

MINUTES

ALABAMA STATE BAR BOARD OF BAR COMMISSIONERS MEETING

State Bar Building
Montgomery, Alabama

Friday, October 31, 2008

1. CALL TO ORDER

President Mark White convened this meeting of the Alabama State Bar Board of Commissioners at 10:00 a.m. in the board room at the Alabama State Bar building in Montgomery, Alabama. Commissioner Anthony Joseph gave the invocation.

2. ROLL CALL

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

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|------------------------|------------------------|----------------------------|
| Ronnie E. Keahey | Michael E. Jones | Christy Crow |
| J. Garrison Thompson | Randall S. Haynes | Cooper Shattuck |
| Alyce M. Spruell | John M. Gruenewald | Phil D. Mitchell |
| Anthony A. Joseph | S. Greg Burge | Jack Neal |
| Phillip W. McCallum | Greg Hawley | Maibeth J. Porter |
| Joseph A. Fawal | Robert E. Moorer | William A. (Pete) Short |
| Richard W. Whittaker | Henry A. Callaway, III | William M. Cunningham |
| Juan Ortega | James R. Beaird | Les Hayes III |
| James H. Anderson | Cole Portis | Sim Penton |
| Lee H. Copeland | F. Michael Haney | K. Scott Stapp |
| Joseph A. Morris | John L. Jernigan, III | John M. Peek |
| Harold Stephens | L. Thomas Ryan, Jr. | Ronald H. Strawbridge, Jr. |
| Kenneth E. White, III | Elizabeth Parsons | Jason P. Knight |
| Buddy Lee | Eddie Beason | Christopher E. Malcom |
| Robert T. Meadows, III | Gerald R. Paulk | Jerry C. Trent |
| Alexander M. Smith | Walter E. McGowan | Deborah Byrd Walker |
| Merceria Ludgood | Alicia F. Bennett | La Barron Boone |
| Pamela H. Bucy | Kesa Johnston | Kelly T. Lee |
| Tut Wynne | | |

The following Commissioners were absent:

| | | |
|----------------------|----------------------|----------------------------|
| W. N. (Rocky) Watson | Jim Pratt | Albert J. Trousdale, II |
| Billy C. Bedsole | Mary Margaret Bailey | Donald R. Jones |
| Ramona Morrison | Brian D. Mann | Richard J. R. Raleigh, Jr. |
| R. Wyatt Howell | John C. Gullahorn | Allan Chason |
| Robert L. Rumsey | John M. Kennemer | J. Milton Coxwell, Jr. |
| David F. Law | Claude E. Hundley | |

President-elect Tom Methvin and Immediate Past President Sam Crosby were present. Staff members present included Tony McLain, Ed Patterson, Robby Lusk, Sam Partridge, Jeremy McIntire, Brad Carr, Laura Calloway, Angela Parks, Linda Lund, Jeanne Marie Leslie, Katherine Church and Debbie Dickey. Also in attendance was Tracy Daniel of the Alabama Law Foundation.

3. INTRODUCTION OF GUESTS

President White recognized Honorable Gene Verin, circuit judge, Jefferson County as well Donald Monroe Phillips, president of the Chambers County Bar Association, Shannon Renell Sims Clark, president of the Coffee County Bar Association, William “Bill” Donald, III, president of the Tuscaloosa County Bar Association and James Kevin Walding, president-elect of the Houston County Bar Association. President White also introduced David Hymer, the recently appointed chairman of the Board of Bar Examiners. President White thanked the visitors for attending the meeting.

4. SUPERINTENDENT OF BANKING JOHN B. HARRISON

President White introduced the Superintendent of Banking, John B. Harrison for remarks. Mr. Harrison informed the commission that the state banking department oversees state chartered banks. He addressed the soundness of Alabama’s banks and reported that only eight out of 129 state chartered banks are considered problem banks. He noted that this was public information. He further stated that all banks are undergoing tough times financially but that banks in Alabama have not been affected as drastically as in other states. Mr. Harrison spoke to the recent increase in FDIC deposit insurance up to \$250,000 per deposit. He discussed the FDIC’s program of unlimited protection for transaction accounts that are non-interest bearing through December 31, 2009. Mr. Harrison stated that based on the steps already taken by the treasury department and the FDIC he doesn’t think there is any need to believe that funds in lawyers’ trust accounts (ILOTA accounts) are at risk. He encouraged commissioners to sit down with their individual bankers if they have particular questions. He advised that he would not recommend the commission taking any steps to recommend to the Supreme Court a temporary suspension of the mandatory IOLTA rule.

