

**STATE BAR OF GEORGIA
BOARD OF GOVERNORS
MEETING MINUTES
Saturday, October 19, 2019/9:00 a.m.
The DeSoto Savannah/Savannah, GA**

The 280th meeting of the Board of Governors of the State Bar of Georgia was held at the date and location shown above. Darrell Sutton, President, presided.

Special Recognition

Sutton recognized the members of the judiciary, the past-presidents of the State Bar, and other special guests in attendance.

Roll Call

Secretary Sally Akins circulated the roll for signature. The list of those in attendance is attached as Exhibit A.

Future Meetings Schedule

Sutton reviewed the Future Meetings Schedule.

Minutes of the 278th and 279th Meeting of the Board of Governors

Secretary Sally Akins presented the minutes of the Board of Governors meetings held June 7 and June 8, 2019, at the Ritz-Carlton Orlando, Grande Lakes, in Orlando, Florida. By unanimous voice vote, the Board of Governors approved the minutes.

Amendments to Bylaws and Rules

Following a report by Sutton, the Board of Governors, by unanimous voice vote, approved recommending to the Supreme Court of Georgia the following proposed Bylaws and Rules amendments (Exhibit B): 1) Rule 1-702. Standing Committees; Special Committees; 2) Rule 4-204.1 Notice of Investigation; 3) Rule 1.1 Competence; 4) Rule 1.6 Confidentiality of Information; 5) Rule 1.15(III) Record Keeping; Trust Account Overdraft Notification; Examination of Records; 6) Rule 1.18 Duties to Prospective Client; 7) Rule 1.0 Terminology and Definitions.

Approval of New Cannabis & Hemp Law Section

Following a report by Bill NeSmith, the Board of Governors, by unanimous voice vote, approved the creation and proposed Bylaws (Exhibit C) of a new Cannabis & Hemp Law Section, with the addition of a sentence under Section 1 that reads "This Section will not promote or encourage the violation of any local, state, or federal laws."

Amendments to the Appellate Practice Section Bylaws

Following a report by Bill NeSmith, the Board of Governors, by unanimous voice vote, approved amendments (Exhibit D) to the Bylaws of the Appellate Practice Section.

Appointments to the Commission on Continuing Lawyer Competency (CCLC)

The Board of Governors, by unanimous voice vote, approved the reappointments of Kent Altom and Anne Kaufold-Wiggins to the CCLC for three-year terms (2020-2022).

Advisory Committee on Legislation (ACL)

Following a report by ACL chair Amy Howell, the Board of Governors took the following action on proposed legislation:

<u>Legislative Proposal</u>	<u>Germane to Purposes of the Bar</u>	<u>Support on Merits 2/3 Majority</u>
1) Support for FY 2021 Judicial Council Budget Request-\$750,000 to Fund Civil Legal Services Grants for Kinship Care Families	Passed by unanimous voice vote	Passed by unanimous voice vote
2) Support for FY 2021 Judicial Council Budget Request-\$2.5M to Fund Civil Legal Services Grants for Victims of Domestic Violence	Passed by unanimous voice vote	Passed by unanimous voice vote
3) Proposed Amendments to Title 53 (Wills, Trust, and Administration of Estates)	Passed by unanimous voice vote	Passed by unanimous voice vote

Amy reported that the Uniform Mediation Act, a carry-over bill from last year, will also be part of the Bar's 2020 legislative agenda. Thereafter, Amy announced that the next ACL meeting will be held December 5, 2019.

The Board of Governors received the minutes of the ACL meeting held September 11, 2019.

Legislative Update

Director of Governmental Affairs Christine Butcher Hayes and Legislative Consultant Rusty Sewell provided a legislative update, thanking Amy for her leadership of the ACL. Christine reported work was done over the summer about the integration of the Uniform Mediation Act into the Georgia Code. Another proposal has arisen following a study committee about remote online notarization, which several states have adopted. The ACL is working with the Real Property and Fiduciary Law Sections on a previously drafted bill about this issue.

