

MINUTES

ALABAMA STATE BAR BOARD OF BAR COMMISSIONERS MEETING

State Bar Building
Montgomery, Alabama

Friday, September 19, 2014

1. CALL TO ORDER

President Rich Raleigh 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 Portis 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
William H. Broome	Emily Baggett	S. Greg Burge
Barry A. Ragsdale	Augusta S. Dowd	Allison O. Skinner
Kenneth Moore	Ralph E. Holt	Thad Yancey, Jr.
Henry A. Callaway, III	Clay A. Lanham	Juan Ortega
James Rebarchak	George R. Parker	Les Pittman
J. Flynn Mozingo	Cole Portis	David Martin
Tom Perry, Jr.	William Randall May	Anne Malatia Glass
Robert L. Bowers, Jr.	Cliff Mendheim	Eric Coale
Thomas B. Albritton	Tazewell T. Shepard, III	John A. Brinkley, Jr.
Jerry Wayne Baker, Jr.	Rebecca K. McKinney	Daryl Burt
Sam Irby	Erskine R. Funderburg, Jr.	H. Thomas Heflin, Jr.
Lee F. Knowles	Christy Williams Graham	Roger W. Pierce
Diandra S. Debrosse	Meredith S. Peters	Rebecca G. DePalma
Kira Fonteneau	Jeanne Dowdle Rasco	Monet M. Gaines
Ashley Swink Fincher		

The following commissioners were absent:

Jerry L. Thornton	Leslie R. Barineau	Robert G. Methvin, Jr.
Teresa G. Minor	Brannon Buck	Derrick A. Mills
Walter H. Honeycutt	James R. Beard	Jeffery C. Duffey
Donald Rhea	Julia C. Kimbrough	John Earl Paluzzi
F. Patrick Loftin	Allan Chason	Robert L. Rumsey
Jason P. Knight	Sharon Hindman Hester	William Thomas Chapman
Stephen M. Kennamer	John M. Plunk	Gregory M. Varner
Scott L. McPherson	Cooper Shattuck	Alicia F. Bennett

In addition, President-elect Lee Copeland and Immediate Past President Anthony Joseph were in attendance. Staff members present included Tony McLain, Justin Aday, Diane Locke, Margaret Murphy, Laura Calloway, Ed Patterson, Christina Butler, Eric Anderson, Jeremy McIntire, Mark Moody and Michelle Owens. Suzi Edwards, legislative counsel, Tracy Daniel, director of the Alabama Law Foundation and Judy Keegan, director of the Alabama Center for Dispute Resolution were also in attendance. Brandon Hughey, president of the Young Lawyers' Section, was in attendance.

3. INTRODUCTION OF GUESTS

The following guests were introduced at the meeting: Holly Sawyer, past president of the Houston County Bar Association; Clinton G. Eubanks, president of the Cherokee County Bar Association and Michel Niemeyer, president of the Baldwin County Bar Association. Sara Juda, a third year law student at Jones School of Law, was introduced by Commissioner Gaines.

4. APPROVAL OF THE MINUTES OF JULY 9, 2014 AND JULY 12, 2014 ALABAMA STATE BAR BOARD OF COMMISSIONERS MEETINGS AND THE MINUTES OF THE JULY 12, 2014 GRANDE CONVOCATION AND BUSINESS MEETING

President Raleigh stated that the minutes of the July 9, 2014 and July 12, 2014 board meetings and the minutes of the July 12, 2014 Grande Convocation and Business Meeting had been transcribed and circulated prior to the meeting. He asked if there were any corrections, additions or deletions. There were none.

COMMISSIONER WATSON MOVED TO APPROVE THE MINUTES OF THE JULY 9 AND JULY 12, 2014 BOARD MEETINGS AND THE MINUTES OF THE JULY 12, 2014 GRANDE CONVOCATION AND BUSINESS MEETING. THE MOTION WAS SECONDED AND APPROVED BY UNANIMOUS VOICE VOTE.

