

**Texas Forensic Science Commission  
Minutes from April 23rd, 2010 Meeting in Irving, Texas**

The Texas Forensic Science Commission met at 9:30 a.m. on Friday, April 23rd, 2010, at the Omni Mandalay Las Colinas, 221 East Las Colinas Blvd., in Irving, TX. Members of the Commission were present as follows:

Members Present: Bradley, Kerrigan, Eisenberg, Peerwani, Farley, Adams, Hampton, Hamilton, Evans

Members Absent: None

Invited Speakers: Pat Johnson, DPS; Jeffrey Boschwitz, Orchid Cellmark; Lori Wilson, Houston PD; and The Honorable Barbara Hervey, Texas Court of Criminal Appeals

(Additional attendees included: Veena Mohan, Attorney General's Office; Barbara Deane, Attorney General's Office; Leigh Tomlin, FSC Coordinator; Rodger Jones, Dallas Morning News; Rick Casey, Houston Chronicle; Morgan Smith, Texas Tribune; Stephen Saloom, Innocence Project; Nicole Harris, Innocence Project; Allan Turner, Houston Chronicle; Craig Adair, Legislative Director, Texas House of Representatives; Mark Adams, Office of the Governor; Manual Valadez, Garland Crime Lab; Aliece Watts, Integrated Forensic Laboratories; Gloria Rubac, member of the public; Yamil Berard, Star Telegram; Corrie MacLaggan, Austin American Statesman)

**Introduction**

Bradley made opening remarks. Each commission member, the commission coordinator and the Attorney General's office representative introduced themselves.

**Adoption of minutes**

Texas Forensic Science Commission January 29<sup>th</sup>, 2010 meeting minutes

**MOTION AND VOTE:** *Evans moved for approval of the minutes from the January 29<sup>th</sup>, 2010 meeting. Peerwani seconded the motion. During discussion, Kerrigan argued that minutes should provide more detail. Bradley responded that minutes are a record of agenda and actions taken by commission. Bradley also noted that the commission coordinator was recording the meeting. A transcript could be prepared from that recording if requested. The FSC approved the minutes without amendment. Kerrigan and Adams voted against approval.*

**Nominations for committees and investigative panels**

**MOTION AND VOTE:** *The Chair presented nominations for committees and investigative panels, following the addition of Lance Evans to the Willingham Investigative Panel, for approval. Eisenberg moved to approve. Adams seconded the motion. The FSC unanimously approved the following nominations:*

Forensic Development Committee:

Kerrigan, Farley, Hamilton

Legislative Committee:

Hampton, Adams, Evans

Complaint Screening Committee:

Peerwani, Bradley, Eisenberg

Investigative Panel for Willingham/Willis case:

Peerwani, Kerrigan, Bradley, Evans

Investigative Panel for Moon case:

Eisenberg, Evans, Farley

**Invited testimony on laboratory testing backlogs**

Bradley presented a review of Chapter 2 of the recent National Academy of Science Report, focusing on the issue of backlogs in laboratory work, before introducing the invited guests for testimony. Commission members listened to and participated in dialogue on solutions to backlog issues initiated by presentations from Pat Johnson, DPS, Lori Wilson, Houston Police Department, and Jeffrey Boschwitz, Orchid Cellmark.

**Creation of general counsel position**

Evans provided information on the need for a General Counsel as the FSC continues to expand the scope of activities. Tomlin offered comments on the need for a General Counsel as a member of the FSC staff from the office activity perspective. FSC members discussed the recognized need for a General Counsel position

**MOTION AND VOTE:** *Evans moved to approve the General Counsel position and appoint a committee to begin the search for a General Counsel. Peerwani seconded the motion. The FSC unanimously approved the motion.*

Evans will work with Tomlin on initiating an interview committee and working with SHSU in developing the position.

## Update on website

Tomlin presented FSC website developments and redesign.

**MOTION AND VOTE:** *Adams moved to approve implementation and changes to the website as demonstrated by Tomlin. Evans seconded the motion. The FSC unanimously approved the motion.*

## Report and consider recommendations from Complaints Screening Committee on pending complaints

FSC members instructed the commission coordinator to contact those complainants who had not yet completed an official complaint form and request that each complainant fill out that form before the FSC proceeds on the complaint.

### **MOTIONS AND VOTES:**

**Complaint No. Unassigned:** Peerwani recommended dismissal, arguing that the complaint, being from a case in Pennsylvania, falls outside the FSC's geographical jurisdiction. *Bradley moved to dismiss. Kerrigan seconded the motion. The FSC unanimously agreed to dismiss the complaint.*

**Complaint No. 09-06:** Commission members argued that the complaint does not involve any lab work or lab analysis covered by the subject matter jurisdiction of the FSC. *Bradley moved to dismiss. Adams seconded the motion. The FSC unanimously agreed to dismiss complaint #09-06.*

**Complaint No. 09-15:** The FSC discussed obtaining additional information on a response from the accrediting body and reviewing any additional information for this complaint. *Bradley moved that recommendations for this complaint be made at the July 23<sup>rd</sup>, 2010 meeting. Peerwani seconded the motion. The FSC unanimously agreed on the recommendation.*