Treasurer's Report

Treasurer Elizabeth Fite reported about the Bar's finances and investments. She discussed the timeline for the Bar's budget process and discussed why the Bar used negative budgeting to draw down unallocated funds. She referred the Board members to the Status and Use of Cash Investments and the Board Designated and Donor Temporarily Restricted Net Assets reports that reflect a breakdown of where the cash and investments reside within the Bar. Fite also reported that the Finance Committee will be studying appropriate Bar reserve levels.

The Board of Governors received the combined Operations and Bar Center Consolidated Revenues and Expenditures Report as of June 30, 2019; Bar Center Revenues and Expenditures Summary for the Twelve Months through June 30, 2019; Income Statement YTD-Operations for the Twelve Months Ending June 30, 2019; Status and Use of Cash Investments as of June 30, 2019; Board-Designated and Donor Temporarily Restricted Net Assets as of June 30, 2019; Summary of Members and Voluntary Legislative Contributions Paid through June 30, 2019; Summary of Members and Voluntary Contributions to GLSP Paid through June 30, 2019; Legislative Activity Report from July 1, 2018 through June 30, 2019; and Cornerstones of Freedom Activity Report from July 1, 2018 through June 30, 2019.

The Board of Governors also received ICLE financial reports: Statement of Financial Position June 30, 2019; and Statement of Revenues and Expenses from July 1, 2019 with Budget for the Fiscal Year ended June 30, 2019.

Report on Programs Assessments

Sutton reported that the Bar has been operating within an annual budget that has intentionally spent down unallocated funds. Reversal of that trend is now necessary, however, in order to preserve the existence of adequate unallocated funds. Current forecasts indicate that to do this with the start of the 2021 Bar year, operation within a balanced budget is required. That will in turn require a substantial dues increase, if the Bar continues to operate with no changes to Bar programs.

To illustrate this, Sutton reviewed the Cash Activity Projection for 2019-2020 and Subsequent Years Based Upon the 2019-2020 Budget report. This reflects what will happen if dues are raised by \$2, \$6, and \$10 per year, and then the dues amount required for the Bar to operate within a balanced budget. Sutton then reviewed the Cash Activity Projection report that indicates the 1) total net losses likely to be incurred each year with only a \$2 due increase and no changes to programming; 2) a balanced budget with no changes to programming, reflecting dues at \$276 in 2020-21 and increasing \$8 each year thereafter; and 3) a balanced budget with assessments (\$15 professionalism fee and \$15 CSF assessment) and no changes to programming, reflecting dues at \$306 in 2020-21 and also increasing \$8 each year thereafter.

Sutton reported that to ensure that any dues increase is only an amount absolutely necessary, and considering that the majority of the Bar's expenses (apart from personnel) are associated with the Bar's programs, alterations to programs were considered. This was done by the Programs Committee conducting an independent assessment of each program. Using a rating criteria, each program received a letter rating to indicate the Program's Committee's assessment of each program's relationship to the Bar's mission, and a number rating to indicate the Program's Committee's assessment of how well each program fulfills its purpose, considering other funding sources. The result of that assessment is reflected on the State Bar of Georgia Programs and Related Entities chart (Exhibit E).

Sutton reported that the Executive Committee then considered the Programs Committee's assessment and made recommendations to eliminate the funding for 1) BASICS, 2) The Resource Center, and 3) iCivics; to 4) sunset MLAP in recognition of other complementary legal clinics; and 5) conduct a further review of the Pro Bono Project before making a final funding decision. The Executive Committee also voted to recommend to the Chief Justice's Commission on Professionalism a reduction in the mandatory professionalism assessment from \$15 to \$5, and to pass along to Bar members the convenience fee associated with credit card payments. Each Bar program was also asked to develop a plan for reducing costs by up to 10%.

Sutton reported that the Executive Committee thereafter held a meeting to hear presentations from proponents of the programs slated to be impacted. Following that meeting, the Executive Committee's recommendations to eliminate the funding for BASICS and iCivics was unchanged. A motion to endorse making MLAP a subset of the Bar's Pro Bono Project, with GLSP assuming the cost associated with it, was approved. The recommendation to eliminate Bar funding for The Resource Center was rescinded. Sutton also reported that at the request of the Executive Committee, Bar staff identified \$500,000-\$600,000 of cost reductions in the operating budget.

