

MINUTES

ALABAMA STATE BAR BOARD OF BAR COMMISSIONERS MEETING

**Embassy Suites Hotel
Huntsville, Alabama**

Friday, April 5, 2019

1. CALL TO ORDER

President Sam W. Irby convened this meeting of the Alabama State Bar Board of Commissioners at 10:00 a.m. in the Big Spring Ballroom of the Embassy Suites Hotel, Huntsville, Alabama. Commissioner Deborah Dunsmore gave the invocation.

2. ROLL CALL

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

LaBella S. Alvis	Emily L. Baggett	Raymond L. Bell, Jr.
Robert L. Bowers, Jr.	Sally Bowers	Jeffrey L. Bowling
John A. Brinkley, Jr.	William H. Broome	Brannon J. Buck
Bryan E. Comer	Latisha R. Davis	Deborah Dunsmore
Michael D. Ermert	Kira Y. Fonteneau	Jana Russell Garner
Dana Grimes	H. Thomas Heflin, Jr.	Erik Stephen Heninger
Scott B. Holmes	Ralph E. Holt	Carmen Howell
Brett A. King	Karen Laneaux	Donald B. Mansell
M. Clay Martin	William Randall May	Clint L. Maze
Rebekah K. McKinney	J. Flynn Mozingo	J. Levi Nichols
George R. Parker	Manish Patel	Taylor T. Perry, Jr.
Amanda Porter	Chuck Price, II	Barry A. Ragsdale
Jeanne Dowdle Rasco	James Rebarchak	Pat Sefton
Tazewell T. Shepard, III	Scott Shipman	Allison O. Skinner
John T. Stamps	Charles C. Tatum, Jr.	James M. Terrell
Halron W. Turner	C. Gibson Vance	

The following commissioners were absent:

Mark S. Boardman	Robert H. Brogden	Bradley Cornett
Diandra S. Debrosse	Jeffery C. Duffey	J. Langford Floyd
Erskine R. Funderburg, Jr.	J. Kirkman Garrett	Anne Malatia Glass
Christy Williams Graham	Frederick G. Helmsing, Jr.	Clinton H. Hyde
William R. Lancaster	F. Patrick Loftin	David Martin

R. Cliff Mendheim	Robert G. Methvin, Jr.	C. Zachery Moore
Kenneth Moore	Larry W. Morris	J. Lynn Perry
Courtney R. Potthoff	John A. Smyth	Andrew D. Stanley
Terri O. Tompkins	Gregory M. Varner	Roy W. Williams, Jr.

Also in attendance was President-elect Christy Crow. Staff members in attendance were: Roman Shaul, Justin Aday, Ashley Penhale, Linda Lund, Diane Locke and Katherine Church.

3. INTRODUCTION OF GUESTS

President Irby recognized special guests including Associate Justice Sarah Stewart, Past President Rich Raleigh, Dan Johnson, chair of the Alabama Board of Bar Examiners, Josh Hayes, president of the Alabama Civil Justice Foundation, Nikki Tucker Thomas, executive director of the Alabama Civil Justice Foundation, Tracy Daniel, executive director of the Alabama Law Foundation, Guy Lescault, executive director of Legal Services Alabama, Michael Forton, director of advocacy for Legal Services Alabama, Mark Debro, president of the Madison County Bar Association, Laura Lester, executive director of the Alabama Food Bank Association, Bobby Poundstone, Price Evans, Travis Jackson, David Holt, Bob McCurley, and Deborah Bell Paseur.

4. APPROVAL OF THE MINUTES OF THE JANUARY 18, 2019 BOARD MEETING

President Irby stated that the minutes of the January 18, 2019 Board Meeting had been transcribed and circulated prior to the meeting. He asked if there were any corrections, additions or deletions. There were none.

COMMISSIONER RAGSDALE MOVED TO APPROVE THE MINUTES OF THE JANUARY 18, 2019 BOARD MEETING. THE MOTION WAS SECONDED AND APPROVED BY UNANIMOUS VOICE VOTE.

