

**Texas Forensic Science Commission
Minutes from September 8, 2011 and September 9, 2011 Meeting in Austin, Texas**

The Texas Forensic Science Commission met at 1:00 p.m. on Thursday, September 8, 2011, and continued their meeting at 9:30 a.m., Friday, September 9, 2011 at the Central Services Building, 1711 San Jacinto, Room 402, in Austin, TX. Members of the Commission were present as follows:

Members Present: Kerrigan, Adams, Evans, Peerwani, Eisenberg, Hampton

Members Absent: Hamilton, Farley

Staff Present: Lynn Robitaille, FSC General Counsel
Leigh Tomlin, Commission Coordinator

Review and adopt minutes from 4/14, 4/15, 6/20 and 7/7 meetings

MOTION AND VOTE: *Peerwani moved to adopt the draft of the 4/14/11-4/15/11 meeting minutes. Kerrigan seconded the motion. The minutes were unanimously adopted by the FSC.*

MOTION AND VOTE: *Kerrigan moved to adopt the draft of the 6/20/11 meeting minutes. Eisenberg seconded the motion. The minutes were unanimously adopted by the FSC.*

MOTION AND VOTE: *Eisenberg moved to adopt the draft of the 7/7/11 meeting minutes. Evans seconded the motion. The minutes were unanimously adopted by the FSC.*

MOTION AND VOTE: *Eisenberg moved to adopt the draft of the 4/14/11 Complaint Screening Committee meeting minutes. Peerwani seconded the motion. The minutes were unanimously adopted by the FSC.*

Update on FSC Appointments, introduction and orientation

This agenda item was postponed until further appointments/reappointments are made. Robitaille reminded members that they continue to serve until they are replaced.

AG Opinion

Members broke to convene in Executive Session at this time and reconvened before making the following vote.

Evans gave a brief summary and analysis of the attorney general opinion as it applies to the scope of the FSC's jurisdiction.

MOTION AND VOTE: *Adams moved to adopt the AG Opinion as guidance and proceed by applying the Opinion on a case-by-case basis. Peerwani seconded the motion. The motion was unanimously adopted by the FSC.*

Update from Legislative Committee

Evans gave a brief update on FSC-related legislation from the past legislative session, including a summary of SB 1658 proposed by Senator Hinojosa.

Update on office move

Robitaille explained a letter of agreement with SHSU initiated by Texas State General Counsel Fernando Gomez. Tomlin gave a brief update on the office move, technology developments, staffing, budget, website and other related office issues. Members also expressed their gratitude for the ongoing support provided by Sam Houston State University and the Texas State University System.

MOTION AND VOTE: *Kerrigan moved for Robitaille to sign the letter of agreement with Texas State University Counsel Fernando Gomez. Eisenberg seconded the motion. The motion was unanimously adopted by the FSC.*

Commission members instructed staff to proceed with improving the FSC website in collaboration with the University of Texas Information Technology department.

Discuss and consider amendments to policies and procedures

MOTION AND VOTE: *Kerrigan moved to adopt Robitaille's revisions of the FSC policies and procedures. Eisenberg seconded the motion. The motion was unanimously adopted by the FSC.*

MOTION AND VOTE: *Evans moved to adopt a conflicts policy as drafted by Robitaille and amend the policies and procedures accordingly. Adams seconded the motion. The motion was unanimously adopted by the FSC.*

Discuss and consider committee composition

MOTION AND VOTE: *Evans moved to approve Eisenberg as the new Complaint Screening Committee Chair. Kerrigan seconded the motion. The motion was unanimously adopted by the FSC.*

MOTION AND VOTE: *Evans moved to hold open meetings of the FSC in Fort Worth for efficiency purposes. Adams seconded the motion. The motion was unanimously adopted by the FSC.*

Members agreed to hold off on reassembling the Forensic Development and Legislative Development committees, until further appointments and/or reappointments are made by the appropriate appointment offices.