Sutton explained the reasons for the processes undertaken, which included objectivity, timing, and the opportunity for proponents to be heard by the Executive Committee and by the Board of Governors before any action is taken. He further reported that we cannot use ICLE assets to balance the Bar's budget due to restrictions contained in the State Bar/ICLE asset transfer agreement. Lastly, Sutton said

challenges such as *Fleck* are not the reason why this process was undertaken, and in fact, this process would have become necessary even if *Fleck* and similar challenges had never arisen, because the budgeting design used by the Bar that resulted in this process becoming necessary arose independent of those challenges.

The Board of Governors then received information from various programs.

Presentation from BASICS

Former BASICS Committee chair Seth Kirschenbaum and Director of the BASICS Program Michelle Menifee presented an overview of the BASICS program. BASICS is an offender rehabilitation program that provides work training and other life skills to inmates who are within 12 months of release. It operates a 10-week program in 21 transition centers around the state, and has graduated 14,000 inmates since its inception 43 years ago. Seth also reported that since the Bar has been deferring dues increases to spend down excess funds, the dues amount has not even kept up with inflation. He believes it is time for the Bar, which has one of the lowest dues rates in the country, to have an appropriate dues increase so that it can continue to fund the BASICS program. Seth asked the Board of Governors to vote to keep BASICS when a vote is taken.

BASICS Committee chair Michael Terry discussed why he believes BASICS is *Keller* compliant. He said stopping recidivism stops the courts from being clogged by unnecessary cases and improves the administration of justice. The BASICS graduations are truly inspirational and the Bar's reputation is greatly enhanced by this program. The floor was opened for comments and questions after Terry's presentation.

Jon Pannell asked about the existence of other sources of funding for BASICS, but Seth reported that right now 100% of the funding comes from the Bar. Both Seth and Mike reported that attempts to have the state fund BASICS have been unsuccessful.

When asked what other services BASICS provides that inmates cannot get otherwise, Michelle said BASICS is the only program helping inmates with their skills set and what they can do to sustain themselves, particularly through entrepreneurial opportunities.

David Cannon asked about past funding and who tracks the recidivism rate. Seth reported that the Georgia Bar Foundation formerly funded BASICS, but when the Great Recession occurred, the Bar assumed funding BASICS. He also reported that the Department of Corrections (DOC) keeps statistics about recidivism.

Jack Long asked for a breakdown of how the \$150,000 BASICS budget is spent. He said that BASICS reportedly serves 325 inmates per year and asked how is that number is reached and why is it not larger than that given the number of inmates who could be served. Seth reported that the majority of funds go to salaries for trainers and workbooks. The BASICS program costs about \$300 per student for each course.

Eric Ballinger asked how long it has been since BASICS asked the DOC or other legislative body for funding. Seth reported he and then President Ken Hodges met with the DOC and were told it cannot fund BASICS. Michael reported that BASICS is exploring grant opportunities.

Joe Dent said a number of programs like BASICS were funded by the Georgia Bar Foundation and when those funds were no longer available, those programs found other sources of funding outside of the Bar.

Presentation from iCivics

There was no presentation by iCivics.

Report from MLAP

Sutton identified the existing significant overlap between MLAP and the Pro Bono Project. The only change being made to MLAP under the proposed arrangement is that GLSP will now fund it instead of the Bar.

Eric Ballinger reported that the Pro Bono Project already maintains the list of lawyers who volunteer for MLAP, and MLAP sees that those lawyers are qualified, so the entities work in tandem. Eric also reported that MLAP will continue to work with the Military/Veterans Law Section on other projects and the Section will maintain the restricted funds donated in memory of Past President Jeff Bramlett. Eric also recognized MLAP Director Christopher Pitts, who replaced Norman Zoller.

