

Insurance Research Task Force

2021-2022 Insurance Research Task Force, chaired by Phil D. Mitchell, was created on July 30, 2021 by the 146th Alabama State Bar President, Tazewell T. Shepard. The task force was tasked with the job of conducting research into the origins and history of the Alabama State Bar Health Insurance Plan (the “State Bar Plan”) and the Madison County Bar Health Insurance Plan (the “Madison Plan”, collectively the State Bar Plan and the Madison Plan are referred to as the “Plans”).

The Purpose and Scope of the Task Force was as follows:

The Task Force shall conduct research into the origins and history of the Alabama State Bar Health Insurance Plan and the Madison County Bar Health Insurance Plan (the “Plans”). The research shall include identification of individuals involved in oral and written representations and discussions concerning the two plans and all documents that the task force deems important to its research. The research shall also include analysis of the legal relationship between the plans and the State Bar, and to ensure that no conflict issues arise in the involvement of State Bar staff and resources with the State Bar health insurance plan. The task force’s research shall also include analysis to ensure that the plans are and remain in compliance with the Ethics laws, the Open Meetings Act, and any other applicable Alabama statutes and regulations.

All State Bar staff and State Bar leaders shall cooperate fully with the task force in its research activities. The Alabama State Bar, through its designated staff liaison, will provide staff support for the task force in carrying out its purpose.

The purpose of this task force is to ensure the continued viability of both health insurance plans because of the important services they provide to our members. The task force report may include constructive recommendations to further this purpose.

The task force shall terminate immediately after the end of the last day of the State Bar’s 2022 Annual Meeting, unless it is renewed by the new State Bar president.

Activities of the task force:

The Task Force was created during the COVID-19 Pandemic, which precluded in-person meetings of the Task Force for most of its existence. Shortly following the creation of the Task Force, the Chair and Vice Chair met via telephone conference to organize a plan of action and direction for the Task Force to accomplish its purpose and scope, which included first obtaining documentation from the Alabama State Bar upon the formation and operation of the State Bar Plan, followed by dissemination of this documentation to the full Task Force for their review. It must be noted that Terri B. Lovell became Executive Director of the Alabama State Bar almost immediately prior to the time that the Task Force was formed. Although Executive Director Lovell was experiencing her own learning curve as the new executive director of the State Bar, she and her Executive Assistant Michelle Shaw were extremely helpful to the Task Force in completing its work and providing the Task Force with the materials requested and needed from the State Bar for its research. After the Task Force received the documentation on the State Bar Plan and the Task Force members had the opportunity to review the documentation, the full Task

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Force held a meeting by Zoom/Conference Call on December 16, 2021, to discuss the information provided. At the conclusion of this Task Force Meeting, additional documentation on the State Bar Plan was requested and provided to the Task Force by the State Bar's General Counsel, Roman Shaul, and the Task Force made the decision to obtain this information, so that the Task Force could be as well-versed as possible with the State Bar Plan, before turning its attention to researching the Madison Plan. Following the review of such additional documentation, the full Task Force discussed all the information provided on the State Bar Plan. The Task Force members asked the Chair to establish contact with Cindy Seeley, who serves as the Executive Director of the Huntsville-Madison County Bar Association. The purpose of the contact was to obtain general information regarding the Madison Plan and to schedule a meeting of the Task Force with Ms. Seeley following the State Bar Commissioner's May Meeting in Huntsville, Alabama. The Chair of the Task Force contacted Executive Director Seeley and scheduled the meeting requested by the Task Force. On May 13, 2022, the Task Force met with Executive Director Seeley in person at the offices of the Huntsville-Madison County Bar Association. Prior to the meeting, the Task Force members in attendance discussed the preliminary information obtained by the Chair from Seeley, and then met with Seeley to obtain the needed information for the Task Force's research of the Madison Plan. Executive Director Seeley was extremely cooperative and helpful to the Task Force in completing its work and providing the Task Force with the materials requested and needed from the Huntsville-Madison County Bar for its research. Following this meeting, the Chair developed an outline of the information learned from Executive Director Seeley and disseminated this information to the full Task Force. Thereafter, on May 19, 2022, the Task Force met in person and via Conference call with State Bar Executive Director Lovell and General Counsel Shaul to follow up on the information provided on the State Bar Plan and the information obtained on the Madison Plan. After this meeting, the Task Force obtained additional information regarding the operation of the State Bar Plan from Executive Director Lovell. All of the materials obtained from both the Alabama State Bar and the information obtained upon the Madison Plan were shared with the full Task Force via a DropBox folder created for the Task Force's work. All materials referenced in this Final Report are available for review, if needed. The Task Force believes that it has at all times followed its charge and conducted sufficient research into the Plans to submit its findings and recommendations hereafter set forth for consideration by the Board of Bar Commissioners.

