

The Florida Bar Board of Governors
October 21, 2011
Charleston Place Hotel
Charleston, SC

1. Roll Call

Scott G. Hawkins, President
Gwynne A. Young, President-elect
Stephen H. Echsner, 1st Circuit
William H. “Bill” Davis, 2nd Circuit
Clay A. Schnitker, 3rd Circuit
S. Grier Wells, 4th circuit
Michael G. Tanner, 4th Circuit
Lawrence Scott Kibler, 5th Circuit
Andrew B. Sasso, 6th Circuit
Sandra Fascell Diamond, 6th Circuit
Sandra C. Upchurch, 7th Circuit
Mary Ann Morgan, 9th Circuit
C. Richard “Rick” Nail, 10th Circuit
Ramon A. Abadin, 11th Circuit
Dori Foster-Morales, 11th Circuit
Leslie J. Lott, 11th Circuit
Michael J. Higer, 11th Circuit
Dennis G. Kainen, 11th Circuit
John H. Hickey, 11th Circuit
L. Norman Vaughan-Birch, 12th Circuit
William J. Schifino, Jr., 13th Circuit
Lansing C. Scriven, 13th Circuit
Margaret Diane Mathews, 13th Circuit
Michael S. Hooker, 13th Circuit
John W. Manuel, 14th Circuit
David C. Prather, 15th Circuit
Gregory W. Coleman, 15th Circuit
Michelle R. Suskauer, 15th Circuit
Gary Shepard Lesser, 15th Circuit
Eugene K. Pettis, 17th Circuit
Jay Cohen, 17th Circuit
Clifton A. McClelland, Jr., 18th Circuit
John M. Stewart, 19th Circuit
Laird A. Lile, 20th Circuit
Richard A. Tanner, Out-of State
Ian M. Comisky, Out-of-State
Eric L. Meeks, Out-of-State
Brian D. Burgoon, Out-of-State
Sean T. Desmond, YLD President
Paige Adonna Greenlee, YLD President-elect

Winston. W. Gardner, Jr., Public Member
Alvin V. Alsobrook, Public Member

Members Absent:

Lawrence E. Sellers, 2nd Circuit
Carl B. Schwait, 8th Circuit
Paul Louis SanGiovanni, 9th Circuit
Scott R. McMillen, 9th Circuit
Juliet M. Roulhac, 11th Circuit
Edwin A. Scales III, 16th Circuit
Walter G. Campbell, Jr., 17th Circuit
Adele Ilene Stone, 17th Circuit
Timothy L. Bailey, 17th Circuit
Scott W. Weinstein, 20th Circuit

2. Guests

Susan Healy, President, Florida Association for Women Lawyers
C. SháRon James, President, Virgil Hawkins Florida Chapter, National Bar Association

3. Staff in Attendance

John F. Harkness, Jr., Executive Director
John Berry, Director, Legal Division
Ken Marvin, Director, Lawyer Regulation
Rosalyn Scott, Assistant to the President
Gary Blankenship, Senior Editor, Florida Bar *News*

4. Invocation and Pledge of Allegiance

Board member Richard Tanner delivered the invocation and led the board in the Pledge of Allegiance.

5. Health Law Section Report

Chair Cynthia Mikos said the section is working to improve communications, technology, and services to members. That includes overhauling its website, setting up a listserv, and using social media to reach law students and young lawyers. Two law schools are assisting with the section's online newsletter and online journal and the section is now webcasting all of its CLE programs. The section is working on luncheon programs and also reaching out to government lawyers who may have limited resources. Another project is updating the section's Health Law Handbook.

