFEL: Ms. St. Yves.

DIANE ST YVES: Yes.

TREY APFFEL: Mr. Tolchin.

MR TOLCHIN: Yes.

TREY APFFEL: Mr. Vargas.

MR VARGAS: Yes.

TREY APFFEL: Mr. Vasquez.

MR VASQUEZ: No.

TREY APFFEL: Ms. Wilburn.

MS WILBURN: Yes.

TREY APFFEL: Mr. Wester.

MR WESTER: No.

TREY APFFEL: Ms. Pack-Wilson.

MS PACK-WILSON: Yes.

CHARLIE GINN: OK, motion passes. All right, I believe there was a request for some discussion. I'm going to give the floor to Director Rob Crane. Director Crane, the floor is yours.

ROB CRANE: Thank you, Mr. Chair. I will cut my comments short. I hope it feels that way to you all. First of all, I just wanted to say thank you for - to the chair for your leadership not just in this meeting but in the meeting in July. I doubt there was another association in America, on July 27, and today, September 10, having the kind of open discussion from its members in the way that has transpired - it is inspiring to me. I hope it is inspiring to not just our members but to other citizens in our state and throughout the country. We had over 60 public speakers in July. We had 45 today. And I thought it was a beautiful

## State Bar of Texas Board of Directors Meeting - 09/10/2020

display of America and how we should conduct ourselves. Everybody - the speakers following protocol and being respectful and the board listening attentively. Mr. Apffel, thank you so much for your diversity inclusion comments and in your message - your written message to our membership. We are going to continue that work. Mr. Dawson, you and I have fought on some issues that were not necessarily popular in the past. And you and I agree on 99% of everything involving the comments made by the president and one of our directors that has caused these two meetings. Can't thank you enough for your comments today - your thoughtfulness today. And I just want to applaud you. I join your apologies to our members. And you said that. And you put that on your shoulders. Yet, as all of us as elected directors - we're only directors for three years. And I know that you were not on the elections and nominations committee when this - when that meeting occurred. And I know you were not on this board when we failed to do the things we needed to do. But you put that on your shoulders. And you are a leader among leaders. And thank you for doing that. The process has been spoken about. We are 105,000 members. We have more multiple governing documents. We have case law that we have to follow. We have a lot of eyes on us. And this board of directors has got to follow process. And I believe the process over the past two meetings has played itself out in the best manner possible. And you have served your membership incredibly well, whether we agreed on votes or did not agree on votes. I want to accentuate the positive for a minute on something that is so passionate to me. As many y'all know, I'm a co-founder of Together We Dine, Together We Can. I work every day on human relations which - race relations are human relations. And the positive steps that are necessary in this state bar, you all are leading out front. And you all passed a number of motions. In that last meeting, we talked about a number of them. The task force president-elect Firth is leading. I know that she's worked diligently in identifying candidates who have not necessarily been involved but who are not white who need to be better represented in our leadership. I know that Director Roe in her task force has done the same. We were approached - Alan Sims and I, who are - he's the adviser of the African American law section, and I'm his alternate - to whether or not we felt a resolution in support of the positive changes that need to continue to occur take place. And he and I felt - I don't want to speak for Alan - but he and I felt that recommending that to Ms. Roe's work group would be a positive thing. And she called. She had to leave - that's why you didn't hear her vote. But she is going to bring that forward to her committee as to whether or not that's an appropriate task for them. In addition, we have got the board taking implicit bias training. We have the analysis of the African American Lawyers Section. Action items has been - is under way in a positive way and moving forward. The nominations of new candidates for new positions as - has been predicated about next board meeting on the 25. We have a wonderful new candidate for a position - our nominee, I should say. And the to-do's - when the frustration came about of when things came down, and we learned these comments by the president and the director - there was no code of conduct. There was no process for removal. There are - these missions that were in our system well before Alistair Dawson and his motions today that passed to help fill that void are critical for this - critical for our membership going forward. And that positive work is what we need to continue to do. It is much easier to divide than to unify. And in our country, we know that now. And the lawyers, I believe, are uniquely positioned in our communities to be the unifiers. And there's so many of this board and leadership here who are doing their best to unite in positive change, in a positive way. I just wanted to, once again, give my thanks and gratitude to all of the board members and, in particular, Mr. Dawson and to Mr. Ginn - your leadership - and Mr. Apffel - for guiding us through these two meetings. I know there's more work to be done, but I felt like it needed to be said about the positive things that have already come out of this negative instance. And let's continue to unify in a positive way.

