

The Florida Bar Board of Governors  
January 30, 2009  
The Florida Bar Annex  
Tallahassee, Florida

Pursuant to notice, the regular meeting of the Board of Governors of The Florida Bar was called to order at 9 a.m., Friday, January 30, 2009, at the Bar Annex, Tallahassee, with President Jay White presiding.

**1. Roll Call**

John G. White III, President  
Jesse H. Diner, President-elect  
Stephen H. Echsner, First Circuit  
Lawrence E. Sellers, Jr., Second Circuit  
Dominic M. Caparello, Second Circuit  
Clay A. Schnitker, Third Circuit  
S. Grier Wells, Fourth Circuit  
John J. Schickel, Fourth Circuit  
Andrew B. Sasso, Sixth Circuit  
Charles Chobee Ebbets, Seventh Circuit  
Carl B. Schwait, Eighth Circuit  
Mayanne Downs, Ninth Circuit  
Daniel L. DeCubellis, Ninth Circuit  
Robert M. Brush, 10th Circuit  
Ramon A. Abadin, 11th Circuit  
David Rothman, 11th Circuit  
Ervin A. Gonzalez, 11th Circuit  
Michael J. Higer, 11th Circuit  
Dennis G. Kainen, 11th Circuit  
Juliet Roulhac, 11th Circuit  
John H. Hickey, 11th Circuit  
Dori Foster-Morales, 11th Circuit  
L. Norman Vaughan-Birch, 12th Circuit  
William J. Schifino, Jr., 13th Circuit  
Gwynne Alice Young, 13th Circuit  
Clifford W. Sanborn, 14th Circuit  
David C. Prather, 15th Circuit  
Gregory Coleman, 15th Circuit  
Scott G. Hawkins, 15th Circuit  
Edwin A. Scales, 16th Circuit  
Allison K. Bethel, 17th Circuit  
Nancy W. Gregoire, 17th Circuit  
Jay Cohen, 17th Circuit  
Frank C. Walker II 17th Circuit

Clifton A. McClelland, Jr., 18th Circuit  
John M. Stewart, 19th Circuit  
A. Lawrence (Larry) Ringers, 20th Circuit  
Richard Arthur Tanner, Out of State  
Ian M. Comisky, Out of State  
Brian D. Burgoon, Out of State  
Jewel White Cole, Young Lawyers Division President  
Arnell Bryant-Willis, Public Member.

Members absent:

Denise A. Lyn, Fifth Circuit  
Murray Silverstein, Sixth Circuit  
Scott M. McMillen, Ninth Circuit  
William Kalish, 13th Circuit  
Lisa S. Small, 15th Circuit  
Eugene K. Pettis, 17th Circuit  
Laird Lile, 20th Circuit  
Eric L. Meeks, Out of State  
Roger J. Haughey II, Young Lawyers Division President-elect  
Alvin V. Alsobrook, Public Member

## **2. Guests**

Rebecca Steele, President of the Florida Association for Women Lawyers  
Rachelle Munson, President of the Virgil Hawkins Florida Chapter of the National Bar Association  
Members of the Citizens Forum: C. Ron Kalapp, Giselle Carson, Marilyn Baldwin, Laura Levenson, (assistant to Ms. Baldwin), Sam Stark, and Connie Bookman.

## **3. Invocation and Pledge of Allegiance**

Board member Dominic Capareello delivered the invocation, and Board member Larry Sellers led the Pledge of Allegiance.

## **4. Appearance by Judge Greg Parker**

Third Circuit Judge Greg Parker, a former member of the board, welcomed the board to Tallahassee, and spoke of applying lessons he learned on the board to his job on the bench.

## **5. Appearance by Elizabeth McArthur, Chair, Administrative Law Section**

McArthur presented the section's annual report, with an emphasis on a new section pro bono program to help children and adults with developmental disabilities who now have their Medicaid claims heard before administrative judges.

## **6. Non-Roll Call Items**

Non roll-call items from the grievance agenda were given as items 8, 10, 11, 13, 14, 17, and 20.

