

MINUTES

ALABAMA STATE BAR BOARD OF BAR COMMISSIONERS MEETING

State Bar Building
Montgomery, Alabama

Friday, November 2, 2012

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 Mitchell gave the invocation.

2. ROLL CALL

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

Jerry L. Thornton	Christy Crow	Jana Russell Garner
Robert Simms Thompson	Terri O. Tompkins	William H. Broome
Phil D. Mitchell	Rocky Watson	Leslie R. Barineau
S. Greg Burge	Robert G. Methvin, Jr.	Joseph A. Fawal
Brannon Buck	Derrick Mills	Thad Yancey, Jr.
Henry A. Callaway, III	Harry V. Satterwhite	James R. Beaird
Les Pittman	J. Flynn Mozingo	Jeffery C. Duffey
Lee H. Copeland	Donald Rhea	K. Scott Stapp
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.	John Earl Paluzzi
Samuel W. Irby	Robert L. Rumsey	Braxton W. Ashe
Jason P. Knight	Rebecca Green Thomason	J. Milton Coxwell, Jr.
H. Jerome Thompson	Roger W. Pierce	Stephen M. Kennamer
Alexander M. Smith	Diandra S. Debrosse	Rebecca G. DePalma
LaBarron Boone	Jeanne D. Rasco	Ashley E. Swink

The following commissioners were absent:

Ronnie E. Keahey	Hays Webb	Jack Neal
Augusta S. Dowd	Teresa G. Minor	William A. (Pete) Short
Albert J. Trousdale II	Walter H. Honeycutt	Billy C. Bedsole
Juan Ortega	Frank M. Wilson	Hamp Baxley
R. Wyatt Howell	Kenneth E. White, III	Jerry Wayne Baker, Jr.
Allan Chason	Elizabeth Parsons	Robert H. Brogden
John M. Plunk	Gregory M. Varner	Claude E. Hundley, III
Meredith S. Peters	Alicia F. Bennett	Monet M. Gaines

In addition, President-elect Anthony Joseph was in attendance. Staff members present included Tony McLain, Laura Calloway, Brad Carr, Linda Lund, Ed Patterson, Diane Locke, Angela Parks, Christina Butler, Jeremy McIntire, Robert Thornhill and Mark Moody. 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 Nettie C. Blume, president of the Tuscaloosa County Bar Association and Sue Ann Balch, president of the Lee County Bar Association. He also introduced the following chairs of the local outreach committees: Emily Niezer Johnston, Cullman County; Brian Strength, Macon County and Will Powell, Lauderdale County. Next, President McCallum introduced the law students who were attending the meeting in celebration of Pro Bono Week. They were Justin Fargason and Mary Wheeler from the University of Alabama; Dave Lewis and Richard Phillips from Birmingham School of Law; Chase Estes and Ginna Lemon from Jones School of Law and Ashley Rhea and Blake Ramsay from Cumberland School of Law.

4. APPROVAL OF THE MINUTES OF SEPTEMBER 14, 2012 ALABAMA STATE BAR BOARD OF COMMISSIONERS MEETING

President McCallum stated that the minutes of the September 14, 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 MITCHELL MOVED TO APPROVE THE MINUTES OF THE SEPTEMBER 14, 2012 ALABAMA STATE BAR BOARD OF COMMISSIONERS MEETING. THE MOTION WAS SECONDED AND APPROVED UNANIMOUSLY BY VOICE VOTE.

5. REMARKS OF SENATOR ARTHUR ORR

President McCallum introduced Senator Arthur Orr, chairman of the Finance and Taxation General Fund Committee of the Alabama Senate. Senator Orr expressed his appreciation for the invitation and explained the state budgeting for fiscal years 2008-2012. He described the dire lack of funds for the state budgets particularly the general fund budget. Senator Orr outlined the budget cuts for state government that have been necessitated as a result of the conclusion of federal stimulus money and noted that the 2013 budget represents the state living on its own funds without any federal stimulus.