CHARLIE GINN: Thank you, Judge Crain, for your comments and for your leadership. We're going to - I'll take two more - Director Agosto and Director Fischer - in comments. And then we'll move to the next

## State Bar of Texas Board of Directors Meeting - 09/10/2020

item of the agenda. I believe our next item from the agenda will be a report from President McDougal. Director Agosto, you have the floor.

BENNY AGOSTO: Thank you very much. I have a couple of minutes, and I want it to be positive. I'm glad that Rob Crain used his time to be positive. I wanted to be positive. I'm positive in my everyday life with my beliefs and the way I do things. And we need to praise the leaders that we have in our group, because Charlie, you've done a great job. Trey, in your leadership, and Alistair, in your leadership - you have really brought us to this special meeting today as members to not waste the time of the regular business time. So I was - I'm in favor of having a special meeting so we can focus, we have the opportunity to have the members be heard, and be deliberate and deliberate in what we have to do. Our goal as state bar leaders is to find ways to help our lawyers and to help us in our practice of law - improve things in our practice of law. And we are doing that every day. So I want to compliment all of us to be positive. I believe in the First Amendment. I believe in due process. And I also believe in Texas. As lawyers of Texas, we have - we're committed to be advocates, to represent our clients, but represent the lawyers of our state. So I want us to continue to be positive in that. And so, what have we seen? And what have we heard? We have heard Larry McDougal, our president, say I'm sorry. We have seen him try to move forward doing his job. He's doing his job. And I'm one to say - even though I totally disagree and was disappointed by his comments - I want to say that I forgive. Let's move on. And we need - we heard a lot of comments today, but what we heard today was we need to continue forward to do good for our members. And we have to do that. That's our job. So we see a diversity task force that's in place, grievance reform that's coming. We're moving forward with a lot of positive things that - task forces on leadership, on diversity. We have to look forward to positive things. And I believe that if we continue to look for what we can do to help each other as lawyers, then as directors, we will be successful. So I want to be positive and give us that opportunity to think. We have work to do. We're going to be listening through the different committees. And I'm on some of the committees. In fact, I voted against the referral that's coming to the committee that I'm part of. But I'm going to do my job, no matter what. So I strongly encourage us to move forward in a positive way for the best of our state. Thank you.

CHARLIE GINN: All right. Director Fischer, I see that your hand is raised. You have the floor. Steve, you're muted.

STEVE FISCHER: I know. OK. In line with what last two speakers said - Benny and Rob - about unity and positive and working together, I have a specific suggestion. And it doesn't need a vote. Trey can say yeah or no. We're doing some - obviously, we're discussing some really contentious, divisive issues where some of us - maybe me - are over passionate and zealous and really fighting. But what we're missing is the meeting - in-person meeting that we've always had. We've always had a retreat where we get together. When I first served as director, there are people like David Chamberlain or Harper Estes who never voted with me. Yet, I would - over the years, I've visited them. And we've had these friendships and communication. And some of the first-year members have complained to me. They said, you know, we're having these fights and arguments - I've never even broken bread with these people. So my suggestion is that at the next pub-person, in-person meeting that we put an extra day in there. And we're certain that - if it's Tyler, it's not really some exotic place that we would normally go. So sorry, Christina. But that we can meet and spend some time - we don't have to spend a lot of money on it. But I don't even know some of these people I'm arguing with. And some of the first-year members say I haven't met two-thirds of three-quarters of them. So that's a suggestion. We can meet. We could talk. We could see what kind of differences we have in general. And I think it would be a good thing, you know? Some of us are public persona or are combative persona. We may be actually nice people when you talk to us one-on-one. So that's my suggestion. No motion.

