

MINUTES

ALABAMA STATE BAR BOARD OF BAR COMMISSIONERS MEETING

State Bar Building
Montgomery, Alabama

Friday, January 20, 2017

1. CALL TO ORDER

President Cole Portis 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 Jana Garner gave the invocation.

2. ROLL CALL

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

Halron W. Turner	Courtney R. Pothoff	Jana Russell Garner
Larry W. Morris	Terri O. Tompkins	Dana Grimes
Leslie R. Barineau	Barry A. Ragsdale	Robert G. Methvin, Jr.
LaBella S. Alves	Michael D. Ermert	Allison O. Skinner
Erik Stephen Heninger	Kenneth Moore	Ralph E. Holt
Frederick G. Helmsing, Jr.	William R. Lancaster	Bryan E. Comer
James Rebarchak	Charles C. Tatum, Jr.	Les Pittman
J. Flynn Mozingo	C. Gibson Vance	J. David Martin
Donald R. Rhea	Tom Perry, Jr.	William Randall May
Mark S. Boardman	Robert L. Bowers	Rebekah K. McKinney
Audrey O. Strawbridge	J. Daryl Burt	Clint L. Maze
J. Lynn Perry	Sam Irby	Erskine R. Funderburg, Jr.
H. Thomas Heflin, Jr.	Lee F. Knowles	Christy Williams Graham
Andrew D. Stanley	Diandra S. Debrosse	R. Cooper Shattuck
Rebecca G. DePalma	Karen L. Laneaux	Kira Fonteneau
Jeanne Dowdle Rasco	Monet M. Gaines	Brannon J. Buck

The following commissioners were absent:

J. Levi Nichols	Hays Webb	William H. Broome
Emily L. Baggett	John A. Smyth, III	Ashley Swink Fincher
Thad Yancey, Jr.	C. Zack Moore	George R. Parker
Jeffery C. Duffey	Anne Malatia Glass	R. Cliff Mendheim
Eric Coale	Manish H. Patel	Tazewell T. Shepard, III
John A. Brinkley, Jr.	M. Clay Martin	Steven D. Adcock
Roy W. Williams, Jr.	Sharon Hindman Hester	W. Thomas Chapman II
Matthew C. Mitchell	Donald Ben Mansell	Gregory M. Varner
Scott L. McPherson	Meredith S. Peters	

Also in attendance were President-elect Augusta Dowd, Immediate Past President Lee Copeland and board counselor Richard J.R. Raleigh, Jr. Staff members in attendance were: Diane Locke, Robert Thornhill, Ed Patterson, Linda Lund, Merinda Hall, Justin Aday, Eric Anderson, Laura Calloway, Mark Moody, Jeremy McIntire, Margaret Murphy and Angela Parks. Also in attendance was Suzi Huffaker, legislative counsel, Tracy Daniel, director of Alabama Law Foundation as well as Parker Miller, president of the Young Lawyers Section.

3. APPROVAL OF THE MINUTES OF THE OCTOBER 28, 2016 BOARD MEETING

President Portis stated that the minutes of the October 28, 2016 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 MAZE MOVED TO APPROVE THE MINUTES OF THE OCTOBER 28, 2016 BOARD OF COMMISSIONERS MEETING. THE MOTION WAS SECONDED AND APPROVED BY UNANIMOUS VOICE VOTE.

4. REPRIMANDS

4.a. Patricia Sue Lackey, Scottsboro, ASB 2015-1767

Ms. Lackey received a public reprimand with general publication and with all costs taxed for violating Rule 1.1, 8.4 (a), (d) and (g) of the *Alabama Rules of Professional Conduct (ARPC)*.

4.b. Mickey Lamar Johnson, Pelham, ASB 2016-346

Mr. Johnson received a public reprimand with general publication for violating Rules 1.3, 1.4 (a), (b) and 1.6 (d) of *ARPC*.

4.c. Frank Leon Parker, Jr., Mobile, ASB 2016-505

Mr. Parker received a public reprimand with general publication for violating Rules 1.1, 1.3, 1.4 (a), (b) and 1.5 (b), (c), 1.5 (a), (e) and 1.6 (d) of *ARPC*.

4.d. Joe Morgan Reed, Montgomery, ASB 2016-635

Mr. Reed received a public reprimand with general publication for violating Rules 5.3 and 7.3 of *ARPC*.