Mr. Harrison then answered several questions including whether or not he thought the FDIC would change its rule so as to allow unlimited deposit protection for IOLTA accounts. Mr. Harrison answered in the negative. Following the questions and answers, President White thanked Mr. Harrison for speaking to the commission.

5. **APPROVAL OF THE MINUTES OF THE BOARD OF COMMISSIONERS MEETING FOR SEPTEMBER 12, 2008.**

President White stated that the minutes of the Board of Commissioners meeting for September 12, 2008 had been disseminated to the board. He asked if there were any corrections, additions or deletions. There were none.

COMMISSIONER SPRUELL MOVED TO APPROVE THE MINUTES OF THE BOARD OF COMMISSIONERS MEETING FOR SEPTEMBER 12, 2008. THE MOTION WAS SECONDED AND THE MINUTES WERE APPROVED BY UNANIMOUS VOICE VOTE.

6. **PUBLIC REPRIMANDS**

6.1. Joe Lampley, Madison County, **ASB 03-330 (A)**

Mr. Lampley received a public reprimand with general publication for violating Rule 8.4 of the *Alabama Rules of Professional Conduct [ARPC]*.

6.2. Greg Lee Smith, Birmingham, **ASB 06-171 (A)**

Mr. Smith entered a plea of guilty for violating Rules 1.4 (a) and 1.4 (b) of *ARPC*. He received a public reprimand without general publication.

6.3 Sherry Ann Weldon Dobbins, DeKalb County, **ASB 07-111 (A)**

Ms. Dobbins received a public reprimand with general publication for violating Rules 1.3, 1.4 (a) and 1.4 (b) of *ARPC*.

6.4 Jonathan Lee Draper, Walker County, **ASB 07-202 (A)**

Mr. Draper received a public reprimand with general publication for violating Rules 1.3, 1.4 (a), 1.16 (d), 8.4 (a) and 8.4 (c) of *ARPC*.

7. **PRESIDENT'S REPORT**

President White discussed his releasing a statement on behalf of the bar during the Supreme Court race. He noted that because the Alabama State Bar's name was dragged into the campaign inappropriately, he responded to set the record straight. He stated that he believes the bar has not been tainted as a result of the unapproved activity due to the steps taken to rectify the misinformation. President White next introduced the Volunteer Lawyer Program staff including Linda Lund, Katherine Church and the program's newest employee, Deborah Dickey.

8. SECRETARY'S REPORT

The Secretary reviewed the bar exam statistics for the July examinees. He next discussed the Alabama State Bar's year-end financial report. The Secretary concluded his remarks by stating that the Mobile Bar Association had forwarded resolutions memorializing Elsworth "Peter" Scales, III and Cecil B. King for placement in the Alabama State Bar Book of Memorial Resolutions.

COMMISSIONER CUNNINGHAM MOVED TO INCLUDE THE RESOLUTIONS MEMORIALIZING ELSWORTH 'PETER' SCALES, III AND CECIL B. KING BY THE MOBILE BAR ASSOCIATION IN THE ALABAMA STATE BAR BOOK OF MEMORIAL RESOLUTIONS. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

9. COMMUNICATIONS UPDATE

There was no report made by the Communications Department.

10. PROGRAM UPDATE

There was no report made by the Programs Department.

11. OFFICE OF GENERAL COUNSEL REPORT

Mr. McLain reported on the status of the lawyer advertising rules before the Supreme Court.

12. SPECIAL GUEST – HONORABLE JIMMY FRY

President White introduced the executive director of Legal Services Alabama, Honorable Jimmy Fry. He updated the commission on LSA and reported that it was in better financial condition than last year when he was selected as executive director. He stated that LSA plans to handle a larger number of cases this year than the year before and is working to serve more people with better service. He spoke about the partnership with the bar, the Alabama Civil Justice Foundation and the Access to Justice Commission to help Alabama citizens with foreclosure counseling. Following his remarks, President White thanked Judge Fry for his report on LSA.

