

**STATE BAR OF GEORGIA
EXECUTIVE COMMITTEE
MINUTES
Wednesday, February 20, 2019/12:00 p.m.
State Bar Building/Atlanta, GA**

Members Participating:

Kenneth B. Hodges, III, President; Darrell L. Sutton, President-elect; Dawn M. Jones, Treasurer; Elizabeth Louise Fite, Secretary; Buck Rogers, Immediate Past President (by phone); Rizza O'Connor, YLD President; William T. Davis, YLD President-elect; Nicole C. Leet, YLD Immediate Past President; Sally B. Akins; Tony DelCampo; Amy V. Howell; David S. Lipscomb; Frank Strickland; and Nicki Vaughan.

Staff Participating:

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

Call to Order

President-elect Darrell Sutton, presiding pursuant to designation by President Ken Hodges, called the meeting to order at 12:14 p.m. Members of the Executive Committee in attendance are indicated above.

Future Meetings

President-elect Darrell Sutton reviewed the Future Meetings Schedule.

Executive Committee Minutes

By unanimous voice vote, the Executive Committee approved the minutes of the December 6, 2018 Executive Committee meeting.

Members Requesting Resignation

Pursuant to State Bar Rule 1-208, the Executive Committee approved the following resignation requests by unanimous voice vote: Jay Allen Boelter-088512, Carol Eller Kirby-243625, Ruth Harris Goldsmith-300220, Joan Perkins Shaker-572249, Michael Douglas McRobbie-240341, Joshua Franklin Naylor-535782, Steven Kendall Snider-141573, S. Rhea Hudson Sheldon-374696, Damon Verner Pike-002965, Bret Nelson Bogenschneider-065385, Megan Carr Douthat-460469.

Commission on Continuing Lawyer Competency (CCLC) Recommendation to Eliminate the Over Age 70 CLE Exemption

Following a report by CCLC Chair Aasia Mustakeem on a recommendation from the CCLC to eliminate the over age 70 CLE exemption, the Executive Committee, by unanimous voice vote, approved recommending the elimination of the exemption to the Board of Governors.

Members Requesting Disabled Status

Pursuant to State Bar Rule 1-202, the Executive Committee, by unanimous voice vote, approved two requests for disabled status.

Survey to Bar Members Re: E-Filing

Governmental Affairs Director Christine Butcher Hayes reported on a request from Chief Justice Harold Melton and the Judicial Council Technology Committee to conduct a survey of our members about civil E-filing. The survey will gather information on issues that have arisen thus far and the results will be given to the Technology Committee. The Executive Committee, by unanimous voice vote, approved conducting the survey.

Client Security Fund Recommendation

President-elect Darrell Sutton presented a proposal from the Clients' Security Fund Board of Trustees recommending that all dues paying lawyers pay \$10 each year into the fund in addition to the current assessments paid by new lawyers. This would provide an additional \$570,000 into the fund each year. Current rules require the Bar to impose a mandatory assessment on all members equal to the pro rata share of the difference between the fund balance and \$1 million (not to exceed \$25 per member). The aggregate amount that can be paid to all claimants in one year is \$50,000. As of December 2018 the fund balance was \$1,472,189 and the average burn rate over the last five years was \$378,000 per year. In the last three years the fund paid over \$490,000, yet the new lawyers' assessment only brings in around \$150,000 per year.

A motion to eliminate the new lawyers' assessment and instead assess all lawyers \$15 each year was withdrawn. The Executive Committee postponed any further action on the proposal until it has an opportunity to further explore the issue in March at the Executive Committee/Supreme Court joint meeting.

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

Following a report by General Counsel Paula Frederick, the Executive Committee took the following action on proposed amendments to the Bylaws and Rules (Exhibit A):

Proposed Bylaws and Rules

- 1) Rule 1.0 Terminology and Definitions: Recommended both revised definitions to the Board of Governors by majority voice
- 2) Rule 1.17 Sale of Law Practice: Recommended to the Board of Governors by unanimous voice vote
- 3) Rule 1.4 Communication: Recommended to the Board of Governors by unanimous voice vote
- 4) Rule 4-203.1 Uniform Service Rule: Withdrawn
- 5) Rule 4-219. Publication and Protective Orders: Recommended to the Board of Governors by unanimous voice vote
- 6) Rule 4-220. Notice of Punishment or Acquittal; Administration of Reprimands: Recommended to the Board of Governors by unanimous voice vote
- 7) GRPC Rule 5.3 Responsibilities Regarding Nonlawyer Assistants: Recommended to the Board of Governors by unanimous voice vote
- 8) Rule 5.4 Professional Independence of a Lawyer: Recommended to the Board of Governors by majority voice vote
- 9) Rule 7.1 Communications Concerning a Lawyer's Services: Recommended to the Board of Governors by unanimous voice vote
- 10) Rule 9.4 Jurisdiction and Reciprocal Discipline: Recommended to the Board of Governors by unanimous voice vote
- 11) Rules 16-101 through 16-105 Preamble and Establishment of the Institute of Continuing Legal Education: Recommended to the Board of Governors by unanimous voice vote