## State Bar of Texas Board of Directors Meeting - 09/10/2020

CHARLIE GINN: I know that we're all anxious to have coronavirus past us and - so we can all get together in person, not least of which for a board meeting but so that we can all be with friends and family across the state and travel. There's no motion, so I don't see any reason to discuss the proposition. But I know we're all anxious for that to happen outside of our roles in the state bar. Our last comment in this discussion period will be president - immediate past president Victor Flores. Victor, you have the floor.

VICTOR FLORES: I just wanted to thank everybody for their comments. It's been a long day. I'm not going to insert any more arguments or issues. But I would like to continue the comments of being positive and going forward. And for those members viewing right now, TYLA remains committed to diversity inclusion. TYLA has a history of creating projects that support that. I would encourage everybody to visit [tyla.org](http://tyla.org) and view all of our resources - one of them which just recently, this - I think, during the time of all of our discussions - received an award from the ABA Young Lawyers Division for its diversity project - one of its diversity projects of the year - which is the TYLA retention guide, not just including but retaining a diverse legal practice so that the legal representatives represent our - a fair representation of the clients that we advocate for. And also, I know the current TYLA President Britney Harrison has already - even before all this happened - set up a line of diversity inclusion projects way before the comments noted by president and director. So we have been tasked - TYLA has been tasked with being the public service arm portion of the State Bar of Texas. We take that with great responsibility. And just know that - for the members who are watching - the actions of these two individuals do not reflect. So I just wanted to share that. And again, all our resources are available for free at [tyla.org](http://tyla.org). I encourage everybody to visit that website.

CHARLIE GINN: Victor, thank you. And thank you for your friendship and your leadership at TYLA over the last two years and in this immediate past president year. And I know that both president elect Jeanine Rispoli and President - Madam President Britney Harrison along with TYLA are doing incredible things. And we're grateful to be in partnership with you. With that, let's go onto item number eight of the agenda - a report from the president. President McDougal, the floor is yours.

LARRY MCDUGAL: Thank you, Mr. Chair. I'm gonna keep this very short and save most my comments for the 25. But what I do want to tell you is I agree with about everything Benny just said. And I plan on moving forward. On the 25, I plan on showing the roster and presenting my task force on citizen protection, grievance review and the - what was it - the client fund where we fund - I'm drawing a blank on the name right now - but have a roster in that committee and everything set up so we can hit the ground running and get going. I'm also planning on - plan on moving forward, introducing you to the work group - get courthouse access badges, if we'll ever need those again. And I also look forward to talking to you about the implementation of the plan that I've been working with Mr. Rob Crane on to address the issues of listening - the issues of inclusion. I always felt like, when I made my point, that inclusion was a big deal, and it was very important to me. And I think if you look at them, you'll see that I did. So - but, with that, I'm gonna save the rest of my comments. I look forward to moving forward. I hope we can get further. I hope we can put this behind us. And, Mr. Chair, I give you the floor back.

CHARLIE GINN: Are there any comments or discussion based on the report? Seeing none. We'll move to the next item on the agenda. Our report from the president-elect. Madam President-elect Sylvia Borunda Firth. The floor is yours. Sylvia, you're muted. Here you go.

SYLVIA BORUNDA FIRTH: OK. Now you can hear me. Sorry, it's a long day. But I also want to echo the comments, Chairman Ginn, about your service to this group and your - have been exemplary as a chair.

