

Florida Bar Board of Governors
April 19, 2013
Marriott Waterside Hotel
Tampa, Florida

1. Roll Call

Gwynne A. Young, President
Eugene K. Pettis, President-elect
Stephen H. Echsner, 1st Circuit
William H. Davis, 2nd Circuit
Clay A. Schnitker, 3rd Circuit
S. Grier Wells, 4th Circuit
Andrew B. Sasso, 6th Circuit
Sandra Fascell Diamond, 6th Circuit
Sandra C. Upchurch, 7th Circuit
Carl B. Schwait, 8th Circuit
Mary Ann Morgan, 9th Circuit
Scott R. McMillen, 9th Circuit
C. Richard 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
Gregory W. Coleman, 15th Circuit
Gary Shepard Lesser, 15th Circuit
Edwin A. Scales, III, 16th Circuit
Walter G. Campbell, Jr., 17th Circuit
Adele I. Stone, 17th Circuit
Lorna E. Brown-Burton, 17th Circuit
Jay Cohen, 17th Circuit
O. John Alpizar, 18th Circuit
John M. Stewart, 19th Circuit
Laird A. Lile, 20th Circuit
Marcy L. Shaw, 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
Paige Adonna Greenlee, Young Lawyers Division President

Melanie Shoemaker Griffin, Young Lawyers Division President-elect
Winston W. Gardner, Jr., Public Member
Anthony Holloway, Public Member

Members Absent:

Lawrence E. Sellers, Jr., 2nd Circuit
Michael G. Tanner, 4th Circuit
Lawrence Scott Kibler, 5th Circuit
Paul Louis SanGiovanni, 9th Circuit
Juliet M. Roulhac, 11th Circuit
John W. Manuel, 14th Circuit
David C. Prather, 15th Circuit
Michelle R. Suskauer, 15th Circuit
Timothy L. Bailey, 17th Circuit

2. Staff in Attendance

John F. Harkness, Jr., Executive Director
John Berry, Director, Legal Division
Marcy Jackson, Director of Administration
Beth Brenneis, Director, Finance and Accounting
Ken Marvin, Director, Lawyer Regulation
Mary Ellen Bateman, Director, Ethics and Advertising, UPL, and Special Projects
Elizabeth Clark Tarbert, Ethics and Advertising Counsel
Lori Holcomb, Unlicensed Practice of Law Counsel,
Francine Walker, Director, Public Information and Bar Services
Rosalyn A. Scott, Assistant to the President
Gary Blankenship, Senior Editor, Florida Bar *News*

3. Guests

Sandra M. Ferrera, President, Cuban American Bar Association
Laura Wendell, President, Florida Association of Women Lawyers
Aramis Ayala, President, Virgil Hawkins Florida Chapter, National Bar Association
Diana Bock, Government Lawyer Section

4. Invocation and Pledge of Allegiance

Board member Lansing Scriven delivered the invocation, and board member Margaret Mathews led the board in the Pledge of Allegiance.

5. Welcome by Tampa Mayor Bob Buckhorn

Mayor Buckhorn welcomed the board to Tampa, which he said is taking its place among the great American cities. He praised the legal profession for giving “the least of us” the chance to succeed.

6. Approval of Minutes

The board approved the minutes from its February 1, 2013, meeting in Tallahassee. That action included approving the following emergency legislative actions by the Bar president and actions by the Executive Committee:

- On February 18, 2013, the Executive Committee, by respective 9-0 and 8-1 votes, took emergency action and approved adding the following two positions to the Bar's legislative agenda:

- Supports amendment of Article V, Section 8, of the Florida Constitution, to increase the mandatory retirement age for justices and judges, from 70 years to 75 years of age.

- Supports a merit-based process for selecting Florida judges through independent judicial nominating commissions and opposes any changes to the current JNC process that would impair the independence of the commissions.

- On March 6, 2013, President Gwynne Young took emergency action and agreed not to prohibit the Trial Lawyers Section from advocating three legislative positions. The emergency action was necessary because the issues had been scheduled for a Florida House committee meeting without the normal 48 hours notice. The issues were that the section:

- Opposes legislation that would increase the burden of proof in cases of medical negligence based upon the failure of the health care provider to order, perform, or administer supplemental diagnostic tests, from a preponderance of the evidence standard to a clear and convincing evidence standard.