5. REMARKS BY ASSOCIATE JUSTICE SARAH STEWART

Associate Justice Stewart thanked the board for the invitation to make remarks at the meeting. She reported that the Court has been busy since new justices took office and that there is collegiality and significant energy among the justices. She informed the board that a committee chaired by Justice Mitchell will be proposing rule changes to effectuate the implementation of notice of appeal e-filing by October 1, 2019.

6. RECOGNITION OF COMMISSIONER BILL BROOME FOR POINT OF PERSONAL PRIVILEGE

President Irby recognized Commissioner Bill Broome for a point of personal privilege. Mr. Broome informed the board that his term as a commissioner ends this year and

that he is ineligible to run for re-election. He said that it was his honor to serve for 18 of the past 21 years as the bar commissioner from the 7th Judicial Circuit. He thanked his fellow commissioners for their friendships and kindness, especially during his recent battle with cancer.

7. **PRESIDENT'S REPORT**

President Irby reported on local bar meetings and other speaking engagements that he has attended since the last board meeting. He thanked those commissioners who have hosted bar leadership at the local bar level and said it is a great opportunity for him to meet so many lawyers across the state. Mr. Irby reported on upcoming events and encouraged commissioners to continue to invite state bar leadership to local bar meetings and other activities in their communities.

President Irby reminded the commissioners about the Annual Meeting, which will be held July 17-20, 2019, at The Grand Hotel in Point Clear. He recognized Ashley Penhale, director of programs for the Alabama State Bar, and commended her for all of the planning and coordination work on the Annual Meeting.

President Irby informed the board that the Alabama Civil Justice Foundation has made a request to be included as a contribution beneficiary, in the same manner as the Alabama Law Foundation, on the annual Consolidated Fee Invoice. He informed the board that the request came in after the board meeting agenda was finalized and that the request will be a discussion item for the next board meeting.

8. **PRESIDENT-ELECT REPORT**

President Irby recognized president-elect Christy Crow to give a brief report. President-elect Crow thanked Vice President Shepard and his wife, Pam, for hosting a reception at their home on the evening prior to the board meeting. She updated the board on Leadership Forum alumni events that are taking place across the state to receive feedback on the Leadership Forum and if changes are needed for future classes of the program.

President-elect Crow informed the board that wellness would be a focus of her year as bar president and she encouraged commissioners to become involved in finding solutions to manage the stress of practicing law in a healthy manner. She also encouraged commissioners to send her any preferences they have for service on committees and task forces. She concluded by informing the board that the bar will host a mid-year meeting January 22-23, 2020, in conjunction with the Judges meeting, at Gulf State Park in Gulf Shores.

9. **SECRETARY / EXECUTIVE DIRECTOR'S REPORT**

Secretary/Executive Director Phillip McCallum reminded commissioners that April 26, 2019, is the deadline for election petitions. He informed the board that several

applications were received for at-large positions on the board and that the at-large positions up for election this year would be filled by the board at the May meeting. He reminded commissioners that April 15, 2019, is the deadline for nominations for the William D. “Bill” Scruggs, Jr., Service to the Bar Award and the J. Anthony “Tony” McLain Professionalism Award.

Mr. McCallum reported that Colonel Bryan Morgan, director of career services at Faulkner University’s Jones School of Law, has returned to work and is doing better after suffering a serious heart attack in January. He informed the board that Tracy Daniel, executive director of the Alabama Law Foundation, will be leading a group of Alabama attorneys on a trip to Washington, D.C., to seek funding for legal services.

Mr. McCallum informed the commission that the launch of the re-designed Alabama State Bar website has been delayed due to some technical glitches. He stated that he expected the website and the Annual Meeting online registration to launch within a week.

10. OFFICE OF GENERAL COUNSEL REPORT

General Counsel Roman Shaul informed the board that Robin Ennis was hired to be his paralegal. He complimented Mrs. Ennis, who came to work at the bar from the Supreme Court Clerk’s Office.

