

MINUTES

ALABAMA STATE BAR BOARD OF BAR COMMISSIONERS MEETING

State Bar Building
Montgomery, Alabama

Friday, September 14, 2012

1. CALL TO ORDER

President McCallum 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 Burge gave the invocation.

2. ROLL CALL

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

Ronnie E. Keahey	Christy Crow	Robert Simms Thompson
Terri O. Tompkins	William H. Broome	Phil D. Mitchell
Rocky Watson	Leslie R. Barineau	S. Greg Burge
Robert G. Methvin, Jr.	Augusta S. Dowd	Brannon Buck
William A. (Pete) Short	Thad Yancey, Jr.	Henry A. Callaway, III
Walter H. Honeycutt	Billy C. Bedsole	Les Pittman
Donald Rhea	K. Scott Stapp	Hamp Baxley
John M. Peek	John A. Brinkley, Jr.	Kenneth E. White III
Jerry Wayne Baker, Jr.	Allan Chason	Sam W. Irby
Elizabeth Parsons	Braxton W. Ashe	Jason P. Knight
Rebecca Green Thomason	H. Jerome Thompson	Stephen M. Kennamer
John M. Plunk	Gregory M. Varner	Alexander M. Smith
Rebecca G. DePalma	LaBarron Boone	Jeanne Dowdle Rasco
Monet M. Gaines	Ashley Swink	

The following commissioners were absent:

Jerry L. Thornton	Jana Russell Garner	Hays Webb
Teresa G. Minor	Joseph A. Fawal	Derrick A. Mills
Albert J. Trousdale II	Juan Ortega	Harry V. Satterwhite
James R. Beard	J. Flynn Mazingo	J. Cole Portis
Jeffery C. Duffey	Lee H. Copeland	William Randall May
Julia C. Kimbrough	David A. McDowell	John L. Jernigan, III
Harold Stephens	Richard J.R. Raleigh, Jr.	John Earl Paluzzi
R. Wyatt Howell	Robert L. Rumsey	Robert H. Brogden
J. Milton Coxwell, Jr.	Roger W. Pierce	Diandra S. Debrosse
Hon. Claude E. Hundley, III	Meredith S. Peters	Alicia F. Bennett

Staff members present included Tony McLain, Laura Calloway, Brad Carr, Linda Lund, Ed Patterson, Diane Locke, Angela Parks, Margaret Murphy, Christina Butler, Mark Moody, Jeremy McIntire and Dolan Trout. Also in attendance was Suzi Edwards, Legislative Counsel.

3. **INTRODUCTION AND REMARKS OF LT. GOVERNOR KAY IVEY**

President McCallum introduced Lt. Governor Kay Ivey. Lt. Governor Ivey expressed that she has enjoyed working with Alabama's leadership in both houses of state government on the challenges that have come before the legislature. She expressed her appreciation for the work of the state bar in the legislative process and the long term perspective that the profession takes. She discussed the referendum that will be taking place on September 18 and the importance of that vote and the actions required if the referendum passes or fails. The Lt. Governor also spoke about efforts to bring more jobs to Alabama and the fact that it takes many years for these projects to come to fruition. She mentioned that many initiatives are underway. She next spoke about the right sizing of government and making government operate more efficiently. She stated that more than one billion dollars has been cut from state budgets and that efforts were underway on institutionalizing best business practices in many areas of state government including Medicaid. The Lt. Governor remarked that the new leadership team in Montgomery elected in 2010 is aware of the challenges that confront state government and she highlighted only a few of the steps that have been taken to address those challenges. The Lt. Governor concluded her remarks by stating that more work was underway to make state government more efficient and that these efforts would require the cooperation of each branch of government.

After responding to questions from the members of the commission, President McCallum thanked Lt. Governor Ivey for attending the commission meeting and sharing her thoughts with them.

4. **INTRODUCTION OF GUESTS**

President McCallum introduced former executive director of the Alabama State Bar, Reggie Hamner who is a member of the Task Force on Studying the Possible Removal of the State Bar from State Fiscal/Budgetary Authority. He next introduced Kitty Brown, president of the Young Lawyers' Section and Tracy Melvin, president-elect of the Houston County Bar Association. Mike Winter, president of the Montgomery County Bar Association was also present. Mr. Winter asked to be heard and he expressed his appreciation for the hard work of Linda Lund in helping the Montgomery County Bar Association re-establish its volunteer lawyers' program.

