

**Texas Forensic Science Commission
Minutes from June 20, 2008 Meeting in Austin, Texas**

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

Members Absent: Hamilton

(Additional attendees included: Barbara Deane, Assistant Attorney General; Ms. Tomlin, TFSC Coordinator; Christie Davidson, SHSU staff; Edwin Colfax, The Justice Project; Gabriel Oberfield, The Innocence Project. Will Young, Pat Johnson, and Forrest Davis, DPS, were present at the meeting before lunch. Julie Hargrove, from the Governor's office, was present briefly at the commencement of the meeting.)

The minutes from the April 2008 meeting were approved by Motion from Mr. Adams.

Sam Bassett discussed the introduction of Ms. Tomlin, the TFSC office employee, and introduced Ms. Tomlin to the Commission. Ms. Tomlin gave a brief introduction, a description of her qualifications and experience, and an update on the TFSC office. Ms. Tomlin reported that the office and all necessary equipment, supplies, etc. have been set up.

Dr. Kerrigan reported on the setting up and progress of the website. The website design is complete and expected to be live within the next couple of weeks at the address www.fsc.state.tx.us. The website is currently housed under the SHSU domain name. SHSU Computer Services is working with the DIR to link the state.tx.us address. Dr. Kerrigan reviewed a print out of the website text/design with commission members. She also discussed the service contract at a cost of \$300-\$400/month, by SHSU Computer Services. Sam Bassett presented a Motion to approve the cost of monthly service by SHSU Computer Services. Commission members approved. Dr. Kerrigan discussed the necessity of purchasing a dedicated server for the Commission and reported on her meeting with SHSU Computer Services and Ms. Tomlin regarding the same. SHSU Computer Services will provide Ms. Tomlin and Dr. Kerrigan with a wide range of server quotes and recommendations that will be discussed at the next TFSC meeting. Upon approval, Dr. Kerrigan is to sign the service contract for the server purchase. Dr. Kerrigan also reported on 1(888) numbers for Commission. The numbers are set up and should be working by next week. Concluding Dr. Kerrigan's report, Sam Bassett presented a motion to approve the website content. The motion was seconded by Dr. Eisenberg and approved by the Commission.

Ms. Tomlin provided an update on the physical office for TFSC. She reported on what documents, CDs, etc. are stored in the office. She also explained the filing system set up to keep track of documents, introduced the commission members list and other organizational documents to keep track of TFSC contacts. Ms. Tomlin described the physical location and set up of the office. Ms. Tomlin and the Commission decided on a title for her position. Her job title will be Commission Coordinator. Ms. Tomlin

discussed the TFSC business card, letterhead, and envelopes designed. The need for the legal program Westlaw was discussed. Ms. Tomlin also discussed reimbursement issues and reminded commission members to keep all receipts and mail reimbursements in the envelopes provided at the meeting. Ms. Tomlin briefly discussed her communications with the DIR and setting up the 1(888) numbers and website.

Sam Bassett inquired with commission members about their personal financial statements and keeping them up to date. The Open Records/Open Meetings Act Training was briefly discussed.

The issue was brought up on whether or not to post the agendas on the website. It was agreed that the meeting agendas would be posted on the website with the meeting minutes.

The discussion continued from the last meeting concerning the “whistleblower” issue in disclosing investigations and important information about cases to outside parties. Barbara Deane reviewed the exceptions to the Public Information Act (“PIA”), including attorney/client communications, pending litigation, email addresses, social security numbers, etc. Ms. Deane explained that any administrative agency with penalty authority is considered a law enforcement agency and can exercise special exceptions to the PIA. The TFSC does not fall into this category and thus cannot exercise any special exceptions to the PIA. Mr. Bassett inquired about whether the commission could request an early opinion on certain issues from the Attorney General’s (“AG’s”) office. Ms. Deane explained that the TFSC could meet with the Open Records Division (“ORD”) of the AG’s office, but TFSC would be limited to advisory, verbal opinions from the ORD. Ms. Deane introduced Amanda Crawford as the head of the ORD. It was suggested and agreed that one or two commission members meet with Ms. Crawford before the next meeting. Sam Bassett is to meet with Ms. Crawford before the next meeting.

