

## MINUTES

### ALABAMA STATE BAR BOARD OF BAR COMMISSIONERS MEETING

State Bar Building  
Montgomery, Alabama

Friday, March 14, 2014

#### 1. CALL TO ORDER

President Anthony Joseph 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 Peek gave the invocation.

#### 2. ROLL CALL

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

Halron W. Turner	Christy Crow	Jana Russell Garner
Charles G. Reynolds, Jr.	Terri O. Tompkins	Hays Webb
Phil D. Mitchell	Rocky Watson	Leslie R. Barineau
Barry A. Ragsdale	Robert G. Methvin, Jr.	Teresa G. Minor
Joseph A. Fawal	Brannon Buck	William A. (Pete) Short
Albert Trousdale, II	Thad Yancey, Jr.	Henry A. Callaway, III
Walter H. Honeycutt	Clay A. Lanham	Juan Ortega
Harry V. Satterwhite	George R. Parker	J. Flynn Mozingo
Cole Portis	Jeffery C. Duffey	Lee H. Copeland
K. Scott Stapp	William Randall May	David A. McDowell
John L. Jernigan, III	John M. Peek	Harold Stephens
John A. Brinkley, Jr.	Rebecca K. McKinney	Daryl Burt
Jerry Wayne Baker, Jr.	Braxton W. Ashe	Rebecca Green Thomason
Gregory M. Varner	Alexander M. Smith	Roger W. Pierce
Cooper Shattuck	Meredith S. Peters	Rebecca G. DePalma
LaBarron Boone	Jeanne Dowdle Rasco	Monet M. Gaines
Ashley Swink Fincher	Diandra S. Debrosse	Donald Rhea

The following commissioners were absent:

Jerry L. Thornton	William H. Broome	S. Greg Burge
Augusta S. Dowd	Derrick A. Mills	James R. Beard
Les Pittman	Julia C. Kimbrough	Hamp Baxley
John Earl Paluzzi	F. Patrick Loftin	Allan Chason
Sam Irby	Robert L. Rumsey	Elizabeth Parsons
Jason P. Knight	Robert H. Brogden	J. Milton Coxwell
H. Jerome Thompson	Stephen M. Kennamer	John M. Plunk
Alicia F. Bennett		

In addition, Immediate Past President Phillip McCallum was in attendance. Staff members present included Tony McLain, Diane Locke, Laura Calloway, Ed Patterson, Linda Lund, Christina Butler, Robert Thornhill, Margaret Murphy, Angela Parks, Jeremy McIntire, Mark Moody, Tripp Vickers, Justin Aday and Kelley Lee. Tracy Daniel, Director of the Alabama Law Foundation, Judy Keegan, Director of the Alabama Center for Dispute Resolution and Suzi Edwards, legislative counsel, were also in attendance.

**3. INTRODUCTION OF GUESTS**

President Joseph recognized several guests who were in attendance including: Bill Burns, president of the Blount County Bar Association; Isaac Whorton, president of the Chambers County Bar Association; Steven Williams, president of the Marshall County Bar Association and Clinton Mays, local bar outreach chairman for Marshall County; John Thomason, son of Commissioner Rebecca Thomason and a second year student at Birmingham School of Law. Lynn Biles, local bar outreach chairman for Baldwin County was also introduced. President Joseph recognized Commissioner Smith who reported on the death of former commissioner Wayman Sherrer of Oneonta.

**4. APPROVAL OF THE MINUTES OF JANUARY 10, 2014 ALABAMA STATE BAR BOARD OF COMMISSIONERS MEETING**

President Joseph stated that the minutes of the January 10, 2014 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.

The secretary stated that the first sentence under the "Introduction of Guests" had been corrected to read as follows: "President Joseph recognized Dudley Motlow, president of the Alabama Defense Lawyers Association (ACDLA). Commissioner Broome introduced Amber Ladner, president of the Alabama Criminal Defense Lawyers Association. He commented that Commissioner Duffey was the immediate past president of ACDLA, Commissioner Webb was the vice president and that he was the president-elect."

FOLLOWING THE SECRETARY'S SUGGESTED CORRECTION, COMMISSIONER FAWAL MOVED TO APPROVE THE MINUTES AS CORRECTED OF THE JANUARY 10, 2014 ALABAMA STATE BAR BOARD OF COMMISSIONERS MEETING. THE MOTION WAS SECONDED AND APPROVED UNANIMOUSLY BY VOICE VOTE.

**5. REMARKS OF MR. BILL NEWTON, FINANCE DIRECTOR**

President Joseph introduced Mr. Newton, the state finance director. Mr. Newton discussed the state's financial operations. He informed the commission that state operations total approximately \$20 billion annually. He observed that since fiscal year 2010, this figure had been essentially flat. He noted that federal funds account for 40 percent of the state's receipts and expenditures with state taxes totaling about 45 percent and various license fees accounting for the rest. Mr. Newton stated that Alabama taxes are the 49<sup>th</sup> lowest per capita in the country. He next highlighted the spending side by noting that a third of the state's spending goes to education, one third to healthcare (principally Medicaid) with the rest going to social services (18 percent), transportation

(8 percent) and law enforcement/courts (6 percent). He noted that the federal government provides two thirds of the Medicaid funding while the state provides one third.

