

MINUTES

ALABAMA STATE BAR BOARD OF BAR COMMISSIONERS MEETING

State Bar Building
Montgomery, Alabama

Friday, October 31, 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 Shattuck gave the invocation.

2. ROLL CALL

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

Halron W. Turner	Jerry L. Thornton	Christy Crowe
Jana Russell Garner	Terri O. Tompkins	Hays Webb
William H. Broome	Emily L. Baggett	Leslie R. Barineau
S. Greg Burge	Robert G. Methvin, Jr.	Teresa G. Minor
Allison O. Skinner	Brannon Buck	Kenneth Moore
Ralph E. Holt	Thad Yancey, Jr.	Henry A. Callaway, III
Walter H. Honeycutt	Juan Ortega	James Rebarchak
James R. Beaird	George R. Parker	Les Pittman
J. Flynn Mozingo	Cole Portis	Jeffery C. Duffey
James David Martin	Donald Rhea	Tom Perry, Jr.
William Randall May	Anne Malatia Glass	Robert L. Bowers, Jr.
Cliff Mendheim	Eric Coale	Thomas B. Albritton
John A. Brinkley, Jr.	Rebekah K. McKinney	Daryl Burt
F. Patrick Loftin	Allan Chason	Sam Irby
Erskine R. Funderburg, Jr.	Lee F. Knowles	Sharon Hindman Hester
Roger W. Pierce	John M. Plunk	Gregory M. Varner
Scott L. McPherson	Diandra S. Debrosse	Cooper Shattuck
Meredith S. Peters	Rebecca G. DePalma	Alicia F. Bennett
Kira Fonteneau	Jeanne Dowdle Rasco	Monet M. Gaines

The following commissioners were absent:

Charles G. Reynolds, Jr.	Rocky Watson	Barry A. Ragsdale
Augusta S. Dowd	Derrick A. Mills	Clay A. Lanham
Julia C. Kimbrough	Tazewell T. Shepard, III	John Earl Paluzzi
Jerry Wayne Baker, Jr.	Robert L. Rumsey	H. Thomas Heflin, Jr.
Jason P. Knight	W. Thomas Chapman, II	Stephen M. Kennamer
Ashley Swink Fincher		

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, Tripp Vickers, Michelle Owens, Angela Parks, Linda Lund, Kelley Lee and Robert Thornhill. Suzi Edwards, legislative counsel, and Tracy Daniel, director of the Alabama Law Foundation were in attendance. Brandon Hughey, president of the Young Lawyers' Section was also present.

3. **INTRODUCTION OF GUESTS**

President Raleigh introduced the following law students who served on the Pro Bono Celebration Task Force: Jessica Shaver and Aigner Kolom, Jones Law School and Queena A. Ruffin, University of Alabama School of Law.

4. **APPROVAL OF THE MINUTES OF SEPTEMBER 19, 2014 ALABAMA STATE BAR BOARD OF COMMISSIONERS MEETING**

President Raleigh stated that the minutes of the September 19, 2014 Board of Commissioners' meeting had been transcribed and circulated prior to the meeting. He asked if there were any corrections, additions or deletions. There were none.

COMMISSIONER BROOME MOVED TO APPROVE THE MINUTES OF THE SEPTEMBER 19, 2014 BOARD MEETING. THE MOTION WAS SECONDED AND APPROVED BY UNANIMOUS VOICE VOTE.

5. **REPORT OF RICKY MCKINNEY, DIRECTOR OF THE OFFICE OF INDIGENT DEFENSE SERVICES (OIDS)**

President Raleigh recognized Mr. Ricky McKinney, director of the Office of Indigent Defense Services. Mr. McKinney informed the commission that the public defender program has been organized in Montgomery County with Aylia McKee as the program's first director. He stated that the public defender's office will be located in the Shorter Mansion next to the county courthouse and begin operations by January with 18 lawyers and approximately 30-40 support staff. He also reported that the public defender's office in Jefferson County was operating well and expanding to 30 lawyers with more than 100 staff members. Mr. McKinney reported that the office had handled 5000 cases which constituted all of the criminal cases in Jefferson County. He explained that the Montgomery office would not initially handle capital cases. He also reported that the Escambia program had added two additional lawyers to its staff. Mr. McKinney reported that indigent defense costs were down this year (FY2014 \$57 million vs. in FY13 \$65 million) and that the quality of services being provided to indigent defendants was very good. He concluded his remarks by stating that the new system was working well across the state.

