

## MINUTES

### ALABAMA STATE BAR BOARD OF BAR COMMISSIONERS MEETING

**State Bar Building  
Montgomery, Alabama**

**Friday, September 14, 2018**

#### 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 board room of the Alabama State Bar building, Montgomery, Alabama. Commissioner Robert Bowers gave the invocation.

#### 2. ROLL CALL

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

LaBella S. Alvis	Raymond L. Bell, Jr.	Mark S. Boardman
Sally Bowers	Jeffrey L. Bowling	William H. Broome
Brannon J. Buck	Bradley Cornett	Latisha R. Davis
Diandra S. Debrosse	Jeffery C. Duffey	Deborah Dunsmore
Michael D. Ermert	J. Langford Floyd	Erskine R. Funderburg, Jr.
Monet M. Gaines	Jana Russell Garner	J. Kirkman Garrett
Anne Malatia Glass	Dana Grimes	H. Thomas Heflin, Jr.
Frederick G. Helmsing, Jr.	Erik Stephen Heninger	Scott B. Holmes
Ralph E. Holt	Carmen Howell	William R. Lancaster
Karen Laneaux	Donald B. Mansell	David Martin
M. Clay Martin	William Randall May	Clint L. Maze
Charles Zackery Moore	Larry W. Morris	J. Levi Nichols
George R. Parker	Manish H. Patel	J. Lynn Perry
Amanda Porter	Courtney R. Potthoff	James Rebarchak
Pat Sefton	Tazewell T. Shepard, III	Scott Shipman
Allison O. Skinner	John T. Stamps	James Michael Terrell
Terri O. Tompkins	Halron W. Turner	C. Gibson Vance

The following commissioners were absent:

Emily L. Baggett	John A. Brinkley, Jr.	Robert H. Brogden
Bryan E. Comer	Kira Y. Fonteneau	Christy Williams Graham
Clinton H. Hyde	Brett A. King	F. Patrick Loftin
Rebekah K. McKinney	Cliff Mendheim	Robert G. Methvin, Jr.

Kenneth Moore  
 Chuck Price, II  
 John A. Smyth  
 Gregory M. Varner

J. Flynn Mozingo  
 Barry A. Ragsdale  
 Andrew D. Stanley  
 Roy W. Williams, Jr.

Taylor T. Perry, Jr.  
 Jeanne Dowdle Rasco  
 Charles C. Tatum, Jr.

Also in attendance were President-elect Christy Crow and Immediate Past President Augusta Dowd. Staff members in attendance were: Roman Shaul, Justin Aday, Eric Anderson, Margaret Murphy, Alex Rice, Linda Lund, Laura Calloway, Merinda Hall, Ed Patterson and Diane Locke. Also in attendance was Tracy Daniel, director of the Alabama Law Foundation.

### 3. **INTRODUCTION OF GUESTS**

President Irby recognized special guests including Associate Justice Will Sellers, State Representative Jim Hill, Riley Potthoff, son of Commissioner Courtney Potthoff, Barney Martin of Mobile, Othni Lathram, Director of the Alabama Legislative Services Agency, Lee Johnsey, Juan Ortega, chair of the Alabama State Bar Member Benefits Committee, Eileen Harris, Director of the Alabama Center for Dispute Resolution, and Legislative Counsel Suzi Huffaker.

Representative Jim Hill addressed the commission and reminded commissioners that he is always available to them for assistance with matters in the state legislature. He also asked commissioners to encourage attorneys in their communities to become involved in public service, especially to consider offering themselves as a candidate for the state legislature.

Justice Will Sellers addressed the commission and thanked the commissioners for their service to the bar. He reminded commissioners that the Judicial Building is owned by the people and he is always willing to welcome visitors to the building and provide a tour. Justice Sellers congratulated President Irby on his becoming president of the Alabama State Bar and wished him well in his year as president.