6. Approval of Minutes.

The board approved the minutes from its July 29, 2011, meeting in Palm Beach. The approval included endorsing these actions taken by the Executive Committee since that meeting:

- At an August 10 meeting, the Executive Committee: (1) recommended approval of out-of-cycle rule amendments from the Florida Probate Rules Committee to implement laws passed by the Legislature in 2011; (2) recommended approval of out-of-cycle amendment from the Small Claims Rules Committee to conform with the ruling on privacy matters in *In re: Privacy and Court Records*, SC08-2443; (3) recommended approval of out-of-cycle rules amendments proposed by the Juvenile Court Rules Committee to implement three laws passed by the Legislature in 2011; and (4) recommended approval of new rule 2.451, Use of Electronic Devices, proposed by the Rules of Judicial Administration Committee, on removing electronic devices from jurors and the use of electronic devices in the courtroom.

- At an August 23 meeting, the Executive Committee recommended approval of the Appellate Rules Committee's proposed out-of-cycle rule amendments to rule 3.170, 3.800, and 3.851, and proposed new rule 3.801, which are being submitted in connection with rule amendments from the Criminal Court Steering Committee.

- At a September 20 meeting, the Executive Committee approved two new slates of candidates for, respectively, the Fourth District Court of Appeal Judicial Nominating Commission and the 17th Circuit Judicial Nominating Commission, in accordance with a request from Gov. Rick Scott, who rejected the initial slates. Michele K. Cummings, Debra A. Jenks, and Patricia Anne Leonard were nominated for the Fourth DCA JNC, and Michael E. Dutko, Sr., Kevin P. Tynan, and Linda Spaulding White were nominated for the 17th Circuit JNC.

- At an October 4 meeting, the Executive Committee recommended approval for a change to Form 8.990 from the Juvenile Court Rules Committee to correct an error in a previous filing with the Supreme Court.

7. Approval of Consent Agenda

The board approved the consent agenda as submitted. That included:

- Approving these appointments to circuit UPL committees: Louis A. Maygarden, Jack Walter Lurton III and Richard Norton Sherrill as attorney members to Committee 1A; Kyle McLeod as an attorney member to Committee 3; Josef Josel Fridman as a public member to Committee 15B; Gregory J. Donoghue as an attorney member to committee 18A; David Potter and an attorney member and Dr. Mabel Lopez as a public member to Committee 20; and Dawn Marie Matthews Berlanga as an attorney member to Committee 9A.

- Not opposing 12 legislative position requests from the Real Property, Probate and Trust Law Section:

- Supports creation of F.S. § 732.1081 barring inheritance through intestate succession of a natural or adoptive parent from or through a child for whom their parental rights have previously been terminated.

- Supports amendment to F.S. § 732.401 clarifying the period in which an attorney-in-fact or guardian must file a petition for authority to make an election to take a tenancy in common interest in a homestead and the tolling effect such a petition has on the election deadline.

- Supports amendment to F.S. § 732.401 clarifying that the defined term "protected homestead" for purposes of the probate code does not include property owned by the decedent in joint tenancy with rights of survivorship.

- Supports extension of the sunset of the Distressed Condominium Relief Act until July 1, 2012, through amendment to Section 718.707, F.S.; to provide an effective date.

