

**STATE BAR OF GEORGIA
BOARD OF GOVERNORS
MEETING MINUTES
Saturday, March 30, 2019/9:00 a.m.
Ritz-Carlton Reynolds at Lake Oconee/Greensboro, GA**

The 277th meeting of the Board of Governors of the State Bar of Georgia was held at the date and location shown above. Ken Hodges, President, presided.

Special Recognition

President Ken Hodges recognized the members of the judiciary, the Past Presidents of the State Bar, and other special guests in attendance.

Roll Call

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

Future Meetings Schedule

President Ken Hodges reviewed the Future Meetings Schedule.

Report of Attorney General Chris Carr

Attorney General Chris Carr provided an update on the activities in the Attorney General's office. The *Demand an End Georgia* program continues to train law enforcement on how to recognize and report suspected cases of human trafficking, and his office now has six individuals to prosecute human trafficking cases. He reported that District Attorney (and Board member) Sherry Boston participated in a briefing at Crimm High School for he, Senator David Purdue and others with Wellspring Living. Wellspring Living helps victims and teaches prevention and empowerment. His office recently investigated violations of the Georgia Open Records Act and it will continue to press for openness and transparency in government. His office also continues to make strides in stopping Medicaid fraud through its Medicaid Fraud Division. He announced that the next meeting of the Statewide Opioid Task Force will take place in May in Cobb County, and two more are scheduled thereafter. He also announced the formation of a Georgia Anti-Gang Network. At the network's first meeting, leadership from several local, state and federal partner organizations, including all three U.S. Attorneys, came together to discuss a strategic response to gang activity in the state. Lastly, Attorney General Carr announced that the Legal Food Frenzy will kick off on April 22, and he thanked the YLD and Georgia's Food Banks for their continued assistance in this effort.

Report of GLSP Director Rick Rufolo

Rick Rufolo, the new Executive Director of GLSP, addressed the Board. He joined GLSP after a successful 30-year business and legal career at United Parcel Service. He reported that he started his new position by traveling throughout the State to meet with GLSP lawyers and staff. He reminded the Board of Governors how GLSP was created by the YLD in 1971 and it is important to continue the relationship between the State Bar and GLSP. He promised that Bar members' donations to GLSP will be put to good use, but GLSP also needs the support of lawyers in pro bono matters. He stated he is confident that with everyone working together GLSP can continue to ensure access to justice throughout the State for those in need.

President's Report

President Ken Hodges reported that he has continued Past President Bob Kauffman's wellness efforts. He recently attended a Wellness CLE in Arizona arranged by Wellness Committee Chair Javoyne Hicks. While there, he talked to a former Arizona Bar Executive Director who now does consulting, and he hopes to have him assess the State Bar after we see what happens in the *Fleck* case. He reported that Executive Directors and General Counsel around the country are in constant communication about *Fleck* and other challenges facing bar associations so he has appointed a Unified Bar Committee to look at what the State Bar will do if it is impacted by *Fleck*. Past President Pat O'Connor is the chair and Allegra Lawrence-Hardy is the vice chair. Ken reported that the Executive Committee had a productive strategic planning meeting and some of the items discussed at that meeting will be coming back to the Board of Governors in June, including moving the Consumer Assistance Program (CAP) to the Office of General Counsel and adopting a rule to require the registration of in-house counsel. Following that, Ken introduced Linley Jones, chair of the Professional Liability Insurance Committee, to discuss that committee's recommendation that all active members of the State Bar engaged in the private practice of law in Georgia be covered by a policy of professional liability insurance. Ken stated that he would like to present the committee's recommendation for a vote at the June Board of Governors meeting.

