

MINUTES

ALABAMA STATE BAR BOARD OF BAR COMMISSIONERS MEETING

State Bar Building
Montgomery, Alabama

Friday, October 29, 2010

1. CALL TO ORDER

President Spruell 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 Shattuck gave the innovation.

2. ROLL CALL

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

Ronnie Keahey	J. Garrison Thompson	Cooper Shattuck
Hays Webbs	William H. Broome	Phil D. Mitchell
Leslie R. Barineau	S. Greg Burge	Phillip W. McCallum
Teresa G. Minor	Robert E. Moorer	Derrick A. Mills
Albert J. Trousdale, II	Richard W. Whittaker	Henry A. Callaway, III
Walter H. Honeycutt	Billy C. Bedsole	Juan Ortega
James R. Beaird	Les Pittman	Cole Portis
Sim Penton	Lee Copeland	Julia Kimbrough
John L. Jernigan, III	John M. Peek	Harold Stephens
L. Thomas Ryan, Jr.	Richard J.R. Raleigh, Jr.	R. Wyatt Howell
Jerry Wayne Baker, Jr.	Allan Chason	Tut Wynne
Robert L. Rumsey	Elizabeth Parsons	Eddie Beason
Don Word	Alexander M. Smith	Alicia F. Bennett
LaBarron Boone	David Howard	Kelly T. Lee

The following Commissioners were absent:

Cleve Poole	Christy Crow	Robert Simms Thompson
Rocky Watson	Jack Neal	Augusta S. Dowd
Joseph A. Fawal	William A. (Pete) Short	Mary Margaret Bailey
Frank M. Wilson	F. Michael Haney	K. Scott Stapp
Ramona Morrison	Brian D. Mann	Hamp Baxley
J. Dale Lawrence, Jr.	Kenneth E. White, III	John M. Kennemer
Jason P. Knight	Buddy Lee	J. Milton Coxwell, Jr.
Christopher E. Malcom	Roger W. Pierce	Jere C. Trent
David F. Law	Walter E. McGowan	Claude E. Hundley, III
Deborah Byrd Walker	Merceria Ludgood	Monet Gaines

President-elect Jim Pratt and Immediate Past President Tom Methvin were present. Staff members present included Tony McLain, Ed Patterson, Laura Calloway, Brad Carr, Angela Parks and Sam Partridge. Also present were Tracy Daniel with the Alabama Law Foundation and Legislative Counsel Kim Adams.

3. INTRODUCTION OF GUESTS

Visiting guests included Brian Strength, the president of the Macon County Bar Association and Jennifer Argo, president of the Calhoun/Cleburne County Bar Association. Also in attendance were guests from in-state law schools including Jimmy Grant and Robyn Cannon from Jones Law School; Kim Goins, Josh Christensen and Suzanah Moorner, University of Alabama School of Law; SeTara O’Foster, Aaron Gallardo and Zachary LaFleur of Cumberland Law School; J. D. Walker, Albert Osorio, Antionnette Alexander, Shay Golden and Dean James Bushnell from the Birmingham School of Law and Paul M. MgBodle, David Love, Jr. and LaDonna Rudolph of Miles Law School.

4. APPROVAL OF THE MINUTES OF THE BOARD OF COMMISSIONERS MEETING FOR SEPTEMBER 24, 2010.

President Spruell stated that the minutes of the Board of Commissioners meeting for September 24, 2010 had been transcribed and disseminated to the board. She asked if there were any corrections, additions or deletions. There were none.

COMMISSIONER BEDSOLE MOVED TO APPROVE THE MINUTES OF THE BOARD OF COMMISSIONERS MEETING FOR SEPTEMBER 24, 2010. THE MOTION WAS SECONDED AND THE MINUTES WERE APPROVED BY UNANIMOUS VOICE VOTE.

5. PUBLIC REPRIMANDS

5.1 Ellsworth Charles Ogden, III, Marshall County, ASB 08-237(A)

Mr. Ogden received a public reprimand with general publication for violation of Rules 1.4(a), 1.5(a), 1.15(a), 1.16(d) and 8.4(a) of the *Alabama Rules of Professional Conduct [ARPC]*.

5.2 Deena V. Tyler-Satterfield, Tuscaloosa County, ASB 08-246(A)

Ms. Tyler-Satterfield received a public reprimand without general publication for violation of Rules 1.3, 1.4(a), 1.16(d) and 8.4(a) *ARPC*.