- Supports additional guidance and regulation respecting the creation of a condominium within a condominium unit, through creation of Section 718.406, F.S.; to provide an effective date.
- Supports clarification of Ch 718, F.S.: to confirm that certain operational provisions do not apply to nonresidential condominium associations; to define "nonresidential condominiums;" to clarify that the division's arbitration program only pertains to residential condominiums; to provide an effective date.
- Supports amendment of F.S. § 701.04 to require mortgagees to provide subsequent owners of property with payoff information as to mortgages encumbering the property.
- Supports amendments: to § 95.11(2) and (5), F.S., as to the statute of limitations for actions on payment bonds; to § 713.08(3) (the statutory form for a claim of lien) to include the separate statement required by F.S. 713.08(1)(c); to § 713.13, F.S. to delete the requirement that the notice of commencement be verified and to clarify the timing of the expiration date of the notice of commencement; to § 713.18, F.S. as to electronic confirmation of delivery through the U.S. Postal Service.
- Supports creation of a new statute F.S. § 732.703 which provides that when an individual dies after a divorce, a beneficiary designation created by the individual prior to the divorce which designates the spouse as a beneficiary, becomes void upon the divorce and the spouse is deemed to have predeceased the decedent.
- Supports creation of new F.S. § 765.2021 and F.S. § 765.3031 to terminate the authority of a health care surrogate or surrogate appointed under a living will upon the divorce or annulment of the marriage between the surrogate and the principal.
- Supports clarification of F.S. § 213.758 "Transfer of tax liabilities" in order to streamline the transfers of businesses, stocks of goods, and certain real estate transactions.
- Support the proposed amendments to F.S. Chapter 738 to bring the Florida Uniform Principal and Income Act into conformity and alignment with the Uniform Act and Federal tax law and to clarify existing ambiguities representing further and ongoing technical corrections to our Act.
- Not opposing two legislative positions of the International Law Section:
 - Supports amending § 48.193 F.S., § 685.101 F.S. and § 685.102 F.S. to give Florida courts jurisdiction to hear contractual disputes involving parties choosing Florida as governing law as a forum for dispute resolution, even where no other contacts may exist with Florida.
 - Supports continuing refinement of the substantive law governing international commercial arbitrations in this state through necessary remedial amendments to the Florida International Commercial Arbitration Act, passed in 2010 and codified within F.S. Ch. 684.
- Not opposing two legislative positions of the Business Law Section:
 - Supports adequate funding for civil legal assistance to indigent persons through the Florida Access to Civil Legal Assistance Act.
 - Supports update and modernization of the Florida Arbitration Code, Ch. 682, F.S., via enactment of the Revised Uniform Arbitration Act ("RUAA").
- Not opposing this legislative position of the Entertainment, Arts and Sports Law Section: Supports the passage of legislation which would provide increased corporate income tax, sales, and use tax credits to qualified entertainment entities instead of reimbursements from appropriations.

- Not opposing two legislative positions of the Public Interest Law Section:
 - Supports, consistent with the final report of the Special Committee on the Legal Needs of Children, legislation to implement an array of sentencing options for children in adult court, including blended sentences.
 - Supports, consistent with the final report of the Special Committee on the Legal Needs of Children, legislation to restore judicial authority to determine the appropriateness of whether a child should be prosecuted in adult court.
- Approving the legislative consultant contract between the Workers' Compensation Section and Fausto Gomez.

8. Workers' Compensation Section Report

Section Chair Jeffrey Jacobs said continuing fallout from 2003 revisions to Florida's workers' compensation laws has made it harder for injured workers to collect needed benefits and harder for attorneys to take their cases because of limits on attorneys' fees. He said the law had more than halved the number of litigated claims. The change has caused a decline in section membership to the current 1,200, but section finances have remained healthy. The section offers webinars every other month and several other CLE programs. It has a quarterly newsletter and remains active in reviewing workers' compensation rules.

9. Communications Committee Report

On behalf of the committee, Chair Greg Coleman moved and the board approved a communications plan to keep Bar members informed about Bar legislative activities. It includes a letter that will be e-mailed to all Bar members, published in the *Bar News*, and posted on the Bar's website. There will also be a weekly update during the session posted on the website. On another matter, Coleman moved on behalf of the committee and the board approved the strategic communications plan for the Board of Legal Specialization and Education. The committee is continuing to study sending out a summary of board actions to Bar members and how that can be distributed.

10. Legislation Committee Report

Co-chair Ray Abadin reported that Bar legislative consultants do not anticipate for next year the numerous court-related "reform" bills that appeared in the Legislature earlier this year, but that there may be a review of the judicial nominating commission process. That will likely include an effort to remove the Bar from its role in nominating potential commissioners for JNCs. Abadin separately noted that the Legislature will be getting a report on stable funding alternatives for the clerks and the courts.