Professional Liability Insurance Committee Report and Discussion

Professional Liability Insurance Committee (PLIC) Chair Linley Jones presented for discussion the PLIC's recommendation that the State Bar require lawyers to be covered by a policy of professional liability insurance. She discussed the process undertaken by the committee in reaching its recommendation. The committee reached out to insurance companies and others, and by its best estimate believes that 20-35% of Georgia lawyers are uninsured. It explored policies and practices of other states, participated in an ABA webinar because states across the country are looking at this issue, and reviewed the rules and requirement of other U.S. jurisdictions as reported by the ABA. Linley referred the Board of Governors members to Proposed Rule 1-201 *Professional Liability Insurance*. The rule would require that active members of the State Bar engaged in the private practice of law be covered by a policy in an amount no less than \$100,000/occurrence \$300,000/aggregate. Lawyers would certify on their annual license fee statement that they are covered and provide the name of the insurance company and policy number, or notify the Bar's Membership Department if coverage lapses for more than 30 days. Non-complying members would face administrative suspension. The State Bar's website would reflect whether or not a State Bar member has professional liability insurance or is exempt. Proposed exemptions include inactive and emeritus lawyers, mediators, and government lawyers.

A lengthy discussion by the Board of Governors followed Linley's report where a number of questions and concerns were raised. Among them were costs, lawyers who would or would not be exempted, the impact on young lawyers and other disproportionate attorneys (struggling attorneys) who have not been heard, the impact on vulnerable communities, especially south and middle Georgia, uninsurable lawyers, rising insurance rates, out-of-state lawyers, and questions about the expedited process without a more comprehensive study, and the need to educate all lawyers about the issue and proposed recommendation. Based on that discussion, the PLIC will continue to refine its recommendation and bring it back to the Board of Governors at the June Board meeting.

A motion made by Joe Dent at the November 3, 2018 Fall Board meeting that tabled discussion on the issue of mandatory professional liability insurance until the 2019 Spring Board meeting so that the State Bar could gather information on the dues notice, on a voluntary basis, on whether or not attorneys have professional liability insurance was brought forward. Following a second, an amended motion to also include a subcategory on the dues statement to ask lawyers to indicate if they are a judge, government attorney, or out-of-state practitioner, failed by majority voice vote.

A motion and second to table the issue of mandatory professional liability insurance until the 2020 Spring Board of Governors meeting failed by a hand vote of 40 in favor to 59 opposed.

President Ken Hodges said he was taking notes and the conversation will continue. He said he will not ask the Board to vote until the Board is ready.

A motion and second to table any further discussion on mandatory professional liability insurance, so as to allow the Board of Governors to get through the rest of Board agenda, was approved by unanimous voice vote.

The Board of Governors received a copy of the PLIC Report, talking points, the disclosure that would appear on the dues statement, an ABA Model Court Rule on Insurance Disclosure by state, and the PLIC's meeting minutes from its five meetings.

Registration of in-House Counsel Discussion

General Counsel Paula Frederick presented for discussion a proposed rule that would require non-Georgia lawyers who serve as in-house counsel in Georgia to register with the Bar, to prove their status as lawyers in another jurisdiction, and to pay a fee equal to the active dues amount paid by Georgia lawyers. Thirty-four U.S. jurisdictions require in-house counsel to register and pay an annual fee in order to practice within the jurisdiction. She will be circulating the rule to our members, the Bar's Corporate Counsel Section, and the International Trade in Legal Services Committee (for input for foreign in-house counsel) for feedback. A comment was raised that we should also include federal lawyers, and another that we need to let those lawyers know the benefits for registering with the Bar. Paula plans to bring this back to the Board of Governors at the June Board of Governors meeting.

Young Lawyers Division

YLD President Rizza O'Connor reported on the activities of the YLD. She stated that the Public Interest Internship Program (PIIP) continues to provide \$5000 scholarships to interns who have secured an unpaid internship in a law-related nonprofit or government agency in Georgia. It gave out three scholarships last year and will give out three this year. The Leadership Academy, which is in its 13th year, continues to emphasize pro bono and community service to its thirty participants. The Intrastate Moot Court Competition was held last weekend between Georgia and Mercer Law Schools, and the competition winner was Georgia. The YLD Signature Fundraiser has planned an amazing event with a Decades Game Night theme that will benefit Lawyers for Equal Justice. Tickets and sponsorships can be obtained through the Bar's website. The YLD Spring Meeting in Washington, D.C. on April 25-29 will feature a CLE, tours, and a swearing-in to the U.S. Supreme Court. Lastly, Rizza reported that upcoming activities include the Legal Food Frenzy on April 22- May 3, the Build a Better Day Georgia on May 4, and the National High School Mock Trial Competition on May 17-18.