He informed the board that the Executive Council authorized him to sign a joint defense agreement in *Fleck v. Wetch*, litigation challenging activities of mandatory bars using attorney license fees. Mr. Shaul informed the board that the joint defense agreement does not make the bar a party to the litigation, but it does give the bar notice of actions in the case and access to valuable information related to the litigation.

General Counsel Shaul concluded by informing the board that the Supreme Court is more engaged in the disciplinary process. He said that he welcomed the engagement and scrutiny by the Court, but informed the board that the change in approach by the Court may result in more appeals by the Office of General Counsel in cases of attorney discipline.

11. ELECTION UPDATE

Justin Aday, Director of Admissions and Attorney Licensing, reminded commissioners of the April 26, 2019, deadline to qualify as candidates in the 2019 election. He reminded the board that 19 board positions are up for election and that three at-large positions will be filled. Mr. Aday reminded the board that the election will open online on Monday, May 20, 2019, and close at 5:00 p.m. on Friday, May 24, 2019.

12. **19TH AMENDMENT CELEBRATION REPORT**

Commissioners Allison Skinner and Tom Heflin updated the board on the work of the 19th Amendment Celebration Committee, which is working to commemorate the centennial of women's suffrage in the United States. Commissioner Skinner informed the board that the steering committee is making plans for a celebration in August 2020. Commissioner Heflin informed the board that the best role for the state bar is to be a hub of information and resources, especially with relevant content on the bar's website. He also stated that the Alabama Department of Archives and History is providing valuable assistance using experience from the current bicentennial celebration of Alabama's statehood. Commissioner Skinner closed by informing the board that former commissioner Leslie Barineau has been appointed by the president-elect of the ABA to serve as an ABA liaison in coordinating the celebration.

13. **LEGAL FOOD FRENZY UPDATE**

Commissioner Jeanne Rasco and Laura Lester, executive director of the Alabama Food Bank Association, informed the board that the 4th Annual Alabama Legal Food Frenzy will take place April 22, 2019 – May 3, 2019. Commissioner Rasco and Ms. Lester stressed the importance of increased donations to the food bank network during spring months, because those donations become the food that is distributed to those experiencing food hardships, many of whom are children who are not receiving free or reduced breakfasts and lunches during the summer break from school. Commissioner Rasco encouraged commissioners to participate by contacting other lawyers and encouraging participation, by sponsoring an event to raise food and funds, and by giving money that will be used by the food banks to purchase food supply.

14. **ALACOURT.COM & PERSONAL IDENTIFYING INFORMATION TASK FORCE UPDATE**

Commissioner Mike Ermert updated the board on the progress being made by the Alacourt.com & Personal Identifying Information Task Force. He informed the board that the task force divided its work based on three main areas of law – criminal, civil and domestic-juvenile. Mr. Ermert said that the final report of the task force will be given at the Annual Meeting, but that results from the task force's work will include a detailed attorney's guide for using Alacourt and Alafile so as to reduce personal identifying information, CLE opportunities on the attorney's guide and filing procedures, proposed rule changes that will provide for filing procedures that reduce personal identifying information and ensuring that each proposal of the task force limits public access to personal identifying information without denying access to public papers. Mr. Ermert commended Commissioner Tom Heflin, Legislative Counsel Suzi Huffaker, Nathan Wilson and Eric Anderson for their assistance to the task force.

15. LEGISLATIVE UPDATE

Legislative Counsel Suzi Huffaker reported to the board that the legislative session is active and that several bills of interest to the bar have been filed. She reported that five bills have been filed that would make changes to the Judicial Article. These bills were proposed by the Alabama Law Institute, after reviewing the Judicial Article for two years. She informed the board that a summary of the bills are included in the meeting materials. Mrs. Huffaker also informed the board that the corporations code update has passed the House and moved to the Senate and that the General Fund Budget, which looks positive for the court system, has been reported out of House Committee. Mrs. Huffaker also reported that there is close attention on a juvenile justice reform bill and that she understands there is a forthcoming bill which would provide for a senior status for circuit judges in state court, much like the senior status currently available to federal judges.