## **7. Approval of Minutes**

The minutes from its December 12 meeting were approved by board. The vote included endorsing the actions of the Executive Committee taken since the board's December meeting, including:

- At a January 5 meeting, denying a request from the Consumer Protection Law Committee to file an amicus brief in a Third District Court of Appeal case, *Leslie et al. v. Carnival Corp. et al.* The committee, however, referred the matter to the Business Law Section for more authoritative analysis, in conjunction with the Consumer Protection Law Committee, the Trial Lawyers Section, and possibly other groups. On another amicus request, the committee voted unanimously that the Bar should file an amicus brief with the Florida Supreme Court in *Goldberg v. Merrill Lynch*. The underlying case involved an allegation that Merrill Lynch and World Savings Bank committed unlicensed practice of law by preparing legal documents needed for mortgages and home purchases. The court had requested that the Bar file a brief "focusing on the existence and adequacy of remedies that may be available to those claiming to have been harmed by persons engaging in the unauthorized practice of law." On a third amicus matter, the committee heard that the Professional Ethics Committee would get a request from the Third DCA for the Bar to file an amicus brief on the pending appeal where the 11th Circuit Public Defender is seeking to withdraw from some felony cases because of workload issues.

- At a January 9 meeting, the committee voted 10-0 to allow the Rules of Judicial Administration Committee to file comments on proposed amendments to Fla.R.Jud.Admin 2.420 filed September 2, 2008, by the Supreme Court's Committee on Access to Court Records.

- At a January 12 meeting, the committee voted 8-3 not to file an amicus brief with the Third DCA in the 11th Circuit Public Defender case, where the PD's office is seeking recusal from several felony cases because of overwork. The court had invited the Professional Ethics Committee to file an amicus brief, addressing various issues of the case. A majority of PEC members felt that committee should not file an amicus brief as it was outside the scope of the committee's authority.

- At a January 15 meeting, the committee voted 8-0 to hire counsel to represent the Bar as an interested party in a case before the Florida Supreme Court on whether a suspended attorney could be seated as a judge. The committee vote took the position the lawyer could not be seated.

## **8. Consent Agenda**

The board approved the consent agenda, after item 5(d)(i)(2)(d), a proposed legislative position from the Elder Law Section, was removed from further consideration at this meeting.

That action including appointing Steven Neale Gosney to UPL Circuit Committee 7A and Robin Severs Braun to UPL Circuit Committee 7B.

The Board of Governors agreed not to prohibit the Real Property, Probate and Trust Law Section's advocacy of the following positions:

- F.S. §736.0709(9) – Florida Trust Code – “Directed Trustee” glitch: “Supports amendment of F.S. §736.0709(9) to correct a misnomer created by insertion of the term

‘directed trustee’ as a person different from the statutory term ‘excluded trustee,’ when they are in fact one and the same.”

- F.S. §736.0105 – Trust Code – state law applicable to trusts: “Supports amendment of F.S. §736.0105 to make F.S. §736.0107 a mandatory provision of law not subject to contradiction by the terms of the trust itself.”

- F.S. §731.201 & Ch 733 – Florida Probate Code – “Incompetent” vs. “Incapacitated”: “Supports amendment of F.S. §731.201(21) to replace the definition of ‘incompetent’ with ‘incapacitated person,’ as well as making consistent changes to F.S. §§733.201(3) & 733.504(1).”

- F.S. §48.23 – Lis pendens revisions: “Supports amendment of the lis pendens statute, F.S. §48.23, to: (i) permit transfer of property where the lis pendens has been discharged; (ii) require a notice of lis pendens to include either the date of the action of the case number; (iii) extend the time for holders of unrecorded interests to intervene; and (iv) require that a court control a lis pendens based on an unrecorded instrument as it would an injunction.”

- F.S. Ch 376 – Brownfield redevelopment program: “Supports continuation and improvement of the Florida brownfield redevelopment program, including the voluntary cleanup tax credit (VCTC) program pursuant to F.S. §376.30781.”

The Board of Governors agreed not to prohibit the Elder Law Section’s advocacy of the following positions:

- “Barrier” Language – *Browning* case: rescinding current section position #1.
- Long Term Care Facilities – Increased staffing ratios (current section position #3), revised as follows: “Supports legislation that would increase staffing ratios, governmental oversight and Medicaid reimbursement rates to improve the general quality of care for ~~elderly and disabled persons residing~~ residents in nursing homes any long term care facility, and opposes legislation that would decrease staffing ratios, governmental oversight and Medicaid reimbursement rates or otherwise decrease the general quality of care for residents in any long term care facility.”