11. Young Lawyers Division Report

YLD President Sean Desmond said the division is improving communications with its 21,000 members, including improving its website and converting its newsletter from paper to electronic. The division is also working with the Bar's Law Office Management Assistance Service to provide management assistance to young lawyers. An extra panel on professionalism featuring young lawyers has been added to the Practicing with Professionalism Program. The YLD is also testing a group mentoring program with 10 lawyers and 10 law students at Stetson and the University of Miami, and hopes to expand it to all the state's law schools next year and make it available for new Bar members.

12. Annual Convention Committee Report

Co-chair Lanse Scriven said the committee has lined up a humorous legal speaker for the Judicial Luncheon at the 2012 Convention and asked board members to have their firms contribute to support the luncheon and convention expenses.

13. Executive Session

The board went into executive session to discuss disciplinary and other confidential matters.

14. Investment Committee Report

Committee Chair Ian Comisky reported that market volatility had hurt the Bar's investment portfolio although it was still substantially up for the year. The Bar, on advice of its financial managers, reduced its large cap portfolio by 2 percent, with the money to be directed into a short-term bond fund or cash holdings. Because of market uncertainties, almost half of the Bar's portfolio is now in cash or bond funds, Comisky said.

15. Budget Committee Report

On behalf of the committee, Chair Bill Schifino moved and the board approved using \$54,700 (prorated for the rest of the fiscal year) from the Bar's reserves to hire an additional attorney to work exclusively on grievance complaints related to mortgage issues.

16. Juvenile Court Rules Committee Report

The board voted 28-0 to recommend approval of a change to *Fla. R. Juv. P. Form 8.947*, Disposition Order – Delinquency, which had been submitted to the Supreme Court earlier this year but was found to contain an error.

17. Family Law Rules Committee Report

The board voted 25-0 to recommend approval of four rule amendments proposed to conform to changes in the Rules of Civil Procedure. The vote also included an amendment to Fla. Fam. L.R.P. 1.740(f)(1) deleting a requirement that a mediation agreement be sent to a party's counsel who was not at the mediation agreement with a time period for the counsel to review and file an objection to the agreement.

18. Program Evaluation Committee Report

Chair Jay Cohen presented two items on second reading, which were approved by the board:

- Subchapter 6-11. Standards for Board Certification in Workers' Compensation: Revised rule title and verbiage to identify standards for board certification in workers' compensation, rather than as standards for a board certified workers' compensation lawyer and made non-substantive changes to conform to the Supreme Court style guide. Within 6-11.2, subdivision (e), substantial equivalent, adds that a substantial equivalent may be a trial and submission to the trier of fact of any workers' compensation issues before any judge other than a Judge of Compensation Claims (JCC). Within 6-11.3, subdivision (a)(2), substantial involvement, removes allowing a trial advocacy course to substitute for a case. Within 6-11.5, subdivision (b), trial requirement, removes restriction that hearings and/or trials outside the jurisdiction of the Florida Office of the Judges of Compensation Claims, and appeals of these matters (including, but not limited to, rule nisi, federal workers' compensation matters, Federal Longshore and Harbor Workers' Compensation Act matters, and other circuit court actions, etc.) cannot be used to meet the trial, protracted litigation, or substantial requirements.

- BLSE Policy 3.06, Applicant Procedural Requirements: Within subdivision (b), replaces certified specialists with lawyers seeking certification or recertification and adds that the information will be reported within the application for certification or recertification; within the listing of the information that must be provided, adds that the lawyer must disclose whether the lawyer seeking certification or recertification has either withdrawn an application for certification or recertification by The Florida Bar or had certification denied or revoked by The Florida Bar; and adds that the applicant shall have procedures in place to revoke lawyer certification in instances of denial or revocation of certification by The Florida Bar.

Cohen presented amendment to the Health Law Section and the Tax Section bylaws to the board on first reading. On behalf of the committee Cohen moved and the board approved changing the name of the Judicial Independence Committee to the Constitutional Judiciary Committee. On other matters, Cohen said the committee will present its recommendation to the board at its December meeting on creating a non-voting seat on the board for government lawyers. The committee also voted not to change the name of the Bar's Unlicensed Practice of Law Department to Unauthorized Practice of Law.