Findings of the Task Force:

The Madison Plan was established by the Huntsville-Madison County Bar Association in the 1970's to provide health insurance to attorneys, who could not otherwise obtain insurance as solo practitioners or members of small law firms. The Madison Plan is a Blue Cross/Blue Shield of Alabama ("BC/BS") Platinum Health Insurance Plan. It was adopted prior to the enactment of the Affordable Care Act ("ACA") and is a "grand-fathered" plan that was not cancelled by BC/BS after the adoption of the ACA. The Madison Plan provides benefits not presently available under BC/BS's offered insurance plans. The Madison Plan's grand-fathered BC/BS Platinum Plan is the only insurance plan the Huntsville-Madison County Bar Association offers.

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Following the adoption of the ACA, BC/BS encouraged the Huntsville-Madison County Bar Association to change the Madison Plan in an effort to reduce rising premiums, and indicated that the Madison Plan would likely be discontinued by 2014. The Huntsville-Madison County Bar Members wanted to do all that was possible to keep the Madison Plan in-place and unaltered. Despite such statements, the Madison Plan has not been changed and has not been discontinued by BC/BS. Seeley understands that as long as the Madison Plan does not change, it can continue to be offered as a “grand-fathered” BC/BS Platinum Plan.

To participate in the Madison Plan, a lawyer must be at least an Associate Member of the Huntsville-Madison County Bar Association and pay a \$150.00 annual associate membership fee. In addition to the lawyer that is enrolled as an Associate Member being allowed to enroll in the Madison Plan, the Associate Member’s staff and family can also enroll in the Madison Plan. The Huntsville-Madison County Bar Association charges a \$25.00 service charge per year for each Associate Member and staff person who is enrolled in the Madison Plan.

Executive Director Seeley serves as the Plan Administrator for the Madison Plan. Seeley accepts applications for enrollment in the Madison Plan and pays drafts to BC/BS for all insureds on the Madison Plan. The Madison Plan is a “pass through” plan, in which the Huntsville-Madison County Bar Association charges insureds on the Madison Plan only what BC/BS charges in premiums to the group, plus the \$25.00 service charge per year. The Madison Plan now insures approximately 265 family policies and 239 individual policies, which provide health insurance to nearly 1,000 insureds.

In 2015, the Huntsville-Madison County Bar Association made the State Bar aware of the Madison Plan and the Madison Plan became listed as a Member-Benefit available to state bar members who join the Huntsville-Madison County Bar Association as an Associate Member. Seeley states that after it became listed as a Member-Benefit, the Madison Plan was allowed advertise in the State Bar’s publications, including in the State Bar’s email blast known as “The Scoop”, without charge to the Huntsville-Madison County Bar Association.

After the ACA was enacted and before the State Bar Plan was enacted, Seeley understands the Mobile Bar Association started a health insurance plan, which was discontinued under the ACA. Despite the restrictions of the ACA, the State Bar obtained a private ruling which allowed the State Bar Plan to be enacted after the passage of the ACA.

The State Bar Plan was enacted on March 6, 2020, by the Board of Bar Commissioners. Minutes of that meeting reflect that, “President Crow informed the Board that the Insurance Benefits Committee has evaluated the possibility of providing an association health insurance plan for bar members. She stated Blue Cross Blue Shield has agreed to offer an association health insurance plan that will be available to members so long as the member has at least one non-relative employee. President Crow informed the Board that the Insurance Benefits Committee reviewed presentations of four different plan administrators and that the committee recommends Alliance Insurance Group of Montgomery to administer the plan for the state bar. She stated that the administrator will pay all costs of administering the plan and that the bar would not be responsible for any hard costs associated with the plan. Commissioner Helmsing

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moved to suspend the rules and make this discussion item an action item. The motion was seconded and approved by the necessary two-thirds vote. Commissioner Lancaster made a motion that Alliance Insurance Group of Montgomery be approved as the third-party administrator of the Alabama State Bar Health Insurance Plan. The motion was seconded and approved by voice vote.”