Pro Bono Director Mike Monahan reported that he is grateful for the opportunity to work with MLAP. The Pro Bono Project has assets it can bring to the table, including a case management system and a pro bono infrastructure that can further identify potential volunteers and services beneficiaries in our communities. He also reported that the ABA has approached GLSP and MLAP about an opportunity for a three-year grant to provide military legal assistance efforts.

Judge Paige Reese Whitaker asked for more information on The Resource Center's funding sources before the Midyear Meeting. She stated that in addition to what the Bar provides, The Resource Center gets substantial funding for its program from the state, which is representing 5 death-row inmates. Sutton reported that if the Board wishes to hear from The Resource Center, he will make arrangements to have Resource Center representatives available at the Midyear Meeting.

Jon Pannell reported that the programs discussed were identified as desirable, but not essential to the Bar. The aggregate of those programs is \$35.75 per member. He encouraged the Executive Committee, before the Midyear Meeting, to develop an explanation for why certain of the C-ranked programs were left intact. He said the Board of Governors needs to balance the programs that should be cut with a determination about a reasonable dues increase, and this should be done by determining whether all C-ranked programs should continue or be reduced or eliminated.

Tina Shadix Roddenbery requested that a history of dues increases be included with the next Board meeting agenda, as well as the Programs Committee minutes.

Jack Long asked that the ABA assessment of Bar dues across the country also be included with the next Board meeting agenda.

Judge David Cannon thanked the Executive Committee for undertaking the programs assessment.

Sutton asked Board members to take the information provided to their constituents for feedback and to contact him or any other member of the Executive Committee if needed for assistance or more information. The Board of Governors will be asked to take whatever action it deems appropriate at the Midyear Meeting.

President's Report

Sutton reported that two of the programs that received C ratings were the Fee Arbitration Program and the Clients' Security Fund (CSF). He had previously reported that he appointed Elena Kaplan and Sharri Edenfield to lead a committee assessing consolidation of the Bar's consumer programs. Due to the programs assessment, he has instead asked them to undertake a review of these two programs to determine whether they can be restructured to make them more effective, and if so, to develop a proposed set of rules and guidelines for each for presentation and consideration by the Board at the Spring meeting.

Young Lawyers Division (YLD)

YLD President Will Davis reported on the activities of the YLD. He said 60 young lawyers attended the YLD Summer Meeting on St. Simons Island, and he thanked Jon Pannell who led the CLE program. He stated that all of his meetings are in Georgia to encourage as many young lawyers to attend as possible. He has also asked YLD committees to hold at least one event outside of Atlanta this year. He recognized Samantha Dorsey and Jena Emory, co-chairs of the Women in the Profession Committee, who are doing a great job getting that committee off the ground. It recently held a lunch and learn program focused on skills to build self-confidence in an out of the courtroom presented by Superior Court Judge Kimberly Childs. The YLD Advocates for Students with Disabilities, co-chaired by Jack Grote and Jenna Rubin, is hosting a CLE on October 23 at the Bar Center. He announced that there is a Wills Clinic being conducted today for first-responders in Hapeville. He is looking forward to the Fall Meeting on November 15-17 at Lake Lanier where Christine Butcher Hayes will lead a CLE program on *Fleck*, and there will also be a wellness event and food bank drive. The National Moot Court Competition will take place on November 22-23 at the Richard B. Russell courthouse, and there is an online signup to serve as a volunteer judge for the competition. He announced that the Leadership Academy applications will go out next Friday, and the annual Signature Fundraiser will be held March 21, 2020 supporting GLSP. Will congratulated YLD Immediate Past President Rizza O'Connor who has been selected to the travel to the Philippines and partnership with its embassy to learn about its government. Lastly, Will asked the Board members to consider allowing a young lawyer in their office to attend a YLD meeting.

The Board of Governors also received a written report on the activities of the YLD.

