

## MINUTES

### ALABAMA STATE BAR BOARD OF BAR COMMISSIONERS MEETING

State Bar Building  
Montgomery, Alabama

Friday, February 6, 2009

#### 1. CALL TO ORDER

President Mark White convened this meeting of the Alabama State Bar Board of Commissioners at 10:00 a.m. in the board room at the Alabama State Bar building in Montgomery, Alabama. General Counsel, Tony McLain, gave the invocation.

#### 2. ROLL CALL

The Secretary called the roll of the Commission and the following Commissioners were present:

J. Garrison Thompson	Cooper Shattuck	Alyce M. Spruell
John M. Gruenewald	Phil D. Mitchell	W. N. (Rocky) Watson
Anthony A. Joseph	S. Greg Burge	Phillip W. McCallum
Greg Hawley	Maibeth J. Porter	Joe A. Fawal
Robert E. Moorer	Jim Pratt	William A. (Pete) Short
Albert J. Trousdale, II	Henry A. Callaway, III	William M. Cunningham
Billy C. Bedsole	Juan Ortega	Mary Margaret Bailey
James R. Beaird	James H. Anderson	Cole Portis
Sim Penton	Lee Copeland	F. Michael Haney
K. Scott Stapp	Brian D. Mann	Joseph A. Morris
John L. Jernigan, III	John M. Peek	Harold Stephens
L. Thomas Ryan, Jr.	Richard J.R. Raleigh, Jr.	Ronald H. Strawbridge, Jr.
Kenneth E. White, III	John C. Gullahorn	Allan Chason
Tut Wynne	Robert L. Rumsey	Jason P. Knight
Buddy Lee	Eddie Beason	J. Milton Coxwell, Jr.
Christopher E. Malcom	Gerald R. Paulk	Jere C. Trent
Alexander M. Smith	Merceria Ludgood	Alicia F. Bennett
LaBarron Boone	Pamela H. Bucy	Kesa Johnston
Kelly T. Lee	Christy Crow	

The following Commissioners were absent:

Ronnie E. Keahey	Michael E. Jones	Randall S. Haynes
Jack Neal	Richard W. Whittaker	Les Hayes, III
Donald R. Jones, Jr.	Ramona Morrison	R. Wyatt Howell
Elizabeth Parsons	John M. Kennemer	Robert T. Meadows, III
David F. Law	Walter E. McGowan	Claude E. Hundley, III
Deborah Byrd Walker		

President-elect Tom Methvin and Immediate Past President Sam Crosby were present. Staff members present included Ed Patterson, Tony McLain, Brad Carr, Linda Lund, Sam Partridge, Jeanne Marie Leslie, Angela Parks, Robby Lusk and Jeremy McIntire. Jimbo Terrell, president of the Young Lawyers' Section was also in attendance.

### 3. **INTRODUCTION OF GUESTS**

Jerry Baker of Marshall County was introduced by Commissioner Gullahorn. Jimbo Terrell, president of the Young Lawyers Section was also introduced.

### 4. **APPROVAL OF THE MINUTES OF THE BOARD OF COMMISSIONERS MEETING FOR DECEMBER 5, 2008.**

President White stated that the minutes of the Board of Commissioners meeting for December 5, 2008 had been disseminated to the board. He asked if there were any corrections, additions or deletions. There were none.

COMMISSIONER BEDSOLE MOVED TO APPROVE THE MINUTES OF THE BOARD OF COMMISSIONERS MEETING FOR DECEMBER 5, 2008. THE MOTION WAS SECONDED AND THE MINUTES WERE APPROVED BY UNANIMOUS VOICE VOTE.

### 5. **PUBLIC REPRIMANDS**

#### 5.1. Mark B. Turner, Walker County, **ASB 05-125 (A), ASB 05-302 (A)**

Mr. Turner entered a conditional guilty plea and received a public reprimand without general publication for violating Rules 1.4(a), 1.15(a), 1.15(b) and 1.16(d) of the *Alabama Rules of Professional Conduct [ARPC]*.

#### 5.2. John R. Hollingsworth, Coffee County, **ASB 06-101 (A)**

Mr. Hollingsworth received a reprimand with general publication for violating Rule 8.4(g) of *ARPC*.

#### 5.3. Byron Gustavis McMath, Birmingham, **ASB 07-130 (A)**

Mr. McMath received a public reprimand with general publication and a 30 day suspension for violating Rules 1.15(a), 1.15(g), 8.1(a) and 8.4(g) of *ARPC* and was ordered to complete a seven hour CLE seminar on ethics during the year as well as enroll in the practice management assistance program.

#### 5.4. Marilyn Hollis Maddox, Birmingham, **ASB 07-240 (A)**

Ms. Maddox received a public reprimand without general publication for violating Rules 1.3 and 1.4 of *ARPC*.