On behalf of Commissioner Ermert and Vice President Shepard, Mrs. Huffaker reported to the board on the work of the Government Relations Task Force and Government Relations Committee

16. COMMISSIONER COMMENTS

President Irby recognized Commissioner Carmen Howell to give an update from the 12th Judicial Circuit (Coffee County and Pike County). Commissioner Howell informed the commission that there are approximately 135 lawyers in the 12th Judicial Circuit, three circuit judges, and one district judge in each county. She informed the board that she has an interest in indigent defense and has served on the Indigent Defense Advisory Board of the Office of Indigent Defense Services, which has implemented an application process to confirm that lawyers wishing to be on the indigent defense list have attained proper CLE and meet other necessary qualifications.

Next, President Irby recognized Commissioner Charles Tatum to give an update on the 14^h Judicial Circuit (Walker County). Mr. Tatum informed the board that there are approximately 100 lawyers in the circuit, 3 circuit judges and 2 district judges. He also reported on changes to indigent defense in the circuit, with a shift in the past 5 years from court appointed indigent defense to a public defender and contract attorney system. He encouraged commissioners to study the issue closely if a similar change was proposed in their circuit because of the consequences the changes have had on many lawyers in his circuit. He also commended bar leadership on the increased availability of information from the bar and asked that the board continue to make efforts to engage lawyers from all areas of the state.

17. BOARD OF BAR EXAMINERS RESTRUCTURE TASK FORCE REPORT

Dan Johnson, chair of the Alabama Board of Bar Examiners, and Commissioner Tom Perry gave a report of the Board of Bar Examiners Restructure Task Force. Mr.

Johnson reported to the board that members of the Board of Bar Examiners had the idea of restructuring that board into a smaller policy-focused board which would have appointment and oversight authority over the Committee on Character and Fitness, a bar examination grading committee and an online curriculum committee. Mr. Johnson explained that this change is logical given the shift in work of the Board of Bar Examiners since Alabama adopted the Uniform Bar Exam in 2011.

Mr. Johnson also informed the board that the Board of Bar Examiners Restructure Task Force considered whether or not re-grading should be used in the bar examination grading process. He reminded the board that the previous re-grading procedure was eliminated in 2014, at the same time the Alabama civil litigation essay questions were removed from the exam and the minimum passing score was raised by four points. Mr. Johnson informed the board that the Board of Bar Examiners, throughout the work of the current task force, was unanimously opposed to implementing a re-grading procedure. As an alternative, the Board of Bar Examiners proposed to the task force that a two-grader system be implemented whereby two graders of the Board of Bar Examiners would grade each essay question and the co-graders would be required to reconcile with each other if they assigned different scores for the same exam paper.

Mr. Perry informed the board that he was the proponent of implementing a re-grading procedure. He stated that he had visited with law school deans and conducted significant research on the issue. He informed the board that he supports the two-grader proposal and that he believes it will address all of the concerns that would have been addressed by re-grading.

18. REPLACEMENT OF MONET GAINES AS AT-LARGE MEMBER, PLACE 8

President Irby reminded the board that there is a vacancy in the At-Large Commissioner, Place 8 position after the resignation of Monet Gaines upon her appointment as District Judge in Montgomery County. He informed the board that applications were due by April 1, 2019, for three at-large positions, including the vacant position which was regularly up for election this year. In accordance with the election rules, a list of qualified applicants will be submitted to the board for its consideration and to fill three at-large positions at the board meeting in May.

19. NOMINATIONS FOR CHAIR OF THE DISCIPLINARY COMMISSION

President Irby informed the commission that the position of chair of the Disciplinary Commission is vacant after the resignation of Monet Gaines upon her appointment as District Judge in Montgomery County. He informed the board that Commissioner Manish Patel and Commissioner Rebekah McKinney had been nominated for the position. President Irby called for discussion of the nominees and further nominations for the vacant position.

