

MINUTES

ALABAMA STATE BAR BOARD OF BAR COMMISSIONERS MEETING

State Bar Building
Montgomery, Alabama

Friday, March 11, 2016

1. CALL TO ORDER

President Lee Copeland 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. Robert Thornhill gave the invocation.

2. ROLL CALL

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

Halron W. Turner	J. Levi Nichols	Christy Crow
Jana Russell Garner	Charles G. Reynolds, Jr.	Terri O. Tompkins
Hays Webb	William H. Broome	Emily L. Baggett
Dana Grimes	Leslie R. Barineau	John A. Smyth
Barry A. Ragsdale	Robert G. Methvin, Jr.	Augusta S. Dowd
Michael D. Ermert	Allison O. Skinner	Brannon J. Buck
Eric Stephen Heninger	Kenneth Moore	Ralph E. Holt
Thad Yancey, Jr.	Frederick G. Helmsing, Jr.	Juan Ortega
James R. Beard	George R. Parker	Les Pittman
C. Gibson Vance	Jeffery C. Duffey	James David Martin
Donald R. Rhea	Tom Perry, Jr.	William Randall May
Mark S. Boardman	R. Cliff Mendheim	Manish Patel
Tazewell T. Shepard, III	John A. Brinkley, Jr.	Rebekah K. McKinney
M. Clay Martin	Audrey O. Strawbridge	Daryl Burt
Clint L. Maze	Allan Chason	Sam Irby
Steven D. Adcock	Erskine R. Funderburg, Jr.	H. Thomas Heflin, Jr.
Lee F. Knowles	Sharon Hindman Hester	Christy Williams Graham
Roger W. Pierce	Matthew C. Mitchell	Donald Ben Mansell
Gregory M. Varner	Meredith S. Peters	Rebecca DePalma
Kira Fonteneau	Jeanne Dowdle Rasco	Ashley Swink Fincher

The following commissioners were absent:

C. Zack Moore	Clay A. Lanham	James Rebarchak
J. Flynn Mozingo	Anne Malatia Glass	Robert L. Bowers
Eric Coale	F. Patrick Loftin	Jason P. Knight
W. Thomas Chapman, II	Scott L. McPherson	Diandra S. Debrosse
Cooper Shattuck	Alicia F. Bennett	Monet M. Gaines

Also in attendance were President-elect Cole Portis and Immediate Past President Rich Raleigh. Staff members present included Tony McLain, Ed Patterson, Diane Locke, Laura Calloway, Linda Lund, Merinda Hall, Angela Parks, Tripp Vickers, Jeremy McIntire, Mark Moody, Eric Anderson, Kelley Lee and Robert Thornhill. Also in attendance were Tracy Daniel, director of the Alabama Law Foundation and Suzi Edwards, Legislative Counsel.

3. INTRODUCTION OF GUESTS

Guests included George Eubanks, president of the Cherokee County Bar Association; Steven Savarese, president of the Baldwin County Bar Association; and Commissioner Moore's wife, Assistant District Attorney Leslie Moore.

4. APPROVAL OF THE MINUTES OF THE JANUARY 8, 2016 BOARD OF COMMISSIONERS MEETING

President Copeland stated that the minutes of the January 8, 2016 board meeting had been transcribed and circulated prior to the meeting. He asked if there were any corrections, additions or deletions. There were none.

COMMISSIONER SHEPARD MOVED TO APPROVE THE MINUTES OF THE JANUARY 8, 2016 BOARD OF COMMISSIONERS MEETING. THE MOTION WAS SECONDED AND APPROVED BY UNANIMOUS VOICE VOTE.

5. REPRIMANDS

5.a. Kenneth E. Sexton, II, Bessemer, ASB 2013-612

Mr. Sexton received a public reprimand without general publication for violating Rules 1.1, 1.3 and 1.4 of the *Alabama Rules of Professional Conduct (ARPC)*.

5.b. Peter Johnson Davis, Birmingham, ASB 2014-766

Mr. Davis received a public reprimand with general publication and was ordered: to complete counseling from the professional management assistance program; to take 10 hours of continuing legal education training in appellate criminal practice; and to pay a \$750 administrative fee for violating Rules 1.4, 8.1 (a), 8.4 (a) and (g) of the *ARPC*.