Senator Orr explained that many departments do not receive cuts because they have their own funding sources. As an example, he cited the conservation department. He stated that it was necessary to eliminate earmarking for so many agencies in order for those funds to flow into the general fund. He said that combining agencies and departments will help accomplish this goal and save money. Senator Orr then took a moment to discuss reallocation of judicial resources. He noted that with the judiciary, as with other general fund agencies, cuts and consolations for the judiciary are being driven by a lack of revenues.

Concluding his remarks, Senator Orr thanked former Alabama State Bar presidents Mark White, Jim Pratt as well as President McCallum for their assisting the legislature. He said that their efforts have been extremely valuable by helping improve the legislative process.

President McCallum thanked Senator Orr for his visit and remarks.

6. ELECTIONS, ETHICS AND GOVERNMENT RELATIONS SECTION

President McCallum took the next agenda item out of order and recognized section chair Greg Butrus who explained the work of the section and the information that the section has provided elected officials regarding election and ethics laws. He noted that the section had been responsible for publishing a handbook on election laws and that it was provided to state officials at no charge. He said that state officials appreciated having this information provided by the Alabama State Bar. Mr. Butrus then discussed electronic filing for elections in the Secretary of State's office and the changes that would be necessitated to implement this new process. Mr. Butrus explained that the section was assisting all of the stakeholders in the process to identify concerns and come up with suggestions to eliminate those concerns about electronic election filing. He concluded his remarks by saying that the section was playing a valuable role, in particular, by helping state officials properly carryout Alabama's election laws.

President McCallum thanked Mr. Butrus and the other members of the section for their work.

7. CONSTITUTIONAL AMENDMENTS FOR NOVEMBER 6TH ELECTION

President McCallum called on Othni Lathram, director of the Alabama Law Institute. Mr. Lathram discussed the work of the Constitutional Reform and Revision Committee to draft revisions for reforming the constitution particularly with respect to Amendments 9 and 10, dealing with banking and corporations. He also took a moment to discuss Amendment 4. He concluded his remarks by stating that all of the work of the Constitutional Reform and Revision Committee was located on the ALI website and the website of the Secretary of State.

President McCallum thanked Mr. Lathram for attending the meeting and briefing the commission on the constitutional amendments.

8. REPRIMANDS

8.a. Dan C. King III – Bessemer, ASB 2012-274

Mr. King received a public reprimand without general publication for violating Rules 1.12 of the *Alabama Rules of Professional Conduct (ARPC)*.

8.b Frank B. Potts – Lauderdale County, ASB 2010-1580

Mr. Potts entered a conditional guilty plea and received a public reprimand without general publication for violating Rules 1.15(c), 8.4(a) and 8.4(g) of the *ARPC*.

8.c Jonathan K. Vickers – Birmingham, ASB 2010-1931

Mr. Vickers received a public reprimand without general publication for violating Rules 1.3, 18(h) and 8.4(g) of the *ARPC*.

8.d Charles E. Davis, Jr. – Birmingham, ASB 2011-416

Mr. Davis received a public reprimand with general publication for violating Rules 1.15(d) and 8.4(g) of the *ARPC*.

8.e James D. Smith – Tuscaloosa, ASB 2011-515

Mr. Smith received a public reprimand without general publication for violating of Rules 1.12(c), 1.3 and 1.4(a) of the *ARPC*.

9. **PRESIDENT'S REPORT**

President McCallum stated that the committees and task forces had gotten off to a good start including a conference that was held in October at state bar headquarters for committee, task force and section chairs. He noted that the previous week had been National Pro Bono Week. He told the commission that many events were held throughout the state including one he attended in Selma that included eight counties from west Alabama. President McCallum thanked Commissioner Rasco, chair of the Pro Bono Week Committee, for an outstanding job. He then called on Commissioner Rasco who gave a more in depth overview of the activities for the week including law student programs, “Just Stories” on the website, four Justice Buses traveling across the state, 15 clinics, phone-a-thons and a proclamation signed by the Governor. Commissioner Rasco stated that these were just a few of the many events that took place during Pro Bono Week thanks to the tremendous help from the members of the committee as well as from Linda Lund, director of the VLP.

President McCallum next updated the commission on Immediate Past President Jim Pratt’s improving condition. He also discussed the fall admission ceremony and informed the commission that the Harold Albritton VLP Award had been presented to former president Sam Crosby during the ceremony.