Standing Executive Committee Policy 100 Amicus Brief Policy

Sutton reported on a proposed addition to *Amicus Brief* policy that allows the Executive Committee to authorize deviations from the policy in order to weigh-in on federal litigation regarding the unified bar. As amended, the policy allows the Executive Committee to waive the provisions of the policy with two-thirds vote. It requires the Committee to report the waiver to the Board at the next regular Board meeting. Requests for filing an amicus brief will still come to the Board of Governors when there is sufficient time for consideration by the Board, and as the governing authority for the Bar, the Board may vote to rescind any action taken by the Executive Committee.

Professional Liability Insurance (PLI) Committee Report

PLI Committee chair Chris Twyman reported that the committee has met monthly since August to consider if attorneys in private practice should be required to have professional liability insurance. It has made changes from the proposal made last year and is currently looking at four options: Option One is mandatory disclosure, Option Two is mandatory disclosure with voluntary risk assessment, Option Three is mandatory disclosure with mandatory CLE for lawyers without insurance, and Option Four is mandatory insurance. The committee will meet again on November 5 to improve and build on the exemptions and received very helpful ideas at yesterday's town hall meeting on how to expand on those exemptions. The committee hopes to have its final recommendations to the Board of Governors in the Spring, and a vote on any of those recommendations in June. There will be another town hall meeting in

conjunction with the Midyear Meeting. Chris thanked the committee members, and Paula Frederick and her staff, for their assistance on this initiative

SOLACE Committee

Court of Appeals Judge and SOLACE Committee Co-chair Clyde Reese reported on a Suicide Awareness Program on April 28, 2020 that is being cosponsored by the SOLACE, Wellness, and Suicide Prevention and Awareness Committees, the CJCP, Drew Eckl Farnham, and ICLE. The program will be moderated by Sally Yates, and speakers include Past President Robin Frazer Clark, R. Javoyne Hicks, Dr. Ben Hunter, Eric Lang, and Judge Bill Reinhardt. Members of the planning team working with Judge Reese are Judge Render Heard, Judge Shondeana Morris, and Joe Chancey. Judge Reese stated that unfortunately, this is a timely topic for many in the legal profession. The committee is also seeking related sponsors from across the legal community, and he asked the Board members to help publicize the program. Lastly, Judge Reese also reminded everyone that Bar members are entitled to six (6) prepaid clinical session per calendar year through Lawyer Assistance Program (LAP).

Executive Committee Minutes

The Board of Governors received copies of the minutes of the Executive Committee meetings held on May 3, May 21, August 1, September 6-7, and October 2, 2019.

Annual Meeting Evaluation Results

The Board of Governors received a copy of the results of the Annual Meeting Evaluations.

Chief Justice's Commission on Professionalism

The Board of Governors received a written report from the Chief Justice's Commission on Professionalism.

Client Assistance Program

The Board of Governors received a written report from the Client Assistance Program.

Law Practice Management Program

The Board of Governors received a written report from the Law Practice Management Program.

Military Legal Assistance Program

The Board of Governors received a written report from the Military Legal Assistance Program.

Office of General Counsel

The Board of Governors received a written memorandum from the Office of the General Counsel.

Communications Media Report

The Board of Governors received a written media report from the Communications Department.

YLD Report

The Board of Governors received a written report from the Young Lawyers Division.

Old Business

There was no old business.

New Business

Javoyne Hicks announced that the Wellness Committee is sponsoring an Out of Darkness Walk in Piedmont Park on November 3 and encouraged everyone to participate and wear their wellness tee shirts.

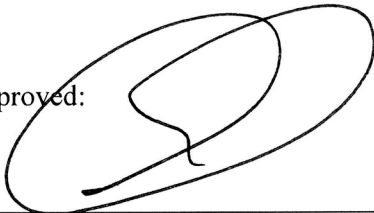
Remarks/Q&A/Comments/Suggestions

Sutton opened the floor to remarks, questions, comments and suggestions.

Adjournment

There being no further business, the meeting was adjourned at 11:30 a.m.

Approved:

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

Darrell L. Sutton, President

A handwritten signature in black ink, featuring a large, stylized loop at the top and a long horizontal stroke extending to the right.

Sarah B. (Sally) Akins, Secretary