- Rights of Long Term Care Facility Residents (current section position #6) revised as follows: “~~Opposes any legislative effort~~ legislation that would eliminate or diminish the rights of residents of ~~nursing homes and other long term care facilities, any long term care facility as currently provided under Chapter 400, F.S.~~”

- Adequate Court Funding: “Supports adequate funding of the state courts system, state attorneys’ offices, public defenders’ offices, and court-appointed counsel.”

- HB 153 – Health Care Representatives: “Supports HB 153 (Anderson) which provides for designation of a health care representative.”

- Health Care Decisions: “Supports legislation that protects an individual’s rights relating to their health care decisions regardless of incapacity, and opposes any legislation that erodes such rights.”

- Protections of Vulnerable Adults: “Supports legislation that enhances and increases the protection of vulnerable adults wherever they reside, and opposes any legislation that erodes or decreases such protection.”

- Administrative Protections for Discharge Decisions – Assisted Living Facilities: “Supports legislation to provide residents of assisted living facilities a process for administrative hearings and administrative review of discharge decisions.”

- Personal Needs Allowance – Long Term Care & Other Facilities: “Supports legislation that increases the personal needs allowance to qualified individuals residing in any long term care, health care and/or residential facility.”
- Pleading Requirements – Vulnerable Adult Defendants: “Supports legislation requiring a specific pleading against a vulnerable adult defendant.”
- Filial Responsibility – Long Term Adult Care: “Opposes legislation requiring filial responsibility for long term care of adults.”
- Economic Value – Care for Vulnerable Adults: “Supports legislation recognizing the economic value of care provided to vulnerable adults by family members and friends.”

The board approved appointing the following lawyers to the Legal Services of North Florida Board of Directors for three-year terms beginning March 1, 2009: Wendy Loquasto, Phillip Smith, Joel Margules, Benjamin Crump, and Nathan D. Boyles.

The board approved the first amendment to the Florida Bar Retiree Health Plan.

#### **9. Rules Committee Report**

Upon recommendation of the Rules Committee, the board approved bylaw changes for the Young Lawyers Division.

#### **10. President-elect’s Report**

President-elect Jesse Diner reported on the annual strategic planning retreat held December 8-9, 2008, in Ft. Lauderdale. While the plan retains the same four overall goals for the Bar, the ways of attaining them has changed because of the dramatic economic upheavals of the past year. The Bar will now rely more on technology in pursuing the goals, and also reexamine old ways of doing business. The board approved the strategic plan for 2009-2012. The goals of the plan are: ensuring that the judicial system is fair, impartial, independent, and adequately funded; promoting the legal profession and improving the public perception of the judicial system; ensuring access to the courts and legal services; and improving the value of Bar membership for its members and improving the Bar’s relationship with its members.

#### **11. Public Reprimand**

Bar President Jay White administered one public reprimand.

#### **12. Executive Session**

The board went into executive session at 9:52 a.m.

#### **13. Family Law Section Amicus Brief**

The board voted to not disallow the Family Law Section filing an amicus brief with the Third District Court of Appeal in the case, *In the Matter of the Adoption of John Doe and James Doe*, supporting the ruling of the trial court judge in that case. The judge ruled F.S. §63.042(3) unconstitutional and allowed homosexual foster parents to adopt two brothers they had raised for four years. The Board of Governors’ action does not constitute The Florida Bar’s formal endorsement of the section’s position. It acknowledges the subject

matter is within the purview of the section's area of expertise and permits the section — composed of and funded entirely by voluntary members — to go forward. No Bar membership fees will be expended to advocate the brief put forth by the section and the amicus will be written by a volunteer. Board member Larry Ringers recused himself from the vote.

#### **14. Report of the Family Law Section**

Chair Scott Rubin reported on section activities, which include improving inclusiveness within the section, working to allow volunteer guardian ad litem to work in dissolution and paternity cases, and to have a Bar-provided uniform statewide training program for volunteer guardians. The section continues to have a full CLE schedule, is working to allow registered paralegals to be affiliate section members, and monitors proposed changes to the Family Law Rules.