5. SPECIAL GUEST

President Raleigh introduced David Byrne, chief legal advisor for Governor Robert Bentley. Mr. Byrne discussed the responsibilities of the position and explained that in those responsibilities were essentially divided into two areas: litigation and legislation. He updated the commission on several of the pressing legal issues confronting the state and also discussed his involvement with the Alabama legislature. Mr. Byrne then talked about the chief legal advisor's role with respect to gubernatorial appointments, especially regarding judges and district attorneys. He outlined the process that Governor Bentley follows in screening and interviewing candidates for vacant judicial positions. Finally, he discussed the responsibilities of the Governor and the chief legal advisor in death penalty cases. He explained that each death penalty case is thoroughly reviewed by the legal advisor who then prepares a memo about the case for the Governor to consider. He stated that in Alabama, the Governor is the only person who can commute a death sentence. Mr. Byrne noted that one of the responsibilities of the chief legal advisor is to serve as an observer when the death penalty is administered.

Mr. Byrne concluded his remarks and President Raleigh thanked him for speaking to the commission and for his service to the State of Alabama.

6. SPECIAL RECOGNITION

The secretary introduced Mr. Jim Sumner, the director of the Alabama Ethics Commission. Mr. Norman outlined Mr. Sumner's career including his last 17 years as director of the agency. He discussed the many improvements that Mr. Sumner was responsible for during his term at the ethics commission as well as some of the significant problems he confronted including a lack of funding, subpoena authority and weak ethics rules. He noted that these conditions existed at the agency until 2010 when Mr. Sumner was finally able to convince the legislature to enact major reforms in Alabama's ethics laws and to provide stable funding as well as subpoena power for the agency. Following the secretary's remarks, Mr. Sumner made a few remarks concerning his service to the State of Alabama. At the conclusion of his remarks, the Board of Bar Commissioners gave Mr. Sumner a standing ovation.

7. REPRIMANDS

7.a. Sherry Ann Weldon Dobbins, Fort Payne, ASB-2010-196

Ms. Dobbins received a public reprimand without general publication for violation of Rules 8.4(a), 8.4(c) and 8.4(g) of the *Alabama Rules of Professional Conduct (ARPC)*.

7.b. Charlene I. Stovall, Birmingham, ASB-2012-506

Ms. Stovall received a public reprimand without general publication for violation of Rules 8.4(d) and 8.4(g) of the *ARPC*.

7.c. Adler Rothschild, Montgomery, ASB-12-1292

Mr. Rothschild received a public reprimand without general publication for violation of Rule 8.4(g) of the *ARPC*.

8. PRESIDENT'S REPORT

President Raleigh highlighted the numerous activities in which he had engaged since the annual meeting as well as upcoming activities during the next month. He touched on the new website as well as the consolidated invoice, the IOLTA certification process and noted that the staff was addressing any problems or difficulties that members were encountering with the introduction of these new services.

9. SECRETARY'S REPORT

The secretary echoed the president's remarks with respect to the work being performed by the staff in implementing the new consolidated invoice and the challenges, on the backend, they have had to deal with to help facilitate the members' online license payments, website usage and IOLTA certification.

10. DIGITAL COMMUNICATIONS

Eric Anderson gave an overview of the process and issues involved with the website and consolidated fee statement. He stated that one third of the members had reset their passwords on the website and online payments were 50 percent higher than last year at the same time.

11. EXTERNAL RELATIONS

Ed Patterson stated that the department works with 19 committees, nine task forces and 28 sections. He informed the commission that the application deadline was October 1, 2014 for Class 11 of the Leadership Forum and asked commissioners to encourage interested lawyers to consider applying. Mr. Patterson noted that CLE credit as well as financial aid was now available for those participating in Leadership Forum.

12. PRO BONO MONTH UPDATE

President Raleigh recognized Cassandra Adams, chair of the Pro Bono Month Celebration Committee to give a report. Ms. Adams discussed the many activities that would be ongoing during October to celebrate pro bono service in Alabama. She distributed a list of activities for the commissioners to review and asked their active participation encouraging local bars to take part in the month long celebration.