President McCallum informed the commission that the task force created to Study the Removal of the Alabama State Bar from State Fiscal and Budgetary Authority had concluded not to recommend such action at this time but to remain vigilant and proactive to protect the state bar’s financial autonomy. He then discussed the expedited trial bill and the work of the committee appointed to provide recommendations to the chief justice including draft rules to comply with a legislative mandate for expedited trials. He stated that the committee, chaired by Commissioner Copeland, did an outstanding job and that the chief justice was extremely appreciative for their completed work.

President McCallum concluded his remarks stating that he would be speaking to the DeKalb County Bar and that he would be glad to speak at other local bars if invited to do so. He reminded the commission that the next meeting would include a review of issues that would likely be before the legislature during the next session.

10. SECRETARY'S REPORT

The Secretary reviewed the bar exam statistics for the July bar exam and encouraged commissioners to go to the website for a complete breakdown of those statistics. He then reviewed the year-end report for FY2011-12.

11. OFFICE OF GENERAL COUNSEL REPORT

General Counsel Tony McLain reported on Show Cause Orders sent to attorneys who failed to comply with the IOLTA certification rule. He stated that the number of Show Cause Orders had been reduced to the point that only 30 suspensions were likely.

12. COMMUNICATIONS REPORT

Brad Carr highlighted the Alabama Broadcasters Association public education partnership with the Alabama State Bar. He stated that during calendar year 2012, to date, the Alabama State Bar had received \$1,497,000 in broadcast time on radio and TV stations throughout the state of Alabama for its contribution of \$68,333.

13. LAWPAY CREDIT CARD PROCESSING SERVICE MEMBER BENEFIT

Laura Calloway, Director of Service Programs, explained the proposed LawPay member benefit program. She stated that 30 state bars and 47 county bars currently endorse LawPay's credit card processing facility. Ms. Calloway further explained that LawPay understands the needs of lawyers particularly with regard to the distinction between operational accounts and trust accounts. She said that safeguards are taken to ensure that fees are never charged to trust accounts. President McCallum thanked Ms. Calloway and stated that this would be an action item at the next meeting.

14. UNIFORM GUIDELINES FOR ATTORNEY FEE DECLARATIONS

President McCallum asked President-elect Anthony Joseph to explain the work of the committee. President-elect Joseph explained the new proposed guidelines. He stated that Mr. Ricky McKinney, director of the Indigent Defense Services Program was supportive of the proposed guidelines. He praised Commissioner Webb for his leadership and work on the guidelines. President McCallum then recognized Commissioner Broome for comments on the necessity for the guidelines.

A MOTION WAS MADE TO SUSPEND THE RULES TO VOTE ON THE GUIDELINES.

AFTER FURTHER DISCUSSION, THE MOTION WAS WITHDRAWN IN ORDER TO GIVE COMMISSIONERS MORE OPPORTUNITY TO DISCUSS THE GUIDELINES WITH LAWYERS IN THEIR CIRCUITS.

15. RULE III APPLICATIONS

President McCallum stated the following individuals submitted applications for admission pursuant to Rule III of the *Rules Governing Admission to the Alabama State Bar*. Elizabeth C. Cheely (PA); Tene D. Davis (MN); Jennifer M. Frank (GA); Edwin S. Gault (MS); Charles E. Guerrier (OH) and Kimberly K. Tippett (GA). He stated that each of the applicants met the requirements for admission by motion pursuant to Rule III.

COMMISSIONER SMITH MOVED TO ADMIT ELIZABETH C. CHEELY (PA); TENE D. DAVIS (MN); JENNIFER M. FRANK (GA); EDWIN S. GAULT (MS); CHARLES E. GUERRIER (OH) AND KIMBERLY K. TIPPETT (GA). THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

16. CONSIDERATION OF THE ELIMINATION OF THE ALABAMA ESSAY PORTION OF THE BAR EXAM

President McCallum recognized Commissioner Stephens who stated that David Hymer, chairman of the Board of Bar Examiners and who was present at the previous meeting of the commission could not attend today's meeting. Commissioner Stephens reminded the commission that Mr. Hymer had emphasized that the Board of Bar Examiners had recommended to eliminate the Alabama essay portion of the bar exam. President McCallum recognized other commissioners for comments including Commissioner Thompson, a former examiner, who gave his reasons for supporting the elimination of the Alabama essay portion of the bar exam.

