

## MINUTES

### ALABAMA STATE BAR BOARD OF BAR COMMISSIONERS MEETING

State Bar Building  
Montgomery, Alabama

Friday, April 3, 2009

#### 1. CALL TO ORDER

President Mark White convened this meeting of the Alabama State Bar Board of Commissioners at 9:30 a.m. in the board room at the Alabama State Bar building in Montgomery, Alabama. President White informed the Commission that Commissioners Malcom and Walker recently had health related issues as did the wife of Commissioner Trent and the father-in-law of Commissioner Spruell. He asked that the commissioners keep each of these individuals in their thoughts. Commissioner Bennett gave the invocation.

#### 2. ROLL CALL

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

Christy Crow	John M. Gruenewald	Phil D. Mitchell
S. Greg Burge	Phillip W. McCallum	Greg Hawley
Joseph A. Fawal	Jim Pratt	William A. (Pete) Short
Richard W. Whittaker	Henry A. Callaway, III	William M. Cunningham
Billy C. Bedsole	Juan Ortega	Mary Margaret Bailey
James R. Beard	Les Hayes, III	Cole Portis
Sim Penton	K. Scott Stapp	Brian D. Mann
Joseph A. Morris	John L. Jernigan, III	John M. Peek
Harold Stephens	L. Thomas Ryan, Jr.	R. Wyatt Howell
Kenneth E. White, III	John C. Gullahorn	Allan Chason
Elizabeth Parsons	John M. Kennemer	Jason P. Knight
Eddie Beason	Robert T. Meadows, III	Gerald R. Paulk
Alexander M. Smith	Walter E. McGowan	Claude E. Hundley, III
Merceria Ludgood	Alicia F. Bennett	LaBarron Boone

The following Commissioners were absent:

Ronnie E. Keahey	Michael E. Jones	J. Garrison Thompson
Randall S. Haynes	Cooper Shattuck	Alyce M. Spruell
W. N. (Rocky) Watson	Anthony A. Joseph	Maibeth J. Porter
Robert E. Moorer	Albert J. Trousdale, III	James H. Anderson
Donald R. Jones, Jr.	Lee H. Copeland	F. Michael Haney
Ramona Morrison	Richard J. R. Raleigh, Jr.	Ronald H. Strawbridge, Jr.
Tut Wynne	Robert L. Rumsey	Buddy Lee
J. Milton Coxwell, Jr.	Christopher E. Malcom	Jere C. Trent
David F. Law	Deborah Byrd Walker	Pamela H. Bucy
Kesa Johnston	Kelly T. Lee	Jack Neal

President-elect Tom Methvin and Immediate Past President Sam Crosby were present. Staff members present included Tony McLain, Ed Patterson, Brad Carr, Angela Parks, Linda Lund, Sam Partridge and Robby Lusk. Tracy Daniel, Executive Director of the Alabama Law Foundation, was also in attendance.

3. **INTRODUCTION OF GUESTS**

President White introduced Kim Adams and Suzie Edwards, co-legislative counsel for the bar. Commissioner Chason introduced Jessica McDill, president of the Baldwin County Bar Association.

4. **APPROVAL OF THE MINUTES OF THE BOARD OF COMMISSIONERS MEETING FOR FEBRUARY 6, 2009**

President White stated that the minutes of the Board of Commissioners meeting for February 6, 2009 had been disseminated to the board. He asked if there were any corrections, additions or deletions. There were none.

COMMISSIONER GRUENEWALD MOVED TO APPROVE THE MINUTES OF THE BOARD OF COMMISSIONERS MEETING FOR FEBRUARY 6, 2009. THE MOTION WAS SECONDED AND THE MINUTES WERE APPROVED BY UNANIMOUS VOICE VOTE.

5. **PRESIDENT'S REPORT**

President White read a special Public Commendation of Assistant General Counsel Sam Partridge for the caring and professional manner in which he carries out his responsibilities as a prosecutor in the disciplinary process.

[A copy of this Public Commendation is attached to these minutes as Appendix A.]

President White next recognized retiring commissioners. They included Michael E. Jones, 2<sup>nd</sup> Circuit; Alyce M. Spruell, 6<sup>th</sup> Circuit, Place 2; Anthony Joseph, 10<sup>th</sup> Circuit, Place 1; Greg Hawley, 10<sup>th</sup> Circuit, Place 5; Billy Cunningham, 13<sup>th</sup> Circuit, Place 2; James Anderson, 15<sup>th</sup> Circuit, Place 2; Joey Morris, 20<sup>th</sup> Circuit; John Gullahorn, 27<sup>th</sup> Circuit; Gerald Paulk, 38<sup>th</sup> Circuit and Pamela H. Bucy, At-Large, Place 7. The retiring commissioners received an ovation from the other members of the board.