#### **15. Family Law Rules Committee**

The board, by a 39-0 vote, recommended acceptance of a response by the Family Law Rules Committee to comments from the Family Law Section on proposed amendments to rules and forms pertaining to custody, visitation, and related matters. The amendments are intended to make the rules consistent with recent changes in state law.

#### **16. Program Evaluation Committee Report**

Chair Frank Walker reported on several matters. The board approved several items on the committee's recommendation:

- Conceptual approval of a public opinion survey and focus group study on lawyer advertising, as part of a new study of attorney advertising requested by the Florida Supreme Court.
- Conceptual approval of a study to be done by a Florida State University law professor on career satisfaction and goals for lawyers.
- Approval of bylaw amendments for the Labor and Employment Law Section.

Walker reported that the committee approved an amendment to Board of Legal Education and Specialization Policy 2.03, which provides that in order to be eligible for consideration, proposed areas of certification must demonstrate a commitment of no fewer than 75 members to apply for certification in the new area within three years of implementation.

On other matters, Walker said the committee rejected a request from the Public Interest Law Section for funding a section website and newsletter, and is continuing to study a proposed "self disclosure statement" for trial court election candidates proposed by the Judicial Administration and Evaluation Committee. The committee is continuing its study of the Bar's Annual Convention, Midyear Meeting, and General Meeting of Sections and Committees and will make a presentation to the board in April. And the PEC, Walker reported, has subcommittees studying the Animal Law Committee, the Bar's fee arbitration program, and the Bar's Henry Latimer Center for Professionalism.

### **17. Criminal Procedure Rules Committee Report**

Board member David Rothman, liaison to the committee, presented an out-of-cycle rule amendment that substitutes in Rule 3.985 the Florida Supreme Court website for the publication of The Florida Bar as the authority to be used by trial judges for forms of Florida Standard Jury Instructions in Criminal Cases. The board recommended acceptance of the changes 35-0.

### **18. Audit Committee Report**

Chair Dan DeCubellis said the Bar will have to comply with new government auditing standards, which will require additional expenditures for computer software and consultants.

### **19. Budget Committee Report**

Chair Gwynne Young presented three amendments for the 2008-09 Bar budget. Those include a \$25,000 rollover from last year's budget for the Equal Justice Fellowship, \$125,000 for computer software and consultants necessary to comply with new auditing standards, and \$10,000 for a court reporter needed in a discipline case. The board approved all three. Young also reported that because of some losses with the Bar's investments, the 2008-09 budget, which had been projected to be balanced, will show a deficit but not threaten the Bar's fiscal stability. Bar expenditures the current fiscal year, she noted, have been below what was budgeted.

### **20. Investment Committee Report**

Chair Ian Comisky said that the Bar's investment portfolio declined 13.61 percent last year because of the recession, but because of the conservative nature of the portfolio, those losses were less than the 35 to 37 percent decline in the Standard & Poors 500 index. He said the committee continues to closely monitor the Bar's investments, along with its advisors, and that the losses do not threaten the Bar's liquidity.

### **21. Report of Budget Committee Chair-elect**

Budget Committee Chair-elect Jake Schickel gave the board a brief preview of the 2009-10 budget, which will be presented to the board in April. He said the budget will not have an increase in annual membership fees but will likely have a small deficit.

### **22. Criminal Procedure Rules Committee Requested Comment**

The board by a vote of 32-0 recommended acceptance of the committee's submission of a comment on proposed Rule of Judicial Administration 2.420(f)(2) by the Supreme Court's Committee on Access to Court Records. The rules committee was concerned that the proposal from the access committee could lead to identifying confidential informants.

### **23. Appearance by Chief Justice Peggy Quince and Supreme Court Justices**

Chief Justice Quince, in the customary chief justice address to the board, talked about the financial challenges facing the court system and the desire to use fees and costs raised through the court system to finance the court system. She also said that not all court functions should be paid for by court-related fees and that judges salaries should continue to come from state general revenues. The chief justice also called for more pro bono help

for foster children who are aging out of the state foster care system, and for more pro bono services in general.

