

**STATE BAR OF GEORGIA
EXECUTIVE COMMITTEE
MINUTES
Thursday, February 8, 2018
State Bar Building/Atlanta, Georgia**

Members Participating:

Brian D. (Buck) Rogers, President; Kenneth B. Hodges, III, President-elect; Dawn M. Jones, Secretary; Darrell L. Sutton, Treasurer; Patrick T. O'Connor, Immediate Past President; Nicole C. Leet, YLD President; Rizza O'Connor, YLD President-elect; Jennifer Campbell Mock, YLD Immediate Past President; Damon E. Elmore; Elizabeth Louise Fite; Phyllis Holmen; David S. Lipscomb; Frank Strickland; and Nicki Vaughan.

Staff Participating:

Sharon Bryant, Chief Operating Officer; Christine Butcher Hayes, Director of Governmental Affairs; Jeff Davis, Executive Director; Paula Frederick, General Counsel; Steve Laine, Chief Financial Officer; Bill NeSmith, Deputy General Counsel; and Sarah Coole, Communications Director.

Guests Participating

Nancy Whaley, Jay Elmore, Cary King, and Norman Zoller.

Call to Order

President Buck Rogers called the meeting to order at 12:10 p.m. Members of the Executive Committee in attendance are indicated above.

Future Meetings

President Buck Rogers reviewed the Future Meetings Schedule. He discussed the arrangements for the evening's dinner with the Court of Appeals. Thereafter, he reviewed the schedule for the joint meeting of the Executive Committee and Supreme Court on March 28-31, 2018.

Executive Committee Minutes

Secretary Dawn Jones presented the minutes of the Executive Committee meeting held on December 14, 2017. The minutes were approved, as revised, by unanimous voice vote.

Members Requesting Resignation

Pursuant to State Bar Rule 1-208, the Executive Committee approved the following resignation requests by unanimous voice vote: Deborah Gale Evans-282560; Robert Bruce Miller-508186; Wesley Schuessler II-629577; Kirk R. Macfarlane-463355; Julia Elizabeth Suma-691748; Diane Lynn Weinberg-746013; Teesha Tamara McCrae-106984; David J. Hansen-323775; Amy Lyn Triggs-701560.

Foundation Assets Re ICLE Transfer to Bar

Deputy General Counsel Bill NeSmith noted that this item on the agenda did not require action by the Executive Committee at this time. He reported on the sale of the Athens ICLE property. He stated that due diligence will end on January 19, and the closing is set for March 21. The Executive Committee received a copy of the Service Agreement.

Amendments to Bylaws and Rules

Following a report by General Counsel Paula Frederick, the Executive Committee, by majority voice vote, approved recommending to the Board of Governors proposed amendments (Exhibit A) to Rule 1-208. Resignation from Membership.

Changes to Letter of Good Standing

Executive Director Jeff Davis reported on the proposed wording on Letters of Good Standing. Currently a Letter of Good Standing includes the attorney's name, Bar number, address, current status, and a history of any public disciplinary actions that have been taken against the attorney. The Executive Committee discussed removing the reference to public disciplinary actions from the Letters of Good Standing and making that information available through a separate request so that on the Bar's storefront there will be two checkoff boxes - one checkoff box to select a Letter of Good Standing only, and one checkoff box to select a Letter of Good Standing with public disciplinary actions that may have been taken against the attorney. The Executive Committee, by a hand vote of 10 in favor to 4 opposed, approved the two new Letter of Good Standing formats and the two checkoff boxes.