5. PRESIDENT'S REPORT

President Portis stated that the lawyer legislator breakfast was scheduled for February 15 at 7:30 a.m. It will be held at the RSA Terrace. He also reported on the first Lawyer University (Marketing 101) meeting held the previous day. He stated that three to four more seminars would be held in the next few months. The president then praised the Huntsville/Madison County Bar Association and its health plan which has allowed more than one hundred Alabama lawyers outside of Madison County to become affiliated with it. He also discussed a new statewide initiative which will provide new suitcases for

foster care children across the state and reported that a strategic plan retreat would be upcoming.

President Portis then called on President-elect Augusta Dowd for an update. President-elect Dowd informed the commission that the “Friends of McCalla” ethics opinion proposed by the Ethics Commission had been withdrawn. She stated that many associations including the Alabama State Bar had filed responses that were critical of the proposed opinions interpretation of the ethics law and the definition of “principal.” President Portis next updated the commission on the Office of General Counsel since the death of General Counsel Tony McLain. He praised the work of the three assistant general counsels, Jeremy McIntire, Mark Moody and Tripp Vickers. He explained that during the coming weeks, he hoped an interim general counsel could be appointed who would serve until the search for a permanent general counsel could be concluded. President Portis also stated that the report by the team from the American Bar Association Standing Committee on Lawyer Discipline had been transmitted to the Supreme Court and that he hoped to be able to review and report on it very soon.

6. SECRETARY REPORT

The secretary reported that the State Comptroller had reduced the travel mileage reimbursement rate to 53.5 cents for 2017. He stated that two memorial resolutions had been received from the Mobile Bar Association for inclusion in the Alabama State Bar Book of Memorial Resolutions to honor Justin Wayne Parsons and W. Boyd Reeves.

COMMISSIONER DEBROSSE MOVED TO ACCEPT THE RESOLUTIONS FROM THE MOBILE BAR ASSOCIATION IN MEMORY OF JUSTIN WAYNE PARSONS AND W. BOYD REEVES AND PLACE THEM IN THE ALABAMA STATE BAR BOOK OF MEMORIAL RESOLUTIONS. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

The secretary stated that a memorial resolution had also been prepared honoring the late Tony McLain. The secretary read the resolution at length:

WHEREAS, James Anthony McLain was born on September 25, 1951 and departed this life on January 1, 2017 in Montgomery, Alabama at the age of 65; and

WHEREAS, the Board of Commissioners of the Alabama State Bar desires to recognize and memorialize his outstanding record of service as a lawyer, assistant attorney general and general counsel of this association.

NOW, THEREFORE, BE IT REMEMBERED that Tony McLain served this profession well through his wisdom, leadership and professionalism as an assistant general counsel and for more than 21 years, as its general counsel.

Tony was born in Headland, Alabama, graduating from Headland High School in 1969. He received his undergraduate degree from Auburn University and his law degree from the Cumberland School of Law. Following law school, Tony served as assistant attorney general during the terms of Attorney General Bill Baxley and Charlie Graddick. He then entered private practice, opening his own firm in Montgomery, McLain and Hampton, and practiced law for eight years prior to joining the state bar as assistant general counsel in 1988 and then being named as general counsel in 1995.

Tony served as president of the Cumberland School of Law National Alumni Association and was honored in 2014 for his many years of dedication and distinguished service to Alabama's legal profession with the creation by the Alabama State Bar of an award named in his honor - the J. Anthony "Tony" McLain Professionalism Award - and for which he was named as its first recipient.

BE IT FURTHER REMEMBERED that Tony McLain served his profession and the Alabama State Bar with great humility and dedication. He enforced *The Alabama Rules of Professional Conduct* with great compassion for those lawyers who strayed from the straight and narrow. He willingly offered his advice and wisdom to fellow lawyers seeking guidance to ethically conduct their practices and represent their clients. Tony leaves surviving him his wife, Leah, son Ben, stepdaughter Meleah, grandson John Ashton, sister, brother and brother-in-law, as well as nieces and nephews.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Alabama State Bar meeting this day assembled that the life of James Anthony McLain be recognized as one of deep dedication to the legal profession of this state, the Alabama State Bar and his family, and that his death represents a great loss to each.