12) Bylaws Article 1, Section 9: Recommended to the Board of Governors by unanimous voice vote

13) Bylaws Article, Section 10: Withdrawn

Revisions to Unlicensed Practice of Law (UPL) Rules

Following a report by Deputy General Counsel Bill NeSmith, the Executive Committee, by unanimous voice vote, approved recommending to the Board of Governors proposed changes to UPL Rules 14-3.1 and Rule 14-4.1 (Exhibit B) regarding the composition of the UPL Standing and District Committees.

Commission on Continuing Lawyer Competency (CCLC) Recommendation to Eliminate Rule 8-104(1) of the Transition into Law Practice Program (TILPP)

Following a report by Executive Director Jeff Davis, the Executive Committee, by unanimous voice vote, approved recommending to the Board of Governors the elimination of Rule 8-104(1) (Exhibit C) of the TILPP as recommended by CCLC.

Lawyer Assistance Program (LAP) Language Clarification

LAP Chair Jeff Kuester presented proposed language clarifications to the services offered to Bar members through the LAP as follows:

Help is a Phone Call Away

~~Bar members are entitled to up to Six~~ clinical assessment and support sessions are available to Bar member during each calendar year ~~per issue per year, and for~~ assistance with referrals to a wide-range of public and private resources and community programs that are the most cost effective, feasible and appropriate options available for their treatment and recovery.

LAP Confidential Services

~~Up to Six~~ Six non-emergency clinical assessment and support sessions ~~per issue per~~ calendar year.

The Executive Committee had no issue with dropping the “per issue” or using the per “calendar” year. It did ask for clarification on the last part of the proposed language with respect to situations that are “critical” 24-hour versus situations that are “non-emergency.” The Executive Committee also asked if CorpCare can track if lawyers being referred to privately funded help after using six sessions are indicating they cannot afford that and wish they could get more services. Jeff said he would take those questions back to the LAP Committee.

Proposed Rule on Registration of In-House Counsel

General Counsel Paula Frederick presented a draft rule on registration of in-house counsel. Before proceeding with a rule change, she would like to seek guidance from the Supreme Court of Georgia about where in the Bar Rules this best fits. She suggested circulating the draft rule to our Corporate Counsel Section, the Association of Corporate Counsel, and the International Trade in Legal Services Committee (for input on the implications for foreign in-house counsel) for feedback, and also asked the Executive Committee for its comments.

Professional Liability Insurance

President-elect Darrell Sutton reported on the results of a survey sent to the Cobb County Bar Association regarding mandatory professional liability insurance. There were 150 responses to the survey out of the approximately 1,000 Cobb Bar members to whom the survey was sent. The results showed that approximately just as many respondents as not favor required professional liability insurance, but approximately two-thirds of respondents were opposed to requiring any forms of disclosure.

General Counsel Paula Frederick reported that the Professional Liability Insurance (PLI) Committee met February 19th and voted to recommend to the Board of Governors that lawyers be required to be covered by professional liability insurance. The proposed Rule 1-210, which is based on an ABA model rule, would go in the portion of the Bar rules that deal with governance and not in the Rules of Professional Conduct. Enforcement of the insurance requirement would be by administrative suspension. Paula is helping the PLI Committee put together a detailed report for the Board of Governors on everything it has looked at and who it has talked to reach its recommendation. Paula also reported that President Ken Hodges plans to send an email about this issue to the Bar membership on February 22nd.