13. VETERANS COURT REPORT

President Raleigh recognized Ed Sledge for a report on the veterans' court program. Mr. Sledge explained the work of the Service Member and Veterans Support Task Force to help acclimate returning veterans to a civilian environment. He also explained the mission of the treatment courts to help promote justice for those vets who are involved in the court system. He stated that the task force had devised a 1500 page binder that is essentially a "plug and play" program that local courts can implement in their respective counties. The material will soon be posted on the bar's website. Mr. Sledge reported that speaking teams were presently going to various counties to discuss the concept of veteran treatment courts (VTC) in order to disseminate information about the program and to encourage their implementation.

Mr. Sledge informed the commission that a VTC had been established in Walker County and that others were in various stages of implementation in Mobile, Chilton, Lawrence, and several other counties. He also discussed the Governor's challenge of a thousand hours of pro bono service for veterans and reporting nearly 300 veteran cases had been handled by attorneys thus far and that the thousand hour goal established by the Governor had not only been met but exceeded. Mr. Sledge also remarked that President Raleigh had encouraged the task force to seek the involvement of businesses in veterans' issues including employing unemployed veterans who come through the justice system. Mr. Sledge concluded by reporting that Leadership Forum participants were being encouraged to play an active role in these and other service member and veterans support efforts.

14. SOLO AND SMALL FIRM REPORT

Commissioner Irby, chair of the Solo and Small Firm Task Force, reported that the task force had its first meeting. He stated that the task force had defined solo and small firm practices as being from one to five members. He explained that a survey had been conducted to determine the interest among members in starting a solo and small firm practitioner committee. Commissioner Irby reported that 94 percent of those responding to the survey indicated they would join a section whose main focus was solo and small firm issues. He further noted that there were several things remaining for the task force to complete before it reports back to the commission at a future meeting.

15. RULE III APPLICATIONS

President Raleigh stated that applications for admission by motion pursuant to Rule III of the *Alabama State Bar Rules Governing Admission* had been received from: Leopold Blum Babin (GA); Jason Richard Bush (MS); Andrew Thomas Hayes (OH); Paisley Anne Newsome (GA); Maia Agatha Niemann (TN) and Joshua Jahyun Wie (GA). He stated that each of the applicants had complied with the requirements of Rule III and satisfied all of the character and fitness requirements.

COMMISSIONER CROW MOVED THE ADMISSION OF LEOPOLD BLUM BABIN, JASON RICHARD BUSH, ANDREW THOMAS HAYES, PAISLEY ANNE NEWSOME, MAIA AGATHA NIEMANN AND JOSHUA JAHYUN WIE PURSUANT TO RULE III. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

16. PROPOSED RULE CHANGES TO THE RULES GOVERNING ADMISSION, ALABAMA RULES OF DISCIPLINARY PROCEDURE AND THE ALABAMA RULES OF PROFESSIONAL CONDUCT

General Counsel Tony McLain stated that prior to addressing the proposed rule changes, a matter had arisen concerning hearing officers. He reminded the commission that at the previous meeting he had informed them about proposed rule changes that had been transmitted to the Supreme Court for the reappointment of disciplinary hearing officers (DHOs). He stated that the Supreme Court had not acted to reauthorize the DHOs and thereby it was necessary for the commission to approve interim DHOs until the Supreme Court acted. He said that the three individuals recommended to serve as interim DHOs were Commissioners Mozingo, Burge and Bennett. He also explained that each of these individuals have to be replaced on the disciplinary commission and disciplinary panels on which they were previously serving. Mr. McLain stated that on the Disciplinary Commission, Commissioner Gaines was suggested as an interim member and that Commissioners Parker, Yancey, Baggett and Garner were recommended to fill interim vacancies created on the disciplinary panels by the appointments of interim DHOs.

COMMISSIONER DOWD MOVED THAT THE RULES BE SUSPENDED SO THAT THE INTERIM APPOINTMENTS COULD BE ACTED UPON BY THE COMMISSION. THE MOTION WAS SECONDED AND APPROVED BY THE REQUIRED TWO-THIRDS VOTE.

COMMISSIONER DOWD THEN MOVED THAT THE FOLLOWING INTERIM APPOINTMENTS BE MADE PENDING THE SUPREME COURT'S ACTING UPON THE DHO RULES.

Disciplinary Hearing Officers: Commissioner Flynn Mazingo, Commissioner Greg Burge and Commissioner Alicia Bennett.

Disciplinary Commission: Commissioner Monet Gaines.