President Raleigh thanked Mr. McKinney for his efforts to make OIDS a success and the commission gave Mr. McKinney a round of applause.

6. REPRIMANDS

6.a. Douglas Barron Lakeman, Birmingham, ASB-2011-2022

Mr. Lakeman accepted a conditional guilty plea and received a public reprimand with general publication for violation of Rules 1.1, 1.3, 1.4(b), 7.1(b) and (c), 7.2(e) and 7.5(a) of the *Alabama Rules of Professional Conduct* (ARPC).

6.b. Mark Hampton Baxley, Dothan, ASB-2012-1503

Mr. Baxley accepted a conditional guilty plea and received a public reprimand with general publication for violation of Rules 1.7(a) and (b), 4.1(b) and 4.3(a) of the *ARPC*.

6.c. Lance Eric Abbott, Eufaula, ASB-2013-709

Mr. Abbott received a public reprimand without general publication for violating Rules 1.3, 1.4(a) and (b), 1.6(d), 8.4(a) and (g) of the *ARPC*.

7. PRESIDENT'S REPORT

President Raleigh praised the state bar staff for their diligence in implementing the uniform invoice and report form. He reported that as of the day's meeting, 15,059 licenses and special memberships had been issued which was ahead of last year despite several problems encountered in the backend operations. President Raleigh next read a proposed resolution honoring Margaret Murphy on the occasion of her 30 years of service to the Alabama State Bar. The resolution has as follows:

WHEREAS, Margaret Murphy began working for the Alabama State Bar in October of 1984 as managing editor and later as director of publications for *The Alabama Lawyer*; and

WHEREAS, for the last thirty years Margaret has worked faithfully and conscientiously with the magazine's only two editors and its Board, to bring Alabama lawyers a nationally acclaimed professional journal that is informative, with insightful and practice oriented articles; and

WHEREAS, Margaret has directed the publication of 180 issues of *The Alabama Lawyer* during her tenure at the Alabama State Bar.

NOW, THEREFORE, BE IT RESOLVED by the Board of Bar Commissioners of the Alabama State Bar, this day assembled, that Margaret Murphy has rendered exceptional service to the Alabama State Bar and its members and that she is hereby praised for her many years of dedication and loyalty and honored for her long time management of the bar's magazine.

BE IT FURTHER RESOLVED that this resolution be recorded in the permanent minutes of this association and that Ms. Murphy be presented a copy in grateful appreciation for her many years of service.

Done this the 31st day of October 2014.

COMMISSIONER BENNETT MOVED TO SUSPEND THE RULES IN ORDER TO TAKE UP THE PROPOSED RESOLUTION OUT OF ORDER. THE MOTION WAS SECONDED AND APPROVED BY THE NECESSARY TWO-THIRDS VOTE. COMMISSIONER GAINES MOVED TO ADOPT THE RESOLUTION. THE MOTION WAS SECONDED AND APPROVED.

President Raleigh concluded by stating that he had attended the admissions ceremony earlier in the week and that the commission would hear about the success of Pro Bono Month later in the meeting.

8. SECRETARY'S REPORT

The secretary had an abbreviated report. He informed the commission that Commissioner Barineau had been elected treasurer of the National Conference of Bar Foundations which would place her in line to become the first person from the state of Alabama to serve as president of the National Conference of Bar Foundations.

9. FINANCIAL REPORT

Director of Finance, Michelle Owens reviewed both the quarterly and year-end report for FY2013-14. Following her report, she asked if there were any questions. There were none.

10. OFFICE OF GENERAL COUNSEL REPORT

Mr. McLain stated that the bar had received a recent order from the Supreme Court regarding disciplinary hearing officers which was considerably different from what the state bar had originally proposed. (A copy of the proposed rules had been previously circulated to the members of the commission.) He next reported that the Disciplinary Commission was considering issuing a formal opinion about legal fees in workers' comp cases known as "double dipping." (i.e., The lawyer receives a separate fees from the comp claim and for a negotiated decrease in the subrogation claim made by the insurance company.) He stated that a formal opinion may not be necessary depending on how the case is decided by the Court of Civil Appeals on a second request for rehearing, or on its appeal to the Alabama Supreme Court. He stated that the case is referred to as Barney 1. President Raleigh recognized Commissioner Rhea, who is handling the appeal of the Case (Barney 1). Commissioner Rhea gave an overview of the case and its posture on appeal. He noted that it was a very convoluted case and that on rehearing he had argued that it was really an excess fee case and a matter for the Alabama State Bar to handle. He reported that the Court of Civil Appeals withdrew the original opinion, Barney 1, and filed a substitute opinion which he referred to as Barney 2. He stated that he filed a second application for rehearing because of the substantial nature of the changes made in the substitute opinion. Commissioner Rhea concluded that the implications of bringing the *Alabama Rules of Professional Conduct* into the litigation arena were very disturbing.