5.c. Sidney Moxley Harrell, Jr., Mobile, ASB 2014-1104

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

5.d. Mark Hampton Baxley, Dothan, ASB 2015-762

Mr. Baxley received a public reprimand with general publication for violating Rules 1.1, 1.3, 8.4 (d) and (g) of the *ARPC*.

5.e. Ronald Ray Goleman, Jr., Theodore, ASB 2015-1159

Mr. Goleman received a public reprimand without general publication for violating Rules 1.3, 1.4 (a) and (b) and 8.4 (d) of the *ARPC*.

6. PRESIDENT'S REPORT

The president reported that the Succession Planning Task Force, which has the responsibility to find a replacement for the retiring executive director, had met the previous day. He stated, on advice of counsel, a new standstill agreement had been signed in the matter involving possible litigation that was discussed at the last meeting. The president also announced the appointment of the Election Committee which included the following commissioners: George Parker, David Martin, Monet Gaines, Augusta Dowd and Cooper Shattuck. Finally, President Copeland mentioned that earlier in the week a press conference was held with Attorney General Luther Strange to kick off the Legal Food Frenzy.

7. SECRETARY'S REPORT

The secretary stated that the Department Measurements for 2015 had been included in the meeting materials. He reported that Commissioner Hays Webb was successful in his primary run for district attorney of Tuscaloosa County. The secretary also informed the commission that Commissioner Zack Moore and his wife recently had twins and that Commissioner Brinkley and his wife were expecting their sixth child in May.

8. ANNUAL MEETING REPORT

Mr. Patterson gave a brief update for the annual meeting scheduled for June 22-25 at Baytowne Wharf in Sandestin.

9. OFFICE OF GENERAL COUNSEL REPORT

Mr. McLain briefly discussed the Nichols decision from the 11th Circuit Court of Appeals solidifying the state bar's immunity under the 10th amendment and the Som case decided in the favor of the state bar by the Federal Court for the Middle District of Alabama.

Note: The Action Items that follow were taken up first because President Copeland excused himself from the board room. President-elect Cole Portis, in the absence of the Vice President, conducted the meeting during President Copeland's absence from the board room.

10. RULE III APPLICATIONS

President-elect Portis stated that the following individuals submitted applications for admission by motion pursuant to *Rule III of the Rules Governing Admission* to the Alabama State Bar. They were Jack Mark Dubose, Jr., (TX); Yurie Yeoul Bae (GA); Andrew D. Farley (TX); Fred Hecht (IN); Michael Ross Holden (MN); Jamie Leigh Jordan (VA); Timothy Charles Kingston (WY) and Caroline McKibben Upchurch (MS).

COMMISSIONER RHEA MOVED THE ADMISSION OF JACK MARK DUBOSE, JR., YURIE YEOUL BAE, ANDREW D. FARLEY, FRED HECHT, MICHAEL ROSS HOLDEN, JAMIE LEIGH JORDAN, TIMOTHY CHARLES KINGSTON AND CAROLINE MCKIBBEN UPCHURCH. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

11. ABA HOUSE OF DELEGATES

President-elect Portis informed the commission that the terms of Bobby Poundstone and Rich Raleigh in the ABA House of Delegates would conclude in August at the end of the ABA's Annual Meeting. He stated that both expressed an interest to be reappointed. He said that Judge Caryl Privett's, whose term also expires in August, did not wish to be reappointed. Mr. Portis also informed the commission that Clark Cooper of Birmingham, Alabama's former ABA State Delegate, had expressed interest in filling the vacancy at the conclusion of Judge Privett's term.

COMMISSIONER DOWD MOVED THE ELECTION OF BOBBY POUNDSTONE, RICH RALEIGH AND CLARK COOPER TO THE ABA HOUSE OF DELEGATES WITH THEIR NEW TERMS TO BEGIN AT THE CONCLUSION OF 2016 ABA MEETING. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

12. ALABAMA SECURITIES COMMISSION NOMINATIONS

President-elect Portis explained that the Board of Commissioners recommends three names to the Governor from which the Governor chooses one person to fill the vacancy of the state bar nominated position on the Alabama Securities Commission. He noted that the term of Everette Price concludes in May and that Mr. Price had requested to be nominated for another term. In addition, he reported that Austin Huffaker of Montgomery, Scotty Lewis of Bay Minette and Kelly Brennan of Birmingham were recommended for the commission's consideration in selecting three nominees for the Governor to consider.