5. **APPROVAL OF THE MINUTES OF JULY 18 AND JULY 21, 2012 ALABAMA STATE BAR BOARD OF COMMISSIONERS MEETINGS AND THE MINUTES OF THE JULY 21, 2012 GRANDE CONVOCATION AND BUSINESS MEETING**

President McCallum stated that the minutes of the July 18 and July 21, 2012 board meetings and the minutes of the July 21, 2012 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 BEDSOLE MOVED TO APPROVE THE MINUTES OF THE JULY 18 AND JULY 21, 2012 ALABAMA STATE BAR BOARD OF COMMISSIONERS MEETINGS AND THE MINUTES OF THE JULY 21, 2012 GRANDE CONVOCATION AND BUSINESS MEETING. THE MOTION WAS SECONDED AND APPROVED UNANIMOUSLY BY VOICE VOTE.

6. REPRIMANDS

6.a. Johnnie Lynn Branham Smith – Montgomery County, ASB 2010-1416

Ms. Smith received a public reprimand without general publication for violation of Rules 1.3 and 1.4 of the *Alabama Rules of Professional Conduct (ARPC)*.

6.b. Tyrus Bernard Sturgis – Birmingham Bar, ASB 2011-1975

Mr. Sturgis entered a conditional guilty plea and received a public reprimand without general publication for violating Rules 1.15(a) and 8.4(g) of the *ARPC*.

7. PRESIDENT'S REPORT

President McCallum discussed the work that has been ongoing since the annual meeting. He described the activities of committees and current projects. He next asked David Wooldridge to introduce the new ALAP Director. David Wooldridge introduced Robert Thornhill and gave a summary of Mr. Thornhill's credentials and background including his most recent work with the doctors' substance abuse program. Mr. Wooldridge expressed his and the committee's excitement about Mr. Thornhill joining the program. Mr. Thornhill made brief remarks following his introduction expressing his excitement at being the new ALAP director. President McCallum welcomed Mr. Thornhill and expressed his appreciation to David Wooldridge, Squire Gwin and Laura Calloway for their efforts in helping to fill the ALAP director's positions.

Next President McCallum read a resolution adopted by the commission at its previous meeting recognizing Gale Skinner for her many years of service and presented a framed copy of the resolution to Ms. Skinner. (Diane Locke also received a framed copy of the resolution adopted by the commission honoring her for her many years of dedicated service.)

President McCallum informed the commission that a Leadership Summit on October 9 would be held at the state bar headquarters. He then discussed the information that had been distributed to the commission members regarding the mandatory e-filing order signed by the chief justice that would take place beginning October 1. President McCallum pointed out that the mandatory e-filing would help the court save a great deal of money and that the state bar would do its best to provide the information to lawyers throughout the state using the local bar outreach network. He concluded by reminding the commission members to make sure that all appointments had been made to the local indigent defense advisory board in their circuits. He noted that Commissioners Webb and Broome had been involved with the local indigent defense advisory boards since the new legislation was passed last year. Commissioner Broome offered remarks concerning the importance of the local advisory boards and making sure that all the members had been appointed.

8. **SECRETARY'S REPORT**

The Secretary stated that he had received memorial resolutions from the Tuscaloosa County Bar Association for Jerome Belcher Baird and from the Mobile County Bar Association for former probate judge Lionel (Red) Noonan, Fred Helmsing, Sr. and Willie Darby, Jr.

COMMISSIONER BEDSOLE MADE A MOTION THAT THE MEMORIAL RESOLUTIONS RECEIVED FROM THE TUSCALOOSA COUNTY BAR ASSOCIATION AND THE MOBILE COUNTY BAR ASSOCIATION BE PLACED IN THE BOOK OF MEMORIAL RESOLUTIONS. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

9. **OFFICE OF GENERAL COUNSEL REPORT**

No report.

10. **PROGRAMS UPDATE**

Mr. Ed Sledge of the Maynard Cooper firm in Birmingham and a member of Class 8 of Leadership Forum was introduced. He discussed the Leadership Forum and its importance in developing leadership for the organized bar. He asked the commission's assistance in identifying nominees for the program and encouraging those individuals to submit an application for Leadership Forum Class 9.

11. **REGULATORY PROGRAMS REPORT**

The Director of Regulatory Programs, Angela Parks, introduced Doris McDaniel as the department's newest staff member filling the vacancy in that department.