5.3 Joseph Wilburn Hudson, Walker County, ASB 09-243 (A)

Mr. Hudson received a public reprimand with general publication for violation of Rules 1.3, 1.4(a), 1.15(a), 8.4(a) and 8.4(g) *ARPC*.

5.4 Douglas Howard Cooner, Jefferson County, ASB 07-62 (A)

Mr. Cooner entered a conditional guilty plea and accepted a public reprimand without general publication for violation of Rules 8.4(c) and 8.4(g) *ARPC*.

5.5 Jacob Ari Dubin, Montgomery County, ASB 09-242 (A) and ASB 08-223(A)

In the first matter, Mr. Dubin entered a guilty plea and received a public reprimand with general publication for violating Rules 1.4(a), 1.5(a), 1.15(a) and 1.15(e) *ARPC*.

In the second matter, Mr. Dubin entered a guilty plea and received a public reprimand with general publication for violating Rules 1.4(d), 1.15(a) and 1.16(d) *ARPC*.

5.6 Cynthia Hooks Umstead, Jefferson County, ASB 09-2011 (A)

Ms. Umstead received a public reprimand without general publication for violation of Rules 1.4(a) and 8.1(b) *ARPC*.

5.7 Leston Curtis Stallworth, Jr., Monroe County, ASB 09-2303(A)

Mr. Stallworth received a public reprimand without general publication for violation of Rules 1.1, 5.3, 8.4(d) and 8.4(g) *ARPC*.

6. **PRESIDENT'S REPORT**

President Spruell recognized Young Lawyers' Section President Clay Lanham and thanked the section for its many efforts including conducting the Minority Law Conference and Admissions Ceremony. She also thanked Commissioner Phil Mitchell and Linda Lund for their work on Pro Bono Week and the recognition the Alabama State Bar received from the American Bar Association. The President asked Commissioner Mitchell to give a report on Pro Bono Week. He reported on activities and programs held during Pro Bono Week (October 18-22) and thanked the commission, committee members, law schools and all the lawyer participants who made this year's celebration of Pro Bono Week a success. Ms. Lund gave a tally of the activities held throughout the state in celebrating Pro Bono Week including 22 clinics, 13 CLE events, 14 proclamations, and 45 other events for a total of 134 activities statewide.

7. **SECRETARY'S REPORT**

The Secretary reviewed the end of the year financial report for 2009-2010. There were no questions following the Secretary's report.

8. **PROGRAMS UPDATE**

Ed Patterson reminded the commission that the deadline for submitting Leadership Forum applications was November 8. President Spruell recognized Laura Calloway, director of the P-MAP program who reported that VLP, the Lawyer Referral Service, P-MAP and ALAP combined to provide a MCLE program for lawyers that was held at the bar headquarters earlier in the month. She noted that the program was well attended and well received.

9. OGC REPORT

There was no oral report from the Office of General Counsel

10. REPORT OF THE TASK FORCE ON THE CHIEF JUSTICE'S JUDICIAL REALLOCATION PROPOSAL

Commissioner Shattuck updated the commission on this issue and the work of the task force to obtain comments from local judges and lawyers on the proposal.

11. FTC RED FLAGS CASE UPDATE

The Secretary reported that the District of Columbia Circuit Court of Appeals had scheduled oral argument in the FTC Red Flags case for November 15. He reminded the commission that the American Bar Association filed suit against the FTC concerning the Red Flags Rule and that the Federal District Court had ruled in favor of the ABA and the FTC had appealed. The Alabama State Bar joined other state and local bars as amicus curiae supporting the Federal District Court ruling in this appeal.

12. DISTRICT COURT MEDIATION PROGRAM REPORT

Former president Sam Crosby and Judy Keegan, director of the Alabama Center for Dispute Resolution provided an overview of the program. They reported that Chief Justice Cobb had requested them to work with AOC and district court judges in developing a statewide volunteer district court mediation program. Mr. Crosby stated that the purpose of the program is to help mediate small claims cases. He reported that after a successful pilot program in Baldwin County, ten counties now have this program in place. Ms. Keegan noted that there are 450 registered lawyer mediators in the participating circuits. Based on early statistics, 70 percent of the cases are being settled. She stated that the plan is to establish this program statewide and that she hoped commissioners would consider spearheading the program in their respective counties that are not already participating.