The issues of complainant calls and requests from the media were discussed. It was decided that the TFSC will ask all complainants to submit a written request along with their Complaint Form which can be accessed on the TFSC website. It was discussed that if a written request for information which might be construed as an open records request from anyone is received at the TFSC office or by any one of the commission members, the request shall be immediately forwarded to Sam Bassett. Ms. Deane explained the strict 10-day rule in responding and/or requesting an opinion from the Attorney General’s Office. It was discussed that Ms. Deane is considered the general counsel for the Commission.

It was also decided that all complaints received by Ms. Tomlin will be immediately disseminated to commission members so that they can be reviewed by each member before the next meeting. For any inquiries, Ms. Tomlin is to send the letter drafted to complainants along with the Complaint Form for the complainant to fill out and return to the office. After the Commission receives the Complaint Form, it was decided that a letter of denial or a letter of approval would be sent to the Complainant. The letter of denial was discussed along with issues/resources that will limit the Commission’s

investigations. It was discussed that cases will have to be strictly prioritized due to limited funds and resources.

Mr. Levy inquired with the DPS representatives on forwarding to DPS those requests for investigations that do not involve DPS. DPS indicated they would look into any requests for investigations from the Commission.

It was decided by the commission that there will be 4 or 5 different form response letters to requests for investigations from complainants. At least one will be a “no jurisdiction” letter; one will be a “not at this time” letter; and one will be a “not meritorious” letter. It was discussed that statutory language would only be included in the jurisdiction response letter. Sam Bassett is to draft a set of denial letters for consideration at the next meeting. Dr. Eisenberg presented a motion to accept the draft of the “decision to investigate” letter. Dr. Kerrigan seconded the motion and the letter was approved by the Commission. It was decided that it would be uniform policy to send a letter along with the Complaint Form to every complainant or letter received regardless of validity.

A guest dialogue/public comment period began with Pat Johnson, the director of DPS. Commission members discussed with Mr. Johnson the process of dealing with complaints and responding to requests. Pat Johnson described DPS’s method of processing complaints and indicated that there have not been too many complaints against any lab or agency accredited by DPS in the past year. Forrest Davis explained there are 73 labs accredited by DPS. Ms. Deane suggested that a commission member meet with DPS to discuss process of interaction with DPS. It was decided that a member would meet with DPS to discuss the same.

Mr. Bassett reported on his attendance at the Innocence Round table given by Sen. Rodney Ellis. Mr. Bassett reported that Texas is considered to be on the forefront in developing a process for wrongful conviction, because it has had at least some cooperation from some District Attorneys in examining wrongful convictions. It was discussed that the majority of wrongful convictions have been based on faulty eyewitness identifications.

Mr. Bassett briefly reported on a past Governor’s Budget Meeting in which agencies were asked to cut their budgets and prioritize expenses. Kerrigan, Bassett and Levy decided to meet with Mary Ann Courter, DPS General Counsel, for an informational discussion on legislative budgeting for the Commission before the next meeting.

The dissemination of information about the TFSC was discussed. Dr. Kerrigan presented a draft of a letter to be sent to professional publications and labs with information about the Commission. Will Young from the DPS is to provide Dr. Kerrigan with a list of accredited labs. Mr. Levy presented a Motion to approve disseminating the notice to publications and labs. The Motion was seconded by Dr. Eisenberg and approved by the commission. Ms. Tomlin is to get in contact with different agencies/publications regarding public service announcements.

There was a discussion on whether TFSC should send a letter to the lab or agency informing them of a complaint against them. It was decided that a notification letter would be sent only if there was going to be an investigation, or if the claim has merit, but the TFSC is unable to investigate it at that time.

Edwin Colfax discussed the issue of prima facie evidence and after-the-fact investigations. It was discussed that most investigations will involve individuals that have already been exonerated. Commission members agreed that any post-conviction testing would be completed by a private, independent lab.

The commission discussed those complaints believed to have merit or call for further action. It was discussed that many of the complaints will clearly not be within TFSC jurisdiction. There was a decision that one independent reviewer of the complaints would be appointed for each complaint to be investigated by the Commission. It was decided that the Commission will begin with an independent review (by a qualified expert) of information for two of the complaints received.

A discussion on missed opportunities for reviewing and reevaluating evidence in cases continued between commission members, Mr. Oberfield and Mr. Colfax. Duties and limitations of the Commission were discussed. It was suggested that the policies and procedures of agencies should be evaluated in addition to the forensic flaws in the cases.

The next meeting for the Commission is to be held in Houston on August 15, 2008, beginning at 9:30 a.m.

The meeting following the August meeting shall take place on October 10, 2008 in Fort Worth.