President-elect Portis asked if there were any additional nominations from the floor.

COMMISSIONER CROW MOVED TO CLOSE NOMINATIONS. THE MOTION WAS SECONDED AND APPROVED.

President-elect Portis then asked for discussion on each individual under consideration. Following the discussion of each of the four candidates, President-elect Portis outlined the voting procedure. He stated that each commissioner would have three votes to cast for three of the candidates.

PRESIDENT-ELECT PORTIS ASKED FOR A SHOW OF HANDS FOR EACH CANDIDATE. FOLLOWING A TALLY OF THE SHOW OF HANDS FOR EACH OF THE CANDIDATES, PRESIDENT-ELECT PORTIS STATED THAT THE THREE NOMINEES WERE: EVERETTE PRICE, AUSTIN HUFFAKER AND KELLY BRENNAN.

13. APPROVAL OF NOMINATION FOR THE JEANNE MARIE LESLIE SERVICE AWARD

President-elect Portis reported that the Lawyers Assistance Program had recommended Squire Gwin and John Brinkley be approved as recipients of the Jeanne Marie Leslie Service Award at this year's annual meeting.

COMMISSIONER DOWD MOVED TO APPROVE THE LAWYER ASSISTANCE PROGRAM'S RECOMMENDATION THAT SQUIRE GWIN AND JOHN BRINKLEY RECEIVE THE JEANNE MARIE LESLIE SERVICE AWARD FOR 2016. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

14. APPROVAL OF NOMINATIONS FOR THE MAUDE MCLURE KELLY AWARD AND THE SUSAN B. LIVINGSTON LEADERSHIP AWARD

President-elect Portis stated that the Women's Law Section had recommended retired Appellate Court Judge Sharon Yates to receive the Maude McLure Kelly Award and that District Court Judge Tammy Montgomery to receive the Susan B. Livingston Leadership Award.

COMMISSIONER CROW MOVED TO APPROVE THE WOMEN'S LAW SECTION RECOMMENDATIONS OF HON. SHARON YATES FOR THE MAUDE MCLURE KELLY AWARD AND HON. TAMMY MONTGOMERY FOR THE SUSAN B. LIVINGSTON LEADERSHIP AWARD. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

15. REAPPOINTMENT OF BOARD OF BAR EXAMINER MEMBERS

The president-elect reported that the terms of Susan Kennedy and Warren Matthews concluded with the February bar exam. He stated that both had indicated their willingness to serve another four year term as members of the Board of Bar Examiners and new terms commencing with the July 2016 bar exam.

COMMISSIONER IRBY MOVED THE REAPPOINTMENT OF SUSAN KENNEDY AND WARREN MATTHEWS TO FOUR YEAR TERMS AS MEMBERS OF THE BOARD OF BAR EXAMINERS COMMENCING WITH THE JULY 2016 BAR EXAM. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

16. APPOINTMENT OF NEW CHAIR FOR THE BOARD OF BAR EXAMINERS

President-elect Portis stated that the term of Warren Matthews as chair of the Board of Bar Examiners had concluded and that Dan Johnson, a current member of the Board of Bar Examiners, was recommended for appointment as board chair.

COMMISSIONER MENDHEIM MOVED TO APPOINT DAN JOHNSON TO A FOUR YEAR TERM AS CHAIR OF THE BOARD OF BAR EXAMINERS COMMENCING WITH THE JULY 2016 BAR EXAMINATION. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

Note: President Copeland returned to the board room after a short absence and conducted the remaining portion of the meeting.

17. LEGISLATIVE UPDATE

President Copeland recognized former president Phillip McCallum who updated the commission on the title bills pending before both houses in the legislature, specifically SB65 and HB129, SB232 and HB160. Mr. McCallum discussed the insurance department's regulation of lawyer continuing education under the title insurance act that became effective January 1, 2013. He stated that these bills purport to address this and other concerns. President Copeland explained that the proponents of each of the competing set of bills would be given five minutes to discuss their respective bills.