- Opposes legislation that would authorize health care providers to offer patients or prospective patients binding arbitration agreements for current or future claims for medical negligence, or to otherwise enter into binding arbitration agreements with those patients that would limit damages in arbitration awards.

- Opposes legislation relating to nursing home litigation that provides exclusive remedies and limits the rights of an injured party to bring a claim only against the nursing home's licensee or management company.

- On March 20, 2013, the Executive Committee approved submitting the following three names to the governor to fill a vacancy on the First District Court of Appeal Judicial Nominating Commission: Lynn Drysdale, Jacksonville; Leonard E. Ireland, Jr., Gainesville; and John J. Schickel, Jacksonville.

- On March 20, 2013, the Executive Committee approved submitting the following names for vacancies on judicial nominating commissions: Sixth Circuit – Denis M. DeVlaming, Clearwater; Kim L. Kaszuba, Clearwater; and Erik R. Matheney, St. Petersburg; Eighth Circuit – Mark Avera, Gainesville; Stephanie M. Marchman, Gainesville; and Peggy-Ann O'Connor, Gainesville; and 16th Circuit – Nathalia M. Abondano, Key West; Pedro J. Mercado, Key West; and Loriellen K. Robertson, Key West.

- On March 26, 2013, President Gwynne Young took emergency action and agreed not to prohibit the Trial Lawyers Section from advocating the following positions. The action was necessary because two bills affecting these positions were ripe for action by both the full Florida House and Senate. The issues were taken that the section:

- Supports amendments to F.S. §61.08 (alimony statute) to recognize the court's discretion to fashion alimony awards that are appropriate based upon the statutory factors including bridge-the gap, rehabilitative, durational, and permanent alimony.

- Opposes any rule or proposed legislation that would substantially alter the current structure of permanent alimony in Florida.

- Opposes any proposed legislation that would allow modification or termination of existing awards of alimony based solely on legislative changes to F.S. §61.08.
- Opposes any proposed legislation that caps the duration of an award of permanent alimony.
- Opposes any proposed legislation that provides a statutorily authorized automatic termination or reduction of permanent alimony other than death or remarriage.
- Supports the codification of existing case law relating to the modification or termination of alimony awards consistent with *Pimm v. Pimm*, 601 So.2d 534 (Fla. 1992).
- On April 3, 2013, President Young took emergency action and agreed not to prohibit the Business Law Section from advocating the following position. The action was necessary because bills affecting this position were advancing in both the House and Senate. The position is that the section opposes amendments to F.S. §48.031 re service of process, and to F.S. §5627 re executions and payment of money collected, as proposed in SB 1263 (2013) and HB 1379 (2013).

7. Approval of Consent Calendar

The board approved the consent calendar as presented. That includes:

- Appointing Sean Achilles Costis as an attorney member to UPL Committee 6A; Elaine Florence Weiss, Carlos Mauricio Duque, and Lody Jean as attorney members and Francine Leibman and Shari Schwartz as public members to UPL Committee 11D; Gregory P. Huber as an attorney member and Kerry Sheehan as a public member to UPL Committee 15A; and Tamara McLendon-Coleman as a public member to UPL Committee 11B.
- Appointing Dwayne Dickerson, Stephanie St. Louis, Oscar Syger, and Andre T. Young as new attorney members and Jerry Hall, Ron Lebno, Sharon Middleton, Rosanna Schachtele, and Gary van der Laan as new public members to the Standing Committee on Unlicensed Practice of Law. Carsandra D. Buie was reappointed as an attorney member and Shirley Gooding-Butler, Francine Liebman, Donald Matsuura, and Daniel J. Schevis were reappointed as public members.
- Approving the bylaws of the Alternative Dispute Resolution Section.
- Approving an amendment to Bar Rule 1-13.1, Time: Within subdivision (b) conforms the bar's computation of time to the Florida Rules of Civil Procedure regarding e-mail service. Other nonsubstantive changes conform the rule to the Supreme Court style guide.
- Appointing Barbara Warren Loli as an attorney member to the Florida Registered Paralegal District Committee.
- Agreeing not to prohibit the Real Property, Probate and Trust Law Section from revising and advocating one of its legislative positions as follows: Supports foreclosure reform ~~that which~~ expedites and streamlines the judicial foreclosure process – ~~especially as to unopposed or abandoned properties~~ – while preserving and protecting fundamental fairness ~~as well as~~ and the property rights and due process rights of the holders of interests in or affecting Florida real property.