COMMISSIONER KNIGHT MOVED TO APPROVE THE RECOMMENDATIONS OF THE BOARD OF BAR EXAMINERS TO ELIMINATE THE ALABAMA ESSAY PORTION OF THE EXAM. THE MOTION WAS SECONDED.

ADDITIONAL QUESTIONS AND FURTHER DISCUSSIONS ENSUED.

THE QUESTION WAS CALLED AND PRESIDENT MCCALLUM ASKED FOR A SHOW OF HANDS ON THE MOTION TO APPROVE THE PROPOSED AMENDMENTS TO RULE VI. (B) OF THE RULES GOVERNING ADMISSION TO THE ALABAMA STATE BAR ELIMINATING THE ALABAMA ESSAY PORTION OF THE EXAMINATION. THE MOTION CARRIED.

(A copy of Rule VI.(B) with the proposed changes as approved included with these minutes as Appendix A.)

17. APPROVAL OF AMENDMENT TO INVESTMENT POLICY

President McCallum asked if there were questions concerning the amendment to modify the investment policy regarding cash fund minimums.

A MOTION WAS MADE BY COMMISSIONER CROW TO APPROVE THE AMENDMENT TO ALLOW FOR THE INVESTMENT ACCOUNT CASH FUND MINIMUM TO FALL BELOW TEN PERCENT FOR OPERATIONAL PURPOSES. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

(A copy of the investment policy as amended is attached as Appendix B).

18. LEGISLATIVE COUNSEL CONTRACT

President McCallum explained that although the legislative counsel position was an item of continuing nature for budgetary purposes, it had been recommended to increase the legislative counsel pay by \$5,000 to \$35,000 for FY 2013. He informed the commission that this new salary figure would be the same as the circuit and district court judges associations were currently paying Ms. Edwards for her services as their legislative counsel.

COMMISSIONER BROOME MOVED TO INCREASE THE LEGISLATIVE COUNSEL CONTRACT AMOUNT TO \$35,000 FOR FY 2013. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

19. APPROVAL OF LEADERSHIP FORUM CLASS 9

Commissioner DePalma discussed the 2013 leadership forum class as recommended by the Leadership Forum Selection Committee. She stated that the individuals recommended for the 2013 class were as follows:

Gray Michael Borden
 John Allen Brinkley
 Ryan Karim Buchanan
 Pamela Lynn Casey
 John William Clark
 Diandra S. Debrosse
 Mary Margaret Williams Fiedler
 William Bains Fleming
 Benjamin Young Ford
 Rachel Abigail Herrin
 Jeremiah Michael Hodges
 Brett Andrew Ialacci
 Andrew Burns Johnson
 Frank Leslie Lambert
 Jonathan William Macklem
 Joseph Brannon Maner
 Ronald Clifford Mendheim
 Mark Bradley Moody
 Abigail Lounsbury Morrow
 Christopher Joseph Nicholson
 Roben Hunt Nutter
 Jaffe Silcott Pickett
 Holly Lynn Sawyer
 Patrick Henry Strong
 Michael Francis Walker
 Stephen Cochran Wallace
 Joshua Byron White
 Melissa Maran White

Justin Glyien Williams
Nathan Philip Wilson

Alternates

Kristin Taylor Parsons
Jack Pershing Faria Russell
Juliana Teixeira Dean
Joshua David Wilson

COMMISSIONER COPELAND MOVED TO ACCEPT THE RECOMMENDATION OF THE LEADERSHIP FORUM SELECTION COMMITTEE FOR THE MEMBERS AND ALTERNATES OF THE 2013 LEADERSHIP FORUM CLASS. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

20. APPROVAL OF THE 2013-2014 BUDGET REQUEST

The Secretary highlighted the budget request stating that the proposed budget for FY 2014 calls for an increase of \$49,000 over the previous year's budget.

COMMISSIONER SMITH MOVED TO APPROVE THE 2013-2014 BUDGET OF \$6,377,229. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

21. 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