

MINUTES

ALABAMA STATE BAR BOARD OF BAR COMMISSIONERS MEETING

State Bar Building
Montgomery, Alabama

Friday, January 11, 2013

1. CALL TO ORDER

President McCallum convened this meeting of the Alabama State Bar Board of Commissioners at 10:00 a.m. in the board room of the Alabama State Bar building, Montgomery, Alabama. Commissioner Garner gave the invocation.

2. ROLL CALL

The Secretary called the roll of the commission and the following commissioners were present:

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|------------------------|-----------------------|---------------------------|
| Christy Crow | Jana Russell Garner | Terri O. Tompkins |
| Hays Webb | William H. Broome | Phil D. Mitchell |
| W. N. (Rocky) Watson | S. Greg Burge | Augusta S. Dowd |
| Teresa G. Minor | Brannon J. Buck | Derrick A. Mills |
| Albert J. Trousdale II | Thad Yancey, Jr. | Henry A. Callaway, III |
| Billy C. Bedsole | James R. Beaird | Frank M. Wilson |
| Les Pittman | Cole Portis | Lee H. Copeland |
| Donald Rhea | William Randall May | Julia C. Kimbrough |
| David A. McDowell | John L. Jernigan, III | John M. Peek |
| Harold Stephens | John A. Brinkley, Jr. | Richard J.R. Raleigh, Jr. |
| Jerry Wayne Baker, Jr. | Allan Chason | Sam W. Irby |
| Elizabeth Parsons | Braxton W. Ashe | Jason P. Knight |
| H. Jerome Thompson | Diandra S. Debrosse | Rebecca G. DePalma |
| LaBarron Boone | Jeanne Dowdle Rasco | Monet M. Gaines |
| Ashley E. Swink | | |

The following commissioners were absent:

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|-----------------------------|----------------------------|------------------------|
| Ronnie E. Keahey | Jerry L. Thornton | Robert Simms Thompson |
| Leslie R. Barineau | George M. (Jack) Neal, Jr. | Robert G. Methvin, Jr. |
| Joseph A. Fawal | William A. (Pete) Short | Walter H. Honeycutt |
| Juan Ortega | Harry V. Satterwhite | J. Flynn Mozingo |
| Jeffery C. Duffey | K. Scott Stapp | Hamp Baxley |
| John Earl Paluzzi | R. Wyatt Howell | Kenneth E. White, III |
| Robert L. Rumsey | Robert H. Brogden | Rebecca Green Thomason |
| J. Milton Coxwell, Jr. | Roger W. Pierce | Stephen M. Kennamer |
| John M. Plunk | Gregory M. Varner | Alexander M. Smith |
| Hon. Claude E. Hundley, III | Meredith S. Peters | Alicia F. Bennett |

In addition, President-elect Anthony Joseph was in attendance. Staff members present included Tony McLain, Ed Patterson, Laura Calloway, Linda Lund, Diane Locke, Angela Parks, Christina Butler, Jeremy McIntire, Robert Thornhill, Mark Moody and Brad Carr. Judy Keegan, Director of the Alabama Center for Dispute Resolution, Tracy Daniel, Director of the Alabama Law Foundation and Suzi Edwards, legislative counsel were also in attendance.

3. INTRODUCTION OF GUESTS

President McCallum recognized the following guests including local bar president David Clark of Autauga County; David Johnston, chair of the local outreach committee for the 7th Judicial Circuit; Law Day Chair David Rains; Derrick Blythe, president of the 5th circuit bar association; Holly Andrews, legislative intern and third year law student at Jones and Kitty Brown, YLS President

4. APPROVAL OF THE MINUTES OF NOVEMBER 2, 2012 ALABAMA STATE BAR BOARD OF COMMISSIONERS MEETING

President McCallum stated that the minutes of the November 2, 2012 Alabama State Bar Board of Commissioners Meeting had been transcribed and circulated prior to the meeting. He asked if there were any corrections, additions or deletions. There were none.