BE IT FURTHER RESOLVED that this resolution be recorded in the permanent minutes of this association.

FOLLOWING THE SECRETARY'S READING OF THE MEMORIAL RESOLUTION HONORING TONY MCLAIN, IT WAS MOVED AND THE BOARD OF BAR COMMISSIONERS ADOPTED THE RESOLUTION BY ACCLAMATION.

6. **FINANCE REPORT**

Finance Director Merinda Hall reviewed the first quarter report for 2016-2017 and reported that the bar had received an unqualified audit for FY2015-2016.

7. **ADMISSIONS REPORT**

Admissions Director Justin Aday reported that applications for admission over the last five years had remained essentially flat and the number of individuals passing the bar exam was down. He also reported that the new bar exam fee structure had resulted in a savings to the bar by having candidates pay the National Conference of Bar Examiners directly for their NCBE reports and that the fee increase had stabilized the financial condition of the department as well as allowed the implementation of the online application process which he estimated had cut processing time in half.

8. **DIGITAL COMMUNICATIONS REPORT**

Digital Communications Director Eric Anderson reported that the new phone system had been installed and that 48 percent of the members had paid their CFI (combined fee invoice) online with six percent paying their fees with the new voucher process. He also reported that an online discipline index would soon be implemented and that the website survey had been completed. He stated that the results will provide good information for enhancing the state bar website.

9. **ONLINE LEGAL SERVICES PROVIDER**

President Portis called on past president Rich Raleigh to provide an informational report about LegalZoom, Avo and similar online providers.

10. **LEGISLATIVE UPDATE**

Legislative Counsel Suzi Huffaker reported that the new legislative session will commence on February 7th. She discussed several areas that the bar would be monitoring during the upcoming legislative session. Ms. Huffaker stated that she had had several meetings with Acting Chief Justice Lyn Stuart and other court officials concerning the court budget. She also apprised the commission of several bills that had been pre-filed that could impact the state's judicial system.

11. **PRO BONO MONTH REPORT**

Committee Chair Kelly McTear described the efforts of the state's law schools during last October's celebration and introduced student leaders Kristina Gubbles and Depri Hale of Cumberland Law School and NaTasha Sands from Jones Law School.

12. **DIGITAL COMMUNICATIONS COMMITTEE REPORT**

Jon Townsend discussed the work of the current committee to convert the bar's digital communications policies and procedures from a 40 page document to approximately 11 pages. He discussed the various aspects of the condensed policies.

FOLLOWING HIS REPORT, COMMISSIONER PERRY MOVED TO SUSPEND THE RULES IN ORDER FOR THE COMMISSION TO CONSIDER THIS MATER OUT OF ORDER. THE MOTION WAS SECONDED AND APPROVED BY THE NECESSARY TWO THIRDS VOTE.

COMMISSIONER RUSSELL MOVED TO ADOPT THE REDRAFTED DIGITAL COMMUNICATIONS POLICIES AND PROCEDURES AS PRESENTED. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

[A copy of the Digital Communications Policies and Procedures as adopted is included with these minutes as Appendix A.]

13. **RULE III APPLICATIONS**

The President stated that 11 individuals had requested admission by motion pursuant to Rule III of the *Rules Governing Admission to the Alabama State Bar*. He stated they were Brian Joseph Chapuran, (TN); Christina DiGiannantonio, (GA); Emily Camille Rutledge Early, (GA); Jason Andrew Hartsough, (GA); Daniel Matthew Murdock, (GA); Daniel Anthony Necci, (WI); William David Ross, (MS); Amanda Douglas Summerlin (MS); Brett Chandler Tyler (GA); Elizabeth Whipple (GA) and Matthew Miles Williams (MS). The President reported that each candidate had met the requirements of Rule III in order to be considered for admission.

COMMISSIONER HEFLIN MOVED THE ADMISSION BY MOTION OF BRIAN JOSEPH CHAPURAN, CHRISTINA DIGIANNANTONIO, EMILY CAMILLE RUTLEDGE EARLY, JASON ANDREW HARTSOUGH, DANIEL MATTHEW MURDOCK, DANIEL ANTHONY NECCI, WILLIAM DAVID ROSS, AMANDA DOUGLAS SUMMERLIN, BRETT CHANDLER TYLER, ELIZABETH WHIPPLE AND MATTHEW MILES WILLIAMS TO 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. LEGAL SERVICES ALABAMA BOARD VACANCY

Charles Price, II and Cassandra Adams were both nominated for the vacancy. President Portis asked if there were any further nominations.