Disciplinary Panels: Commissioner George Parker, Commissioner Thad Yancey, Commissioner Emily Baggett and Commissioner Jana Russell Garner.

THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

Mr. McLain then discussed the proposed changes to the *Rules Governing Admission of the Alabama State Bar* regarding the character and fitness committee, the changes to Rule IV, Rule IV.2, Rule IX, Rule XII F and Rule XXIX of the *Alabama Rules of Disciplinary Procedure*, and, finally, changes to Rule 1.15e of the *Alabama Rules of Professional Conduct*.

COMMISSIONER DEBROSSE MOVED TO APPROVE THE CHANGES INVOLVING RULE V OF THE RULES GOVERNING ADMISSION, RULE IV, RULE IV.2, RULE IX, RULE XII F AND RULE XXIX OF THE ALABAMA RULES OF DISCIPLINARY PROCEDURE, AND, FINALLY, RULE 1.15E OF THE ALABAMA RULES OF PROFESSIONAL CONDUCT AS RECOMMENDED. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

[A copy of the rule changes as recommended and approved are attached to these minutes as Appendix A.]

17. CASEMAKER CONTRACT RENEWAL

President Raleigh pointed out that the bar's Casemaker contract ends May 31, 2015. He stated that a new contract had been negotiated and would provide for enhanced benefits starting on October 1, 2014 with a reduced monthly rate from \$10,372 to \$6,000. He stated that the realized annual savings over the new contract would be approximately \$52,000 a year.

COMMISSIONER COALE MOVED TO APPROVE THE RENEWAL OF THE CASEMAKER CONTRACT EFFECTIVE OCTOBER 1, 2014. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

18. ALABAMA LAWYER STIPEND INCREASE

President Raleigh reported that the Board of Editors of *The Alabama Lawyer* had requested an increase in the magazine's stipend from the current \$12,500 per issue to \$16,500 per issue (an increase of \$4,000) or by \$24,000 a year. He explained that the actual cost to produce and print each issue was roughly \$24,000 with advertising

covering the difference between the bi-monthly stipend and the actual production cost of each issue. He stated that the bar would continue to pay the cost to mail the magazine which is approximately \$4,000 an issue. The last increase in the magazine stipend was 1996.

COMMISSIONER WATSON MOVED TO INCREASE THE BI-MONTHLY STIPEND TO THE ALABAMA LAWYER BY \$4,000 AN ISSUE OR BY \$24,000 A YEAR. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

19. MCLE RULE CHANGES

Commissioner Fincher, a member of the MCLE Commission, reminded the commission about members who have abused the allowance for filing deficiency plans under the MCLE Rules as had been explained at the prior meeting. She noted that a number of members were routinely filing these requests and that the rule require there be a showing of good cause. She said the proposed amendment, after successive requests have been approved, would require the member to appear and explain why another deficiency plan should be granted.

Following Commissioner Fincher's report, there were several questions from commissioners concerning the definition of successive requests for deficiency plans and the likelihood of a hardship on small firms or solo practitioners if successive petitions were construed to only mean one or two petitions. Following these discussions, language was offered that would further clarify the proposed language:

“In order to make a showing of good cause pursuant to MCLE Rule VIII. E., after the approval of two successive deficiency plans, an attorney shall appear before a panel consisting of the MCLE director, a representative of the MCLE Commission, and a representative of the Office of General Counsel to explain why a further deficiency plan should be granted. The attorney shall be notified in writing of the decision of the panel.”

COMMISSIONER CROW MOVED THE ADOPTION OF THE MODIFIED LANGUAGE ABOVE MODIFYING RULE VIII. E. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

20. STAFF COMPENSATION FY2014-15

President Raleigh recommended staff compensation for FY2014-15 in the amount of \$2,915,458.

COMMISSIONER PITTMAN MOVED TO ACCEPT THE RECOMMENDATION OF STAFF COMPENSATION FOR FY2014-15 IN THE AMOUNT OF \$2,915,458. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

21. ADJOURNMENT

President Raleigh 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.

Richard J.R. Raleigh, Jr., President
Alabama State Bar

ATTEST:

Keith B. Norman, Secretary
Alabama State Bar