Executive Director Seeley states that the State Bar’s leadership told Madison County’s Bar Commissioners and/or Seeley that the State Bar Plan would not compete with the Madison Plan because the State Bar Plan would not be able to offer a Platinum BC/BS Plan. The State Bar Plan would instead offer only Gold, Silver and Bronze BC/BS Plans, which would offer lawyers in Alabama a lower cost alternative to obtain insurance, than the cost of the Madison Plan’s BC/BS “grand-fathered” Platinum Plan. Seeley states that she was told the State Bar Plan will not offer a Platinum Plan because every lawyer cannot afford to be insured by a Platinum Plan. Despite assurances from the Alabama State Bar’s leadership to Executive Director Seeley that the State Bar Plan would not offer a Platinum Plan to compete with the Madison Plan, Alliance Insurance Group is offering what it lists and describes as a “Platinum Plan” under the State Bar Plan, when in fact this is not a BC/BS Platinum Plan (comparable to the Madison Plan’s BC/BS “grand-fathered” Platinum Plan) but is a lesser BC/BS plan with a gap insurance policy issued by MedPlus.

On March 20, 2020, the law firm of Maynard Cooper sent its engagement letter to Phillip W. McCallum, who was at that time the Executive Director of the Alabama State Bar. This engagement letter was signed as “Acknowledged and Agreed to” by Executive Director McCallum on March 23, 2020. This engagement letter indicated that Maynard Cooper jointly represents the Alabama State Bar and Alliance Insurance Group related to the formation of the Alabama State Bar’s Association Health Plan.

In an April 13, 2020, follow up letter from Maynard Cooper directed to Executive Director McCallum at the State Bar, the attorneys recommended the State Bar form its “Plan to provide group health benefits to qualifying law firm employers and their employees (and families). Qualifying law firm employers would be limited to law firm employers with at least one common law employee and whose attorneys are members of the [State Bar] Association. Individual members of the Association (in their individual capacity) and law firms without common law employees will not be allowed to participate in the Plan. The Association and the qualifying law firm employers who participate in the Plan will establish a trust. The trust and Plan documents (the “Plan Governing Documents”) will limit participation in, and control over, the Plan to such qualifying law firm employers who participate in the Plan. The qualifying law firm employers would have the requisite organizational relationship through their owners’ and/or employees’ membership in the ASB, and the trust would constitute a sub-group of employers who qualify as a bona fide group or association of employers acting as an “employer” under ERISA section 3(5). The Plan Governing Documents will provide for the establishment of a board of trustees, administrative committee, or other governing body (“Plan Governing Body”) which will have sole power and authority over the management of the property, operations, and administration of the Plan and may allocate certain fiduciary duties to officers, employees, or

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contractors to provide services to the Plan. Plan Employers will have sole power and authority to elect and remove members of the Plan Governing Body pursuant to the terms of Plan Governing Documents. All Participating Employers will be required to execute a Participating Employer Agreement prior to participating in the Plan.” The Trust Agreement establishes that the Board of Trustees for the Trust shall consist of five (5) trustees, specifically two (2) Small Firm Trustees, two Elected Trustees, and the Executive Director of the Alabama State Bar who shall be a Trustee of the Trust for an indefinite term, expiring only when he/she no longer holds such office with the Alabama State Bar Association. The Small Firm Trustees and the Elected Trustees are nominated by Small Firm Participating Employers and Participating Employers, respectively, or by one or more members of the Board of Trustees, and are elected by a majority vote of the Small Firm Participating Employers and Participating Employers, respectively, participating at the Board’s elections held at the Alabama State Bar Annual Meeting.

At its December 4, 2020, Meeting, the Board of Bar Commissioners voted on, and approved, the Trust and authorized the Executive Council of the Alabama State Bar to execute the Trust Agreement and to take such further actions as are necessary to establish the Trust and implement the terms and purposes of the Trust Agreement.

Regulatory Filings for the 2019-2020 reporting period list State Bar employees, Phillip McCallum, Justin Aday, and Merinda Hall as persons responsible for operation of the State Bar’s health plan, using Tax ID no. 85-6153707. Regulatory Filings for the 2020-2021 reporting period list a portion of the Trust’s trustees as persons responsible for the Health Plan Trust, using the same Tax ID no. 85-6153707.

In November 2020, during the height of the COVID-19 crisis, BC/BS gave every premium payor a discount during the month of November 2020 and lowered the premiums required for BC/BS Health Insurance during that month. The October 30, 2020 Board of Bar Commissioners’ Meeting Minutes reflect: “BLUE CROSS BLUE SHIELD PREMIUM CREDIT OPPORTUNITY Mike Hicks and Joey Marquez of Alliance Insurance Group, the third-party administrator of the Alabama State Bar Association Health Plan, informed the Board that Blue Cross Blue Shield is offering a premium credit on November premiums for those members participating in the association health plan. Mr. Hicks and Mr. Marquez informed the Board that they have consulted with attorneys at Maynard Cooper as to the options for the premium credit. After consultation with attorneys, the third-party administrator is recommending that the premium credit be retained as a plan asset as opposed to refunding it to the participating members. After discussion, President Methvin recommended that the credit be held in trust and that further study be done on the issue and it be discussed at a future meeting. Commissioner Bell requested that the minutes reflect he abstained from this matter due to his law firm, Maynard Cooper, providing counsel and guidance on the matter.” The October 30, 2020, Bar Commission Minutes do not reflect that a vote was taken on the recommended actions regarding holding the premium credit in trust.