6. **UPDATE ON RSA JUDICIAL BUILDING PROJECT**

President White introduced architect Mike Rutland of the 2WR/Holmes Wilkins firm handling the RSA Judicial Building project. Mr. Rutland provided the board with an overview and a presentation about the RSA Judicial Building project. Following his presentation, Mr. Rutland answered several questions from the commission members. At the conclusion of his remarks, President White thanked Mr. Rutland for his presentation to the commission.

7. **APPROVAL OF LEGISLATIVE COUNSEL CONTRACTS**

President White brought up, out of order, the legislative counsel contracts so that Commissioner Pratt, co-chair of the Legislative Task Force, could be present to answer any questions. President White noted that long-time legislative counsel, Tom McGregor was retiring after 18 years of service to the bar and that Suzanne B. Edwards and Kimberly Adams were being recommended as legislative counsel. Both would serve for the same amount that had been approved in previous years for legislative counsel. President White thanked Commissioner Pratt and the Legislative Task Force for their work in interviewing potential counsel to replace Mr. McGregor. President White asked that the contracts as presented be approved.

COMMISSIONER HAWLEY MOVED THE APPROVAL OF LEGISLATIVE COUNSEL CONTRACTS WITH SUZANNE B. EDWARDS AND KIMBERLY ADAMS. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

8. **PRESIDENT'S REPORT**

President White gave an overview of his busy itinerary since the December meeting. He recognized the work of the Judicial Liaison Committee and in particular Commissioner McCallum and committee members Tom Warburton and Teresa Minor for their hard work in designing a judicial training program with the National Judicial College that would be held at the Cumberland Law School during the summer. The program would use left-over funds raised by the committee to provide judicial training in Alabama and cut the expenses of travel to Reno, Nevada where the National Judicial College is located.

President White then informed the commission that legislation had been introduced to create an indigent defense commission in Alabama. He stated that immediate past president Sam Crosby has been working with parties to revamp the bill which had been introduced in previous sessions. Past President Crosby was recognized to explain the continuing need for the legislation.

President White concluded his remarks by congratulating Commissioner Ken White and his wife on the recent birth of a son.

## **9. SECRETARY'S REPORT**

The Secretary introduced the newest member of the Alabama State Bar staff, Larry Pratt. The Secretary stated that Mr. Pratt is a programmer and will be working with the bar's IT staff. The Secretary then reminded the commission that the legislative breakfast had been rescheduled for February 18 at 7:30 a.m. at the RSA Terrace. He also reminded the commissioners that there would be no May meeting as the May meeting was cancelled in cooperation with the Governor's austerity program. He further noted that the meeting dates for the 2009-2010 bar year had been disseminated and that there would be one less meeting in the fall and one less meeting in the spring to further cut travel expenses.

The Secretary then stated that the bar had received memorial resolutions from the Mobile Bar Association honoring the late Judge Brevard Hand and the late Ben F. Stokes, III and the request that the resolutions be placed in the Alabama State Bar Book of Memorial Resolutions.

COMMISSIONER BEDSOLE MADE THE MOTION THAT THE MEMORIAL RESOLUTIONS FROM THE MOBILE BAR ASSOCIATION HONORING THE LATE JUDGE BREVARD HAND AND THE LATE BEN F. STOKES, III BE PLACED IN THE ALABAMA STATE BAR BOOK OF MEMORIAL RESOLUTIONS. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

The Secretary then highlighted the bar exam fee increase legislation stating that Representative Marcel Black had pre-filed the bill which was HB 344. He then called the commissioners' attention to the Department Measurements for 2008 which were included as an online document. He encouraged the commissioners to review the measurements for 2008 as an overview of the accomplishments of the bar as a result of both staff and volunteer efforts. The Secretary concluded his remarks by reviewing the financial report for the first quarter of FY 2008-2009.

## **10. COMMUNICATIONS REPORT**

Brad Carr, Communications Director, gave a brief report and highlighted the new membership benefit pamphlets that will soon be posted online for members to download.

## **11. PROGRAMS UPDATE**

Ed Patterson, Assistant Executive Director, referred to the written report that was disseminated to the commission and gave a brief highlight of the upcoming annual meeting.

## **12. OGC UPDATE**

General Counsel, Tony McLain gave a report on the lawyer advertising rules currently pending before the Alabama Supreme Court. He stated that under the current direct

solicitation rules problems were occurring with domestic abuse situations in particular. These problems have necessitated the OGC to petition the court requesting the court to consider this particular rule change regarding direct solicitation in light of the problems that were currently occurring under the present rules.