The Executive Committee had a lengthy discussion about the issue. The main concern expressed was that the process needs to be slowed to allow more time for deliberation. This is a complex matter that needs more vetting, and we need to provide a reason and support for doing this. The Executive Committee also had concerns about the proposal as a whole and felt that any publication to the Bar members or the Board of Governors is premature. Since the Executive Committee had enough questions amongst itself about the proposal, it was suggested that no action be taken until the matter can be explored further at the Executive Committee/Supreme Court joint meeting in March. Furthermore, the Executive Committee feels there are too many unanswered questions about this recommendation and proposed rule for this to come for a vote, even as early as the Annual Meeting's Friday or Saturday Board of Governors meetings. President-elect Darrell Sutton agreed to convey the Executive Committee's concerns to President Ken Hodges.

Legislative Contribution/Dues Statement

The Executive Committee reviewed a copy of the proposed 2019-2020 License Fee and Assessment Notice. A motion to adopt the proposed 2019-2020 License Fee and Assessment Notice, with an optional legislative and public advocacy fund contribution and a few other minor changes, was approved by majority voice vote.

Proposed Investment Policy

Executive Director Jeff Davis presented a Statement of Investment Policy from Greystone Consulting that was formulated based on the Bar's current investment policy and input from the Investment Committee. Jeff would like this to be an action item at the March Board of Governors meeting, and Greystone Consulting investment managers will be present to answer any questions. Before taking any action, the Executive Committee asked for feedback on the policy from the Finance Committee chair, Nancy Whaley. The policy will be added to the agenda of a subsequent Executive Committee meeting, or an interim meeting by phone, for consideration.

Policy Concerning Use of the State Bar Conference Center

Following a report by Executive Director Jeff Davis, the Executive Committee, by unanimous voice vote, approved a proposed Conference Center Policy, Terms of Use and Process for the State Bar Conference Center, subject to some minor wordsmithing.

Request for Funding Projects of the Law-Related Education (LRE) Program from the Tom Marshall Fund

Following a report by Executive Director Jeff Davis, the Executive Committee, by unanimous voice vote, approved using money in the Tom Marshall Fund to fund the 5th and last year of the LRE Virtual Law Museum project in the amount of \$72,000, and up to \$20,000 for Journey Through Justice Program bus transportation (requested by schools over 100 miles outside of Atlanta) in the 2019-2020 Bar year.

Web 360° Tour of the State Bar of Georgia

Executive Director Jeff Davis reported on a proposal by Global Web Advisors to produce a virtual 360° tour of the State Bar Center at a cost of \$5,780. The Executive Committee, by majority voice vote, approved the proposal.

Proposal from Bar Organizational Consultant

President-elect Darrell Sutton presented a proposal from Pathfinder Executive Consulting for a State Bar of Georgia Assessment. Following a discussion about the benefit and timing of an assessment, no motion was made on the proposal.

Request for Sponsorship

The Executive Committee reviewed a 1) \$2,500 sponsorship request from the Southern Center for Human Rights *Justice Taking Root* event on May 7, 2019, and 2) \$2,500 sponsorship request from Georgia Appleseed for its 11th annual *Good Apple* event on April 24, 2019. Following the State Bar of Georgia Sponsorship Guidelines, the Executive Committee took the following action:

Southern Center for Human Rights Sponsorship Request

- 1) By majority voice vote, determined that the State Bar's financial sponsor is Keller-permissible, but
- 2) By a hand vote of 4 in favor to 6 opposed, determined that the State Bar's participation as a financial sponsor does not advance the goals of the Bar.

Georgia Appleseed Sponsorship Request

- 1) By majority voice vote, determined that the State Bar's financial sponsor is Keller-permissible, but
- 2) By a hand vote of 4 in favor to 6 opposed, determined that the State Bar's participation as a financial sponsor does not advance the goals of the Bar.

Standing Executive Committee Policy 500 (Email Policy)

The Executive Committee, by unanimous voice vote, approved proposed changes to Standing Executive Committee Policy 500 (Email Policy) (Exhibit D).

Treasurer's Report

Treasurer Dawn Jones reported on the Bar's finances. She referred the Executive Committee to the report on variations to the budget and the other financials included in the agenda. She reported that the Finance Committee, at its February meeting, recommended a \$2 increase in dues for the 2019-2020 Bar year. The Finance Committee is meeting again in March to get more information on Bar Center transfers, the IT Department, the 2019-2020 ICLE budget, the Clients' Security Fund, the Cornerstones of Freedom, and a summary of reserves and surplus. The Finance Committee will recommend the 2019-2020 budget at its April meeting.