Commissioner Crow commented about fees on underlying cases when a subrogation claim is negotiated downward. She remarked that such a practice is questionable at best.

Mr. McLain concluded by stating that he welcomed the commission's input on these matters.

11. DIGITAL COMMUNICATIONS REPORT

Mr. Anderson reported that the consolidated fee statement had been very successful but that efforts were still underway to improve the process. He stated that he would be contacting firm administrators to get feedback on how the system worked with respect to firms' using the e-check apparatus, without charge, to pay for all firm member fees. He noted that with the utilization of the consolidated invoice, online usage was up this year, thus far, by 12 percent in addition to a substantial increase in the e-check payments. Mr. Anderson also reported that a redesign of the state bar database was in order. He emphasized that this would be a big project and be done over most of next year. He concluded by informing the commission that a revision to the broadcast email policy was being considered.

12. EXTERNAL RELATIONS REPORT

President Raleigh reported for Mr. Patterson who was attending a funeral. He stated that the stats on the Leadership Forum had been included in the materials and that a law school summit would be held the following week with all of Alabama's in-state law schools participating.

13. ADMISSIONS REPORT

Mr. Aday reported that a letter had been transmitted to the court with an analysis of the July bar exam results. He discussed the lower pass rate on the July bar exam. He noted that it was down approximately nine percent from the previous year. He stated that based on raising the cut-score and eliminating re-grades had been insignificant factors in the decline in the overall pass rate. Mr. Aday informed the commission that the letter to the Supreme Court outlining the lower pass rate and that the recent changes had less than a two percent impact on the overall percentage of passages. He surmised that the most likely reason for the drop in the overall pass rate was the nature of the examinee and not the exam itself.

14. WOMEN'S SECTION REPORT – SUSAN BEVILL LIVINGSTON LEADERSHIP AWARD

Commissioner Skinner, who also serves as chair of the Women's Section, discussed the genesis of the proposed Susan Bevill Livingston Leadership award. She explained that the Maud McLure Kelly Award given by the section was developed for female attorneys who were trailblazers in the profession and that it was not an award to recognize leadership. She stated that the section was recommending the creation of the Susan Bevill Livingston Leadership Award for that purpose. She then discussed the criteria for the award. Next, Commissioner Minor spoke as a former partner of Susan Livingston and what the award would mean as well as the Women's Section's efforts to create a leadership award honoring not only Ms. Livingston but other leaders within the legal profession.

COMMISSIONER PERRY MOVED TO SUSPEND THE RULES AND TO TAKE UP CONSIDERATION OF THE SUSAN BEVILL LIVINGSTON LEADERSHIP AWARD OUT OF ORDER. THE MOTION WAS SECONDED AND APPROVED BY THE NECESSARY TWO-THIRDS VOTE.

COMMISSIONER SHATTUCK NEXT MOVED TO AUTHORIZE THE CREATION OF THE SUSAN BEVILL LIVINGSTON LEADERSHIP AWARD TO BE GIVEN BY THE WOMEN'S SECTION. THE MOTION WAS SECONDED AND APPROVED.

President Raleigh thanked Commissioners Skinner and Minor.

15. PRO BONO CELEBRATION MONTH

President Raleigh recognized Commissioner Mozingo. Commissioner Mozingo stated that he was reporting on behalf of Ms. Cassandra Adams, chair of the Pro Bono Celebration Month Committee because she was unable to attend the meeting. Commissioner Mozingo gave an overview of the month's activity including two poverty simulations, 29 legal clinics, state-wide recruitment events, local bar events in most of the judicial circuits, CLE opportunities and law student participation in most of the events. He stated that Pro Bono Month had become a national as well as an international event and he thanked everyone for their participation and help in making this year's event very successful.

16. LAWYER REFERRAL SERVICE REPORT

Commissioner Garner reported that the committee was evaluating the efficiency of the program and that a survey would be sent out to bar members to obtain information and to encourage more participation in the lawyer referral service.