Mr. Newton next discussed earmarking and explained that approximately 91 percent of all state funds are earmarked which provides for an extremely restricted budgeting process. He again noted that Alabama is at the extreme in this regard with the next closest state (Michigan) earmarking roughly 50 percent of their funds. Mr. Newton stated that low taxes and extreme earmarking are critical points to understand in Alabama's fiscal operations. He also explained that while most people think there are only two funds in state government (Educational Trust Fund and the General Fund) that there are actually closer to 200 funds which account for all state operational expenses. ETF and GF account for approximately \$8 billion of the over \$20 billion of the state's annual expenditures.

Mr. Newton responded to questions. One question concerned the oil trust fund which Mr. Newton reported currently totals \$3 billion and is professionally managed. He responded to a question about earmarking and whether or not earmarking was statutory. Mr. Newton responded that most of the earmarking was by statute but some earmarking is due to constitutional provisions (e.g. gas and income tax). In response to a question, he explained the budgeting process for universities and noted that state appropriations for the four and two year colleges had shrunk over the past 15-20 years. In response to additional questions, Mr. Newton reported that the state has approximately \$4 billion in debts which is low and as a result, that the state has an excellent AA bond rating. Mr. Newton also explained another aspect that makes the credit rating for the state so high is the constitutional mandate for a balanced budget. Finally, Mr. Newton discussed the Rolling Reserve Act. He said that it applied to the educational trust fund and it is a formula that requires current funding based on a 15 year average and basically works as a budget cap.

President Joseph thanked Mr. Newton for speaking to the Board of Bar Commissioners and for his service to the state of Alabama.

Next, President Joseph recognized Othni Lathram, executive director of the Alabama Law Institute, for an overview of the current legislative session. Mr. Lathram recapped the bills that had already passed the legislature including the LLC law, Tibor and legislation that allows AOC to take credit cards for filing fees statewide, and a comprehensive forfeiture act. He took questions from the commission including one about the status of Carly's Law which he reported had a good chance of passing. Mr. Lathram reported that the judicial reallocation legislation was unlikely to pass this session and would be considered at the next session.

President Joseph thanked Mr. Lathram for attending the meeting and for his hard work at the Alabama Law Institute.

## **6. REPRIMANDS**

6.a. Dalton Kelly Livingston – Pell City, ASB-2011-1483

Mr. Livingston received a public reprimand with general publication for violation of Rules 1.4(b), 1.8(k), 8.4(a) and (g) of the *Alabama Rules of Professional Conduct* (ARPC).

6.b. Heather Lee Friday Boone – Montgomery, ASB-2013-472

Ms. Boone received a public reprimand with general publication for violation of Rules 1.3, 1.4(a) and (b), 8.1(b) and 8.4(a) and (g) *ARPC*.

**7. PRESIDENT'S REPORT**

President Joseph gave a brief report which emphasized the help which the bar has been to the legislature during the current legislative session. He stated that the bar had served as a third party neutral to mediate and resolve several disputes over legislation at the request of legislative leaders. He recognized Immediate Past President Phillip McCallum who reported on the bar's assistance in several specific areas. He praised Mr. Lathram for the great job he had done and Suzi Edwards, legislative counsel for her efforts through the legislative session.

President Joseph thanked Mr. McCallum for serving as a resource for the legislature and the legislative leadership.

Finally, President Joseph noted that Commissioner Phil Mitchell was attending his last commissioner's meeting. He thanked Mr. Mitchell for his service over two terms. The commission gave Mr. Mitchell an ovation.

**8. SECRETARY'S REPORT**

The secretary reported that staff member Kristi Skipper's father had recently died and that Eric Anderson's father was having surgery. He asked the commissioners to keep these staff members and their families in their thoughts and prayers. The secretary next reminded the commissioners of the Inns of Court Summit to be held immediately following lunch in the Balch & Bingham Conference Room. He then explained that he would be asking the board of trustees to pay for the online bar examination course which had been approved by the commission at its previous meeting in January. The secretary then highlighted the first quarter report for FY14. Following his report, he asked if there were any questions and there were none.

**9. OFFICE OF GENERAL COUNSEL REPORT**

Mr. McLain mentioned the foreign student issue that had been discussed at previous meetings with regard to the Alabama State Bar admission rules. He also informed the commission that the supreme court had issued a letter through the clerk of the court stating that the cut-score for the bar exam beginning with the July 2014 administration was being raised to 130 and that automatic re-grading within three points of the cut-score was being eliminated.