### 4. **APPROVAL OF THE MINUTES OF THE JUNE 27, 2018 AND JUNE 30, 2018 BOARD MEETINGS AND THE MINUTES OF THE JUNE 30, 2018 GRANDE CONVOCATION AND BUSINESS MEETING**

President Irby stated that the minutes of the June 27, 2018 and June 30, 2018 Board Meetings and the minutes of the June 30, 2018 Grande Convocation and Annual 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 GLASS MOVED TO APPROVE THE MINUTES OF THE JUNE 27, 2018 AND JUNE 30, 2018 BOARD MEETINGS AND THE MINUTES OF THE JUNE 30, 2018 GRANDE CONVOCATION AND ANNUAL BUSINESS MEETING. THE MOTION WAS SECONDED AND APPROVED BY UNANIMOUS VOICE VOTE.

## 5. REPRIMANDS

### 5. a. Elizabeth Clair Addison, ASB 2016-1532

Ms. Addison received a public reprimand with general publication and pay any and all costs taxed pursuant to Rule 33, *Alabama Rules of Disciplinary Procedure*, including but not limited to a \$1,000 administrative fee for violating Rules 1.1, 1.3, 1.4, 5.5(a)(2), 8.4(a) (g) of the *Alabama Rules of Professional Conduct*.

### 5. b. Darren William Kies, ASB 2016-847

Mr. Kies received a public reprimand with general publication and pay a \$750 administrative fee pursuant to Rule 33, *Alabama Rules of Disciplinary Procedure* for violating Rules 5.2(a), 7.2(c), 7.3(a) and 8.4 (a)(g) of the *Alabama Rules of Professional Conduct*.

### 5. c. Brandy Murphy Lee, Rule 25A, PET. 2017-1207

Ms. Lee received a public reprimand with general publication as reciprocal discipline pursuant to *Rule 25, Alabama Rules of Disciplinary Procedure*.

### 5. d. James McCauley Smith, ASB 2014-1317

Mr. Smith received a public reprimand with general publication for violating Rules 1.5(a) and 8.4(g) of the *Alabama Rules of Professional Conduct*.

### 5. e. Michael Jay Upton, ASB 2016-972

Mr. Upton received a public reprimand with general publication and pay any costs taxed pursuant to Rule 33, *Alabama Rules of Disciplinary Procedure* including but not limited to a \$750 administrative fee for violating Rules 1.5(a), 1.5(b), 1.15(a), 7.2(f) and 8.4(a),(c),(g) of the *Alabama Rules of Professional Conduct*.

## 6. GUEST SPEAKER: OTHNI LATHRAM, DIRECTOR OF THE ALABAMA LEGISLATIVE SERVICES AGENCY

President Irby recognized Othni Lathram, director of the Alabama Legislative Services Agency, to give a brief report on the state legislature. Mr. Lathram thanked the commissioners for their service to the bar and for the work that many of them do in conjunction with the Alabama Law Institute. He gave a brief overview of the Legislative Services Agency, which is an agency that combines several long-standing agencies of state government including the Legislative Reference Service, Legislative Fiscal Office and Alabama Law Institute.

Mr. Lathram informed the commission that the three main areas of attention for the 2019 legislative session will likely be budgets, infrastructure and the Ethics Act. He reviewed the two state budgets – the Education Trust Fund (ETF) budget, which will likely have fiscal year revenues this year that are the highest in Alabama history and the State General Fund (SGF), from which 72% of appropriations go to fund Medicaid and Corrections. Mr. Lathram informed the commission that the legislature will likely propose a change to the gas tax, moving it from a per gallon structure to a percent-based structure. He also reminded the commission that a commission has been appointed to review the Alabama Ethics Act, with the Alabama State Bar having President-elect Christy Crow and Commissioner Mike Ermert as its representatives on the commission. Mr. Lathram concluded by informing the commission that there is an Alabama Law Institute committee studying the Judicial Article, including issues such as court fees and the continuity of the Administrative Office of Courts, and that a report will be forthcoming in that regard.

#### **7. PRESIDENT'S REPORT**

President Irby recognized those commissioners who are serving on the Executive Council for the 2018-2019 bar year and asked them to stand and be recognized by the commission. He also recognized Commissioner Mark Boardman who will be advising the president and commission this year on matters of parliamentary procedure. President Irby informed the commission that he appointed Robert Bowers to service on the Judicial Conference.

President Irby informed the commission that he has been busy since taking office. He holds a weekly conference call with Secretary/Executive Director McCallum, has met with the State Bar staff and attended many events representing the Alabama State Bar. He informed the commission of the Bar Leadership Symposium to be held on September 27th and reminded them that a number of activities are planned for October in conjunction with the Pro Bono Month Celebration.