13. NEW CIRCUIT JUDGE FOR MADISON COUNTY

President White recognized Commissioner Stephens to discuss the need for a new circuit judge for Madison County. Commissioner Stephens reported that the average case load for circuit judges in Alabama was 1,200 cases. He stated that for Madison County circuit judges the average case load is more than 2,500 cases. He further noted that Madison County has not received a new circuit judge since 1974 and that the number of cases filed has more than doubled in the last ten years alone to almost 10,000. Commissioner Stephens thanked the Jefferson County Circuit Judges who have stepped in to help alleviate the tremendous case load. He also asked the commission to support efforts to have the legislature create a new circuit judge position for Madison County because of its extremely large case load.

AFTER SEVERAL COMMENTS BY COMMISSIONERS, COMMISSIONER SPRUELL MOVED TO SUSPEND THE RULES FOR CONSIDERATION OF A RESOLUTION SUPPORTING EFFORTS TO ADD A NEW CIRCUIT JUDGE POSITION FOR MADISON COUNTY. THE MOTION WAS SECONDED. PRESIDENT WHITE ASKED FOR A SHOW OF HANDS WHICH INDICATED THAT THE MOTION PASSED BY THE NECESSARY TWO-THIRD VOTE FOR SUSPENSION OF THE RULES.

COMMISSIONER FAWAL MOVED TO ACCEPT THE FOLLOWING RESOLUTION AS AN ACTION ITEM BY THE COMMISSION. THE MOTION WAS SECONDED AND THE RESOLUTION WAS ADOPTED. THE RESOLUTION AS ADOPTED READS AS FOLLOWS:

RESOLUTION

WHEREAS, no new circuit judge position has been created for Madison County since 1974; and

WHEREAS, the cities of Huntsville and Madison and the entire area of Madison County has experienced significant population growth and development since that time; and

WHEREAS, the number of civil, criminal and domestic circuit court filings has increased dramatically since 1974 (with criminal filings alone almost ten times higher); and

WHEREAS, the circuit judges of Madison County have almost twice the average caseload of other judges in the state of Alabama; and

WHEREAS, a number of Jefferson County Circuit Judges have agreed to assist in resolving the heavy caseload in Madison County; and

WHEREAS, the delegation of Bar Commissioners from Madison County, Harold Stephens, Claude Hundley, Rich Raleigh and Tom Ryan, brought this issue to the attention of the Board of Bar Commissioners at the meeting held on October 31, 2008 urging a resolution in support of the creation of a new circuit judgeship in Madison County and to express appreciation for the service provided by Jefferson County Circuit Judges;

WHEREFORE,

Be it resolved by the unanimous vote of the Board of Bar Commissioners at their duly scheduled meeting held on October 31, 2008 as follows:

1. The Board of Bar Commissioners do hereby express their support for and endorsement of the creation of a new circuit judgeship for Madison County, Alabama and respectfully urge the Alabama Legislature to approve any and all necessary legislation for such additional judgeship.

2. The Board of Bar Commissioners do hereby express their sincere thanks and appreciation for the efforts of those Circuit Judges from Jefferson County who have offered their time and service to assist in remedying the current heavy caseload in Madison County.

3. A copy of this resolution shall be furnished to the presiding judges of both Madison County and Jefferson County who are encouraged to share this resolution with their fellow Judges.

14. LEGISLATION FOR NEXT SESSION

President White discussed the legislation which Chief Justice Cobb hopes to pursue during the upcoming legislative session. Those legislative items include: the judicial experience bill and the indigent defense commission bill. President White also stated that several judicial selection bills would be introduced that would provide for judicial selection commissions in Houston and Montgomery Counties for mid-term vacancies on the trial court. President White noted that another bill, from Monroe County, would allow it to opt out of partisan judicial elections. Commissioner Ludgood commented that it would be in order to study the results of the various selection commissions that are now operating to find out how they have worked with respect to improving diversity on the trial courts. President White concurred. He then discussed what he referred to as “bar bashing” where certain groups contend that lawyers should not be permitted to participate in the judicial selection process as participants on selection commissions. He stated that this is a trend among a number of states around the country and that it was likely to become an issue here.

15. LEGISLATIVE TASK FORCE REPORT

Immediate Past President Crosby reported on behalf of Commissioner Pratt and former president Boots Gale who co-chair the committee. He reported on the recent meeting the committee had and elaborated on the three goals which include offering Alabama State Bar as a resource to legislators that would involve putting together a group of mediators who are recognized as leaders and statesmen (not necessarily all lawyers) that could be called on by the legislature to assist them. He stated that if the commissioners had recommendations to be considered to please send the names to Commissioner Pratt. The other two goals were to work with the legislative counsel and cooperate with the Chief Justice on her legislative efforts.