COMMISSIONER BEDSOLE MOVED TO APPROVE THE MINUTES OF THE NOVEMBER 2, 2012 ALABAMA STATE BAR BOARD OF COMMISSIONERS MEETING. THE MOTION WAS SECONDED AND APPROVED UNANIMOUSLY BY VOICE VOTE.

5. REPRIMANDS

5.a. Peter Monfore Neal – Morgan County, ASB 2010-574

Mr. Neil received a public reprimand without general publication for violating Rules 7.3(b)(1)(2i) and 8.4(a) of the *Alabama Rules of Professional Conduct (ARPC)*.

5.b Maria P. Sperando – Stewart, FL, [Pro Hac Vice Admittee], ASB 2010-1934

Ms. Sperando received a public reprimand without general publication for violating Rules 8.1(a) and 8.4(g) of the *ARPC*.

6. PRESIDENT'S REPORT

President McCallum addressed three primary issues in the upcoming legislature which the bar will be dealing with including court funding, judicial reallocation and workers compensation. He spoke about two ancillary matters, public adjusters and private investigators, that the bar is currently involved with as well. The president next reminded the commission that the task force studying whether to remove the Alabama State Bar from fiscal and budgetary authority of the state had recommended that the state bar take no formal action but rather monitor any legislation that could potentially affect the bar's

funding and fiscal operations. He noted that Commissioner Mozingo had done a great deal of work in this area and thanked him for his efforts.

The president reported that he would be attending the investiture of Chief Justice Roy Moore and Justice Tommy Bryan. He took a moment to praise outgoing Chief Justice Charles Malone as well as former state bar president Alyce Spruell for the work they had done during their brief tenure at the court and the Administrative Office of Courts respectively. He also reported that he would be speaking to the trial lawyers, judges and local bars over the course of the next two months.

The president next reported that the court had failed to include in its last rules agenda the proposed rule to eliminate the Alabama essay. He stated that through an oversight it was not included on the agenda but that it would be on the next rules calendar for the court to address. He also noted that he had spoken with David Hymer, chairman of the Board of Bar Examiners regarding interest in reviewing the cut-score. He stated that Mr. Hymer and the Board of Bar Examiners would revisit the cut-score after the court has approved the proposed rule eliminating the Alabama essay portion of the exam. The president concluded his remarks by discussing the legislation authorizing private judges for cases under \$50,000 and noting that 22 retired judges had been approved for this newly authorized service.

7. SECRETARY'S REPORT

The secretary reported that a resolution had been received from the Mobile Bar Association in memory of municipal court judge James Howard Lackey to be included in the Alabama State Bar Book of Memorial Resolutions.

COMMISSIONER BEDSOLE MOVED TO INCLUDE THE MOBILE BAR ASSOCIATION RESOLUTION IN MEMORY OF THE HONORABLE JAMES HOWARD LACKEY IN THE ALABAMA STATE BAR BOOK OF MEMORIAL RESOLUTIONS. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

The secretary next informed the commission that the state comptroller had increased the reimbursement rate for instate travel to 56.5 cents per mile for 2013. He stated that it became effective January 1, 2013.

8. OFFICE OF GENERAL COUNSEL REPORT

Mr. Tony McLain reported that the proposed rule eliminating the Alabama essay exam from the bar examination would be considered at the Supreme Court's next Rules meeting. He also addressed the public adjuster issue and stated that his office had been working with the Alabama Attorney General's Office which is preparing an opinion that had been requested by the head of the Department of Insurance dealing with public adjusters. He noted that the primary concern is what constitutes a "disputed claim" as well as the issue of contingency fees for handling such claims by public adjusters and whether such constitutes the practice of law. He stated that the work is continuing and that the Attorney General's Office would be releasing an opinion shortly on the issue.