**Complaint No. 09-18:** The FSC discussed that the complaint does not pertain to any lab work or lab analysis. *Peerwani moved to dismiss. Hamilton seconded the motion. The FSC unanimously agreed to dismiss complaint #09-18.*

**Complaint No. 09-19:** The FSC discussed obtaining additional information, including trial transcripts and other pertinent documents before making a decision to proceed or not proceed on the complaint. *Bradley moved for recommendations for this complaint to be made at the July 23<sup>rd</sup>, 2010 meeting. Evans seconded the motion. The FSC unanimously agreed on the motion.*

**Complaint No. 09-20:** The FSC discussed the autopsy exclusion rule in the legal definition of forensic analysis. *Peerwani moved to dismiss complaint #09-20,*

*based on the exclusion of any portion of an autopsy examination. Kerrigan seconded the motion. The FSC unanimously agreed to dismiss complaint #09-20.*

## **Report and consider recommendations from Investigation Panels**

### **WILLIS/WILLINGAHM INVESTIGATION**

The investigation panel and other members agreed to obtain additional information pertinent to the investigation, engage other agencies that are parties to the investigation, contact the consultant hired by the FSC, analyze this information in detail and come prepared to present any recommendations at the July 23<sup>rd</sup>, 2010 meeting.

### **MOON INVESTIGATION**

The investigation panel and other members agreed to obtain additional missing pieces of information that are vital to the investigation. The complaint will be tabled until other panel members have had the opportunity to review the information. Recommendations from the investigative panel will be made at the July 23<sup>rd</sup>, 2010 meeting.

## **Discuss and consider policy regarding anonymous complaints**

**MOTION AND VOTE:** *Kerrigan moved to table the anonymous complaint policy agenda item until the next meeting, pending research on the issue of commission member liability, an executive session report from AG's counsel, Barbara Deane, and development of proposed amended language for of the policies and procedures. Bradley seconded the motion. The FSC unanimously approved the motion.*

## **Report and consider recommendations from Forensic Development Committee**

Kerrigan proposed publishing different guidelines and codes of conduct and ethics for labs on the FSC website for reference information. After discussion, the FSC decided that Kerrigan will work with Tomlin in posting the different recommended codes of ethics. The FSC will also resume the development of roundtable discussions throughout the State.

**MOTION AND VOTE:** *Bradley moved to approve Forensic Development Committee to move forward with first roundtable meeting in Austin. Adams seconded the motion. The FSC unanimously approved the motion.*

The forensic development committee will also assist Judge Barbara Hervey in forensic development training initiatives. Judge Barbara Hervey offered comments on the subject.

## **Report and consider recommendations from Legislative Committee**

The Legislative Committee is to explore issues for proposed legislative action related to FSC. In addition, Committee will take responsibility for coordinating with SHSU on budget line item for 2011 legislative session.

### **Discuss and consider records retention policy**

**MOTION AND VOTE:** *Bradley moved the retention policy discussion be tabled until the July 23<sup>rd</sup>, 2010 meeting, after Barbara Deane and her staff can begin drafting a proposed policy, working closely with the Library and Archives Commission. Kerrigan seconded the motion. The FSC unanimously approved the motion.*

### **Discuss and consider media policy**

The FSC will develop a generalized policy, based on examples from other state agencies and present the policy at the July 23<sup>rd</sup>, 2010 meeting.

### **Discuss and consider legislative hearings policy**

Adams and other commission members will develop a policy for coordinating responses to appear at legislative hearings. Recommendations on a policy will be presented at the July 23<sup>rd</sup>, 2010 meeting.

### **Report on House Committee hearing**

House Committee on Public Safety hearing attendees, Kerrigan and Adams, presented comments on the hearing.

### **Amendment to Policies and Procedures regarding public comment at meetings**

**MOTION AND VOTE:** *Bradley explained the proposed amendment to the policies and procedures, adding 12.0, regarding public comment. Hamilton moved to adopt the proposed public testimony amendment to the policies and procedures. Hampton seconded the motion. The FSC unanimously approved the amendment.*

The commission coordinator will publish an amended copy of the policies and procedures, distribute them to the FSC members and post them on the website.

### **Hear public comments**

#### **The FSC heard comments from:**

Gloria Rubac

Stephen Saloom, Innocence Project

## **Consider proposed items for July meeting agenda**

The FSC agreed to transfer any tabled agenda items as discussed to the July 23<sup>rd</sup>, 2010 meeting.

**MOTION AND VOTE:** *Adams moved to have a recurring agenda item that allows changes to the schedule and location of future meetings. Evans seconded the motion.*

Kerrigan suggested an ongoing agenda item to make changes to the policies and procedures as necessary. Bradley responded that such a request for change should have a specific agenda item and a proposed written amendment for board members to review in advance.

The FSC proposed an item for interpretation of the “forensic analysis” and “accredited” terms of the FSC statute. The memo would help determine time period limits of investigations and commission jurisdiction issues. Counsel, Barbara Deane, agreed to assist in developing the memo as it applies to the FSC statute. Bradley and Evans also agreed to assist. The FSC also noted that it must determine whether interpretive testimony is covered by the statute.

The meeting adjourned at approximately 3:30 p.m.

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Leigh Tomlin, Commission Coordinator