Supporting SB65 and HB 129 was Henry Henzel, president of Attorneys Insurance Mutual of the South (AIM). He stated reasons why it was necessary for the commission to support these bills. He emphasized that the regulation to the practice of law must remain the exclusive jurisdiction of the Alabama State Bar. He noted that the consequence of the title insurance act has been to permit title insurers suing attorneys to get around the two year statute of limitation under the Legal Services Liability Act claiming that writing title insurance is not the practice of law. Mr. Henzel remarked that if the insurance department is permitted to continue regulating this aspect of a lawyer's practice, the sacred right of the attorney client privilege would be jeopardized because there would be a question as to whether an attorney is acting as a title agent rather than a lawyer. Mr. Henzel stated that lawyers not only want to be regulated by the bar, but they also want to know what standards they must follow and whether the protections of the Legal Services Liability Act extend to their work.

Speaking next in favor of SB65 and HB129 was Calvin Poole of Greenville. Mr. Poole stated that the commission should go on record supporting these bills. He said that he has practiced real estate law for many years, and had never heard of a problem until the title insurance act became effective in 2013, and title companies began suing lawyers for poor title work and attempting to get around the shorter statute of limitation under the Legal Services Liability Act. He then proceeded to read a list of boards and commissions where lawyers are plainly exempt from regulation and he urged the commission to support this legislation to exempt lawyers from any regulation by the insurance department.

Ted Hosp, representing the Alabama Land Title Association, spoke on behalf of SB232 and HB160. He explained that these bills were compromise measures that would set up a process to allow lawyers to receive certification from the state bar that would go to the insurance department to satisfy the education requirement under the title act law. Mr. Hosp stated it was his belief that SB65 and HB129 which would exempt lawyers from any regulation by the insurance department, went too far. He said that in his opinion, selling title insurance was not the practice of law although delivering a title opinion was the practice of law. He further stated that the bills supported by AIM would essentially make selling title insurance the practice of law.

President Copeland once again recognized Mr. McCallum. Mr. McCallum summarized the comments by both sides and discussed the complicated nature of the issues being discussed. He stated that because bar members are on both sides of this issue, it was essential for the commission to keep this fact in mind. Mr. McCallum urged the commission to pass a resolution stating that lawyers are regulated by the Supreme Court and that any legislation that would attempt to regulate the legal profession was inappropriate. He explained that this would send the necessary message of what the law is and would be sufficient to apprise legislators of the bar's position with respect to these competing bills.

Following Mr. McCallum's remarks, discussion ensued among the commissioners concerning both sets of bills.

COMMISSIONER IRBY MOVED TO SUSPEND THE RULES IN ORDER TO TAKE UP CONSIDERATION OF THE LEGISLATION OUT OF ORDER AS AN ACTION ITEM. THE MOTION WAS SECONDED.*

PRESIDENT COPELAND ASKED FOR A SHOW OF HANDS AND THE MOTION WAS APPROVED BY THE NECESSARY TWO-THIRDS VOTES.

COMMISSIONER IRBY NEXT MOVED THAT THE BOARD OF COMMISSIONERS OF THE ALABAMA STATE BAR FULLY SUPPORTS PASSAGE OF SENATE BILL 65 AND HOUSE BILL 129. THE MOTION WAS SECONDED.

Further discussion ensued on the main motion.

THE QUESTION WAS CALLED. THE MAIN MOTION WAS APPROVED, WITHOUT OBJECTION BY VOICE VOTE.

President Copeland recognized Commissioner Crow who offered the following supportive resolution:

Alabama lawyers are licensed and regulated by the Alabama Supreme Court. As such, Alabama lawyers are exempt from any current and/or proposed legislation which attempts to change the control of licensing, regulation and/or discipline of Alabama lawyers related to the practice of law.

These licensing and regulatory matters are constitutionally granted to the Alabama Supreme Court as a branch of government. See Article VI §150; Code of Alabama (1975), §34-3-43 and Board of Bar Commissioners of the Alabama State Bar v. State ex rel Baxley, 295 Ala. 100, 324 So. 2d 296 (Ala. 1975).

THE RESOLUTION WAS SECONDED.

Additional discussion ensued.