President White then announced the members of the Nominating Committee: Commissioners Billy Bedsole, Kelly Lee and John Gruenewald.

President White informed the commission that the American Bar Association report on the Judicial Discipline Program had been sent to the Supreme Court. He told the commission that he planned to write the court and ask the court to share the report with the bar.

President White stated that he has been in contact with Professor Bo Cole of Cumberland Law School to seek his assistance with the recommendations made in the ABA report. He noted that Professor Cole was the principle author of the original constitutional provisions in judicial article establishing the Judicial Inquiry Commission, the Court of the Judiciary and the original Rules of Procedure for both bodies.

President White informed the Commission that bar member and nun Sister Lynn McKenzie had questioned the Department of Human Resources interpretation of an Ethics Commission opinion that would bar lawyers from qualifying as foster parents. President White stated that he had sent a letter to the Ethics Commission asking that lawyers not be singled out and excluded from serving as foster parents because of DHR's unfortunate interpretation of the Ethics Commission's opinion.

Finally, President White informed the commission that Linda Lund, Director of the Volunteer Lawyers Program, had recently received the NALS Foundation Scales of Justice Award from the Montgomery Area Legal Secretaries during Legal Professionals Week.

**6. SECRETARY'S REPORT**

The Secretary introduced Renee Avery, the new lawyer referral secretary.

**7. COMMUNICATIONS REPORT**

There was no Communications Report.

**8. PROGRAMS UPDATE**

Assistant Executive Director Ed Patterson gave a brief report on the Leadership Forum 2009 and the annual meeting slated for July at the Grand Hotel.

**9. OGC UPDATE**

General Counsel Tony McLain reported that the lawyer advertising rule 7.3(b)(1) regarding direct mail solicitation had been approved by the Supreme Court. He further noted that the Supreme Court confirmed no action was to be taken at this time on the remaining advertising rules.

**10. LEGISLATIVE UPDATE**

President White gave the commission a legislative update. He spoke about the indigent defense bill and gave examples of why more oversight of the indigent defense system in Alabama was needed. He pointed out that the indigent defense legislation would not create a statewide public defender system but would attempt to deal with the

sky-rocketing indigent defense costs which have increased from \$40 million to \$70 million in three years. He stated that the bar's support of indigent defense legislation was an effort to be proactive in addressing this serious problem. He then discussed the minimum experience bill for judges and the bar exam fee increase bill. Following the president's remarks, there were several comments by commissioners regarding the legislation.

**11. JUDICIAL AWARD OF MERIT**

President White stated that the Judicial Conference Committee had recommended that Associate Justice Champ Lyons receive the Judicial Award of Merit for 2009.

COMMISSIONER BEDSOLE MOVED TO ACCEPT THE RECOMMENDATION OF THE JUDICIAL CONFERENCE COMMITTEE RECOMMENDING THAT THE HONORABLE CHAMP LYONS RECEIVE THE JUDICIAL AWARD OF MERIT FOR 2009. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

**12. ELECTION OF DELEGATES FOR THE ABA HOUSE OF DELEGATES**

President White noted that there were two delegate positions up for election. He remarked that the positions are currently held by Commissioner Ken White and young lawyer member Navan Ward. President White stated that both individuals had indicated their willingness to continue as members of the House of Delegates if the commission was inclined to reelect them. He also stated that the new two year terms would commence at the conclusion of this year's ABA meeting in August.

President White opened the floor for nominations in addition to Commissioners White and Ward.

COMMISSIONER CROW MOVED TO CLOSE NOMINATIONS AND TO ACCEPT THE TWO NOMINEES FOR THE TWO ABA DELEGATE POSITIONS. THE MOTION WAS SECONDED AND APPROVED VOICE VOTE.

**13. APPROVAL OF TRI-STATE RESOLUTION HONORING ELEVENTH CIRCUIT COURT OF APPEALS JUDGE PHYLLIS A. KRAVITCH**

President White stated that the Eleventh Circuit Court of Appeals meeting would be held in Birmingham in May. He informed the Commission that the states of Florida, Georgia and Alabama would be presenting a resolution to the Honorable Phyllis A. Kravitch during the meeting. President White remarked that the resolution would be signed by the bar presidents of Florida, Georgia and Alabama. He noted that a resolution authorizing him to sign on behalf of the Alabama State Bar was needed.

COMMISSIONER PRATT MOVED TO AUTHORIZE PRESIDENT WHITE TO SIGN THE TRI-STATE RESOLUTION OF THE STATE BARS OF FLORIDA, GEORGIA AND ALABAMA HONORING ELEVENTH CIRCUIT COURT OF APPEALS JUDGE PHYLLIS A. KRAVITCH. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

14. **WOMEN'S LAW SECTION RECOMMENDATION FOR THE MAUD MCLURE KELLY AWARD**

President White stated that the Women's Law Section recommended Frankie Fields Smith to receive this award for 2009.