Apparently, the State Bar Plan was administered outside of the Trust from the State Bar Plan’s adoption on March 6, 2020, through the adoption of the Trust on December 4, 2020, and

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was under the control of the Bar Commission when it was announced that the premium credit would be retained as a plan asset and not returned to the insureds.

In a Memorandum dated June 17, 2021, from the law firm of Maynard Cooper to the Alabama State Bar Association Health Plan Trust and Alliance Insurance Group, regarding an “Outline for Discussion of Fiduciary Responsibilities”, Maynard Cooper provided an outline for discussion regarding the trustees’ fiduciary responsibilities, and items which included the “MLR Rebates (or similar refunds, rebates, etc.) - Because all funds flow through the Trust, likely all rebates on account of those funds would be considered plan assets subject to the exclusive benefit rule”. A further item included that the trustees hire the service providers and establish reasonable fees for such service providers. After BC/BS announced that it would be providing a premium credit to its insureds in November 2020, Huntsville-Madison County Bar Association Executive Director Seeley prepared an announcement to be published in the State Bar’s email publication “The Scoop” to advertise the Madison Plan and to specifically discuss BC/BS’s premium credit for November 2020, which the Huntsville-Madison County Bar intended to pass on to its member insureds during that month. The Madison Plan thereafter reduced its November 2020 premiums for its insureds to pass the BC/BS credit on to its insureds.

Seeley sent this announcement by email to Melissa Warnke, Director of Communications at the State Bar, for publication in The Scoop, but she did not hear back from Ms. Warnke and the announcement to promote the Madison Plan and the decision of the Madison Plan to pass the November 2020 BC/BS premium credit on to its members did not appear in The Scoop. When Seeley contacted Ms. Warnke at the State Bar about this, Seeley was told she would have to speak with State Bar President Robert G. Methvin, Jr. about why the Madison Plan’s announcement was not published in The Scoop. Seeley states that upon contacting President Methvin, she was told the Madison Plan was in competition with the State Bar Plan and that the Madison Plan could no longer be advertised in the State Bar’s publications without cost.

Executive Director Lovell has confirmed that there was much confusion during the end of former Executive Director McCallum’s service in 2020 when the State Bar Plan was administered directly by the State Bar and she confirmed that Ms. Warnke was told not to advertise for the Madison Plan during this time if it competed with the State Bar Plan. Since assuming the position as Executive Director of the State Bar in June of 2020, Lovell has worked with State Bar President Shepard and members of the State Bar’s staff to insure that the Plans are treated equally in being advertised as Member-Benefits.

The Task Force finds that it is of significant benefit to the members of the Alabama State Bar Association that both the Madison Plan and the Alabama State Bar Plan continue to be offered and provided as a Member-Benefit to Alabama lawyers, their families, and staff members, based upon the variety of costs and benefit coverages provided under the Plans. The Task Force recognizes that the promotion and advertisement of the Plans to recruit new members/insureds greatly assists the Plans, as the premium costs of insurance per insured to cover the Plans’ groups of insureds decreases as the total number of insureds in the group increases. Stated another way, the premium costs for groups with larger numbers of insureds is less per member than for groups with smaller numbers of insureds.

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The Task Force further finds that the State Bar Plan is no longer under the legal control or supervision of the State Bar's Board of Bar Commissioners or the State Bar's employed staff as a result of the December 4, 2020 adoption and implementation of the Alabama State Bar Association Health and Welfare Plan Trust, which is specifically controlled by the Trust's Board of Trustees as established and elected under the terms of the Trust. As such, the Alabama State Bar Association no longer has control over the State Bar Health Plan it established in March, 2020. Certainly, the Alabama State Bar Association has no control over the Huntsville-Madison County Bar Association, or over the Madison Plan. As such, the Task Force is unaware of any of the activities of the Trust in the implementation and operation of the State Bar Plan, or of the Huntsville-Madison County Bar Association in the implementation and operation of the Madison Plan which triggers the requirements of the Open Meeting Act, and the Task Force believes it is beyond its capabilities and the scope of this Task Force to offer opinions regarding the operations of said entities or their compliance with all statutes and regulations that may apply to them. Subject to such caveats, however, the Task Force can state that it did not discover from its research any items that appear to be in violation of any applicable statutes or regulations regarding these entities.