16. **FUNDING FOR THE ALABAMA BROADCASTERS ASSOCIATION PARTNERSHIP WITH ALABAMA STATE BAR**

Director of Communications Brad Carr reported that the contract between the Alabama State Bar and the Alabama Broadcasters Association would expire in January and that consideration of funding for this program would be an action item in December.

17. **NOMINATIONS FOR THE ALABAMA BOARD OF COURT REPORTING**

The Secretary reported that the Alabama State Bar is obligated to provide the Governor and the Lieutenant Governor each with the names of three lawyers from which each of the officials are to appoint one to the Alabama Board of Court Reporting. The Secretary asked the commissioners to provide him with the names of lawyers that would be interested in having their names recommended by the commission to the Governor and the Lieutenant Governor.

18. **PROFESSIONALISM PLEDGE**

Commissioner Stephens discussed the Professionalism Pledge that was reprinted in the May issue of *The Alabama Lawyer* as a part of the executive director's report. He asked all commissioners to sign the pledge of professionalism and take an extra copy back to their circuits for dissemination and to encourage members of their circuit to sign it. He stated he had spoken at the professionalism conference and that he was surprised at the number of new admittees who were willing to sign the pledge. Commissioner Stephens then asked the secretary to explain plans for cataloging the signatures. The Secretary stated that the stack of signed pledge forms surrendered by Commissioner Stephens would be entered on to the bar's web site under the heading of "Professionalism Honor Roll". He further stated that bar members would be able to sign the pledge online and have their names displayed on the honor roll.

19. **IOLTA DISCUSSION**

President White recognized Commissioners Porter and Stephens for remarks concerning mandatory IOLTA. Commissioner Porter discussed the FDIC's temporary liquidity guarantee program and explained that the full value of non-interest bearing accounts are insured while interest bearing accounts, including IOLTA are only insured up to a maximum of \$250,000. Commissioner Porter discussed whether or not a moratorium on Rule 1.15 of the Alabama Rules of Professional Conduct would be appropriate under the circumstances. Commissioner Porter stated that the FDIC has a comment period on the rules that it has adopted concerning the temporary liquidity guarantee program that would last through November 13th.

Commissioner Stephens was of the opinion that the commission should recommend to the Alabama Supreme Court a suspension of the rule. He noted that it was a difficult situation but that a paramount concern for lawyers is protection of client funds. He opined that the FDIC has put this bar and other bars in this position by adopting rules that do not include IOLTA accounts. He repeated the need to recommend a suspension of the rule in order that client funds can be placed in accounts that are fully insured.

President White recognized Tracy Daniel, Executive Director of the Alabama Law Foundation for remarks. Ms. Daniel provided the commission with information on what lawyers can do to protect funds under existing rules. She estimated that only five to ten percent of the IOLTA accounts have funds greater than \$250,000. She highlighted options to take that would provide more protection for IOLTA funds short of suspending the mandatory IOLTA rule. This included sweeps for high balance accounts that are backed by U.S. government obligations. She also noted that no other state has suspended its mandatory IOLTA rules. Ms. Daniel concluded her remarks by asking that commission members contact their members of Congress to request FDIC include IOLTA accounts under the temporary liquidity guarantee program.

President White recognized various members of the commission for remarks and questions. Remarks concerned whether or not to take immediate action to request the Supreme Court temporarily suspend Rule 1.15 or to wait until the FDIC has considered requests to include IOLTA funds under its temporary liquidity guarantee program. President White reminded the commission that it could authorize the executive council to act in its stead when appropriate between the current meeting and the next meeting in December. Several suggestions were offered by commissioners regarding appropriate measures to take. President White reminded the commission that this was not an action item and that in order for the commission to vote on any measure that it would require suspension of the rules.

COMMISSIONER ANDERSON MOVED TO SUSPEND THE RULES IN ORDER TO VOTE ON WHETHER OR NOT TO RECOMMEND TO THE SUPREME COURT A SUSPENSION OF THE MANDATORY IOLTA RULE, RULE 1.15. THE MOTION WAS SECONDED. PRESIDENT WHITE ASKED FOR A SHOW OF HANDS. BY SHOW OF HANDS, 39 WERE IN FAVOR OF THE MOTION TO SUSPEND AND 11 WERE OPPOSED TO SUSPENDING THE RULES. THE MOTION TO SUSPEND THE RULES WAS APPROVED.