A MOTION WAS MADE BY COMMISSIONER LUDGOOD AND SECONDED BY COMMISSIONER CUNNINGHAM TO APPROVE THE WOMEN'S SECTION AWARDING THE MAUD MCLURE KELLY AWARD TO FRANKIE FIELDS SMITH FOR 2009. THE MOTION WAS APPROVED BY VOICE VOTE.

15. **ON-LINE DISCUSSION GROUP GUIDELINES**

President White stated that the on-line discussion group guidelines were discussed at the last meeting. He asked if there were any questions concerning the guidelines.

COMMISSIONER BEDSOLE MOVED TO APPROVE THE ON-LINE DISCUSSION GROUP GUIDELINES. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

[A copy of the On-Line Discussion Group Guidelines as approved are attached to these minutes as Appendix B.]

16. **RULE III ADMISSIONS**

President White stated that Meagan Helen Eshbaugh (D.C. Circuit), Peter Brian Hoffman (Georgia), Brenda Lee McCann (Tennessee), Michelle Guthrie Whitelaw (Georgia), Russell Todd Abney (Georgia), Margaret Lynn Baxley (Mississippi) and William Duane Baxley (Mississippi) had petitioned for admission under Rule III, *Rules Governing Admission to the Alabama State Bar*. He stated that each candidate complied with the requirements of Rule III including all of the character and fitness requirements.

COMMISSIONER FAWAL MOVED TO ADMIT MEAGAN HELEN ESHBAUGH, PETER BRIAN HOFFMAN, BRENDA LEE MCCANN, MICHELLE GUTHRIE WHITELAW, RUSSELL TODD ABNEY, MARGARET LYNN BAXLEY AND WILLIAM DUANE BAXLEY. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

17. **GEICO Affinity Agreement**

President White introduced Kate Musso, chair of the Insurance Programs Committee. Ms. Musso explained the details of the affinity program which would provide bar members with an eight percent discount for automobile and homeowners insurance as compared to regular customers. She stated that the program had been adopted by 10 other state bars.

COMMISSIONER HAWLEY MOVED TO APPROVE THE GEICO AFFINITY PROGRAM AGREEMENT. THE MOTION WAS SECONDED.

President White asked if there was any discussion. Discussion ensued concerning different aspects of the agreement including whether or not a mandatory arbitration provision was included in the agreement. Ms. Musso stated that she did not believe there was a mandatory arbitration provision in the individual agreements but she could find out.

A MOTION TO AMEND THE ORIGINAL MOTION WAS MADE MAKING APPROVAL OF THE AFFINITY AGREEMENT CONTINGENT ON THERE BEING NO MANDATORY ARBITRATION PROVISION IN THE POLICIES. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

PRESIDENT WHITE ASKED FOR A VOTE ON THE MAIN MOTION, AS AMENDED. THE MAIN MOTION WAS APPROVED BY VOICE VOTE.

[A copy of the affinity agreement is attached to these minutes as Appendix C.]

#### **18. ELECTION OF AT-LARGE COMMISSIONERS**

President White reviewed the current demographics of the Board of Bar Commissioners. He noted that three at-large commission positions needed to be filled. He stated that Commissioner Bucy had chosen not to seek re-appointment but that Commissioners Ludgood and McGowan were seeking re-appointment. President White read the names of the other applicants seeking appointment. They were as follows: Monet McCorvey Gaines, Montgomery; David K. Howard, Florence; Allison O'Neal Skinner, Birmingham; Latanishia Watters, Birmingham and Lance J. Wilkerson, Birmingham. President White stated that an application had been received from Roger H. Bedford, Jr. of Russellville but that Mr. Bedford had withdrawn his application. President White then stated that the names of all seven individuals seeking appointment or re-appointment would be submitted to the commission for consideration. He further explained that each commissioner would have three votes and only three votes to cast for the three candidates of their choice. The incumbent candidates were excused from the board room prior to the vote.

President White asked for comments concerning each of the candidates for the at-large positions. Discussion on each of the candidates ensued.

FOLLOWING THE DISCUSSION, PRESIDENT WHITE ASKED FOR A VOTE ON EACH OF THE CANDIDATES. THE VOTE WAS CONDUCTED BY RAISED HANDS AND AFTER TABULATING THE VOTES FOR EACH OF THE SEVEN APPLICANTS, PRESIDENT WHITE DECLARED THE FOLLOWING INDIVIDUALS HAD BEEN ELECTED AS COMMISSIONERS: DAVID K. HOWARD, MERCERIA LUDGOOD AND WALTER E. MCGOWAN.

Commissioners Ludgood and McGowan returned to the Board Room. President White thanked the Commission and congratulated Commissioners Ludgood and McGowan on their reappointment.

**19. 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