13. UNIFORM BAR EXAM

President Spruell recognized Mr. David Hymer, chairman of the Board of Bar Examiners, Mr. Barry Ragsdale, a member of the Board of Bar Examiners and Justice Tom Woodall, associate justice, Alabama Supreme Court. Mr. Hymer stated that at the last meeting he explained the concept of the uniform bar exam and provided the commission with information about the concept. He reported that the Board of Bar Examiners had unanimously recommended the adoption of the uniform bar exam for Alabama which would change very little from the current bar exam as far as the examinees were concerned. A copy of the proposed changes to the *Rules Governing Admission to the Alabama State Bar* to implement the UBE was circulated to the commission. President Spruell asked if there were any further questions.

COMMISSIONER RALEIGH MOVED TO SUSPEND THE RULES TO ALLOW THIS MATTER TO BE CONSIDERED AS AN ACTION ITEM. THE MOTION WAS SECONDED. PRESIDENT SPRUELL ASKED FOR A SHOW OF HANDS AND THE MOTION TO SUSPEND WAS APPROVED BY THE NECESSARY TWO-THIRDS VOTES.

COMMISSIONER COPELAND MOVED TO APPROVE AND RECOMMEND TO THE ALABAMA SUPREME COURT THE ADOPTION OF THE AMENDMENTS TO THE *RULES GOVERNING ADMISSION TO THE ALABAMA STATE BAR* TO IMPLEMENT A UNIFORM BAR EXAMINATION IN ALABAMA. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

President Spruell thanked Justice Woodall, Mr. Hymer and Mr. Ragsdale and the entire Board of Bar Examiners for their work.

14. ALABAMA TAX APPEALS COMMISSION LEGISLATION

President Spruell recognized Mr. Bruce Ely, former chair of the Tax Law Section and current member of the section's legislative review committee for a report on the proposed legislation. Mr. Ely gave an overview of the proposed legislation. He stated that the Department of Revenue had signed off on the draft and that both the Tax Section and the ABA recommended the adoption of this legislation to create an independent tax appeals body for Alabama. He stated that Alabama is among a minority of states that does not have an independent tax tribunal. Mr. Ely highlighted some of the changes of the current proposed legislation that were not included in previous drafts. He explained that some of the changes were made to win the support of the Revenue Department which had previously been opposed to this legislation.

Mr. Ely stated that he would glad to answer any questions concerning the legislation and that he would appreciate the commission endorsing the legislation at its next meeting so that the section can have it introduced for the 2011 legislative session.

[A copy of Mr. Ely's memo to the commission is attached to these minutes and appears as Appendix A.]

15. AMENDMENTS TO THE CLIENT SECURITY FUND RULES

President Spruell recognized Commissioner Bedsole and others for the work on this project. Commissioner Bedsole reported on the amendments that the task force had recommended and several recent changes to the amendments as reported by the task force. He outlined the main changes for the Client Security Fund Rules which includes an annual \$25.00 assessment to allow an increase of the payment caps to \$75,000 per claim and \$200,000 per lawyer. He explained amendments to Rule VI(d) which includes language to clarify the fact that the executive director is charged with all staffing decisions concerning any recommendations made by the Client Security Fund Committee. He also explained changes to Rule XII so as to cap fees under Rules 27 and 29 of the Alabama Rules of Disciplinary Procedures at \$25,000 per claim unless circumstances warrant otherwise.

COMMISSIONER BEDSOLE MOVED THE ADOPTION OF THE AMENDMENTS WITH THE CHANGES AS HIGHLIGHTED. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

[A copy of the Client Security Fund Rules as amended are attached to these minutes as Appendix B.]

16. RULE III APPLICATIONS

President Spruell stated that the bar had received applications for admission by motion pursuant to Rule III of the *Rules Governing Admission to the Alabama State Bar* from Elizabeth Ann Holt (DC), Jeffrey Scott Richardson (TN) and Mark Xavier Sullivan (IN). She stated that the applications and character and fitness information complied with the rules thereby allowing them to be considered for admission by motion.

COMMISSIONER RALEIGH MOVED THE ADMISSION OF ELIZABETH ANN HOLT, JEFFREY SCOTT RICHARDSON AND MARK XAVIER SULLIVAN. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

17. BUDGET REQUEST FOR FY 2011-2012

The Secretary referred to the budget request document that had been submitted to the commission in advance of the meeting. He stated that for fiscal year 2011-2012, the budget request was for \$6,322,819 or an increase of 4.48 percent over the FY 2010-2011 budget. The Secretary highlighted several aspects of the budget and answered several questions concerning the budget request.