Recommendation from the Investment Manager Selection Committee

Finance Committee Chair Nancy Whaley reported on the search for an investment manager by the Special Committee on Investment Manager RFP, and provided a handout from the committee. The committee focused on getting a solid partner that could help the Bar develop a strong investment policy. After receiving 13 proposals and conducting multiple interviews, the committee unanimously recommended that the Bar retain the services of Graystone Consulting Atlanta. Graystone is a fee based investment company based in Atlanta, and one of the consulting arms of Morgan Stanley. Graystone will invest approximately \$8.5 million of the Bar's and ICLE's legacy reserves. Once the partnership is formed, the Investment Committee and Chief Financial Officer Steve Laine will work closely with Graystone. A motion to recommend engaging the services of Graystone Consulting Atlanta to the Board of Governors, with Immediate Past President Pat O'Connor and President-elect Ken Hodges recusing, was approved by unanimous voice vote.

Steve Laine thanked Nancy Whaley for her leadership on the Special Committee on Investment Manager RFP.

Dues 2018-19 Recommendation to the Board of Governors

Treasurer Darrell Sutton reported that the Finance Committee met yesterday. After an analysis of the Bar's current financial position, projected financial position, and a discussion on whether to institute a dues increase and at what amount, the Finance Committee recommended a \$2 increase in dues for the 2018-19 Bar year.

Damon Elmore reported that the Finance Committee had a lot of discussion related to this yesterday and debated whether we should have a \$2 increase or a \$4 increase. He stated that there should probably be an analysis of Bar programs and other expenses so that we do not have the dilemma of burning through the Bar's reserves with rising costs and expenses.

President Buck Rogers stated that President-elect Ken Hodges can give a report on the Programs Committee meeting held on February 5. He reported that part of the Strategic Plan is looking critically at the Bar's programs to ensure we are doing what we should be doing. Darrell Sutton noted that GLSP contributions increased during the previous year after a similar \$2 dues increase.

Phyllis Holmen reported that GLSP had a very successful year with contributions. She worried that an increase in Bar dues will have a ripple effect and could negatively impact the future success of those contributions.

Thereafter, the Executive Committee, by unanimous voice vote, approved recommending to the Board of Governors that active member dues be increased by \$2 to \$252 and inactive member dues increased from \$125 to \$126 for the 2018-19 Bar year.

Approval of Other Bar Dues Statement Items

Jeff Davis reported on the other dues statement items. New this year is a court mandated \$15 Professionalism Fee for every active lawyer who is required to take one professionalism CLE hour annually. This will allow attorneys to take as many professionalism hours as they want each year for only one \$15 professionalism fee per year. It will also make it easier to collect the professionalism fee, encourage more professionalism hours offered in seminars, and keep seminars that offer professionalism hours less cost prohibitive to our members.

Thereafter, the Executive Committee approved recommending to the Board of Governors the following dues statement items by unanimous voice vote:

1. Section dues to be reflected on the dues statement ranging from \$10-\$35; and
2. Continuation of assessments required by Bar Rules regarding the Clients' Security Fund (\$100 @ \$25/year) and Bar Center Facility (\$200 @ \$50/year); and
3. Professional Fee (\$15) mandated by the Supreme Court; and
4. Continuation of a \$100 opt-out contribution for the Legislative and Public Education Fund; and
5. A suggested \$300 opt-in provision for individual contributions (\$100 for young lawyers) for the Georgia Legal Services Program.

The Executive Committee received a copy of the 2018-19 Budget Timetable.

Request to Support HB 802 (Criminal Procedure) Pursuant to Executive Committee Standing Policy 100

Following a report by Governmental Affairs Director Christine Butcher Hayes, with questions and comments from Executive Committee members during discussions, the Executive Committee took the following action on HB 802:

1. By unanimous voice vote, found the subject matter to be within the legitimate scope and purposes of the Bar; and
2. By majority voice vote, determined pursuant to Standing Executive Committee Policy 100 that immediate Executive Committee action was necessary since the Board of Governors will not be meeting until March 10, 2018; and
3. By unanimous voice vote, approved a motion tabling action to a time certain so as to allow the Advisory Committee on Legislation and other Bar-related entities to weigh in on HB 802, and to revisit the Keller issue, and
4. By unanimous voice vote, agreed to a special called Executive Committee meeting, via teleconference, at 4:00 p.m. on Wednesday, February 14, to further discuss HB 802.