Discuss and consider recommendations from Complaint Screening Committee

Complaint #10-27 (Bexar County: Gas Chromatography/Mass Spectrometry) (Cacy)

MOTION AND VOTE: *Peerwani moved to dismiss the complaint, because (1) the analysis in the investigation was conducted prior to September 1, 2005 and (2) the Bexar County Crime Lab was not accredited at the time of the forensic analysis. Kerrigan seconded the motion, emphasizing that had there not been jurisdictional issues, the committee might have recommended an investigation. The motion was unanimously adopted by the FSC.*

MOTION AND VOTE: *Peerwani moved to direct Kerrigan to work directly with Robitaille to draft a letter to the complainant regarding today's discussion and disposition. Eisenberg seconded the motion. The motion was unanimously adopted by the FSC.*

Complaint #11-04 (City of Waco Fire Marshal: Arson Investigation) (Gibson)

MOTION AND VOTE: *Adams moved to dismiss the case and refer to the State Fire Marshal's Office for review of the fire science, requesting that the State Fire Marshal's office report their findings to the McClennan County District Attorney's office, as well as any appropriate defense counsel. Evans seconded the motion. The motion was unanimously adopted by the FSC.*

Complaint #11-07 (APD Crime Lab: Toxicology) (Stephens)

MOTION AND VOTE: *Evans moved to dismiss the complaint, because the complaint falls outside the jurisdiction of the FSC. Adams seconded the motion. The motion was adopted by the FSC.*

Kerrigan abstained from voting.

Complaint #11-08 (Forensic DNA Drug Testing Services: Toxicology, Civil Case) (Devening)

MOTION AND VOTE: *Peerwani moved to dismiss the complaint, because it falls outside the limited jurisdiction of the FSC pursuant to Article 38.35 (a)(4)(f), but to follow up with a letter to the lab and other stakeholders stating the concerns the FSC had about the complaint in the dismissal notice. Kerrigan seconded the motion. The motion was unanimously adopted by the FSC.*

Complaint #11-09 (DPS Crime Lab – Waco: Controlled Substance Analysis) (Cooksey)

MOTION AND VOTE: *Kerrigan moved to dismiss the complaint based on insufficient evidence and information establishing an actionable complaint. Peerwani seconded the motion. Hampton abstained from voting. Adams voted nay. The complaint was dismissed by the FSC.*

Complaint #11-05 (Tarrant County Medical Examiner: Toxicology and Autopsy) Caraway

MOTION AND VOTE: *Eisenberg moved to dismiss the complaint, because it falls outside the jurisdiction of the FSC. Evans seconded the motion. The motion was unanimously adopted by the FSC.*

Peerwani abstained from discussion and voting.

Complaint #11-11 (El Paso Police Department Crime Lab: Controlled Substance)

MOTION AND VOTE: *Peerwani moved to investigate the case and assign a committee to come back to the full FSC with recommendations and findings. Evans seconded the motion. The motion was unanimously adopted by the FSC.*

MOTION AND VOTE: *Peerwani moved to recommend a committee of two for the investigation, Kerrigan (Chair) and Eisenberg (Member). Evans seconded the motion. The motion was unanimously adopted by the FSC.*

Complaint #09-19 (LabCorp Dallas: Toxicology) Perwani

MOTION AND VOTE: *Kerrigan moved to dismiss the complaint due to lack of jurisdiction. Evans seconded the motion. The complaint was unanimously dismissed by the FSC.*

Complaint #10-24 (SWIFS) reconsider

Peerwani and Eisenberg abstained from discussion or voting in this case in response to concerns by the complainant regarding alleged conflicts. They abstained to ensure against even the slightest appearance of a conflict.