**10. DIGITAL COMMUNICATIONS REPORT**

In the absence of Mr. Anderson, President Joseph reported that the online curriculum and consolidated invoice were both on track. He also stated that work on the new website was progressing as well.

**11. EXTERNAL RELATIONS REPORT**

Mr. Patterson discussed the development of possible training programs for young lawyers in conjunction with the Leadership Forum. He also took time to update the commission on this year's Leadership Forum program.

**12. AWARD OF MERIT AND COMMISSIONERS' AWARD NOMINATIONS**

President Joseph stated nominations for the Award of Merit and the Commissioners' Award would be considered at the next meeting. He reminded the commission that these are annual awards and suggested nominees should be forwarded to the secretary.

**13. RULE III APPLICATIONS**

President Joseph reported that there were two applicants requesting admission by motion pursuant to Rule III of the *Rules Governing Admission to the Alabama State Bar*. He stated the applicants were Matthew Paul Pennington, a member of the New Hampshire Bar and Scott W. Barton, a member of the Pennsylvania Bar. He noted that both individuals resided in Alabama and meet all of the requirements of Rule III including character and fitness.

COMMISSIONER CROW MOVED TO ADMIT APPLICANTS MATTHEW PAUL PENNINGTON AND SCOTT W. BARTON FOR MEMBERSHIP IN THE ALABAMA STATE BAR PURSUANT TO RULE III OF THE *RULES GOVERNING ADMISSION TO THE ALABAMA STATE BAR*. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

**14. MILITARY SPOUSE RULE**

President Joseph stated that this matter had been discussed at the last two commission meetings. He noted that following the last meeting, language for a transition period of 18 months following the death of the military spouse had been included in the proposed rule. He reminded the commissioners that this rule would affect a very small group.

COMMISSIONER FAWAL MOVED TO ADOPT THE MILITARY SPOUSE EXCEPTION RULE. HIS MOTION WAS SECONDED.

Discussion ensued following the motion and second including an objection questioning the need for the rule.

FOLLOWING ADDITIONAL DISCUSSION, THE QUESTION WAS CALLED AND THE MOTION WAS APPROVED BY VOICE VOTE.

[A copy of the rule as approved is included with these minutes as Appendix A.]

**15. APPROVAL OF NOMINEES FOR THE ALABAMA BOARD OF COURT REPORTING**

President Joseph reported that the state bar had been requested to fill a vacancy for a partial term on the Alabama Board of Court Reporting. As provided for under the statute creating the board, President Joseph stated that the state bar must recommend the names of three individuals, in this case, to the Governor for consideration and appointment of one of the nominees. He stated that the three names being recommended to the governor were Commissioners Leslie Barineau, Joe Fawal and Jana Garner.

COMMISSIONER MITCHELL MOVED TO APPROVE LESLIE BARINEAU, JOE FAWAL AND JANA GARNER AS NOMINEES TO RECOMMEND TO THE GOVERNOR FOR CONSIDERATION FOR APPOINTMENT TO THE ALABAMA BOARD OF COURT REPORTING. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

**16. CONGRESSIONAL TAX LEGISLATION THAT COULD IMPACT LAW FIRMS**

President Joseph informed the commission that pending legislation in Congress would require law firms and other types of personal service businesses to use the accrual method of accounting instead of the traditional cash receipts and disbursements method. He stated that the American Bar Association has asked state bars to contact their congressional delegation to express opposition to this change.

COMMISSIONER RHEA MOVED TO OPPOSE THE TAX LEGISLATION THAT WOULD FORCE LAW FIRMS TO USE THE ACCRUAL METHOD OF ACCOUNTING INSTEAD OF THE TRADITIONAL CASH RECEIPTS AND DISBURSEMENTS METHOD AND TO AUTHORIZE PRESIDENT JOSEPH TO SEND AN APPROPRIATE LETTER TO ALABAMA'S CONGRESSIONAL DELEGATION EXPRESSING THE ALABAMA STATE BAR'S OPPOSITION TO THE PENDING LEGISLATION. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

**17. COURT OF THE JUDICIARY APPOINTMENT**

President Joseph stated that Billy Melton's term on the Court of the Judiciary had concluded. He reminded the commission that this was one of two positions on the Court of the Judiciary that the Alabama State Bar fills. President Joseph further noted that Mr. Melton had indicated he did not wish to be reappointed and that former state bar president Dag Rowe of Huntsville was being recommended to fill the vacancy.

COMMISSIONER SMITH MOVED TO APPROVE S. DAGNAL ROWE OF HUNTSVILLE TO THE VACANCY CREATED AT THE CONCLUSION OF BILLY MELTON'S TERM ON THE COURT OF THE JUDICIARY. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

**18. ADJOURNMENT**

President Joseph 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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Anthony A. Joseph, President  
Alabama State Bar

ATTEST:

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Keith B. Norman, Secretary  
Alabama State Bar