

**STATE BAR OF GEORGIA  
EXECUTIVE COMMITTEE  
MINUTES  
Friday & Saturday, September 21-22, 2018  
The Henderson/Destin, Florida**

Members Participating:

Kenneth B. Hodges, III, President; Darrell L. Sutton, President-elect; Buck Rogers, Immediate Past President; Elizabeth Louise Fite; Secretary; Dawn M. Jones, Treasurer; 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; Christine Butcher Hayes, Director of Governmental Affairs; Paula Frederick, General Counsel; and Bill NeSmith, Deputy General Counsel.

Call to Order

President Ken Hodges called the meeting to order at 12:32 p.m. Members of the Executive Committee in attendance are indicated above.

Future Meetings

President Ken Hodges reviewed the Future Meetings Schedule.

Executive Committee Minutes

By unanimous voice vote, the Executive Committee approved the meeting minutes of August 16, 2018.

Members Requesting Resignation

Pursuant to State Bar Rule 1-208, the Executive Committee approved the following resignation requests by unanimous voice vote: Kathleen Deveix-138820, Philip Freeburg-390972, Adrienne Jules-142093, Brad Berman-054827, Kenneth Liebowitz-239241, Linda T. Ladell-460786, Joseph Tabler-338035, Harold Greenberg-459822, Donald Thomas Phillips-575937, Derek Howard Campbell-343311, George L. Williams III-761850, Tracy Klingler-105450, Virginia H. Jeffries-390150, Deborah M. Vaughan-726238, Stephen Noble Fitts III-171834, James E. Thomas Jr-705412, Robert Allen Mullins-529010, Susan Nolan Reini-600523, Janet Pomerantz-690788, Bryant Killian Smith-654895, Barbara Smith Gilbreath-940449, Vincent Marc Ferrero-259210, Karen Mozley Calloway-105307, Gunter Filippucci-259895.

Members Requesting Disabled Status

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

Members Requesting Late Fee Appeal

The Executive Committee, by unanimous voice vote, approved a waiver of late fees for Nathaniel A. Barnes, Jr. and Ralph Fulton Haygood.

Proposed New Uniform Rules for the Juvenile Courts of Georgia

This item was tabled.

Resolution of Appreciation for Disciplinary Rules and Procedures Committee

Following a report by David Lipscomb the Executive Committee, by unanimous voice vote, with David Lipscomb abstaining, approved presenting framed resolutions of appreciation to the members of the Disciplinary Rules and Procedures Committee for their efforts over the past two years on the disciplinary

rules revisions, and authorized up to \$1,500 for the framing. The resolutions will be presented at the Fall Board of Governors meeting

#### IOLTA Account Random Audits

General Counsel Paula Fredrick reported that at the request of President Ken Hodges, she gathered information from jurisdictions that conduct random audits of trust account and provided a copy of the ABA Model Rule on Random Audit of Trust Accounts. The State Bar does not have a random audit rule, but it does have Bar Rule 4-111 that allows the State Disciplinary Board to conduct an Audit for Cause when the Board has evidence suggesting that a lawyer is stealing client funds. Paula further reported that there are twelve jurisdictions that conduct random audits. President Hodges said this item will be discussed further at the Saturday meeting.

#### Mandatory Engagement Letter

General Counsel Paula Fredrick reported that 15 state bars require their members to provide written engagement letters in all matters regarding client representation. The State Bar's current rule only requires a written agreement for contingency cases. She said there are some who believe that any representation should be in writing and others who believe written agreements are only needed for fees above a certain amount. President Ken Hodges said this item will be discussed further at the Saturday meeting.

#### Mandatory Malpractice Disclosure

General Counsel Paula Frederick reported on mandatory disclosure of professional liability insurance. She said 25 jurisdictions requires lawyers to disclose to their clients whether or not they have professional liability insurance. Some jurisdictions require their lawyers to state they have professional liability insurance on their dues notices; some require their lawyers to affirmatively disclose that information to each new client. Paula was asked to present a written proposal on mandatory malpractice disclosure at the Saturday meeting.