8. Public Reprimands

President Young administered a joint public reprimand to two attorneys.

9. Out of State Division Report

Chair Don Workman reported that nearly one-fifth of the Bar's membership continues to live and practice out of state. He said the division's primary focus remains helping out-of-state Bar members with education and practice issues, including through CLE courses and its electronic publication. The division also emphasizes diversity in all of its activities and encourages members in their pro bono activities.

10. Legislation Committee Report

Chair Laird Lile reported that with two weeks left in the 2013 session, the judicial branch was doing very well in the session, with extra money to address foreclosure cases, and funding for capital issues including a new roof for the Supreme Court. The Senate was also proposing a \$3 million increase in the flat fees paid to private criminal defense counsel plus another \$500,000 for when fees exceed the flat fees. Both the House and Senate, Lile said, appeared to be backing off a proposed constitutional amendment to take rulemaking authority away from the Supreme Court on collateral death penalty appeals. A bill to remove circuit and county clerks of court from direct legislative oversight on their court-related expenditure was advancing in both the House and Senate. The bills would have the clerks' budgets reviewed by the Legislative Budget Commission. A proposed bill, Lile said, that would make the governor's five direct appointments to each judicial nominating commission at-will appointments appeared to be dead. He announced that the committee had set up a subcommittee to review the proposal from former ABA President Steve Zack that the Bar sponsor a "Florida Day" in Tallahassee similar to the "ABA Day" in Washington, D.C., to educate about and promote the legal system.

11. Investment Committee Report

Chair Ian Comisky said the Bar continued to do well with its investments and had a good first quarter. At the recommendation of its investment advisors, the committee is continuing with a complete review of its investment policies with an eye to adjusting them to meet anticipated new conditions in national and international markets. Comisky said the policy changes would be presented to the board at its May meeting.

12. Audit Committee Report

Chair Clay Schnitker said auditors had reviewed the Bar's retirement and deferred compensation plans and found no problems. He also said the auditors were working with the Bar's new Director of Administration Marcy Jackson and Director of Finance and Accounting Beth Brenneis on ongoing financial procedures and processes.

13. Budget Committee Report

Budget Committee Chair Lansing Scriven presented the Bar's 2013-14 budget, which was unanimously approved by the board.

14. Board Review Committee on Professional Ethics Report

Chair Carl Schwait reported that it would take the committee longer than expected to make its recommendations based on the final report of the Special Committee on Lawyer Referral Services, and now hoped to present the recommendations to the board at its July meeting.

15. Rules Committee Report

Chair Margaret Mathews presented on final reading and the board approved an amendment to Bar Rule 7-3.1 and related Standing Board Policy 3.10. The amendments, “Authorize \$25 from the fee paid to The Florida Bar pursuant to rules 1-3.10 & 1-3.11 to be allocated to the Clients' Security Fund for the payment of claims.”

Mathews presented three items on first reading:

- Rule 4-1.5 Fees and Costs For Legal Services (Lien Resolution #2): Within Rule 4-1.5(f)(4), adds new subdivision (E) that the lawyer in a personal injury or wrongful death case charging a contingent fee must provide ordinary lien resolution as part of the lawyer's representation of the client under the fee contract, that the lawyer may not charge any additional fee to the client for providing such services if all fees for the personal injury matter plus lien resolution exceed the contingent fee schedule, that extraordinary services for subrogation and lien resolution may be referred to another only with the client's informed consent, that additional fees by the other lawyer must comply with all provisions of the fee rule, and that the lawyer providing the extraordinary subrogation and lien resolution services may not divide fees with the lawyer handling the personal injury or wrongful death claim. Within comment, explains what lien resolution services are required as part of the original fee contract and what extraordinary services entail.

- Rule 4-5.5 Unlicensed Practice of Law; Multijurisdictional Practice of Law (Changing Ad Rules Reference): Within the comment, changes rules 4-7.1 through 4-7.10 to subchapter 4-7.