Personnel Committee Meeting

A motion to adjourn the Executive Committee meeting and move into a Personnel Committee meeting to hear the MLAP staffing request was approved by unanimous voice vote. The Personnel Committee, composed of the State Bar Officers, commenced its meeting at approximately 1:33 p.m.

MLAP Staffing Request

Jay Elmore, Cary King, and Norman Zoller presented a request to hire a full-time staff attorney at an annual salary of \$65,000, plus benefits, and to reduce Norman Zoller's compensation to support the hiring of the new employee. If approved, Norman would remain a part-time contractor with an annual compensation of \$45,000. The reduction in Norman's compensation would help offset the cost of hiring the new staff attorney. It was also reported that since MLAP's formation in 2011, the program has processed more than 2,000 referrals connecting Georgia military and veterans to MLAP participating attorneys for a variety of civil law issues, increased the number of VA accredited attorneys from 160 to 768, supported the VA Clinic at Emory and the development of similar clinics at other law schools, and drafted enabling legislation to create the Veterans Courts and assisted in locating mentors for defendants in those courts. It has supported Stand Downs at various military bases, hosted a symposium in 2015 of Bar leaders across the nation to encourage the creation of similar programs, sponsored the annual Marshall-Tuttle Award, and MLAP is currently sponsoring a program approved by the Board of Bar Examiners to make it easier for attorney spouses of military personnel stationed in Georgia to practice law. When considering that Georgia has a population of about 9 million, about 10% who are either presently or were formerly in the military, the need for the program is significant and not likely to diminish.

Executive Director Jeff Davis provided a brief background on the MLAP, which was originally set up as a pro bono program under the auspices of the Pro Bono Project. The program has experienced an expansion which now provides assistance to military personnel regardless of their income level. He reported that once the new members' enhanced directory (CloudLawyers) is in place, military personnel who have income above the pro bono threshold will be able to find attorneys who can assist them with veteran issues in their geographic locations. There was discussion about the liability issues to the Bar of referring attorneys to those who did not qualify for pro bono services. The Bar does have insurance for its pro bono activities.

General Counsel Paula Frederick reported that her office had reviewed the staff position and determined that it should be categorized as a Bar employee and not an independent contractor position. She also stated that a nonlawyer may run a lawyer referral service.

Thereafter, the Personnel Committee took the following action:

1. By unanimous voice vote, recommended retaining the services of Norman Zoller until his current independent contract agreement expires on June 30, and
2. By unanimous voice vote, recommended the hiring of a new staff person as a Bar employee during the current 2017-18 Bar year, who will be under the direct supervision of the Pro Bono Project, and
3. By unanimous voice vote, recommended that the MLAP program operate as a true pro bono program and any referrals to non-income qualified military personnel or veterans be directed to the CloudLawyers members' directory.

Executive Committee Meeting

A motion to adjourn the Personnel Committee and move back into the Executive Committee meeting was approved by unanimous voice vote. The Executive Committee meeting resumed at approximately 2:21 p.m.

MLAP Staffing Request

The Executive Committee, by unanimous voice vote, approved the recommendations of the Personnel Committee regarding the MLAP's request to hire a new full-time staff position as a Bar employee in the this Bar year, to retain the services of Norman Zoller as an independent contractor through June 30, and to operate the MLAP as a true pro bono program under the supervision of the Pro Bono Project.

Discontinuing Printed Directory & Handbook

Communications Director Sarah Coole presented a proposal to discontinue printing the Directory. We have approximately 1,000 changes to member data every month, including name, telephone, email, status and address. By its very nature, the Directory & Handbook is outdated even before it is printed, and less than 3% of our members ordered Directories last year. The newly designed Bar website that will launch in April will have a responsive design built in. It will resize itself to best fit the device it is being viewed on and will include a better version of the membership directory with a "smart search." It will also link CloudLawyers where our members can choose to have an enhanced member profile. The new website will also contain a more user-friendly version of Bar rules. Lastly, the Supreme Court of Georgia recognizes www.gabar.org as the source for the official rules of the State Bar of Georgia.