MOTION AND VOTE: *Adams moved to direct Robitaille and Kerrigan to work on an addendum to the dismissal notice to send to the complainant. Evans seconded the motion. The motion was adopted by the FSC.*

Discuss and consider draft of APD memo

MOTION AND VOTE: *Kerrigan moved to adopt the APD memo as drafted by Robitaille. Eisenberg seconded the motion. The draft was unanimously approved by the FSC.*

MOTION AND VOTE: *Kerrigan moved to send the APD memorandum to all DPS labs. Adams seconded the motion. The motion was unanimously adopted by the FSC.*

September 8, 2011 Public Testimony

Patricia Cox

Discuss and consider draft of Willis/Willingham Addendum and status of recommendations

Members discussed initial efforts of collaboration with the State Fire Marshal's (SFMO) office. Peerwani reviewed the SFMO's response to each of the FSC's recommendations. Jeff Blackburn of the Innocence Project of Texas offered to assist with conducting a retroactive review of Texas arson cases. Members instructed Robitaille to send a letter to Fire Marshal Paul Maldonado containing a formalized version of the FSC's final recommendations and requesting his feedback regarding same.

MOTION AND VOTE: *Kerrigan moved to incorporate the addendum into the Willingham memorandum approved at the last meeting for consideration at the next scheduled meeting. Adams seconded the motion. The motion was unanimously adopted by the FSC.*

Discuss and consider draft of Moon memorandum (#09-02)

Members reviewed a draft memorandum of recommendations resulting from the Moon investigation.

MOTION AND VOTE: *Peerwani moved to adopt recommendation 1. Adams seconded the motion. The recommendation was unanimously adopted by the FSC.*

MOTION AND VOTE: *Adams moved to adopt recommendation 2. Hampton seconded the motion. The recommendation was unanimously adopted by the FSC.*

MOTION AND VOTE: *Evans moved to adopt recommendation 3. Kerrigan seconded the motion. The recommendation was unanimously adopted by the FSC.*

MOTION AND VOTE: *Evans moved to adopt recommendation 4 with minor edits. Kerrigan seconded the motion. The recommendation was unanimously adopted by the FSC.*

MOTION AND VOTE: *Adams moved to delete recommendation 5. Kerrigan seconded the motion. The recommendation was unanimously removed by the FSC.*

MOTION AND VOTE: *Evans moved to authorize Peerwani to sign the final Moon report. Kerrigan seconded the motion. The motion was unanimously adopted by the FSC.*

Update on Texas Association of Crime Lab Director's Meeting

Robtaille gave a brief update on the most recent TACL D meeting attended by FSC staff. TACL D President, Tim Fallon, gave a thorough discussion of the organization's mission and recent activities. Mr. Fallon also responded to questions from commission members.

Report from visit to national Fire Research Laboratory

Robtaille gave a summary of her visit to the lab.

Report from AFDA A conference

Robtaille gave a brief summary of her presentation at the AFDA A conference.

Report from Center for American and International Law conference

Robtaille reported on her attendance at the conference and meeting with Dr. John DeHaan.

Discuss member participation and agenda for SWAFS conference

Evans, Peerwani and Robtaille volunteered to participate in a panel discussion/presentation of the FSC at the SWAFS conference, October 3rd, 1-5 p.m. in Houston.

Update from Forensic Development Committee

Kerrigan gave a presentation on national initiatives related to forensic science. Members discussed moving forward with plans for a training seminar hosted by the FSC in collaboration with the Texas Criminal Justice Integrity Unit and any other interested stakeholders. Kerrigan also described possible future initiatives by the FSC for creating

stakeholder meetings focused on various issues of concern to the forensic science community.

Members instructed staff to circulate updated contact information along with a new lab poster to DPS accredited labs.

Consider proposed agenda items for October 14th, 2011 meeting

Members will submit agenda items to FSC staff prior to next meeting.

Schedule and location of future meetings

Member will meet for their next quarterly meeting, October 28th, 2011. Peerwani discussed moving the meetings back to hotels for convenience of FSC members' travel and participation. Tomlin will submit a cost analysis on the cost difference in meeting in a hotel as opposed to a State meeting room. Tomlin indicated that the cost difference is minimal.

Hear public comment

Stephen Saloom

Adjourn

MOTION AND VOTE: *Adams moved to adjourn. Kerrigan seconded the motion. The FSC adjourned.*