#### SOLACE Subcommittee Inquiry to State Bar of Georgia Foundation

Executive Director Jeff Davis reported that the SOLACE Committee wants to receive donations into the State Bar of Georgia Foundation for purposes of making donations to those in need. It would like to have a modest liquid emergency fund that can be used to meet certain needs as approved by the SOLACE Committee and the Foundation. After a discussion regarding the original and current policy that SOLACE not receive monetary donations, the Executive Committee decided to maintain the current policy and no motion was made on the request.

#### Request for Corporate Credit Card for ICLE Sections Liaison

Following a report by Executive Director Jeff Davis, the Executive Committee, by unanimous voice vote, approved issuing a corporate credit card to the ICLE Sections Liaison position with a \$10,000 limit. The position requires travel inside and outside the state, making travel arrangements for speakers, handling meeting space and hotel deposits and conducting site visits with Section leaders.

#### Active Military Dues Waiver Form/MCLE Waiver Form

Executive Director Jeff Davis reported on military dues and MCLE waivers from the ABA and other bar associations. The Executive Committee, by majority voice vote, failed to pass a motion wherein only Bar members serving on active duty in a combat zone would receive a dues waiver. The current policy will remain in effect that any active military attorney may annually request a dues waiver.

#### Use of Bar Center for by Non-Profits

A motion tabling this discussion until the Saturday meeting was approved by unanimous voice vote.

### Bar Organizational Review

President Ken Hodges reported that he talked to Executive Director Jeff Davis and General Counsel Paula Frederick about bringing in an outside consultant to conduct an organizational review of the State Bar. Jeff reported that he and Paula reached out to the ABA Division of Bar Services and to the Southern Conference. They found that The Florida Bar has retained a former Arizona Bar executive director who now provides consulting services, and there is another former Wisconsin Bar executive director that consults. The Executive Committee requested that Jeff and Paula present a proposal for an outside consultant at the November Executive Committee meeting.

### Fee Arbitration Rules

Executive Director Jeff Davis reported that in cases where an attorney refuses to be bound by the results of an arbitration and an award in favor of a client remains unpaid, upon written request of the client the Fee Arbitration program may provide an attorney to represent the client in post-award proceedings at no cost to the client other than court filing fees and litigation expenses. He further reported that there are several states with mandatory fee arbitration programs wherein lawyers must participate in the program, but other programs like that of The Florida Bar only arbitrate cases where both the lawyer and the client agree to be bound. The Executive Committee, by unanimous voice vote, approved a motion to adopt The Florida Bar arbitration model and asked that proposed new rules be drafted and presented to the Executive Committee at its November meeting. The proposed changes in the Fee Arbitration Program will be an informational item at the November Board of Governors meeting.

### State Bar Security Camera System Upgrade

Following a report by Executive Director Jeff Davis, the Executive Committee, by unanimous voice vote, approved upgrading the Bar Center's security camera system at a cost of \$10,762.

### Sponsorship Request

Following a report by President-elect Darrell Sutton, the Executive Committee, by majority voice vote, approved a sponsorship in the amount of \$4,000 for the Gate City Bar Association's 2018 Hall of Fame Gala on November 10, 2018.

### Innocence Project Request

President Ken Hodges reported that the Georgia Innocence Project asked for donated office space in the Bar Center of approximately 3,000-3,500 square feet, but that he had to notify it that currently there is no rental space available. He then suggested that the Bar provide a \$4,000 sponsorship contribution to the Innocence Project, but it was the consensus of the Executive Committee that such a contribution does not meet the criteria in the sponsorship policy.

### Treasurer's Report

Treasurer Dawn Jones reported on the Bar's finances. She stated that she meets with Chief Financial Officer Ron Turner every week to review the Bar's financial reports. She further reported that the audit has been completed and the audit report will probably be presented to the Executive Committee at its November meeting.