COMMISSIONER ANDERSON THEN MOVED FOR THE ADOPTION OF THE FOLLOWING RESOLUTION:

The Board of Commissioners of the Alabama State Bar recommends a temporary suspension of those portions of the rules of professional conduct (Rule 1.15) which require an attorney to invest the funds of clients or third persons in an interest bearing or dividend trust account. Such funds shall continue to be deposited in "eligible institution," which is defined by the rule as "any bank or savings and loan association authorized by federal or state laws to do business in Alabama, whose deposits are insured by an agency of the federal government, or any open-ended investment company registered with the Securities and Exchange Commission authorized by federal or state laws to do business in Alabama." Said temporary suspension shall continue until the FDIC agrees to provide unlimited insurance coverage for IOLTA accounts or until the amount of FDIC insurance coverage for interest and non-bearing accounts is the same.

THE MOTION TO ADOPT THE RESOLUTION WAS SECONDED.

Additional discussion concerning the resolution asking the Supreme Court to suspend or place a moratorium on the operation of Rule 1.15 continued. Several commissioners suggested that the commission not take any precipitous action to recommend the suspension of the rule.

THE QUESTION WAS CALLED. PRESIDENT WHITE ASKED FOR A SHOW OF HANDS OF THOSE SUPPORTING THE MOTION AND THOSE OPPOSED TO THE MOTION. THIRTY-TWO VOTED IN FAVOR OF ADOPTING THE RESOLUTION AND 20 OPPOSED THE MOTION. THE MOTION ADOPTING THE RESOLUTION REQUESTING THAT THE ALABAMA SUPREME COURT TEMPORARILY SUSPEND RULE 1.15 WAS APPROVED.

President White thanked the commission for handling this delicate situation in a professional and thorough fashion.

20. FY 2009-2010 BUDGET

President White stated that the budget request for FY 2009-2010 was \$5,940,812 or a 2.92 percent increase over the current fiscal year's budget.

COMMISSIONER SPRUELL MOVED TO ADOPT THE BUDGET AS PROPOSED FOR FY 2009-2010 IN THE AMOUNT OF \$5,940,812. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

21. APPOINTMENT OF DIRECTORS TO VACANCIES ON THE LEGAL SERVICES ALABAMA BOARD

President White stated that Richard Dorman of Mobile and Judge George T. Craig of Decatur had been recommended to fill the two remaining vacancies on the LSA Board of Directors.

COMMISSIONER SPRUELL MOVED THE APPOINTMENT OF RICHARD DORMAN OF MOBILE AND JUDGE GEORGE T. CRAIG OF DECATUR TO THE LEGAL SERVICES ALABAMA BOARD OF DIRECTORS. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

22. BAR EXAMINATION ANCILLARY FEE INCREASE

The Secretary explained the need to increase the investigative fees collected by the Alabama State Bar for out of state applicants seeking admission to the Alabama State Bar. He recommended that the fee be increased by \$25 immediately and by an additional \$25 effective January 1, 2009. The Secretary stated that the fee could not be increased more than \$25 per calendar year.

COMMISSIONER PAULK MOVED AN IMMEDIATE FEE INCREASE OF \$25 OF THE INVESTIGATIVE FEES COLLECTED BY THE ALABAMA STATE BAR FOR NONRESIDENTS SEEKING ADMISSION TO THE BAR AND AN ADDITIONAL \$25 FEE INCREASE TO BE COLLECTED FOR INVESTIGATIVE SERVICES FOR NONRESIDENTS EFFECTIVE JANUARY 1, 2009. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

23. RULE III ADMISSIONS

President White stated that the following out of state lawyers had applied for admission pursuant to Rule III of the *Rules Governing Admission to the Alabama State Bar*: Grace R. Belton (Missouri); William W. Groves (Georgia) and Jeven R. Sloan (Texas). He informed the commission that each candidate had met the requirements of Rule III and had the requisite character and fitness for admission.

COMMISSIONER SHATTUCK MOVED THE ADMISSION OF GRACE R. BELTON, WILLIAM W. GROVES AND JEVEN R. SLOAN PURSUANT TO RULE III. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

24. 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.

J. Mark White, President
Alabama State Bar

ATTEST:

Keith B. Norman, Secretary
Alabama State Bar