The Executive Committee, by majority voice vote, approved discontinuing the printing of the Directory & Handbook.

2018-19 Budget Request

Following a report by Sarah Coole, the Executive Committee, by unanimous voice vote, approved a \$2,000 request from the Local & Voluntary Bars Committee to conduct a Fall Leadership Institute in the 2018-19 Bar year.

Requests for Contributions/Sponsorships

The Executive Committee took the following action on requests for contributions:

- 1) By unanimous voice vote, approved a request from the Middle Georgia Access to Justice Council for \$5,000 to be used in starting an incubator program for new lawyers in Macon with Mercer School of Law. The contribution will be paid from the Bar's surplus funds.
- 2) By unanimous voice vote, approved a request from YLD President Nicole Leet for \$2,000 to be used to help fund the Signature Service Celebration honoring those that have participated in the YLD *Do Justice. Do 50* Pro Bono Challenge.
- 3) By majority voice vote, approved providing \$2,500 to the Southern Center for Human Rights for its annual *Justice Taking Root* benefit in Atlanta on May 1, 2018.

Reimbursement for YLD Officers (Secretary and Treasurer)

YLD President-elect Rizza O'Connor reported that she plans to bring a request to the Executive Committee at its next meeting for funds to help defray the hotel and travel expenses of the YLD Secretary and YLD Treasurer incurred at YLD meetings.

Constitutional Amendment Pursuant to Executive Committee Standing Policy 100

Governmental Affairs Director Christine Butcher Hayes reported that she was approached by various stakeholders about the Bar's position on HR 993, which is a Constitutional amendment to create business courts statewide. To date, the resolution does not have enabling legislation attached to it. If the constitutional resolution is approved in November, the next Governor would be responsible for creating the statutory framework to execute the establishment of the business courts. She discussed the venue issue, the appointment of the business court judges by the Governor, and that decisions of business courts

shall bind all courts except the Court of Appeals and Supreme Court of Georgia. Christine further reported that the Advisory Committee on Legislation met via conference call this morning and did vote in favor of the creation of a statewide business court in general, but took no position on the selection of the judges. General Counsel Paula Frederick discussed the political implications of the judicial appointments.

Thereafter, the Executive Committee took the following action:

1. By unanimous voice vote, found the subject matter to be within the legitimate scope and purposes of the Bar; and
2. By unanimous voice vote, determined that immediate Executive Committee action was necessary since the Board of Governors will not be meeting until March 10, 2018; and
3. By unanimous voice vote, took no action on HR 993, and requested that Christine communicate to legislators the concerns expressed by the Executive Committee, including the lack of enabling legislation, the venue issue, the selection of judges, and the binding precedent.

President's Report & Strategic Plan

President Buck Rogers reported that he and President-elect Ken Hodges were conducting a bar-wide review of programs over a two-year period. President-elect Ken Hodges reported that the Programs Committee recently heard from every program, but now will undertake an analysis with senior staff to do an assessment of the financial impact of those programs. President Rogers said all programs seem to be essential or really good, and Damon Elmore reported that was the general feeling, but the challenge is that we did not conduct a business analysis about those programs.

Executive Director Jeff Davis reported that we came out of that meeting with some good ideas about places we could make a difference. We talked about our meeting with the Department of Corrections concerning the BASICS program, and the efficiencies that could be made in the Fee Arbitration Program. David Lipscomb said that mandatory arbitration and suspension of licenses on the administrative side will be discussed at the next meeting of the Fee Arbitration Committee to address efficiencies and cost. Jeff Davis further reported that there are different ways to approach these issues; sometimes we need a different agency taking over a program or we need rules changes. He also stated that outside of this there is a case from North Dakota, which could be heard by the U.S. Supreme Court that could affect the future of mandatory bars. All of those things need to be discussed, and as Buck has mentioned, there are always proponents for every program.