The Executive Committee received copies of the Consolidated (Operational and Bar Center) Revenues and Expenditures Report as of June 30, 2018; Income Statement YTD for the Twelve Months Ended June 30, 2018; Bar Center Revenues and Expenditures Report for the Twelve Months Ended June 30, 2018; Summary of Dues and Voluntary Contributions at June 30, 2018; Legislative Fund and Cornerstones of Freedom Fund Activity Reports through June 30, 2018; and an Investment Performance Comparison 2005-2018.

### YLD Report

YLD President Rizza O'Connor reported on the activities of the YLD. She said the Summer Meeting was attended by many new young lawyers. She announced that the Fall Meeting will be held the weekend of Nov. 9-11, 2018, at the Ritz-Carlton Reynolds at Lake Oconee. The Signature Fundraiser will take place in late March/early April and the recipient is the Lawyers for Equal Justice Program and her remote representation project. She reported that applications for this year's Leadership Academy will be sent out in early November, and the Academy will kick off at the 2019 Midyear meeting. She reported that each YLD committee has something going on every month. The Legal Food Frenzy is putting together a golf tournament this year. The Corporate Counsel Committee is having a "save the ocean" event at the Georgia Aquarium. The Law School Outreach Committee will be promoting the YLD at football tailgates. The Disaster Legal Assistance Committee is in place if needed for this year's hurricane season. Lastly, Rizza reported that the YLD conducted its first Facebook live video streaming at the Summer meeting.

### Executive Director's Report

Executive Director Jeff Davis provided an update on the chandelier repair in the Presidents Boardroom.

### ACL/Legislative Report

Director of Governmental Affairs Christine Butcher Hayes reported there is a meeting of the Advisory Committee on Legislation on Tuesday, September 25. The agenda includes three legislative proposals and one funding request. Christine also reported that President Ken Hodges continues to meet with GTLA and the Georgia Chamber about business courts.

### Office of General Counsel Report

General Counsel Paula Frederick reported that new disciplinary process is going well, and that her screening office is working with CAP. She stated that the Coordinating Special Master is doing a great job and he will be training a new pool of 20 Special Masters on October 12. She said she has been doing a lot of CLE speaking generally. She reported that the Office of General Counsel Overview Committee has had trouble getting off the ground, but the Disciplinary Rules & Procedures Committee and the Clients' Security Fund Board will meet at the Fall Board of Governors Meeting. She mentioned that the Clients' Security Fund needs more money for all of the claims it is receiving. She met with the clerks at the Supreme Court to talk about how things are going procedurally with e-filings, and she hopes to meet soon with the Supreme Court Justices to discuss disciplinary cases. She reported that since there is an added annual fee for pro hac vice lawyers, her staff is being overwhelmed administratively sending out the annual notices and processing checks so she is going to ask the Georgia Bar Foundation if we can begin taking credit card payments for all pro hac vice fees. Lastly, Paula reported that she and Deputy General Counsel Jenny Mittleman will be attending the International Conference of Legal Administrators at The Hague next week.

Paula reported on national challenges to the organized Bar. In the Fleck case, the main challenge is the legislative opt-out provision. Fleck filed a suit against the North Dakota Bar for using his compulsory fees to oppose a measure that he supported. She stated that there are 15-20 jurisdictions that do not have mandatory bars and they have other avenues to regulate their lawyers. The U.S. Supreme Court will decide on Monday whether or not to accept cert in the Fleck case. If it does accept cert, there is talk about mandatory bar associations going together to do something such as an amicus brief.

President Ken Hodges announced that he is going to appoint a special committee on Keller to look at this and report back to the Executive Committee.

### Georgia iCivics Newsletter

The Executive Committee received a copy of the iCivics Newsletter outlining the activities to date by the iCivics Committee.

### Old Business

There was no old business.

### New Business

There was no new business.

### Executive Session

Following a motion and second, the Executive Committee met in Executive Session to receive a litigation report and discuss Standing Board Policy 600 on conflicts of interest. Thereafter, by unanimous voice vote, the Executive Committee emerged from Executive Session.