It is of concern to the Task Force from an ethical standpoint that the State Bar's Executive Director serves essentially as a "permanent" member of the Board of Trustees of the Trust, due to the potential for a conflict of interest, or a perception of a conflict, which could arise as a result of the State Bar Executive Director's fiduciary obligations to the Trust while simultaneously serving as the highest-ranking paid employee of the State Bar Association. As an example, the Task Force would point to the decisions involving BC/BS's November 2020 premium credit. If the Executive Director were called in the future to vote to retain a premium credit as an asset of the Trust, as opposed to refunding a premium credit to the current members of the Bar Association which are the State Bar Plan's insureds, the Task Force believes this could place the State Bar's Executive Director in a conflicted position. Additional issues may arise from the State Bar's Executive Director's service as a Trustee of the Trust in control of the State Bar Plan, now that the Plan is no longer controlled by the Executive Director's employer i.e. the Board of Bar Commissioners. The Task Force suggests that the President may wish to seek further input and guidance from the State Bar's General Counsel upon these issues.

Recommendations of the Task Force:

The Task Force recommends that the Board of Bar Commissioners consider the following actions, as it relates to the Plans moving forward:

1. No employee of the Alabama State Bar, including the Executive Director, should serve as a Trustee, employee or agent of the Trust that operates the State Bar's Health Insurance Plan. The Board of Bar Commissioners should request the Trust's governing documents be amended accordingly.
2. No employee of the Alabama State Bar, including the Executive Director, should take any action to endorse or show preference for either the State Bar's Health Insurance Plan or the

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Madison Health Insurance Plan, including writing or signing emails or letters or attending any promotional event which does not promote both Plans.

3. The State Bar's Health Insurance Plan and the Madison Health Insurance Plan should have the same access to "The Scoop" electronic newsletter and to other resources and publications of the Alabama State Bar as all other vendors named in the member-benefits section of the State Bar's website have, and such access should be provided to the State Bar's Health Insurance Plan and the Madison Health Insurance Plan at equal costs.

4. The State Bar's Health Insurance Plan should no longer use the word "platinum" in describing or referring to any of its plans, or any portion of its plans, and it should not create a plan that effectively competes with Platinum Plan offered by the Madison Health Insurance Plan, by offering substantially all the same benefits as Madison's Platinum Plan. The Board of Bar Commissioners should request the Trustees of the State Bar's Health Insurance Plan adopt these policies.

5. The Board of Bar Commissioners should request the Madison Health Insurance Plan not use the words "gold", "silver", or "bronze" in describing or referring to any of its plans, or any portion of its plans, and it should not create a plan that effectively competes with Gold, Silver, or Bronze Plans offered by the State Bar's Health Insurance Plan, by offering substantially all the same benefits as these State Bar Health Insurance Plans. The Board of Bar Commissioners should request the Madison Plan adopt these policies.

6. When a member contacts the Alabama State Bar about health insurance plans that are available, the State Bar should refer the member to both the State Bar's Health Insurance Plan and the Madison Health Insurance Plan.

7. (A) To the extent that such a change is allowed by the ACA, whenever a vacancy occurs on the Board of Trustees of the Trust that operates the Alabama State Bar's Health Insurance Plan, the Board of Trustees should notify the Alabama State Bar of the vacancy and the name(s) of any person that the Trustees recommend to fill said position. The matter should proceed to a vote of the State Bar's Board of Bar Commissioners to fill the vacancy, in the same manner as the Board of Bar Commissioners uses to fill positions on the boards of other organizations, such as Legal Services Alabama and the Alabama Securities Commission; or alternatively, (B) that the Board of Trustees that operates the Alabama State Bar's Health Insurance Plan be enlarged to include two (2) additional members of the Board of Trustees, which shall be appointed by the State Bar's Board of Bar Commissioners, in the same manner as the Board of Bar Commissioners uses to fill positions on the boards of other organizations, such as Legal Services Alabama and the Alabama Securities Commission. The Board of Bar Commissioners should request the Trust's governing documents be amended accordingly.

8. Within fourteen (14) days after the Alabama State Bar's Health Insurance Plan's Board of Trustees receives an annual audit statement of its finances, it shall provide a copy of the statement to the Executive Director and the President of the Alabama State Bar. The Board of Bar Commissioners should request the Trust's governing documents be amended accordingly.

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The Task Force is grateful for the assistance and support of the staff of the Alabama State Bar and of the Huntsville-Madison County Bar Association, who assisted the Task Force in its work on these issues.