Damon Elmore asked that the committee that will undertake the analysis of bar programs consist of a good cross-section of the Bar because part of the challenge we have are programs that sound good, but determining how many members use them, what areas of law they serve, and how effective they are is going to be a tough job.

Elizabeth Fite expressed her concerns about increasing programs every year that have steady annual increases thereafter. Although we are increasing dues by \$2 each year that may or may not be sufficient to keep pace with increased program costs. In the Finance Committee meeting we do not have enough information to approve or disapprove a program, and we do not want to get in the purview of Programs and Personnel Committees, but she would rather the Bar institute budget efficiencies now.

YLD President Nicole Leet reported that at last year's Programs Committee meeting there was a discussion about encouraging current Bar programs, and those requesting new programs, to explore outside funding sources.

President-elect Ken Hodges reported that we did a little bit of that today by cutting the printing of the Directory & Handbook, and with the restructuring of the MLAP, but that we are not done with the review of programs. Now that we have a good overview, we will look at the justification of keeping a program and decide if it is worth its dollar cost per member. The Programs Committee, and anyone else interested in serving on the subgroup discussed, will continue the review.

General Session/BOG Minutes

The Executive Committee received a copy of the draft minutes of the January 6, 2018, General Session/Board of Governors Midyear Meeting.

Treasurer's Report

Treasurer Darrell Sutton reported on the Bar's finances. He stated there are no issues of concern, and to keep in mind at what point in the fiscal year these reports are reflecting when they are being reviewed. Membership information is on track to meet or beat the numbers reflected. New enrollments are rising, and Emeritus members are up another 149 since November. GLSP contributions are up and more than last year's while legislative fund contributions are flat. The Cornerstones of Freedom spending has increased due to this year's PSA campaign and the fund will need to be replenished by approximately \$400,000 from the Bar's surplus, and the litigation fund replenished by approximately \$150,000 for the 2018-19 Bar year. The Finance Department is addressing the ICLE backlog related to pre-merger accounting issues with temporary staffing, but that will be corrected next year with the hiring of accounting additional staff.

The Executive Committee received copies of the Consolidated (Operational and Bar Center) Preliminary Revenues and Expenditures Report as of November 30, 2017; Income Statement YTD for the Four Months Ended October 31, 2017 30, 2017; Bar Center Revenues and Expenditures Report for the Five Months Ended November 30, 2017; Summary of Dues and Voluntary Contributions at December 31, 2017; Legislative Fund and Cornerstones of Freedom Fund Activity Reports through November 30, 2017; and an Investment Performance Comparison 2005-2017.

Amicus Brief

Frank Strickland reported that some other state bar associations may be filing amicus briefs in the North Dakota case challenging mandatory bar associations, and he would like the State Bar to do the same. General Counsel Paula Frederick said that while we typically sign on to someone else's brief; she would gather copies of any filed briefs. She stated there are two cases of concern at the U.S. Supreme Court for mandatory bars - the North Dakota case, which addresses the propriety of mandatory bars, and the California Teachers Union case on the question of mandatory union dues. She will keep the Executive Committee posted on both.

YLD Report

YLD President Nicole Leet reported that almost 10,000 pro bono hours have been committed for the Signature Service Project's *Do 50. Due Justice* campaign. She announced that the Spring meeting will take place in Nashville, TN, the weekend of March 15-17. Vanderbilt Law School students and members of the Tennessee Bar YLD have been invited to attend. She is looking forward to the annual Legal Food Frenzy that will kick off in April. Lastly, she asked the Executive Committee members to reach out and encourage their young lawyer colleagues to participate in the YLD.