Justice Charles Wells, a former board member and who will be retiring from the court in March, spoke briefly, recalling his service on the board and saying he intends to return to the full-time practice of law after leaving the court.

Justice Barbara Pariente addressed the board on the need for more pro bono work and to improve the courts' technology, including the need for a coordinated statewide computer system.

Also attending the meeting and having lunch with the board were Justices Ricky Polston, Charles Canady, and Jorge Labarga.

#### **24. Presentation by Rachelle Munson**

Munson briefed the board about the Virgil Hawkins Florida Chapter of the National Bar Association new book, *Florida's First Black Lawyers (1869-1979)* and a special event planned to promote the publication at the Bar's Annual Convention.

#### **25. Legislation Committee Report**

Chair Greg Coleman said the Bar is continuing its focus in the Legislature on improving funding for the court system, saying there are some signs of progress. He also said the committee recommended, and the board agreed not to prohibit advocacy several section legislative positions. Those include for the Business Law Section:

- UNCITRAL – Model International Commercial Arbitrations: “Supports changing the substantive law that governs international commercial arbitration in Florida, specifically by adoption of the UNCITRAL model international commercial arbitration law and repeal of the current Florida international arbitration act within F.S. Chapter 684.”

- SB 382 – Youth Member of Corporate Boards: “Supports SB 382 (Bennett) to permit a director 15 years of age or older if provided in articles of incorporation or bylaws, or by resolution of board of directors.”

- Corporate Directors – Elections/Resignations: “Supports legislation to amend F.S. Ch 607 to allow for variations from the plurality voting standard in current statute that governs the election of directors, and to clarify aspects of the law regarding contingency or later-date resignation by a director.”

- HB 119 – Real Property Registration: “Opposes HB 119 (Porth), as filed, regarding the Department of Financial Services to establish an Internet registry of all of vacant, abandoned, or foreclosure-proposed real properties.”

- Division of Corporations/Department of Revenue: “Opposes legislation that would transfer the functions of the Division of Corporations in the Department of State to the Department of Revenue.”

For the Criminal Law Section, HB 383 - Discovery Depositions Fla. R. Crim. P. 3.220: “Opposes legislation to repeal Fla. R. Crim. P. 3.220(h)(1)(D) and to eliminate discovery

depositions in cases in which a defendant is charged only with a third degree felony, misdemeanor, or criminal traffic offense.”

For the Tax Section:

- Corporate Income Tax Piggyback: “Supports legislation to cure the disconnect between disallowance of federal bonus depreciation and loss of federal tax basis.”
- Tax Liabilities Transferred to Related Entities: “Opposes transferee liability legislation that places a greater burden on, or risk to, an unrelated purchaser of business assets; opposes legislation expanding transferee liability legislation to lenders foreclosing upon, or taking assets in reduction of indebtedness.
- Bond Waiver Rulemaking Authority: “Supports legislation granting Department of Revenue authority to promulgate administrative rules regarding bond waiver rulemaking authority.”
- Documentary Stamp Tax on Short Sales: “Supports legislation clarifying that the documentary stamp tax on a short sale is based only upon the purchase price.”
- *Crescent Miami Center v. Dept. of Revenue* – Tax Liability upon sale of interest in Florida Property: “Opposes any legislation that may impose tax liabilities upon the sale of an interest in any entity owning Florida real property, to include monitoring legislation to address the documentary stamp tax case of *Crescent Miami Center v. Dept. of Revenue*, 903 So. 2d 913 (Fla. 2005).”
- F.S. §193.1556 - Notice of Change in Property Ownership or Control: “Supports legislation to repeal the F.S. §193.1556 change of control notification requirement to property tax appraisers upon a change of ownership or control of an entity owning real property.”

## **26. Board Review Committee on Professional Ethics Report**

The Board Review Committee on Professional Ethics and Board of Governors deferred action on Proposed Advisory Opinion 90-6 (Reconsideration), concerning a criminal defense attorney’s obligation when he or she learns that a client is proceeding under a false name.