9. PROGRAMS UPDATE

Mr. Ed Patterson discussed department operations with an augmented staff and provided an overview of the leadership forum for the coming year. He stated that the Leadership Forum Section will conduct its separate retreat in February at Willow Point Golf and Country Club.

10. LAW DAY REPORT

President McCallum recognized Mr. David Rains, chair of the Law Day Committee. Mr. Rains provided an update and overview of the Law Day program for 2013. He informed the commission that the theme for this year's Law Day was "Realizing the Dream Equality for All." He stated that May 1 would be the day of celebration and an extensive program was planned for Montgomery. He discussed the planned program including that Morris Dees, founder of the Southern Poverty Law Center, would be the speaker for the ceremony held at the Supreme Court honoring the students who would be receiving awards in the poster, essay and social media categories.

Mr. Rains further reported that at the suggestion of the commission, the law day materials and information had been sent out to the schools earlier than in previous years so that teachers could plan a program in time for Law Day. He stated that the committee's goal was to seek the highest participation ever among students and schools in the program and have 100 percent participation of the local bars in Law Day celebrations. He stressed that commissioners could greatly help in achieving this goal and stated that planning packets with easy to follow instructions and helpful materials would be available to facilitate local bar participation in the Law Day celebration.

President McCallum thanked Mr. Rains for his report and the hard work of the committee in preparing for the 2013 Law Day Celebration.

11. VLP TASK FORCE UPDATE

Commissioner Raleigh reported that the task force is studying the four existing programs: Madison County; South Alabama; Birmingham and the ASB program. In addition to looking at the number of cases each program is handling, the task force is looking at the degree of need statewide and the limited funding available for the programs. He stated that the programs are currently funded through grants from Legal Services Corporation, the Alabama Law Foundation and private funding. He further reported that the four VLP programs are working together very smoothly and that the Montgomery Bar will soon be opening its own voluntary lawyers program. Commissioner Raleigh stated that the task force is looking very closely at possible new satellite offices around the state that are assisted by larger, more regional type programs. He concluded by stating that a joint fundraiser for the programs would be held during pro bono week in October.

12. ALF UPDATE AND DISCUSSION OF POSSIBLE VOLUNTARY CONTRIBUTIONS TO THE FOUNDATION

Commissioner Rocky Watson, who also serves as president of the Alabama Law Foundation reported to the commission. He noted that ALF is the charitable arm of the state bar collecting IOLTA funds as one of its principle sources of funding. He addressed other funding that the program receives through voluntary contributions and PHV fees

and highlighted the charts that were provided to the commission showing the change and the two types of grant requests that the foundation now funds: Legal Aid to the Poor and the Administration of Justice. Commissioner Watson described how the foundation several years ago developed an investment policy as well as a grant policy. He explained that 24 percent of grant funding now comes from the foundation's endowment. Commissioner Watson noted that with the decrease of funds, the foundation has had to change its funding recipients and ways of seeking increased funding. He mentioned the Kids' Chance program which is one of the foundation's programs that has awarded a number of scholarships through the years but has found it difficult to raise additional funds lately.

Commissioner Watson explained that essentially the only untapped new source of funds is small contributions. He highlighted the current ALF campaign of \$25.00 for 25 years to celebrate the 25th anniversary of the foundation. He stated that the foundation is not ready to offer a proposal to the commission yet but it is looking at what other states have done to increase funding for their charitable foundations through small contributions. Commissioner Watson stated that the foundation is looking at a \$50.00 opt out contribution mechanism that could possibly be included on the license invoice or the client security fund invoice. He stated that the funds generated through an opt out mechanism would not only help to increase the funding to the foundation's grant recipients but that a portion of the proceeds could also be used for the Kids' Chance program as well as the Leadership Forum. He then explained that an opt out program is better than an opt in program because it will raise more funds.

President McCallum thanked Commissioner Watson and the leadership of the Alabama Law Foundation for their continued good work in leading the foundation and seeking ways to provide funding for legal needs of the poor and the administration of justice.