FOLLOWING THE DISCUSSION, COMMISSIONER WYNNE MOVED THE ADOPTION OF THE BUDGET REQUEST FOR FY 2011-2012 IN THE AMOUNT OF \$6,322,819. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

18. STATE BAR DISASTER RESPONSE PLAN

The Secretary reminded the commission of the proposed state bar disaster response plan that was discussed at the last meeting. He noted that the proposed plan included a continuation of operation strategy for the state bar in the event of a pandemic, natural disaster or terrorist attack.

COMMISSIONER STEPHENS MOVED THE ADOPTION OF THE STATE BAR DISASTER RESPONSE PLAN. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

19. AMENDMENT TO ALABAMA STATE BAR ELECTION RULES

The Secretary reported that the proposed amendments to the election rules were discussed at the last meeting. He reminded the commission that they include a shortening of the deadline for submission of the initial ballot from the last Friday in May to the third Friday in May. He further noted that the proposed amendments would shorten the deadline for submission of run-off ballots from the third Friday in June to the second Friday in June. The Secretary also reminded the commission that the amendments provided for a

deadline of May 1 for requesting a paper ballot by members who do not have an Internet connection.

COMMISSIONER RYAN MOVED THE ADOPTION OF THE AMENDMENTS TO THE ALABAMA STATE BAR RULES GOVERNING ELECTION AND SELECTION OF PRESIDENT-ELECT AND MEMBERS OF THE BOARD OF COMMISSIONERS. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

20. PROPOSED POLICY ON ALABAMA STATE BAR RESERVES

The Secretary reminded the commission that the Policy on Reserves covers the investment funds of the Alabama State Bar, Client Security Fund and the Alabama State Bar Foundation. He stated that the policy would formalize the long established practice regarding reserves.

COMMISSIONER PEEK MOVED THE ADOPTION OF THE ALABAMA STATE BAR, CLIENT SECURITY FUND AND ALABAMA STATE BAR FOUNDATION POLICY ON RESERVES. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

[A copy of the Policy on Reserves is attached as Appendix C.]

21. RE-APPOINTMENT OF COURTNEY POTHOFF TO THE BOARD OF BAR EXAMINERS

The Secretary informed the commission that the term of Courtney Pothoff on the Board of Bar Examiners ended with the administration of the July 2010 bar examination. He stated that Ms. Pothoff had indicated a willingness to continue to serve and that a new four year term would commence with the February 2011 bar examination.

COMMISSIONER MOORER MOVED THE RE-APPOINTMENT OF COURTNEY POTHOFF TO ANOTHER FOUR YEAR TERM ON THE BOARD OF BAR EXAMINERS COMMENCING WITH THE FEBRUARY 2011 BAR EXAMINATION. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

22. APPOINTMENT TO FILL VACANCY ON BOARD OF BAR COMMISSIONERS FOR THE 15TH JUDICIAL CIRCUIT, PLACE 3

President Spruell stated that the Montgomery County Bar Association had recommended Jeff Duffey to fill the unexpired term of Commissioner Robert Huffaker for the 15th Judicial Circuit, Place 3. President Spruell asked if there were any nominations from the floor. Commissioner Copeland was recognized and he nominated Flynn Mazingo of the 15th circuit. He also noted that he had been asked to nominate Gunter Guy of the 15th Judicial Circuit.

President Spruell asked if there were any further nominations.

COMMISSIONER RALEIGH MOVED THAT NOMINATIONS BE CLOSED. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

Discussion on each of the nominees ensued. Following the discussion, President Spruell stated that the election would be conducted by a show of hands.

PRESIDENT SPRUELL CALLED FOR A SHOW OF HANDS ON EACH OF THE NOMINEES. FOLLOWING A SHOW OF HANDS FOR EACH OF THE NOMINEES, IT WAS DETERMINED THAT MR. MOZINGO WAS ELECTED TO FILL THE VACANCY ON THE COMMISSION FOR THE 15TH JUDICIAL CIRCUIT, PLACE 3.

23. ADJOURNMENT

President Spruell 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.

Alyce M. Spruell, President
Alabama State Bar

ATTEST:

Keith B. Norman, Secretary
Alabama State Bar