The Board of Governors also received a written report on what the YLD has accomplished so far this Bar year and other upcoming programs.

Minutes of the 276th Meeting of the Board of Governors

Secretary Elizabeth Fite presented the minutes of the Board of Governors meeting held January 12, 2019, at the Macon Marriott City Center, in Macon, GA. By unanimous voice vote, the Board of Governors approved the minutes.

Statement of Investment Policy

Investment Committee Chair Donna Barwick, and Garry Bridgemann from Graystone Consulting, presented a Statement of Investment Policy. The policy is based on the Bar's current investment policy and input from Graystone Consulting, the Investment Committee, and Finance Committee Chair Nancy Whaley. The Board of Governors approved the Statement of Investment Policy (Exhibit B) by unanimous voice vote.

Treasurer's Report

Treasurer Dawn Jones reported on the Bar's finances. She presented membership counts by age and gender, and referred to other material in the agenda book.

Finance Committee Chair Nancy Whaley reported on changes that are being made to the financial reports. The new format, shown in the agenda book, will reflect the Bar's combined revenue, combined expenses, and combined net income (loss) as line items on the consolidated revenue and expenditure report. There will be a separate page indicating designated reserves versus surplus, and we will no longer reflect designated monies as it inflates what we believe are reserves. She reported that Bar operations reserves are negative, but the Bar Center is profitable and helping us keep dues lower. Treasurer Dawn Jones reported that the Finance Committee had two meetings to review and discuss the new format and educate itself on how accounting terms are used.

Henry Walker said that while it would be helpful to have a full presentation on this at the next Board meeting, he believes we need to sunset the Bar Facility assessment on new lawyers. He stated that when the assessment was implemented, it was to only be assessed until the Bar Center debt was paid off, and new members are the least able to afford to pay it. This same issue has been raised in the past by other Board members. A motion and second to sunset the Bar Facility Assessment beginning now so that it will not be reflected on the 2019-2020 License Fee Notice was passed by majority voice vote.

The Board of Governors received copies of the Consolidated (Operational and Bar Center) Revenues and Expenditures Report as of January 31, 2019; Income Statement YTD-Operations for the Seven Months Ended January 31, 2019; Bar Center Revenues and Expenditures Report for the Seven Months Ended January 31, 2019; Summary of Dues and Voluntary Contributions at January 31, 2019; Legislative Fund and Cornerstones of Freedom Fund Activity Reports through January 31, 2019; an Investment Performance Comparison 2005-2019; and a copy of the 2018-2019 Budget Timetable (for the 2019-2020 State Bar Budget).

ICLE Budget Report

Treasurer Dawn Jones reported on ICLE's finances and referred the Board members to the information in the Board agenda.

The Board of Governors received a copy of the ICLE Statement of Financial Position as of December 31, 2018, Statement of Operating Revenue and Expenditures for the Six Months Ended December 31, 2018 with Budget Fiscal Year Ended June 30, 2019, and Notes to Statement of Financial Position as of December 31, 2018.

License Fees 2019-2020

Following a report by Treasurer Dawn Jones, the Board of Governors, by majority voice vote, adopted the Finance and Executive Committees recommendations for a \$2 license fee increase so that license fees will be reflected at \$254 for active members and \$127 for inactive members for the 2019-2020 Bar year.

Approval of other Dues Items

Following a report by Treasurer Dawn Jones, the Board of Governors, by unanimous voice vote, and with the removal of the Bar Facility Assessment, approved the following other items on the 2019-2020 license fee notice:

- 1) Section dues to be reflected on the dues statement ranging from \$10-\$40; and
- 2) Continuation of assessment required by Bar Rules regarding the Clients' Security Fund (\$100 @ \$25/year). Such assessment begins with the second full fiscal year following a member's year of admission; and
- 3) Professionalism Fee (\$15) mandated by the Supreme Court; and
- 4) Continuation of a \$100 voluntary contribution for the Legislative and Public Education Fund; and
- 5) A suggested \$300 amount for individual contributions (\$100 for young lawyers) for the Georgia Legal Services Program.

The Board of Governors received a copy of the minutes of the February 6, 2019 Finance Committee meeting, a Dues and Revenue History, and a copy of the proposed 2019-2020 License Fee Notice.