## State Bar of Texas Board of Directors Meeting - 09/10/2020

And thank you very much. On one of our breaks, I looked on social media, and I saw somebody called you a Texas treasure. So (laughter) you have a new name, Chairman Ginn. I think I have the honor of having the last - oh, maybe not. I think have the last action item. So this relates back to July 27 when the board approved the creation on the state bar task force on diversity, equity and inclusion to study and propose actions to promote diversity, equity and inclusion in the administration of justice and the practice of law. So when I drafted the proposal for this task force, it was not only to be advisory to the board, but also to help me to formulate my presidential initiatives relating to these topics. And at the July 27 meeting, I provided a description and the fiscal note with the understanding that I would be back today with the roster for your consideration. The roster includes 15 attorneys from across the state. And I want you to know that there was great interest in serving on this task force. And I'm very grateful for all of that interest. And I have saved all the names of the people that reached out to me. So even if you didn't make this task force, please know that we will use you as a resource before we're done. This is gonna be the first step of many in working on these projects. Joe Escobedo of McAllen has graciously agreed to serve as chair if approved by the board. And the task force includes representatives from the following sections and standing committees of the state bar - the African American Lawyers Section, the Asian Pacific Interest Section, the Hispanic Issues Section, the LBGT Law Section, the Native American Law Section, the Women in the Law section, Disability Issues Committee, Diversity in the Profession, and Women in the Profession Committee. And I want you all to know that the appointments were made by those respective sections and committees. Some of them even had votes because they had people that were interested in serving. The remaining five - also TYLA has - of course, has a representative. And he was appointed by President Harrison. The five additional members that I held back were done to try to fill gaps in areas that were underrepresented in state bar leadership either by geography or if I saw a missing special interest group. I was encouraged by several to make sure to take care of religious diversity, as well. So in those five, you will see that type of representation. And at that time - at this time, I move that the board approved the roster as presented on the task force of diversity, equity and inclusion as was presented in your materials. I stand ready to answer any questions you might have.

DAVID SERGI: I'd like to second that.

CHARLIE GINN: OK, Derek Sergi. Skipping my comment meeting a second.

DAVID SERGI: You got it.

CHARLIE GINN: Thank you, Director Sergi, it has been seconded. Is there any discussion? Hearing none, seeing none. We'll take a vote on this. All those in favor, please say aye.

UNIDENTIFIED PEOPLE: Aye.

CHARLIE GINN: Any opposed? hearing none, the motion passes unanimously. Madam President, we are excited for your task force. We're excited for your year as president. We are grateful to have you, and we're excited for your leadership and for your service. Thank you for all that you do and for the work that you and your committee will be doing going forward.

SYLVIA BORUNDA FIRTH: Thank you, Charlie.

CHARLIE GINN: It's a great illustration of - I hope it's a great illustration. I believe that it's a great illustration of us listening to the board, us listening to the bar. And I know your hopes and dreams, before this ever happened, these circumstances ever happened, this was your plan. And I think that's a

## State Bar of Texas Board of Directors Meeting - 09/10/2020

great reflection of who you are. We're going to take one item out of order before we go to immediate past president Randy Sorrels, and that is - and I think it will be very quick - from our General Counsel Ross Fischer whom I believe there is no report. Is that right, Ross?

ROSS FISCHER: That's correct. (Inaudible)

CHARLIE GINN: Thank you very much. I appreciate it. That's number 13. So let's go back to - we've already had item number 11. So item number 10 is a report from the immediate past president, Mr. Randy Sorrels. Mr. Sorrels, you have the floor, sir.