**13. QUALITY OF LIFE REPORT – SECURED LEAVE RULE**

President White recognized the Honorable Tommy Bryan, Court of Criminal Appeals and Matt White, former chair of the Quality of Life Committee. Both appeared before the commission to explain how the secured leave rule for lawyers would work. Judge Bryan discussed the proposed rule and explained the work of the committee to obtain the endorsements of both the circuit and district judges association for the rule. He stated that if the Board of Bar Commissioners approved the recommended secured leave rule, the Supreme Court would still need to approve the rule as a rule of judicial administration. He encouraged the commissioners to review the rule, which will be an action item at the next meeting. He noted that both Georgia and North Carolina have similar rules and had been pleased with their results.

Following the report, there were several questions asked and discussed about various aspects of the proposed rule. Commissioner Chason was then recognized for comments. Commissioner Chason served as liaison to the subcommittee that drafted the proposed secured leave rule. Commissioner Chason reported that Baldwin County lawyers indicated that it was not needed in their county. Moreover, Commissioner Chason commented about the fact that the rule would not apply in federal court. Judge Bryan responded that the plan was to get the rule adopted in Alabama and then work with the federal bench to craft a similar rule for federal court. Another commissioner spoke in favor of the rule noting that guaranteed leave or securing vacation time for solo practitioners was a very real problem that needed to be addressed.

President White thanked Mr. White and Judge Bryan and the rest of the Quality of Life Committee and subcommittee for their work on this proposed rule.

**14. GOVERNOR’S DEFICIT PREVENTION PLAN**

President White made a few comments concerning the Governor’s deficit prevention plan and the response of the Alabama State Bar. He reminded the commission that although the state bar “eats what it kills” (i.e. it gets no funding from the state general fund other than the funds that the bar raises itself), he recognized the need to be very sensitive to what is happening throughout the state and particularly with the members of our own association. He reported that the bar is in sound shape financially and noted that the calls to the ALAP program have increased significantly. He encouraged the commissioners to let the bar know what they are seeing and confronting in their individual circuits with respect to the severe economic downturn.

**15. TASK FORCE ON ALLIED PROFESSIONS**

President White next recognized Marci Johns, chair of the Task Force on Allied Professions. Ms. Johns presented to the commission a new and different definition for “paralegal”. She stated that the definition is a voluntary benchmark of best practices. She further stated that it was the hope of the task force that by having a definition as broad as the one presented, unforeseen complications could be avoided and the profitability and proficiency of staffing in law firms could be increased.

There were several questions following Ms. Johns presentation. One commissioner asked the difference between paralegal and legal assistant since both terms are used in the Legal Services Liability Act. Ms. Johns responded that in her opinion both terms were synonymous. She did not see a problem including both terms in the proposed definition. Another comment followed that the definition, as drafted, would appear to permit the unauthorized practice of law by stating that paralegals perform services similar to lawyers. A commissioner noted that the bar’s function was to regulate lawyers and that for the bar to attempt to define the definition of a paralegal was placing the bar on a slippery slope.

Following the report and remarks, President White thanked Ms. Johns and the task force for their work. He stated that this matter would be an action item on the bar’s next meeting agenda.

A copy of the proposed definition of Alabama paralegal is attached to these minutes as Attachment A.

**16. ONLINE DISCUSSION GROUP GUIDELINES**

Brad Carr explained the necessity of discussion group guidelines and the difference between discussion groups and listservs. He noted that the discussion groups would principally benefit sections and that before purchasing the necessary software to set up discussion groups, it was necessary to have a policy in place to regulate the discussion groups the bar would be facilitating.

A copy of the discussion group guidelines as proposed is attached to these minutes as Attachment B.

**17. INVESTMENT POLICY AMENDMENT**

The Secretary explained the need to amend the bar’s investment policy so that more funds could be invested in certificates of deposit.

COMMISSIONER SPRUELL MOVED TO APPROVE AMENDING THE ALABAMA STATE BAR INVESTMENT POLICY, SPECIFICALLY II. B. 3 (c) TO READ AS FOLLOWS:

“CERTIFICATE OF DEPOSIT. A CERTIFICATE OF DEPOSIT WITH A MATURITY OF ONE YEAR OR LESS WITH ANY U.S. BANK THAT MEETS ALL OF THE REGULATORY RESERVES REQUIREMENTS AND MINIMUM CAPITAL REQUIREMENTS MAY BE PURCHASED.” THE AMENDMENT WAS SECONDED AND APPROVED BY VOICE VOTE.

**18. RULE III ADMISSIONS**

President White stated that three individuals: Timothy P. Chinaris (Texas); Mahaley P. McInnis (Georgia) and Susan P. Billeaud (Texas) had submitted applications for admission by motion pursuant to Rule III of the Alabama State Bar Rules Governing Admission. He noted that their applications had been reviewed and found to meet all character and fitness requirements.