#### **8. SECRETARY / EXECUTIVE DIRECTOR'S REPORT**

Secretary/Executive Director McCallum reminded the commission that the Consolidated Fee Invoice process is now underway and that all attorneys should be logging in to the website to complete their licensing and membership renewals for the upcoming bar year. Mr. McCallum asked the commission to keep Commissioner Tom Perry's family in their thoughts after the passing of his father-in-law. He also recognized Commissioner Gibson Vance, who recently underwent neck surgery and Commissioner John Brinkley on the birth of his seventh child.

Mr. McCallum informed the commission that work is being done to review the Leadership Forum program and make recommendations on changes that may be due for the program. In particular, the bar will evaluate whether or not a class will be accepted this year and, if not, what changes are needed once the program is resumed.

He informed the commission that a more detailed plan will be presented at the next board meeting.

**9. OFFICE OF GENERAL COUNSEL REPORT**

General Counsel Roman Shaul informed the commission that everything is going well for him in his new position. He commended the staff of the Office of General Counsel and reminded the commission that the office is a resource for lawyers. He informed the commission that he had received considerable feedback about the operations of the office and was looking at ways the office can become more efficient with the limited staffing level it has. He provided the commission with statistics of the office for the current year and informed the commission that the office had given a record 3,800 informal opinions.

**10. FINANCIAL REPORT**

Director of Finance Merinda Hall shared third quarter financial reports with the commission. Particularly, Mrs. Hall informed the commission that revenues are up 2.5% and expenditures are down 3.9%. She also informed the commission that \$400,000 had been returned to the investments account and that \$400,000 was the amount expected to be reported as a surplus at year end.

**11. AMENDMENTS TO BYLAWS OF THE NON-RESIDENT SECTION**

Director of External Relations and Programs Laura Calloway informed the commission that the Non-Resident Members Section was created and operated initially under model section bylaws that are made available to newly-created sections. She informed the commission that sections operate in this fashion for a couple of years and then recommend amendments to the bylaws so that they are more relevant for the section. She informed the commission that the Non-Resident Members Section is proposing six amendments to its bylaws and that the proposed bylaws were distributed in the meeting materials.

**12. AMENDMENTS TO BYLAWS OF THE SOLO & SMALL FIRM SECTION**

Vice President Taze Shepard, chair of the Solo & Small Firm Section, briefed the commission on proposed amendments to the bylaws of the section. He informed the commission that most of the changes were grammatical and that the only substantive amendment dealt with the executive committee having authority over dues changes. He informed the commission that this would allow the section to fund VLP participants into the section at a reduced rate or for free. Mr. Shepard informed the commission that the proposed amendments were unanimously approved by section leadership and the section.

COMMISSIONER MAZE MOVED TO MAKE THIS AN ACTION ITEM. THE MOTION WAS SECONDED AND APPROVED BY THE NECESSARY TWO THIRDS VOTE.

COMMISSIONER MAZE THEN MOVED TO APPROVE THE PROPOSED AMENDMENTS TO THE BYLAWS OF THE SOLO & SMALL FIRM SECTION. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

**13. BUDGET OVERVIEW**

Lee Johnsey, co-chair of the Finance & Audit Committee and Director of Finance Merinda Hall gave an overview of the budget process used to develop the FY2020 budget that will be presented to the commission in October. They informed the commission that the proposed FY2020 budget is 1.7% less than the FY2019 adopted budget.

Mr. Johnsey and Mrs. Hall also informed the commission that there are four anticipated retirements that will have a significant impact on the budget for the upcoming fiscal year. They informed the commission that salary costs in the upcoming budget will decrease despite all employees receiving a 3% cost of living adjustment.

**14. PRO BONO MONTH CELEBRATION UPDATE**

Linda Lund, director of the Alabama State Bar Volunteer Lawyers Program, updated the commission on planning that is underway for the 10th Annual Pro Bono Celebration in Alabama. She informed the commission that the Pro Bono Month Celebration Task Force is being co-chaired by Tim Gallagher of Montgomery and Commissioner Emily Baggett of Decatur. She also informed the commission that Alabama has been recognized nationally as having the highest participation rates among pro bono attorneys and for closing the most pro bono cases. Mrs. Lund concluded by reminding the commissioners that an events calendar for Pro Bono Month is on the Alabama State Bar website and that commissioners are encouraged to attend events when possible.