RANDY SORRELS: Thank you, Charlie, and I appreciate all you've done. I noted your seven on your lapel which is, of course, support for the Seventh Amendment. I appreciate and support that as well. I'm going to report about and talk about two things - first, what it means to Texas lawyers if we lose our autonomy because there has been discussion since this divisiveness has raised its ugly head that we just - should just do away with the Texas Bar. And secondly, I'm going to address some of the issues - some of the Steve Fischer issues that have been raised. So first let me talk about Texas. California used to be a unified bar, similar to Texas, and they decided to have a voluntary bar. What that means now is there is still some authority or some entity in Texas - in California that licenses and regulates the lawyers of California. And since their change, their dues have skyrocketed now and are just for licensing and regulation. So you have an entity that licenses and regulates, which Texas would have as well if we dissolve the bar. In California, those dues are \$554 a year and members get zero benefits from that. Now, California lawyers can join a California State Bar and pay more money for that and get some great benefits that their bar offers. But just for the licensing and regulation, \$554 a year. Right now in Texas, we pay \$235 a year in annual dues. That figure hasn't changed in 29 years since 1991. And while some of our lawyers, I know, do not take advantage of the member benefits and member services the state bar offers, tens of thousands of lawyers do. And our lawyers' families and even the public take advantage of our benefits as well. I can detail all the programs out there such as insurance benefits or TLAP. I think the clients' security fund was mentioned earlier. Our support for our practice area sections where we have - I asked this morning what the numbers were - 44,428 Texas lawyers participate in Texas State Bar sections, which is 42% percent of our membership. So those who say let's just do away with the unified bar need to understand what they're asking for - higher dues, no benefits. So fighting for the state bar of Texas - for a better state bar of Texas is what we should all be doing as we move forward. And in California, let them do what they want to do over there, but in Texas, let's be what someone else wrote today, one of the best bars in the country. And that person looked at it from a from a nationalist perspective - from an ABA perspective. So let's do try to improve. Now, let me - second - talk about Mr. Fischer's comments. When I was - when I appointed Steve Fischer to the State Commission on Judicial Conduct, I sat down and had a talk with him about his ability to be professional while still being a passionate advocate for causes like transparency and educating our members on the role of the commission. He assured me he had the ability to do this. I knew Steve had a background of being helpful to many lawyers, to recruiting lawyers to become more involved in the organized bar and promoting the benefits of the organized bar while still maintaining his vision for what he thought was best for the bar. We didn't always agree on every issue, but we disagreed in a civil manner. Over the last couple of months, though, Steve's conduct has been quite erratic and unbecoming not only of a director of the state bar but also as a lawyer of the State Bar of Texas. And these are not in areas of public concern or public interest, these are dealing with our colleagues. I'll give you some examples. On July 17th, 2020 Texas lawyer article about his social media exchanges with fellow lawyers, he is quoted as saying, quote, "sometimes, I enjoy taunting them, so they get angry at me." He went on to say, quote, "I get over passionate and sometimes I feel bad later." Well, taunting is a form of bullying. And all of us have

## State Bar of Texas Board of Directors Meeting - 09/10/2020

learned the destructive effects of bullying, and we should not tolerate it. The fact that a person cannot control his or her passion is no excuse. Feeling bad later does not undo the taunting previously done. Second, in a July 28th Texas - 2020 Texas Lawyer article about what the writer described as Steve Fischer's offensive Facebook comments. Steve admitted to being intemperate online. He, again, discussed in the article the controversy surrounding Larry McDougal saying, quote, "I told Larry I'll deflect. I'll get some of these comments and you just get better." Then he said this, amazingly - I went on there, and I was pretty vicious. Being vicious to our colleagues in the profession is unacceptable. I believe Steve's efforts to help Larry McDougal were harmful not only to Larry but to the entire board of directors and the bar as a whole. I have privately talked to Steve and told him his conduct of name-calling and intemperate language, as he described it, was damaging for the profession and our bar. He acknowledged what I said, and he agreed to improve. I thought there was hope. At the specially called meeting, though, on July 27, as reported in the Texas Lawyer, he said, I need to be careful about what I say. I really do. I need to look and say, hey. Calm down. Write it out before you post. Where I felt I did wrong, I do apologize. I need to work on it, and I have been working on it. But my hope faded over the last few weeks. Even this week, as I read through the comments submitted for this meeting, I saw Steve Fischer has said these things. Number one, to a lawyer - you are always ignorant, dishonest and wrong. To another lawyer, he said, illiteracy is a bad thing. Reading is important. You should change no schools to show on your profile to obtaining the GED eventually. To another lawyer of Hispanic heritage, he noted, Juan, your Y-O-U-R and you are Y-O-U-'-R-E are different. You're an ignorant because your parents never cared enough to teach you English. I looked at what one of our members wrote - and I don't know if you all saw this - but I thought it was pretty insightful. He said, Mr. Fischer, on the other hand, has become completely unhinged. Not only was his behavior in July 27, 2020, meeting completely unacceptable, but he has engaged in an ongoing campaign of dishonesty and aggression since that time. I know many of the directors are already aware of Mr. Fischer's lies, but for a small sampling they include publicly, one, claiming Mr. McDougal did not write his video apology; two, claiming Mr. McDougal was forced to give his video apology; three, claiming Mr. Fischer was working on or had reached a behind-the-scenes deal to address Mr. McDougal's controversies; four, misrepresenting the motions raised at the July 27, 2020, meeting; five, misrepresenting various policies and procedures within the bar including its committees. All of this occurred in addition to Mr. Fischer's continuing bullying, belittling and attacking of his fellow attorneys - particularly female attorneys. I know only some of the directors have seen this behavior because they've attempted to correct Mr. Fischer's lies publicly. I've talked to Steve privately, and I want to make sure people know publicly. All of Steve's efforts to focus improving on the bar have now taken a backseat to his conduct. Steve needs to take his own words to heart. And every time he writes anything out, every time he writes anything out, he should say, hey. Calm down. Write it out before you post. Taunting lawyers, being vicious to our sisters and brothers in the law, name-calling and insulting are all harmful. Steve can do better. And as a board member, he must do better. I have personally seen how the actions of the state bar board of directors directly impact the practice of law. Those who liken our high - who liken our board to a high school student council are ill-informed and simply do not comprehend the magnitude of decisions this board makes year in, year out. When I roll off the board at the end of this year, I know how much my professional life will remain in the hands of those board members who remain on this bar board and those who come forward in the future and lead our state for years to come. I have two kids who just started law school, so I'm invested in this bar not only for myself but for future generations, as well. I know each of you take your job seriously, and I believe Steve does, too. But for now, I'm asking Steve to adhere to a code of civility, even if others don't. I'm asking Steve to rise above the petty bickering, the childish name-calling, and work together with your fellow board members to consistently improve the bar. Treat your fellow lawyers with respect and dignity. Step away when the urge arises to lash out. And if Steve cannot do this, or any of us cannot do this, resignation is the best solution. Each of our districts and the lawyers of