COMMISSIONER RALEIGH MOVED THE ADMISSION OF TIMOTHY P. CHINARIS (TEXAS); MAHALEY P. MCINNIS (GEORGIA) AND SUSAN P. BILLEAUD (TEXAS) TO BE ADMITTED UNDER RULE III OF THE ALABAMA STATE BAR RULES GOVERNING ADMISSION. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

**19. ALABAMA SECURITIES COMMISSION NOMINEES**

President White informed the commission that the Alabama State Bar sends the names of three nominees to the Governor for one of the positions on the commission. He stated that the term of one of the positions for which the bar offers nominees concludes on March 19<sup>th</sup>. He further stated that the three nominees were Dag Rowe (Huntsville), Harold Kushner (Birmingham) and Tyrone Means (Montgomery).

COMMISSIONER LEE MOVED TO RECOMMEND DAG ROWE, HAROLD KUSHNER AND TYRONE MEANS TO THE GOVERNOR AS NOMINEES TO CONSIDER FOR THE VACANCY IN MARCH ON THE ALABAMA SECURITIES COMMISSION. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

**20. COMMISSIONERS' AWARD**

President White recommended that Supreme Court clerk Bob Esdale, long time assistant attorney general Rosa Davis and Walter Turner who recently retired after more than 45 years of service with the Attorney General's Office be considered for the Commissioners' Award for 2009.

COMMISSIONER MCCALLUM MOVED TO PRESENT THE COMMISSIONERS' AWARD FOR 2009 TO BOB ESDALE, ROSA DAVIS AND WALTER TURNER. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

21. **AWARD OF MERIT**

President White stated that Tom McGregor was being recommended for the Award of Merit for his more than 18 years of service as legislative counsel to the Alabama State Bar.

COMMISSIONER MOORER MOVED TO AWARD THE AWARD OF MERIT FOR 2009 TO TOM MCGREGOR. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

22. **JUDICIAL LIAISON COMMITTEE RESOLUTION**

President White stated that the Judicial Liaison Committee had offered the following resolution for consideration by the commission. The resolution reads as follows:

The Judicial Liaison Committee of the Alabama State Bar hereby recommends that the Alabama State Bar apply the remainder of the funds from the committee's fundraising efforts to send Alabama judges to the National Judicial College to an effort to hold a Alabama Judicial College in Birmingham, Alabama in June, 2009. The Committee further recommends that the Alabama State Bar engage in communications with the Administrative Office of Courts ("AOC") for: (1) the purpose of having AOC execute the agreement with the National Judicial College for the program to be held in June, 2009; and (2) to encourage AOC to contribute financial resources to support the program to be held in June, 2009.

COMMISSIONER GRUENEWALD MOVED TO APPROVE THE RESOLUTION AS RECOMMENDED BY THE JUDICIAL LIAISON COMMITTEE. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

23. **LEGISLATION TO AMEND THE ALABAMA PROBATE CODE**

President White recognized Immediate Past President Sam Crosby and the Honorable Don Davis, probate judge, Mobile County. President White explained the reason for the legislation that would amend Section 12-11-41 and Section 26-2-2 and Section 12-11-42, *Code of Alabama* (1975). Former President Crosby stated he had been informed that the commission had considered this legislation previously and had endorsed it and stated as far as he knows the legislation does not have any opposition. Judge Davis gave further explanation for the need of the legislation. He highlighted the difference between probate proceedings and circuit court actions and that the purpose of the legislation was to allow those cases that had been removed to circuit court to be transferred back to probate court. He also explained another problem for the removal of trust matters to circuit court from probate court which the proposed legislation would correct. Judge Davis stated that he and other

probate judges would appreciate the commission's support for the legislation. Judge Davis then excused himself from the board room during the commission's discussion of the proposed legislation.

COMMISSIONER WYNN MADE A MOTION THAT THE BOARD OF BAR COMMISSIONERS ENDORSE THE LEGISLATION AS PROPOSED. THE MOTION WAS SECONDED.

President White asked for discussion. Several commissioners raised several problems with the bill which were discussed at length by the commission members.

PRESIDENT WHITE CALLED THE QUESTION AND ASKED FOR A SHOWING OF HANDS OF THOSE IN FAVOR OF THE MOTION AND THOSE OPPOSED TO THE MOTION. THE MOTION WAS DEFEATED.

President White thanked the commission and Past President Crosby and Judge Davis.

**24. ADJOURNMENT**

President White 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.

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J. Mark White, President  
Alabama State Bar

ATTEST:

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Keith B. Norman, Secretary  
Alabama State Bar