13. RULE III APPLICATIONS

President McCallum stated that the following individuals had submitted applications for admission pursuant to Rule III of the *Rules Governing Admission to the Alabama State Bar*. He stated they were: Tanya Cooper (DC), Frank Dantone, Jr. (MS), James Ward Fite, II (MS), Deanna Lynn Forbush (PA), Brian B. Hannula (MS), Joseph George Pleva (MI), Joseph H. Rogers, III (OK), Christy C. White (MS), Luke David Wilson (MS) and Robert Leroy Woods (TX). He stated that each of the applicants met the requirements for admission by motion under Rule III.

COMMISSIONER CROWE MOVED THE ADMISSION OF TANYA COOPER (DC), FRANK DANTONE, JR. (MS), JAMES WARD FITE, II (MS), DEANNA LYNN FORBUSH (PA), BRIAN B. HANNULA (MS), JOSEPH GEORGE PLEVA (MI), JOSEPH H. ROGERS, III (OK), CHRISTY C. WHITE (MS), LUKE DAVID WILSON (MS) AND ROBERT LEROY WOODS (TX) PURSUANT TO RULE III OF THE *RULES GOVERNING ADMISSION TO THE ALABAMA STATE BAR*. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

14. LAWPAY CREDIT CARD PROCESSING SERVICE AS A MEMBER BENEFIT

President McCallum reminded the commissioners that at the previous meeting it was explained that the LawPay Credit Card Processing Service was endorsed by 30 state bars and 47 county bars. He stated that LawPay understands the particular needs of lawyers

with regard to the distinction between operational accounts and trust accounts and that safeguards are taken to ensure that fees are never charged to trust accounts.

COMMISSIONER LEE MOVED THE APPROVAL OF LAWPAY CREDIT CARD PROCESSING SERVICE AS A MEMBER BENEFIT. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

15. REAPPOINTMENT OF BAR EXAMINERS

President McCallum stated that the terms of David Hymer and Ed Gentle would expire at the conclusion of the February bar examination. He informed the commission that Mr. Hymer, who currently serves as chairman of the board, and Mr. Gentle had expressed a willingness to continue to serve in their positions. He stated that their reappointment would be for another four year term.

COMMISSIONER KNIGHT MOVED THE REAPPOINTMENT OF DAVID HYMER TO ANOTHER FOUR YEAR TERM AS CHAIRMAN OF THE BOARD OF BAR EXAMINERS AND ED GENTLE TO ANOTHER FOUR YEAR TERM AS A MEMBER OF THE BOARD OF BAR EXAMINERS. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

16. UNIFORM GUIDELINES FOR ATTORNEY FEE DECLARATIONS

President McCallum stated that the guidelines had been discussed at the previous meeting. They were drafted and recommended by the Appointed Counsel and Indigent Defense Representation Committee of the Alabama State Bar, chaired by Commissioner Hays Webb. President McCallum asked if there were any questions concerning the proposed guidelines. There were none. President McCallum recognized Commissioner Broome who personally thanked Commissioner Webb and the committee for their outstanding work in preparing the guidelines.

COMMISSIONER BROOME MOVED TO ADOPT THE UNIFORM GUIDELINES FOR ATTORNEY FEE DECLARATIONS AS RECOMMENDED BY THE APPOINTED COUNSEL AND INDIGENT DEFENSE REPRESENTATION COMMITTEE OF THE ALABAMA STATE BAR. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

[A copy of the Uniform Guidelines for Attorney Fee Declaration as adopted are included with these minutes as Appendix A.]

17. ADJOURNMENT

President McCallum asked if there was any further business to come before the commission. There being no further business to come before the commission, a motion was made and duly seconded to adjourn. The motion was approved by voice vote.

Phillip W. McCallum, President
Alabama State Bar

ATTEST:

Keith B. Norman, Secretary
Alabama State Bar