## State Bar of Texas Board of Directors Meeting - 09/10/2020

our districts deserve someone who has a temperament better to construct our profession - not destruct us. I'm not sure I have the authority to do this, but I welcome any questions, comments or feedback. My one year as president flew by, and Mr. McDougal's will as well. We will survive. Those - for those who've been offended by Mr. McDougal's comments, apologies, actions or interactions, you have a right to feel that way. But we will survive this year. People did not agree with me during my year, and we survived my year. I heard someone say earlier, we don't want to throw the baby out with the bathwater. I went ahead and looked up that term after they said it 'cause I've used it before. It says to discard something valuable along with other things that are essential or - inessential or undesirable. And I may have said some things that are seen as inessential or undesirable when I was president, and maybe Mr. McDougal has as well. But let's not throw the baby out with the bathwater. Mr. McDougal has proposed some programs that will help make our bar better. Let's get behind those programs. President-elect Sylvia Firth has already put some initiatives in place that will make our bar better. Let's get behind those. And let's make sure we go together as one bar, as a unified group, listening to all of our members, allowing everyone the right to speak and be heard and move forward in a positive direction. Thank you, Mr. Ginn.

CHARLIE GINN: OK. Thank you, President Sorrels. I'm going to allow some discussion on this. Steve, I know your hand is up. I'm going to let you respond. When we do this, I'm going to ask that all comments be directed towards me. I'm not going to limit the comments in time. I am going to ask that they do not become abusive in either time or content, OK? With those understandings, Steve, you have the floor. Steve if you amuse yourself