## **27. Communications Committee Report**

Chair Ray Abadin reported the committee has voted for improvements to the “Find a Lawyer” service on the Bar website. The improvements will make it easier to find a particular lawyer, as well as broaden the parameters the public can use when searching for a lawyer. The committee also reviewed the Board of Legal Specialization and Education’s strategic communication program, met with the Citizens Forum, and looked at budget issues related to streamlining the Bar’s communications.

## **28. Disciplinary Procedure Committee Report**

The board approved the committee’s recommendation for an amendment to rule 3-7.1: Within subdivision (d), adds reference to new subdivision (m), which maintains privacy rights under existing laws and court rules; new subdivision (m) adds language to specifically follow rule 2.420 of the Rules of Judicial Administration regarding privacy of certain information in court records.

Vice Chair Andy Sasso said the committee is working on four other issues. One is a change to the disbarment by consent rule, which would allow lawyers under disciplinary investigation to agree to a disbarment by consent without admitting to any of the evidence or charges in the underlying complaints. Another is considering whether it is necessary to continue having the designated reviewer examine complaints that are dismissed by Bar staff as without basis. The committee also, following concern expressed by the Supreme Court, is examining whether a rule is needed for lawyers who are suspended for 91 days or slightly longer periods but then wait several years to petition for reinstatement. Sasso said the committee is looking to see whether those lawyers should have to demonstrate competence as well as rehabilitation, including retaking parts of the bar exam, before their suspension is lifted. Finally, the committee is looking at an amendment for Rule 3-7.7 to clarify that time for filing a notice of review starts to run for the respondent with the docketing of the referee's report by the Florida Supreme Court.

### **29. Young Lawyers Division Report**

YLD President Jewel White Cole reported on a variety of division activities, ranging from its recent affiliate outreach program to the first meeting of YLD's new law student division to studying whether new Bar members should continue to be required to attend basic skills courses (not including Practicing With Professionalism) in person.

### **30. Appointments to The Florida Bar Foundation Board of Directors**

The board reappointed George F. Knox of Miami and Michael Faehner of Sarasota for three-year terms on the Foundation Board of Directors.

### **31. Time and Place of Next Meeting**

The board will next meet April 1-4 at the Biltmore in Coral Gables. There being no further business, President White adjourned the meeting at 2:42 p.m.

## SUBJECT INDEX

ADMINISTRATIVE LAW SECTION REPORT .....	2
APPEARANCE BY CHIEF JUSTICE PEGGY QUINCE .....	7
APPEARANCE BY JUDGE GREG PARKER .....	2
APPOINTMENTS .....	10
APPROVAL OF MINUTES.....	3
AUDIT COMMITTEE REPORT .....	7
BOARD REVIEW COMMITTEE ON PROFESSIONAL ETHICS REPORT .....	9
BUDGET COMMITTEE CHAIR-ELECT REPORT .....	7
BUDGET COMMITTEE REPORT .....	7
COMMUNICATIONS COMMITTEE REPORT .....	9
CONSENT AGENDA .....	3
CRIMINAL PROCEDURE RULES COMMITTEE REQUESTED COMMENT .....	7
CRIMINAL PROCEDURE RULES COMMITTEE REPORT .....	7
DISCIPLINARY PROCEDURE COMMITTEE REPORT .....	9
EXECUTIVE SESSION.....	5
FAMILY LAW RULES COMMITTEE REPORT .....	6
FAMILY LAW SECTION AMICUS BRIEF .....	5
FAMILY LAW SECTION REPORT .....	6
GUESTS .....	2
INVESTMENT COMMITTEE REPORT .....	7
INVOCATION AND PLEDGE OF ALLEGIANCE .....	2
NON-ROLL CALL ITEMS.....	2
PRESENTATION BY RACHELLE MUNSON OF THE VIRGIL HAWKINS FLORIDA CHAPTER OF THE NATIONAL BAR ASSOCIATION.....	8
LEGISLATION COMMITTEE REPORT .....	8
PRESIDENT-ELECT REPORT .....	5
PROGRAM EVALUATION COMMITTEE REPORT .....	6
PUBLIC REPRIMAND.....	5
ROLL CALL.....	1
RULES COMMITTEE .....	5
TIME AND PLACE OF NEXT MEETING.....	10
YOUNG LAWYERS DIVISION REPORT .....	10