A MOTION WAS MADE BY COMMISSIONER MAZE TO CLOSE NOMINATIONS. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

COMMISSIONER BUCK MOVED TO SUSPEND THE RULES AND MAKE THIS DISCUSSION ITEM AN ACTION ITEM. THE MOTION WAS SECONDED BUT FAILED TO RECEIVE THE NECESSARY TWO-THIRDS VOTE.

President Irby informed the board that filling the position of chair of the Disciplinary Commission would be an action item at the next board meeting.

20. NOMINATIONS FOR ABA HOUSE OF DELEGATES

President Irby informed the board that nominations are currently open for a seat in the ABA House of Delegates. He stated that nominations may be submitted and any received would be presented at the next board meeting.

21. APPROVAL OF ABA ACQUIRING LIST OF ASB MEMBERS

President Irby informed the board that a request was made by the ABA to obtain a full list of the names and contact information of current members of the Alabama State Bar. He reminded the board that such action requires board approval because the general policy of the board is that such lists are not made available to any requesting entity.

COMMISSIONER PERRY MOVED TO APPROVE THE REQUEST OF THE ABA TO OBTAIN A FULL LIST OF THE NAMES AND CONTACT INFORMATION OF CURRENT MEMBERS OF THE ALABAMA STATE BAR. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

22. APPROVAL OF YOUNG LAWYERS SECTION ACQUIRING LIST OF ASB MEMBERS

President Irby informed the board that a request was made by the Young Lawyers Section of the Alabama State Bar to obtain a full list of the names and contact information of current members of the Alabama State Bar.

COMMISSIONER PERRY MOVED TO APPROVE THE REQUEST OF THE YOUNG LAWYERS SECTION OF THE ALABAMA STATE BAR TO OBTAIN A FULL LIST OF THE NAMES AND CONTACT INFORMATION OF CURRENT MEMBERS OF THE ALABAMA STATE BAR. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

23. APPROVAL OF MAUD McLURE KELLY AWARD RECIPIENT

President-elect Crow reported to the commission that the Alabama State Bar Women's Section has recommended Merceria Ludgood as the recipient of the 2019 Maud McLure Kelly Award.

COMMISSIONER MAY MOVED TO APPROVE THE RECOMMENDATION OF THE WOMEN'S SECTION TO AWARD THE MAUD MCLURE KELLY AWARD TO MERCERIA LUDGOOD. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

24. APPROVAL OF SUSAN B. LIVINGSTON AWARD RECIPIENT

President Irby reported to the commission that the Alabama State Bar Women's Section has recommended Commissioner Allison Skinner as the recipient of the 2019 Susan B. Livingston Award.

COMMISSIONER SHEPARD MOVED TO APPROVE THE RECOMMENDATION OF THE WOMEN'S SECTION TO AWARD THE SUSAN B. LIVINGSTON AWARD TO ALLISON SKINNER. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

25. APPROVAL OF APPOINTMENTS TO THE ALABAMA BOARD OF BAR EXAMINERS

President Irby reported that the terms of Ed Gentle and Courtney Potthoff on the Board of Bar Examiners concluded with the February 2019 bar exam. He stated that both examiners indicated their willingness to serve another four year term on the Board of Bar Examiners, commencing with the July 2019 bar exam.

A MOTION WAS MADE BY COMMISSIONER MAZE TO CLOSE NOMINATIONS. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

COMMISSIONER COMER MOVED THE APPOINTMENT OF ED GENTLE AND COURTNEY POTTHOFF TO A FOUR YEAR TERM ON THE BOARD OF BAR EXAMINERS COMMENCING WITH THE JULY 2019 BAR EXAM THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

26. ADJOURNMENT

President Irby 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 and the meeting was adjourned at 11:50 a.m.

Sam W. Irby, President
Alabama State Bar

ATTEST:

Phillip W. McCallum, Secretary
Alabama State Bar