STEVE FISCHER: I guess this has descended into personal attacks. And if that's what you guys want, that's fine, Randy. I always was taught to treat people the way people treat you. And yeah, I should ignore a lot of these comments. Let's take one of them: that Steve was drunk, sitting in his car drinking beer, you know, during that meeting and then I - and even Andrew said, and he was in a car. Well, you know, that meeting probably cost me \$10,000. I had stuff to do. I had planned that meeting - where I - my trip way before this emergency meeting. And I don't think I've been drunk in my whole entire life. So I hear stuff like that. And yeah. And then, you know, I wrote a series of about five or six columns - different papers printed it. Someone whose only comments are on Facebook said, well, those aren't really great newspapers. Well, I thought they were, you know. And when I wrote it, initially, the bar censored it. The bar should not be against free speech. And they have a daily news clipping, and they send out all the articles, and yet - hey, what happened to mine? Lufkin paper wrote it. The El Paso paper wrote it. The Midland paper - whatever, you know. And they go, well - and you said Larry - I mean Randy - that you didn't agree, that you thought that some of that stuff was untrue. There's a way to deal with that. When someone writes and then - people didn't know the difference between a column and an article. People said, oh, look at that headline. I tried to explain journalism 101 - maybe I should give a CLE on it - that when you write a column, you do not put a title to it. That's why each column and each paper was different. So yeah, I get offended, and what I do see is ignorance, you know, and I'll say it. And these are - and every attack that someone makes on Larry, I take it personally too. And I'm really disgusted with the way the bar's not moved forward on any of the things that we're elected for. So yeah - I mean, yeah, sometimes later I think, I shouldn't have done that. And I really should not, you know, indulge. There's about five or six people that wherever I post on Facebook, they're there to say something insulting. And I probably should be the better person, but, you know, it is what it is. And if somebody attacks me, I usually fight back. And if they attack Larry - when Larry is fully recovered and healthy, then I can step out of this conversation, and Larry can deal with it himself. But I find things - when he's in the hospital with people demanding, well, Larry, why aren't they - why isn't Larry answering that? Well, you know, he happens to be in the hospital. So yeah, some - there's truth in that, Randy. There's truth in that. And I could always try to be better, but some of the malicious, libelous, disgusting comments that people

## State Bar of Texas Board of Directors Meeting - 09/10/2020

make, you know - I was drinking bubbly water, which tastes almost as bad as bad beer. So yeah. And I had to be up there. Why I was in my car - because I couldn't get reception up in a place that's miles from Internet. And I was just lucky to get on there at all. So yeah, you know, I'm pretty much a fighter. And people attack, and they'll get that turn. But I do appreciate your comments in that - the parts that we're trying to be the - constructive, but really don't want to sit here and argue over these comments all day long. Thank you.

CHARLIE GINN: Thank you, Director Fischer. Director Tolchin, you have the floor.

ANDREW TOLCHIN: Hey, Charlie. I'll address this to you. One of the things that we can do as board members is represent ourselves honestly as to who we are. And I would discourage anyone who's on the board from using, for example, their wife's account to discuss bar business, or anything of the sort, without being known to actually be an account operated by a member of the board. And I'll leave it at that. Thank you.

CHARLIE GINN: Thank you, Director Tolchin. Director Forbes, you have the floor.

LUCY FORBES: Thank you, Mr. Chair. I want to thank our colleagues and the public for their participation and priceless feedback. I agree, we should move forward in a positive manner - working together to promote this - the State Bar of Texas mission statement, which we'll read together at the end of the meeting.

CHARLIE GINN: Thank you, Director Forbes. With that, let's move, if there's no other discussion, to item No. 12: the executive committee nominations and elections subcommittee. Immediate Past President Randy Sorrels and Immediate Past Chair Jerry Alexander, the best-dressed man in the bar, the floor is yours.

RANDALL SORRELS: Jerry, I don't mind doing this, but I just spoke. So if you want to do it, you're welcome to.

RANDALL SORRELS: Oh, no. Go ahead.

RANDALL SORRELS: Thanks. Very brief report - so hopefully, that's good news - from the nominations election subcommittee for which Jerry played a huge role. In fact, all of our members did and spent a lot of time going through the nominations process. And Jerry was a wonderful leader and - appreciate his leadership. We conducted interviews on August 21. We interviewed nine people for the president-elect position - nine outstanding candidates - the best slate that I know - I think I've ever seen. Each of the interviewees did a tremendous job, and all of them would do a fantastic job as president-elect. At that time, this subcommittee selected Laura Gibson of Houston and Leon - E. Leon Carter of Dallas as its nominees for president-elect. We had sent communications to the board updating you on this fact. Subsequently, E. Leon Carter determined that now was not the right time for him to personally make this commitment, and so he decided to withdraw his name from consideration. The subcommittee met again to consider our approach for nominations given this development. We then voted to select Sara Dysart of San Antonio, and we'll recommend both Miss Dysart and Miss Gibson to the board on September 25. At the last special board meeting, on July 27, the board requested the nomination subcommittee and policy manual committee to consider proposing revisions to the board policy to provide increased vetting of president-elect candidates. We've asked the policy manual committee for their input, and we'll be working with them to look at what policies we can incorporate in the vetting