Amendments to Bylaws and Rules (Summary of Proposed Rule Changes)

Following a report by Deputy General Counsel Bill NeSmith, the Board of Governors took the following action on proposed amendments to the Bylaws and Rules:

Proposed Bylaws and Rules

By unanimous voice vote, approved collectively and recommended to the Supreme Court of Georgia the following proposed rules amendments (Exhibit C):

- 1) Rule 1.0 Terminology and Definitions
- 2) Rule 1.4 Communication
- 3) Rule 1.17. Sale of Law Practice
- 4) GRPC Rule 5.3 Responsibilities Regarding Nonlawyer Assistants
- 5) Rule 5.4 Professional Independence of a Lawyer
- 6) Rule 7.1 Communications Concerning a Lawyer's Services
- 7) Rule 9.4 Jurisdiction and Reciprocal Discipline
- 8) Rule 4-219. Publication and Protective Orders
- 9) Rule 4-220. Notice of Punishment or Acquittal; Administration of Reprimands;

By unanimous voice vote, approved recommending to the Supreme Court of Georgia proposed amendments to Rule 14-3.1 and 14-14.1 Unlicensed Practice of Law (Exhibit D); and

By unanimous voice vote, approved recommending to the Supreme Court of Georgia proposed amendments to Rule 16-101, 16-102, 16-103 and 16.105. Institute of Institute of Continuing Legal Education (Exhibit E).

Ron Lowery stated that ICLE reserves need to be given back to the Bar members. Deputy General Counsel Bill NeSmith reported that the reserves reside in the Institute of Continuing Legal Education of the State Bar of Georgia, LLC, and as previously approved by the Board of Governors in the Asset Transfer Agreement, are to be used solely for the purpose of continuing the ICLE operations.

Legislative Update

Governmental Affairs Director Christine Butcher Hayes reported that the Legislature completed day thirty-nine yesterday, and sine die is Tuesday. She stated that H.B. 70 passed out of the Senate Judiciary Committee and will need more votes to bring it to the floor for a vote by Tuesday. S.B. 190 also needs more votes to bring it to the floor. The uniform mediation proposal did not get any sponsors so a group of stakeholders will work on it during the summer. She reported that the fiscal year 2020 budget passed, as did money for civil legal services for Kinship Care families, \$800,000 for The Georgia Resource Center, and funds for victims of domestic violence. She reported that the two competing business court bills (House and Senate) implementing the statewide business court are being hashed out in conference committee and may be resolved by Tuesday. S.B. 38 is currently in the House Rules Committee and hopefully it will move onto the floor for a vote. She is tracking other bills and updates on those will be on the Bar's website on Wednesday.

Legislative Consultant Rusty Sewell reported on the outcome of other bills. He announced that 180 House Bills were introduced this legislative session and 142 went to Bar Sections for review and comment.

Executive Committee Minutes

The Board of Governors received copies of the minutes of the Executive Committee meetings held on December 6, 2018, and February 20, 2019.

Office of General Counsel

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

Military Legal Assistance Program

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

Consumer Assistance Program

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

Law Practice Management Program

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

Communications Media Report

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

Chief Justice's Commission on Professionalism

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

Old Business

There was no old business.

New Business

President Ken Hodges reported that judges are needed for the National High School Competition on May 15-16 in Athens.

President Ken Hodges reported that 2019 State Bar of Georgia Election is underway. There is a contested election for the Secretary's position and he encouraged Board members to reach out to either candidate if they have any questions.

Remarks/Q&A/Comments/Suggestions

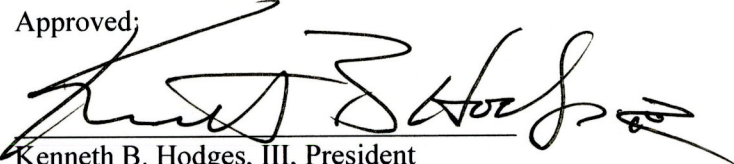
President Ken Hodges opened up the floor to remarks, questions, comments and suggestions.

Adjournment

There being no further business, the meeting was adjourned at 1:05 p.m.



Elizabeth D. Fite, Secretary

Approved:


Kenneth B. Hodges, III, President