Executive Director's Report

Executive Director Jeff Davis reported that budgeting in advance is difficult with the Bar Center budget because it is hard to anticipate what systems may need to be repaired or breakdown in any given year. We have been told by Cushman & Wakefield that we need to upgrade our fire and safety alert system. While we could defer the upgrade until next year, we would prefer to start it now. The cost is \$260,000

and it will be paid from the Bar Center building surplus. It involves all new wiring and new speaker system throughout the building. The Executive Committee, by unanimous voice vote, approved the expenditure in this year's budget so as to begin the upgrade now.

ACL/Legislative Report

Director of Governmental Affairs Christine Butcher Hayes thanked everyone that attended the dinner with the Senate Judiciary Committee, and announced that the dinner with the House Judiciary Committee scheduled next Thursday will more than likely be rescheduled. She reported on the status of the Bar's bills and announced that crossover day is February 28. Lastly, she reported that Supreme Court Justice Bogg's has asked for the Bar's support on the criminal justice reform bill when it is brought forward.

David Lipscomb asked Christine to keep the Executive Committee apprised of the status of the Uniform Unsworn Foreign Declarations Act legislation. He stated that while it was presented and voted on by the Board of Governors at the Midyear Meeting, it appeared that several Board members had no advance information on it. It was noted that the bill was previously considered by the Board of Governors during last year's legislative session.

Office of General Counsel Report

General Counsel Paula Frederick reported that the Supreme Court entered the order concerning procedural changes in the disciplinary rules in January. The Court restored to the Review Panel most of what was taken away from it, and reduced the size of the panel. The new rules will go into effect July 1, 2018. She stated that she submitted a budget of approximately \$100,000 to Accounting for payment to the special masters, reimbursement for members of both discipline panels, and for medical evaluations. She reported that in the meantime, the opioid epidemic is taking a toll on lawyers, and she has had four recent situations with lawyers related to that issue. Paula further reported that she plans to work with Sarah Coole to post something on the website for both attorneys and the public explaining the grievance process and the Clients' Security Fund. David Lipscomb suggested she also include that information in the *Georgia Bar Journal*. YLD President Nicole Leet suggested that the information also be included in the Transition into Law Practice Program CLEs.

Updated Dues Notice

Treasurer Darrell Sutton reported that on next year's dues notice there is a section that asks attorneys to voluntarily identify a successor or receiver to take their files in case of their becoming disabled or otherwise unable to continue practicing, or upon death. The new designation, which was recommended by the Senior Lawyers Committee, will come with an explanatory flyer. He also stated that Membership Director Brinda Lovvorn and Communications Director Sarah Coole were tremendously helpful in formatting the information on the dues notice and flyer.

The Executive Committee received a copy of the 2018-19 Dues Notice.

Mandatory Bar Association Fees Face New Challenge in the US Supreme Court

The Executive Committee received information on the Goldwater Institute's filing of a petition for certiorari on behalf of a North Dakota attorney challenging the constitutionality of North Dakota's mandatory bar association laws under the First Amendment. This is the same case discussed earlier by Frank Strickland.

Old Business

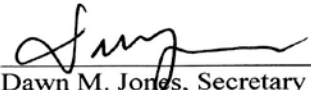
Dawn Jones inquired as to whether anyone had an update about the Arc of Justice request for office space. No one had.

New Business

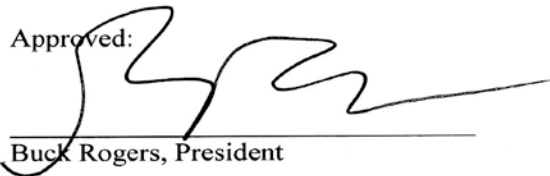
There was no new business.

Adjournment

There being no further business the meeting was adjourned at 4:20 pm.



Dawn M. Jones, Secretary

Approved: 

Buck Rogers, President