## State Bar of Texas Board of Directors Meeting - 09/10/2020

process. In the meantime, we required the nine candidates to submit certification form to us to let us know about whether there was anything controversial in their background. We also included new questions during the interview process to obtain more information about a nominee's background. Again, we remind people, if you wish to run for president-elect of the State Bar of Texas you can do so through the petition process. The president before me, Joe Longley, ran through - as a petition candidate and won. So it's doable, as well. So we encourage anyone interested to consider the petition process as well. That concludes our report, and we'll be back - September 25 meeting - to present the nominees for your consideration.

CHARLIE GINN: Thank you. And I will echo that both Randy and Jerry did an exceptional job leading that committee, and we appreciate the work and the time of our leaders in that - and the other committee members. With that, we'll go to item No. 14, which I anticipate will be brief - our report from legal counsel, Mr. John Sirman.

JOHN SIRMAN: I have no report.

CHARLIE GINN: Thank you very much. We are not going back into closed session. We did all that earlier. We're going to recite our - we're just about done, so we're going to recite our State Bar of Texas mission statement. I've asked President-elect of TYLA Jeanine Rispoli to lead us in that. And before we do that, I just have a few things to say. To the members of the public, thank you for sticking with us on another long meeting. To our directors, thank you for being here and for setting aside days of your practice to be here in service and leadership. To the members of the bar and members of the public, I want you to know that typically we have four meetings, that are set out, a year for us to come and address the needs as a board. And we've had now two special meetings called. We did that because we wanted you to know that we are here and that we want to do whatever we can to help you and your practice of law and to protect your ability as lawyers. Not every decision we make will be satisfactory to everyone. We can't fix every problem, but we are here to help. We do want to help. I don't know of a single director on this board that truly doesn't want to serve Texas lawyers. Keep talking to us. We're going to keep listening. We're going to keep fighting for you. That is not going to stop. Our staff here at the State Bar - any compliments towards me or anything else is appreciated, but I want you to know that anything you're seeing up here that you think is halfway decent is truly because of the staff of this bar. Trey Appfel, Chelsea, Jennifer, Ray, John, Kaylin - our staff is without equal. They are incredible. They have worked around the clock now not once, but twice, for two special meetings and they've got another meeting coming up in two weeks. And they do it because they have a true desire to serve. There are good workers everywhere, but these people care. And so I want our board and our bar staff - excuse me - our bar and the members of the public to know that they are blessed because they make all of this happen. Otherwise, we would be in a pandemic, and we would not meet, and we would not get anything done and we would be stagnant. Instead, we're anything but that. So I want a thank you to our directors for that. Thank you for our officers. Thank you to our staff. And we will hear from our members of the public again on the 25. We're ready to hear from you. We're ready to keep working. Jeanine, if you would lead us in our state bar mission statement.

JEANINE RISPOLI: Charlie, thank you for being a wonderful servant later today, as you always are. Our mission.

UNIDENTIFIED PEOPLE: The mission of the State Bar of Texas is to support the administration of the legal system, assure all citizens equal access to justice, foster high standards of ethical conduct for lawyers,

## State Bar of Texas Board of Directors Meeting - 09/10/2020

enable its members to better serve their clients and the public, educate the public about the rule of law, and promote diversity in the administration of justice and the practice of law.

CHARLIE GINN: It is 5:28 p.m., and I will entertain a motion to adjourn.

UNIDENTIFIED PEOPLE: Motion to adjourn.

DIANE ST. YVES: Second.

CHARLIE GINN: All right. I don't know who said it, but I think Diane St. Yves said it, and I'm going to assume that Michael Hurst seconded it. So with that, we are adjourned. God bless you all. Thank you for being here. It is 5:28 p.m.