12. **LOCAL BAR OUTREACH NETWORK**

President McCallum called on Commissioner Swink who gave an overview of the network to enhance communications between the local bar and the state bar. She discussed the local bar outreach member questionnaire and the feedback the questionnaire provides. She stated that six counties did not yet have a chair and the committee needed help to fill those spots and the co-chairman's positions. Commissioner Swink stated that this will be the first year of the program and that she wants to make it a success. She requested the commission's suggestions about the program. Her co-chair is David Rains of Tuscaloosa.

13. **DISCUSSION OF THE ELIMINATION OF THE ALABAMA ESSAY COMPONENT ON THE STATE BAR EXAMINATION**

President McCallum recognized David Hymer, chairman of the Board of Bar Examiners and David Boyd, former commissioner and former president of the National Conference of Bar Examiners.

Mr. Hymer discussed the reasons for the Board of Bar Examiners recommending the discontinuation of the Alabama state law component. He informed the commission that currently the Alabama essay exam consists of six essay questions that focus entirely on civil litigation. He stated that the majority of the material covered by the Alabama essay exam is not unique to Alabama. Mr. Hymer noted that while the law in areas outside of civil litigation may be unique to Alabama, those aspects are not tested on the Alabama essay exams. He explained that if the Alabama essay component was discontinued, it would result in a savings of approximately \$50,000 a year.

Mr. Hymer pointed out that eliminating the Alabama essays would pose no significant effect on the pass fail rate and that relying strictly on the multi-state bar exam, the multi-state essay and the multi-state practice test would provide components that are professionally drafted and bring Alabama in line with other uniform bar exam jurisdictions. Mr. Hymer addressed possible concerns by stating that the bar exam does not test unique aspects of law but general principles of law. He further stated that eliminating the Alabama component would not open the floodgates to out of state lawyers who would gain admission simply by transferring a uniform bar exam score. He informed the commission that Alabama has received only one application seeking to transfer a UBE score in the last two years since the UBE rule has been in place. By comparison, Mr. Hymer noted there have been approximately 3300 pro hac vice motions filed in Alabama state courts over the last five years. He concluded by stating that there were alternatives to the Alabama component including online CLE courses, online state law open book tests or in person CLE seminars.

Following his remarks, Mr. Hymer responded to questions from commissioners concerning the recommended elimination of the Alabama bar exam component. Several commissioners expressed concerns about eliminating the Alabama component. Questions were asked about the cut-score to which Mr. Hymer and Mr. Boyd both responded that the current cut-score was 128, the lowest of all cut-scores of the jurisdictions. Mr. Hymer stated that because the elimination of the Alabama component would not affect the pass fail rate, it would be better to reserve consideration of increasing the cut-score for another time.

After their remarks, President McCallum thanked both Mr. Hymer and Mr. Boyd for appearing before the commission.

14. REMOVAL OF THE STATE BAR FROM STATE FISCAL/BUDGETARY AUTHORITY

President McCallum explained the work of the task force, chaired by Jim Pratt, and named the individual members of the task force. He reminded the commission of the circumstances regarding legislation in the previous session to lump all of the professional licensing agencies into a pool of funds in order to recoup the cost of services provided by the state to the individual professional licensing agencies. Legislative Counsel Suzi Edwards further explained that legislation and informed the commission that it was her opinion this would be an issue during the next legislative session. President McCallum stated this was an important issue that required continued study and discussion by the commission and that the results of the referendum on September 18 would play a key factor in those considerations.

15. NATIONAL PRO BONO WEEK REPORT

Commissioner Rasco and Mr. Royal Dumas updated the commission on the planning for the National Pro Bono Week. They encouraged the commission to visit the Pro Bono Week website and in particular the “Just Stories” that are a part of the website highlighting many worthwhile pro bono stories.

16. SEPTEMBER 18 REFERENDUM

Legislative Counsel Suzi Edwards highlighted the impact on the court system should the referendum fail. She reported that massive layoffs in the court system and in other areas of government would probably occur and a special session would most likely be called to address these issues if the referendum fails.

17. INVESTMENT POLICY AMENDMENT

The Secretary explained the proposed amendment to II. A. 3. which would provide for a footnote regarding minimum cash reserves. The Secretary stated that because the Alabama State Bar account is used for operational purposes, it is necessary to have the additional flexibility to allow cash reserves for the account to go below the stated minimum of ten percent set out in the investment policy. He stated that as a practical matter, this was already occurring and the investment advisors suggested that the board provide the appropriate change to the minimum cash reserve requirement to reflect the actual practice involving this account.