17. LEGISLATIVE GOVERNMENTAL LIAISON COMMITTEE REPORT

Legislative Counsel Suzi Edwards explained that efforts were underway to prepare for the 2015 legislative session. She reported on efforts to establish a committee to both read and analyze bills as they are filed. She also stated that the state bar would participate in the legislative orientation by conducting a "law school for legislators." She encouraged commission members to stay in touch with local legislators.

18. PARCA STUDY

Immediate Past President Anthony Joseph reported on the PARCA Study commissioned by the state bar. He explained that the study would be an independent and an objective tool to discuss court funding. He noted that the report revealed that only six percent of what is collected by the judicial system as court costs is actually returned to the judicial system. He stated that the PARCA Study dramatically shows the woefully small percentage of fees that are collected as court costs are actually used to fund the judicial system.

19. IN-HOUSE COUNSEL AND PUBLIC GOVERNMENT LAWYERS TASK FORCE

Commissioner Shattuck reported that the task force had issued a survey and the results had been received and would be included in the meeting packet for January. He explained that this particular area of the bar was growing and that the creation of a new section for this group of lawyers would address their unique needs including CLE.

20. RULE III APPLICATIONS

President Raleigh reported that five applications for admission by motion pursuant to Rule III of the Rules Governing Admission to the Alabama State Bar had been received. He stated that they were from Gary Oman Bruce (GA); Patricia I.-Pearn Chen (MA); Emily McDonald Heersink (PA); Linda Carol Roberson (VA); Jonathan Palmer Summers (GA). He explained that each of the applications meets the elements of Rule III and have satisfied the character and fitness requirements as well.

COMMISSIONER DEBROSSE MOVED TO ADMIT GARY OMAN BRUCE, PATRICIA I.-PEARN CHEN, EMILY MCDONALD HEERSINK, LINDA CAROL ROBERSON AND JONATHAN PALMER SUMMERS. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

21. APPOINTMENT OF NEW CHAIR FOR THE BOARD OF BAR EXAMINERS

President Raleigh stated that the term of the current chair of the Board of Bar Examiners, David Hymer, had expired. He stated that Warren Matthews, a long-term Board of Bar Examiners, was recommended to fill the remainder of his current term (through February 2016 examination) as the new chair of the board.

COMMISSIONER DEBROSSE MOVED TO APPROVE MR. WARREN MATTHEWS AS THE NEW CHAIR OF THE BOARD OF BAR EXAMINERS THROUGH FEBRUARY 2016. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

22. LEADERSHIP FORUM CLASS 11

Commissioner DePalma reported on the 11th recommended class. A list of those recommended for approval and the four alternates were as follows:

William Reeves Andrews
Benjamin Huff Barron
Rebecca Ashley Beers
Christopher Patrick Bodden
Haley Andrews Cox
Howard Hube Dodd, Jr.
Christopher Ramsey Duck
Roy Clay Dumas
Prim Formby Escalona
Brandon Keith Essig

Andrew Brent Freeman
Timothy Justin Flinn Gallagher
Shera' Craig Grant
Scott Bradley Holmes
George Allen Howell
John W. Johnson II
Henry Sprott Long III
Thomas Matthews Loper
Glory Rachel McLaughlin
Harold Deen Mooty, III
Kathleen Shuey O'Connell
Adam Patterson Plant
John Thomas Richie
Rachel Laurie Riddle
Kelly Burlison Rushin
Ernest Glenn Smith, Jr.
Kristofor David Sodergren
Brian Michael Vines
Mickey Jansen Voss
William Christopher Waller, Jr.
John Matthew Hart, Alternate
Kimberly Carter Brown, Alternate
Andrew Ray Salser, Alternate
Mark David Johnson, Alternate

COMMISSIONER CROW MOVED TO APPROVE THE NOMINEES FOR THE LEADERSHIP FORUM CLASS 11. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

23. 2015-2016 BUDGET REQUEST

The secretary reviewed the budget request for FY2016. He stated that the amount requested was \$6,699,918 or a 2.64 percent increase over the previous year's budget. Following the discussion of the budget request, President Raleigh asked if there were any questions and there were none.

COMMISSIONER SHATTUCK MOVED TO ADOPT THE BUDGET FOR FY2016 IN THE AMOUNT OF \$6,699,918. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

24. 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