19. Committee on the Decline of Jury Trials Report

Chair Jay Cohen said the committee will have a report at the board's December meeting.

20. Joint Report of the Criminal Procedure, Traffic Court, and Rules of Judicial Administration Committees

The board recommended approval 33-0 of a change to the Rule of Judicial Administration 2.425 on protecting confidential information in court filings. The change was recommended by the Criminal Procedures Committee, the Rules of judicial Administration Committee, and the Traffic Court Rules Committee, which jointly worked on the proposal.

21. Special Committee on Lawyer Referral Services Report

Committee Chair Grier Wells reported the committee has had two public hearings which looked at issues ranging from fraud and improper solicitation of clients to advertising and conflict-of-interest issues. The committee at its next meetings will focus on formulating recommendations.

22. Report on Electronic Court Filing

Board member Laird Lile, a member of the Florida Court Technology Commission, reported that the FCTC has proposed to the Supreme Court, at the court's instruction, a schedule for making electronic filing of court documents mandatory. Those dates were March 1, 2013, for civil cases, and September 30, 2013, for criminal cases. The Bar will have a large role to play, he said, in educating lawyers about e-filing and any deadline adopted by the court. The court also approved a new Rule of Judicial Administration requiring any electronic filing made with the court after January 1, 2012, comply with the ADA. Lile said that means documents must be formatted so software that turns the text into spoken words can translate charts and other items, as well as the written words.

23. Rules Committee Report

Chair Steve Echsner presented five items on first reading:

- Chapter 12 - Emeritus Attorneys' Pro Bono Participation Program: Proposed amendments to 3 rules (noted below) would allow an Authorized House Counsel to participate in the Emeritus Attorneys' Pro Bono Participation Program. Proposed amendments for these 3 rules as well as the rest of chapter 12 are for clarity and to conform to the Supreme Court Style Guidelines. Rule 12-1.2, within subdivision (a), allows an Authorized House Counsel to be certified as an Emeritus Attorney to provide pro bono legal services. Rule 12-1.5, adds new subdivision (a)(3) to allow an exemption for an Authorized House Counsel applying for Emeritus Attorney status from having to supply a certificate of good standing. Rule 12-1.6, adds new subdivision (a)(3) to provide that if an individual's Authorized House Counsel status is revoked, their Emeritus Attorney status is also revoked.

- Rule 4-6.5 Voluntary Pro Bono Plan (responsibilities): Within subdivision (b)(2), adds new subdivision (A) to include "identify, encourage, support, and assist statewide and local pro bono projects and activities" to the responsibilities of the standing committee; reletters accordingly.

- Rule 17-1.3 Activities: Adds new subdivision (a)(3) to allow an Authorized House Counsel to provide pro bono legal services if certified under Chapter 12, the Emeritus Attorney rule.

- Rule 20-3.1 Requirements for Registration: Allows an FRP who was initially registered under the grandfathering provision to reregister under the grandfathering provision.

- SBP 5.10 Standing Committees: Adds the Adoption Law Certification Committee, Education Law Certification Committee, Citizens Forum, and Florida Registered Paralegal Committee to the list of standing committees; also deletes the Member Outreach Committee.

Echsner also reported the committee had looked at the issue of including clauses in lawyer contracts requiring arbitration of malpractice claims and voted 3-2 not to take a position at this time.

24. Elections Committee Report

Executive Director John F. Harkness, Jr., reported the Elections Committee had met and recommended that presidential candidates be allowed to begin collecting signatures required for their nominating petitions on November 1 of the year preceding the election. The board approved that recommendation.

25. Time and Place of Next Meeting

There being no further business before the board, President Hawkins adjourned the meeting at 12:36 p.m. The next board meeting is December 9, 2011, at the Ritz-Carlton at Amelia Island.

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