**15. RESULTS OF FOCUS SESSIONS**

President Irby recognized Vice President Taze Shepard to brief the commission on the results of focus sessions that were held to solicit feedback from members on the Alabama State Bar. Mr. Shepard informed the commission that three sessions had been held in Spanish Fort, Decatur and Montgomery. He said the sessions were moderator-led discussions that were meant to gather unbiased and candid information from members on how the State Bar is doing as a member-service organization. Mr. Shepard informed the commission that the turnout has been overwhelming and that the information gathered will be useful once it is compiled. He said there are discussions about holding additional sessions and the commission would be informed and encouraged to attend if that happens.

**16. REVISED TRAVEL POLICY**

Secretary/Executive Director McCallum informed the commission that the state travel policies had changed and Alabama State Bar travel policies have been proposed in response to those changes. In particular, the out-of-state travel approval process has been streamlined and the agency head is now authorized to approve out-of-state travel for employees and board members. The travel of the Executive Director, as agency head of the Alabama State Bar, will still require pre-approval by the Governor's Office. Under the revised rules, out-of-state travelers will receive per diem calculated based on the location of travel. For in-state travel, the overnight per diem rate has been increased from \$75.00 per day to \$85.00 per day for stays of two nights or less and \$100.00 per day for stays over two nights.

**17. DIGITAL COMMUNICATIONS UPDATE**

Lee Johnsey, chair of the Digital Communications Committee, informed the commission that the Digital Communications Committee is taking a new approach at evaluating how the State Bar serves its members through digital means. In particular, he said the committee is committed to seeing that members and the public have readily accessible information at their fingertips. He said the committee will work hard to formulate a plan based on recent statistics that show over 20% of users on the Alabama State Bar website are not lawyers and that a majority of the website users find it hard to use. He said the committee would rely on focus groups who regularly use digital platforms connected to the State Bar and that input from the commissioners would be important.

**18. ADMISSIONS CEREMONY UPDATE**

Secretary/Executive Director McCallum informed the commission that the State Bar, the Young Lawyers Section and the Supreme Court of Alabama have been evaluating participation levels at the admissions ceremonies held in May and October of each year. In particular, there is concern that so few participants in the May ceremony make it cost-prohibitive to conduct. There have been discussions on eliminating the May ceremony and those discussions will continue and the ultimate decision will be made by the Supreme Court. Mr. McCallum informed the commission that it was not required to take any action on the change, but input from commissioners is welcome and the commission will be informed of any changes that are made.

**19. MEMBER BENEFITS PROPOSAL**

Juan Ortega, chair of the Member Benefits Committee, reported to the commission that the committee reviewed several proposals by entities seeking to be recognized as member benefits providers. The proposals were approved by the Member Benefits Committee and presented for discussion at the board meeting on June 27, 2018. The member benefits that were presented for discussion are as follows: Local Hospitality

(travel discounts), Orlando Employee Discounts (discounts for Orlando travel and local attractions), Avis/Budget (rental car discounts), and Conference America (discounts for telephone and video conferencing services).

COMMISSIONER GLASS MOVED TO APPROVE LOCAL HOSPITALITY, ORLANDO EMPLOYEE DISCOUNTS, AVIS/BUDGET, AND CONFERENCE AMERICA AS ALABAMA STATE BAR MEMBER BENEFITS PROVIDERS. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

**20. STAFF COMPENSATION FY2018-19**

President Irby explained that a total of \$3,359,792 was recommended for staff compensation for FY2018-19.

COMMISSIONER SHEPARD MOVED TO APPROVE STAFF COMPENSATION FOR FY2018-19 IN THE AMOUNT OF \$3,359,792. THE MOTION WAS SECONDED AND APPROVED BY VOICE VOTE.

**21. 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 11:53 a.m.

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Sam W. Irby, President  
Alabama State Bar

ATTEST:

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Phillip W. McCallum, Secretary  
Alabama State Bar