COMMISSIONER IRBY MOVED TO CLOSE THE FLOOR FOR NOMINATIONS. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

THE PRESIDENT ASKED FOR A SHOW OF HANDS FOR EACH OF THE CANDIDATES. FOLLOWING THE VOTE, PRESIDENT PORTIS ANNOUNCED THAT MS. ADAMS HAD RECEIVED THE MOST VOTES.

15. APPOINTMENT OF BOARD OF BAR EXAMINERS MEMBERS

The commission was informed that the terms of three members of the Board of Bar Examiners, Ed Gentle, David Hymer and Aldos Vance concluded with the administration of the February 2017 bar examination.

COMMISSIONER MAZE MOVED TO RE-ELECT ED GENTLE, DAVID HYMER AND ALDOS VANCE TO NEW FOUR YEAR TERMS ON THE BOARD OF BAR EXAMINERS COMMENCING WITH THE ADMINISTRATION OF THE JULY 2017 BAR EXAMINATION. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

16. ADR COMMISSION VACANCIES

President Portis stated that Debra Leo and Boyd Miller had been nominated to fill the two vacancies on the ADR Commission.

COMMISSIONER MAZE MOVED TO APPOINT DEBRA LEO AND BOYD MILLER TO THE ALABAMA DISPUTE RESOLUTION COMMISSION. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

17. FILLING THE REMAINDER JUDICIAL INQUIRY COMMISSION TERM OF PRESIDENT-ELECT AUGUSTA DOWD UPON HER RESIGNATION FROM JIC

The president reported that former bar commissioner Maibeth Porter had been recommended to fill the remaining portion of President-elect Augusta Dowd's term on

the Judicial Inquiry Commission upon her resignation. He stated that the term would conclude in July 2019.

COMMISSIONER GARNER MOVED TO CLOSE NOMINATIONS AND TO APPOINT MAIBETH PORTER TO FILL THE UNEXPIRED TERM OF PRESIDENT-ELECT AUGUSTA DOWD UPON HER RESIGNATION FROM THE JUDICIAL INQUIRY COMMISSION. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

18. SUCCESSION PLANNING TASK FORCE REPORT

President Portis recognized Cooper Shattuck to inform the commission that the task force had unanimously recommended former bar president Phillip McCallum to succeed the current executive director upon his retirement.

THE REPORT WAS ACCEPTED AND UNANIMOUSLY APPROVED BY THE BOARD OF BAR COMMISSIONERS.

19. LITIGATION UPDATE

President Cole Portis stated that it was necessary for there to be an executive session in order to hear from Dave Boyd, the attorney representing the state bar, concerning potential litigation affecting the state bar and several current and former staff members. Mr. Boyd requested that for purposes of attorney client privilege, it was necessary for the commission to move to executive session. Mr. Boyd furnished a lawyer's statement pursuant to *Alabama Code Section 36-25-A-7(a)(3)*, which is incorporated herein and made a part of these minutes and appears as Appendix B.

President Portis stated that the session would last approximately 30 minutes and that the commission would resume its regular meeting following the executive session. He asked for a motion calling for the executive session so that Mr. Boyd could properly advise the commission.

COMMISSIONER MAZE MOVED, WITHOUT OBJECTION, THAT THE BOARD OF COMMISSIONERS ENTER INTO EXECUTIVE SESSION. THE MOTION WAS SECONDED AND, BY A SHOW OF HANDS, APPROVED UNANIMOUSLY.

All non-board members were excused from the board room for the duration of the executive session.

AT THE CONCLUSION OF THE EXECUTIVE SESSION, COMMISSIONER MAZE OFFERED A MOTION AUTHORIZING PAYMENT OF \$50,000 TO SETTLE ANY THREATENED FOR FUTURE LITIGATION IN THE MATTER THAT WAS DISCUSSED IN EXECUTIVE SESSION. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

20. ADJOURNMENT

President Portis 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.

J. Cole Portis, President
Alabama State Bar

ATTEST:

Keith B. Norman, Secretary
Alabama State Bar