The Executive Committee received copies of the Consolidated (Operational and Bar Center) Revenues and Expenditures Report as of December 31, 2018; Income Statement YTD for the Six Months Ended December 31, 2018; Bar Center Revenues and Expenditures Report for the Six Months Ended December 31, 2018; Summary of Dues and Voluntary Contributions at December 31, 2018; Legislative Fund and Cornerstones of Freedom Fund Activity Reports through December 31, 2018; and an Investment Performance Comparison 2005-2018.

2019-2020 Dues Recommendation to the Board of Governors and Other Dues Items

The Executive Committee, by unanimous voice vote, adopted the Finance Committee recommendation for a \$2 license fee increase, and approved submitting the following recommendation to the Board of Governors for approval:

- 1) License fees at \$254 for active members and \$127 for inactive members, which reflects a \$2 dues increase from the previous Bar year; and

- 2) Section dues to be reflected on the dues statement ranging from \$10-\$40; and
- 3) Continuation of assessments required by Bar Rules regarding the Clients' Security Fund (\$100 @ \$25/year) and Bar Center Facility (\$200 @ \$50/year). Such assessments begin with the second full fiscal year following a member's year of admission; and
- 4) Professionalism Fee (\$15) mandated by the Supreme Court; and
- 5) Continuation of a \$100 opt-out contribution for the Legislative and Public Education Fund; and
- 6) A suggested \$300 opt-in provision for individual contributions (\$100 for young lawyers) for the Georgia Legal Services Program.

YLD Report

YLD President Rizza O'Connor reported on the activities of the YLD. The YLD Intellectual Property Committee is conducting a signature in-house counsel program on February 21. The Leadership Academy is meeting in Vidalia on March 8 with a program on the importance of pro bono and community service. It will feature a wills clinic for first responders, farm factory tours, and dinner. Other upcoming events include 1) the Intrastate Moot Court Competition on March 22 at Emory, 2) annual Signature Fundraiser on April 13, 3) Build a Better Georgia Day on May 4, and 4) National High School Mock Trial Competition in Athens on May 16-18. The YLD Spring Meeting in Washington, D.C. on April 25-29 will include a swearing-in ceremony at the U.S. Supreme Court and a meeting with U.S. Supreme Court Justice Clarence Thomas, a CLE, group dinners, and various capitol tours. Lastly, the 2019 Legal Food Frenzy will take place April 22-May 3.

Executive Director's Report

Executive Director Jeff Davis provided no additional report.

ACL/Legislative Report

Director of Governmental Affairs Christine Butcher Hayes reported that Chief Justice Harold Melton delivered the State of the Judiciary on February 19th. She reported that crossover day is March 7 and *sine die* April 2. Following that, she provided an update on the Bar's legislative agenda. She also announced the introduction of two additional bills of interest to the legal profession: H.B. 239 and H.B. 256. H.B. 239 is enabling legislation for the business court, which was approved by constitutional amendment during the November 2018 general election. The bill was drafted and introduced by Representative Chuck Efstrotation. Rep. Efstrotation has also taken the bill to the State Bar's Business Court Committee and received constructive feedback. The State Bar has not been asked to take a position on the bill. H.B. 256, filed last Friday, provides for a constitutional amendment permitting a limit on damages at trial. Christine said she will keep us abreast of any movement on the bill. Lastly, Christine reported that the annual Executive Committee dinner with the Senate Judiciary Committee will take place Tuesday, February 26, and the same dinner with the House Judiciary Committee will be held March 12.

Office of General Counsel Report

Due to the sensitive nature of ongoing litigation involving the State Bar, General Counsel Paula Frederick's litigation report was performed in Executive Session.

Executive Session

Following a motion, second, and unanimous voice vote, the Executive Committee went into Executive Session to discuss pending litigation. Thereafter, the Executive Committee, by unanimous voice vote, moved out of Executive Session.

Georgia Legal Services Program Report to the Georgia Bar Foundation

The Executive Committee received a copy of the Report to the Georgia Bar Foundation Trustees from Georgia Legal Services Program.

Board of Governors Minutes

The Executive Committee received a copy of the minutes of the January 12, 2019 Board of Governors meeting.

Old Business

There was no old business.

New Business


President Ken Hodges reported that he forwarded to Governmental Affairs Director Christine Butcher Hayes proposed legislation from the South Georgia self-help law library that would help it generate fees. Christine reported that the legislation needs to go through the Bar's legislative process for possible introduction next year. The Executive Committee concurred.

Adjournment

There being no further business, the meeting was adjourned at 4:50 p.m.



Elizabeth D. Fite, Secretary

Approved:


Kenneth B. Hodges, III, President