### Adjournment

There being no further business the meeting was adjourned at 4:42 pm and will reconvene on Saturday morning, September 22, 2018.

### Reconvened Executive Committee Meeting

President Ken Hodges called to order the reconvened Executive Committee meeting on Saturday, September 22, 2018 at 8:15 am.

#### Clients' Security Fund (CSF) Assessment

Executive Director Jeff Davis reported on the CSF that is currently funded by a \$100 assessment on new lawyers. In order to keep the fund sustainable, an annual assessment of all Bar members is needed. Deputy General Counsel Bill NeSmith reported that the fund needs between \$500,000-\$750,000/year. YLD Immediate Past President Nicole Leet suggested we pair a professional liability insurance disclosure with the need for an attorney-wide CSF assessment. President-elect Darrell Sutton asked if there were other procedural changes that could be made to the Fund and Bill stated that while the Fund's internal operating procedures have been updated, the \$25,000 cap on claims remains a hindrance. The Executive Committee asked that the CSF look at its procedures and the possibility of an assessment on all lawyers, and report back its recommendations.

#### Professional Malpractice Insurance Disclosure

General Counsel Paula Frederick provided a proposed rule on insurance disclosure. Following a discussion and revisions, it was decided that this topic will be an informational item at the Fall Board of Governors meeting before a rule is presented. It was also suggested that an information page on Clients' Security Fund claims be included in the information provided to the Board of Governors.

#### Engagement Letters

General Counsel Paula Frederick provided proposed amendments to Rule 1.5 Fees of the Georgia Rule of Professional Conduct wherein a lawyer shall communicate in writing the scope of the representation and the basis or rate of fee and expenses before the fees or expenses to be billed at higher rates are actually incurred. Following more discussion, the Executive Committee took no action on the proposed amendments.

#### Random Audits

General Counsel Paula Frederick provided a proposed rule on random audits. In lieu of a rule, Tony DelCampo suggested that we provide trust account training to all new lawyers, and Amy Howell asked if we could identify other areas where we can enhance our members' practices to protect the public. Instead of adopting a random audit rule, it was the consensus of the Executive Committee that the Bar provide more education to its members on trust account management through the Transition into Law Practice Program, Law Practice Management Program, and CLEs.

Registration of In-house Counsel

President Ken Hodges and General Counsel Paula Frederick reported on a proposal to make in-house counsel register with the State Bar. Currently in-house counsel does not have to be members of the State Bar of Georgia. Procedurally it would require a rule approved by the Supreme Court. The rule would include a registration fee, similar to the pro hac vice administrative fee, and require in-house counsel to pay active dues annually. The Executive Committee asked the Office of General Counsel to draft a proposed rule on the registration of in-house counsel for its consideration.

Reporting Rule - Rule 8.3 of Rules of Professional Conduct

General Counsel Paula Frederick reported on Bar Rule 8.3 that states if a lawyer becomes aware of another lawyer's violation of the ethics rules, the lawyer may report him or her to the Office of General Counsel. It was the consensus of the Executive Committee that the current rule does not need to be changed.

Law Firms to Operate under a Trade Name

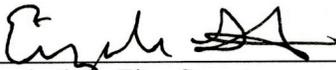
General Counsel Paula Frederick reported on law firms operating under a trade name instead of using the name of the lawyer(s) in the firm name. There will be more discussion on this topic at a later date.

Communications Committee Proposed PSAs

Communications Director Sarah Coole presented the Communications Committee's recommended PSAs for discussion and feedback. The Executive Committee, by unanimous voice vote, approved two of the three PSAs presented. The Executive Committee selected a third proposed PSA and the Arc of Justice PSA, but asked that both be modified before final approval.

Adjournment

There being no further business the meeting was adjourned at 10:30 am.

  
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Elizabeth D. Fite, Secretary

Approved:  
  
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Kenneth B. Hodges, III, President