18. COREL MEMBER BENEFIT

Laura Calloway, Director of Service Programs, explained the Corel offer of providing a 50 percent discount on their products for Alabama State Bar members. She noted that this was a discussion item but the commission would need to act upon it in order for it to be an endorsed member benefit. She stated that a link would be placed on the member benefit portion of the website to advise members of its availability.

COMMISSIONER PEEK MADE A MOTION TO SUSPEND THE RULES IN ORDER TO TAKE THIS MATTER OUT OF ORDER. THE MOTION WAS SECONDED AND THE MOTION WAS APPROVED BY A TWO-THIRDS VOTE.

COMMISSIONER BEDSOLE MADE A MOTION TO APPROVE THE COREL MEMBER BENEFIT PROVIDING ALABAMA STATE BAR MEMBERS UP TO 50 PERCENT DISCOUNTS ON THEIR PRODUCTS. THE MOTION WAS SECONDED AND APPROVED.

19. EXAMINERS OF PUBLIC ACCOUNTS AUDIT REPORT OF THE ALABAMA STATE BAR

President McCallum explained the issues noted in the audit report and stated that the Finance and Audit Committee as well as the Executive Council had discussed the matters. He stated that both groups are pleased with the audit findings and with the

corrective measures taken to address the limited concerns discussed by the examiners in their report.

20. RULE III APPLICATIONS

President McCallum stated that Christine Ann Bruenn (MA), David Edward Coenen (TN), Daniel Justin Fortune (CO), Stephen Alexander Cooper (DC) and Tranny P. Arnold IV (TN) had submitted applications for admission on motion pursuant to Rule III of the *Rules Governing Admission to the Alabama State Bar*. He noted that each of the applicants had fulfilled the requirements for admission pursuant to Rule III.

COMMISSIONER CROW MOVED TO ADMIT CHRISTINE ANN BRUENN (MA), DAVID EDWARD COENEN (TN), DANIEL JUSTIN FORTUNE (CO), STEPHEN ALEXANDER COOPER (DC) AND TRANNY P. ARNOLD IV (TN). THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

21. NOMINATIONS FOR THE ALABAMA BOARD OF COURT REPORTING

President McCallum stated that the names of Douglas McElvy (Montgomery), Graham Esdale (Montgomery) and Commissioner Leslie Barineau (Birmingham) had been nominated to be submitted for consideration for the Governor to appoint one of them to the Alabama Board of Court Reporting. He asked if there were any further nominations.

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

COMMISSIONER SMITH MOVED TO APPROVE THE SUBMISSION OF THE NAMES OF DOUGLAS MCELVY, GRAHAM ESDALE AND LESLIE BARINEAU TO THE GOVERNOR FOR CONSIDERATION FOR APPOINTMENT TO THE BOARD OF COURT REPORTING. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

22. NOMINATION FOR THE HAROLD ALBRITTON PRO BONO LEADERSHIP AWARD

President McCallum recognized Linda Lund who explained the purpose of the award. She stated that Sam Crosby had been nominated by the Access to Justice Committee.

COMMISSIONER WHITE MOVED TO APPROVE THE NOMINATION OF SAM CROSBY FOR THE HAROLD ALBRITTON PRO BONO LEADERSHIP AWARD. THE MOTION WAS SECONDED AND THE MOTION WAS APPROVED BY VOICE VOTE.

23. VACANCY ON LEGAL SERVICES ALABAMA BOARD OF DIRECTORS

President McCallum stated that former commissioner Billy Cunningham of Mobile had resigned from the board leaving a vacancy for his unfilled term. He said that Mr. Cunningham had recommended Merceria Ludgood to fill his vacancy. President McCallum asked if there were any other nominations for the commission to consider.

COMMISSIONER BEDSOLE MOVED TO CLOSE NOMINATIONS AND TO APPOINT MERCERIA LUDGOOD TO FILL THE UNEXPIRED TERM OF FORMER COMMISSIONER BILLY CUNNINGHAM ON THE LEGAL SERVICES ALABAMA BOARD OF DIRECTORS. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

24. STAFF COMPENSATION FY 2012-2013

President McCallum stated that the FY 2013 budget provides for \$3,026,461 for staff compensation. The recommended total for staff compensation for the new fiscal year is \$2,803,121 or an increase of \$60,561 over the previous year compensation total.

COMMISSIONER WHITE MOVED TO APPROVE THE STAFF COMPENSATION FOR FY 2013 IN THE AMOUNT OF \$2,803,121. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

25. ADJOURNMENT

President McCallum 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.

Phillip W. McCallum, President
Alabama State Bar

ATTEST:

Keith B. Norman, Secretary
Alabama State Bar