

**Texas Forensic Science Commission
Minutes from December 12, 2008 Meeting in San Antonio, Texas**

Members Present: Watts, Bassett, Eisenberg, Natarajan, Adams, Hampton, Kerrigan and Hamilton

Members Absent: Levy

(Additional attendees included: Barbara Deane, Assistant Attorney General; Veena Mohan, Assistant Attorney General, Leigh Tomlin, TFSC Coordinator; Edwin Colfax, The Justice Project; Timothy Fallon, Bexar County Crime Lab; Mark Goodson, Goodson Engineering, and Honorable Barbara Hervey, Texas Court of Criminal Appeals.)

Bassett began with opening comments, introducing guests and outlining meeting agenda items to be discussed.

The minutes from the October 2008 meeting were approved by Motion from Watts. The Motion was seconded by Adams. The October 2008 meeting minutes will be posted on the Commission's website.

An update on office activities was given by Tomlin. Tomlin discussed the Commission's website and how many website hits were received since the last meeting. Tomlin informed Commission members that the Commission's website now includes a link to any current Texas Register postings the Commission may have. Tomlin then provided Commission members with a chart updating the status of each pending complaint. The Commission purchased a laptop for the office for use in traveling to meetings. Tomlin discussed all correspondence with complainants that occurred since the last meeting. Any inquiries or letters received from people interested in the Commission's activities were also discussed. Correspondence with the Fire Marshal's office and notifying them of the investigation was also discussed. Tomlin also mentioned contact with fire experts as potential candidates for upcoming investigations.

A conflict of interest issue was decided on during the office update in response to an inquiry from a potential complainant. The complaint may involve a member of the Commission. It was decided by the Commission that if a complaint involves a member of the Commission, that particular Commission member will be excluded from any and all correspondence or discussions regarding the complaint.

Tomlin also discussed that the Commission provided a written update to the Legislative Budgeting Board and to the Texas State University System on the Commission's recent activities. Copies of the update were distributed to all Commission members and to the Attorney General's office representatives.

The meeting continued with discussion of current forensic laboratory accreditation programs and their shortcomings. Different ways of improving labs by providing crime lab accountability were discussed by Commission members and other meeting attendees.

A discussion regarding the Commission developing their own accreditation criteria continued. Edwin Colfax, from the Justice Project, offered his comments on strengthening forensic oversight in Texas. Colfax suggested that one way would be through the Commission taking a proactive quality assurance role. Colfax also mentioned that requirements for DNA analysts appear to be stronger than other forensic disciplines and extending some of the requirements that DNA analysts are subjected to for other forensic disciplines may also be an option. Eisenberg discussed an upcoming report from the National Academy of Science on whether forensic disciplines other than DNA analysts are getting enough funding. Eisenberg agreed to find out the timeline of the report and provide that information to the Commission at the next meeting.

The meeting continued with comments on legislative budgeting. Bassett mentioned that if there is any committee that would like to call on the Commission to testify, he may contact some of the Commission members.

Deane began the discussion on the Public Information Act and Open Meetings Act. Regarding information sharing with DPS, Deane indicated that there were some concerns about the status of investigative files after they share them with the Commission, as the Commission does not have enforcement authority. DPS agreed that a decision to share information with the Commission would have to be made on a case by case basis.

The public comment period began with a discussion of the Mobile Crime Lab protocol. Judge Hervey discussed the foundation of the project with commission members. Hervey indicated that resolution for the mobile crime lab idea has been sent to Senator Whitmire's office. Hervey discussed ways to increase crime lab reliability, including having an independent mobile crime lab operation that will conduct surprise visits on crime labs throughout the state. The evaluations of the labs are projected to include anything from the floor of the lab to the testing and equipment. The idea includes two labs, one moving and one stationary. DPS is on board with the idea of the mobile crime lab unit and is willing to participate in any way they can. Hervey explained that the Texas Forensic Science Commission is a great place to house the mobile crime lab project. It was discussed by Commission members that in order for that to occur, there may have to be significant expansion of the Commission's statutory duties. Discussion regarding the protocol and function of the mobile crime lab continued. Hervey indicated that expert inspector Michael Bromwich was willing to help with the protocol, along with other scientists in Texas.

Commission members proceeded with questions regarding the mobile crime lab idea. Budgetary issues, frequency and scope of inspections were discussed. Tim Fallon, from the Bexar County Crime Lab offered his ideas for inspection of labs and discussed the source of crime lab errors. Fallon discussed that there is inadequate access to proper forensic testing. He explained that if the proper expertise is provided at case level, future

problems can be routed out. Bassett mentioned that funding for indigent defense has long been a difficult issue in Texas. Many defendants are unable to hire their own counsel and usually have a court-appointed attorney and/or inadequate access to experts for their defense.

Judge Hervey offered to provide the Commission with updates on the status of the mobile crime lab idea and protocols. The discussion of the idea will continue at the next meeting.

The meeting continued with a discussion on a self-reporting form for the Commission in which labs and lab employees can submit a complaint to the Commission. The idea is to be discussed at the next meeting.

Tomlin discussed the requirements and guidelines for postings to the Texas Register and the Sam Houston State University purchasing department's requirements for hiring an expert.

Eisenberg discussed the Moon case and potentially available experts to conduct an investigation of the Moon case. Eisenberg put together a written scope/outline for the Moon investigation for the Commission to use in posting an Invitation for Offers. The outline was approved by Motion from Hamilton and Second from Watts. The evaluation matrix for the Moon case was edited by Commission members and approved by Motion from Kerrigan and Second from Hamilton. Tomlin will work on the Texas Register posting with the Sam Houston State University purchasing department and have it submitted by the next meeting.

The meeting continued with discussion of the Willis/Willingham investigation. Mark Goodson from Goodson Engineering spoke on his qualifications as a potential investigator for the case. Commission members discussed with Goodson questions they had regarding how the investigation would be conducted. Three candidates were evaluated and ranked individually based on the evaluation matrix. Dr. Craig Beyler was chosen as the most qualified candidate to investigate the Willis/Willingham case, based on the Commission member's evaluation.

Regarding the next steps in the Willis/Willingham matter, Bassett will send a letter to Sam Houston State University's purchasing department informing them of the Commission's decision and intent to proceed with the investigation. Dr. Kerrigan was elected by Commission members as the liaison for contract negotiations with the candidate and the SHSU purchasing department. Dr. Natarajan agreed to complete an inventory for the investigation and provide it to Dr. Beyler. Tomlin will provide all redacted case documents to Dr. Beyler.

Due to time constraints, three cases that were to be reviewed at this meeting were not reviewed. Those cases will take high priority at February's meeting and a decision to proceed or not proceed with an investigation will be made for each case.

The meeting was adjourned by Motion from Adams. The Motion was seconded by Bassett.

The next meeting for the Commission is to be held in Houston on February 6th, 2009, beginning at 9:30 a.m.

The meeting following the February meeting shall take place in April, and the date and location will be determined at the February 6th, 2009 meeting.