THE QUESTION WAS CALLED AND THE RESOLUTION WAS APPROVED BY VOICE VOTE.

*Commissioner John Smyth did not take part in the discussion and abstained in all votes.

18. TASK FORCE REPORT ON INCREASING THE LICENSE FEE

Former Commissioner Rocky Watson and chair of the Task Force on Increasing License Fees offered a report on behalf of the task force. He stated that there was an obvious need to increase the bar's license fee because cuts in expenditures and efforts to hold expenditures in check had not eliminated the deficits which the bar has experienced for nine straight years. He reported that the task force recommended a regular five year review of state bar financial needs as well as an immediate \$50 per year increase to meet the bar's current operational costs and to help replenish the bar's reserves.

President Copeland informed the commission that a \$100 annual increase would better support operational needs and replenish the bar's reserves. He explained that \$100 was reasonable because of the ASB's extensive regulatory responsibilities when compared to other state bars.

Following much discussion by commissioners, President Copeland recognized Commissioner Chason who addressed the minority view of the task force requesting a license fee increase of only \$25 a year. Commissioner Chason explained his thoughts and reasons to support a smaller increase.

Task force member Joe Fawal was recognized. He spoke about the recommendations of the task force report. Mr. Fawal said that the recommendation of a \$50 fee increase was a compromise amount which the task force concluded was reasonable given its extensive study and review of state bar finances. Additional comments and questions followed Mr. Fawal's remarks with several commissioners speaking to no increase or a smaller increase in the license fee than recommended by the task force.

Before moving to the next topic, President Copeland reminded commissioners that this was a discussion item and would be considered as an action item at the May meeting.

19. AWARD OF MERIT AND COMMISSIONERS AWARD

President Copeland advised commissioners wishing to nominate someone to receive the Award of Merit or Commissioners' Award to contact the executive director with their suggested nominee.

20. PROPOSED AMENDMENTS TO THE ALABAMA RULES OF DISCIPLINARY PROCEDURE

Mr. McLain reported that the changes, specifically amendments to Rules 8 (a) and (b) and 10 (a) and (b), 18, 26 (h) (2), and 28 (e) of the *Alabama Rules of Disciplinary Procedure*, were of a housekeeping nature and addressed questions raised by the Supreme Court.

COMMISSIONER CROW MOVED TO SUSPEND THE RULES. THE MOTION WAS SECONDED AND APPROVED BY THE NECESSARY TWO-THIRDS VOTES. COMMISSIONER BROOME NEXT MOVED TO APPROVE THE AMENDMENTS TO THE ALABAMA RULES OF DISCIPLINARY PROCEDURE AS OUTLINED. THE MOTION WAS SECONDED AND APPROVED VOICE VOTE.

(A copy of the amendments as discussed and approved are attached to these minutes as Appendix A).

21. SOLO AND SMALL FIRM SECTION MENTORING PROGRAM

Commissioner Irby gave a report on the work of the section and advised commissioners to please respond to Laura Calloway with suggestions or ideas.

22. NON-RESIDENT SECTION TASK FORCE REPORT

Tim Chinaris, task force chair, was unable to attend the meeting. Reporting on his behalf was Commissioner Fincher who stated that the survey conducted by the task force indicated there was great interest in forming a non-resident section. She noted that one fifth of state bar members reside outside of Alabama. Commissioner Fincher stated that the bylaws had been drafted and provide for dues in the amount of \$20.

COMMISSIONER DEPALMA MOVED TO SUSPEND THE RULES IN ORDER TO APPROVE THE PROPOSED BYLAWS AND TO AUTHORIZE THE RECOMMENDED DUES OF \$20. THE MOTION WAS SECONDED AND APPROVED BY THE NECESSARY TWO-THIRDS VOTES.

COMMISSIONER CROW MOVED TO APPROVE THE PROPOSED BYLAWS FOR THE NON-RESIDENT MEMBER SECTION AS WELL AS THE RECOMMENDED DUES OF \$20. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

[A copy of the section bylaws as discussed and approved are attached to these minutes as Appendix B.]

23. ADJOURNMENT

President Copeland 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.

Lee H. Copeland, President
Alabama State Bar

ATTEST:

Keith B. Norman, Secretary
Alabama State Bar