- Rule 10-2.1 Generally (Lawyers from Other Jurisdictions Advertising in Florida): Within subdivision (c), changes "state" to "jurisdiction."

16. Unlicensed Practice of Law Report

Board member Bill Schifino, liaison to the Standing Committee on the Unlicensed Practice of Law, reported that the committee, in response to a request from the Real Property, Probate and Trust Law Section, is filing with the Supreme Court a request for an advisory opinion to update the court's 1996 opinion on allowable activities by community association managers.

17. Executive Session

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

18. Real Property, Probate and Trust Law Section Report

Chair Fletcher Belcher reported the section is sponsoring four “fellows” who are younger lawyers who participate in section committee and Executive Council activities. The section is also looking at expanding its RPPTL law student activities at the state's law schools. The section offers 16 CLE courses plus eight webinars this year, and is working with the Professional Ethics Committee to answer questions related to a 2012 state law that allows title insurers to audit lawyers trust accounts. The section also is active legislatively, Belcher said, working with state lawmakers on more than 20 separate bills. He also said the section would be asking the Bar to review the current procedures for allocating overhead expenses and consider adjusting the way overhead charges are allocated for sponsorships related to CLE courses and legislative expenses. He pointed out that the current process discourages sponsorships when it should be encouraged. With regard to the legislative expenditures, he pointed out that since the section is employing its own legislative consultant to support the section's legislative activities, a practice that is

encouraged by the Bar, it is not appropriate to allocate additional administrative legislative expenses to the section. He also pointed out that the section lobbyists are also available to work on Bar legislative activities. President-elect Pettis thanked Belcher for the section's support of the Leadership Academy, and Belcher noted the section will be paying the expenses for its three academy fellows.

19. Appearance by Hillary Bass, State Delegate to the ABA House of Delegates

Bass summarized the activities of the 565-member House of Delegates, which meets twice a year. She noted that the ABA has 32 different sections and divisions and offers more than 3,200 hours of CLE every year in addition to its other meetings. Twenty-seven percent of Florida Bar members belong to the ABA and the ABA is looking to increase that, including by offering free membership through August, which gives lawyers access to ABA periodicals, CLE courses, and member benefits. At its upcoming August meeting in San Francisco, The House of Delegates will be considering the federalization of many criminal matters, creating new standards for recusing judges, and standards for providing pro bono services to low income people.

20. Communications Committee Report

Chair Mary Ann Morgan reported the Bar has added a link on its homepage for the Pro Bono Services Committee. The link helps people who are looking for a pro bono attorney and also gives information to attorneys who are looking to provide pro bono services. The committee is looking to carry the momentum from The Vote's In Your Court education campaign over into the Benchmarks adult education program, and is working with the Constitutional Judiciary Committee and the Speakers Bureau on that. The committee is looking at using technology to help the Bar reach its communications and strategic plan goals and also how technology can help Bar members in their practices. The committee is using the Bar's presence on Facebook and Twitter to reach members, she said. The committee has overseen the updating of the app for the Bar *News* and is working on other Bar-related apps for members. Morgan said the committee reviewed applicants and suggested four people for President-elect Eugene Pettis to appoint to the Citizens Forum.

21. Disciplinary Procedure Committee Report

Chair Dennis Kainen said the committee reviewed monitoring, reporting, and compliance requirements for conditionally admitted Bar members and other members with FLA, Inc. contracts. DPC unanimously approved a final version of Standing Board Policy 15.61, providing guidance for disciplining these lawyers when necessary. The DPC voted to take no action on the issue of a possible new standing board policy regarding the role of the DRC. The DPC determined that such a policy was not needed.

22. Florida Probate Rules Committee Report

Chair James George presented 11 proposed amendments and 14 revisions to comments to bring the rules in compliance with Rule of Judicial Administration 2.425, which governs confidential client information in court filings. The board voted 38-0 to recommend approval of the changes, which now go to the Supreme Court.

23. Program Evaluation Committee Report

Chair John Stewart presented two items for first reading to the board:

- Rule 6-13.2, Standards for Certification of a Board Certified Appellate Lawyer, Definitions: Within new subdivision (e), provides a definition of "primary responsibility" for filing a brief, petition, or response. This means having the most substantial and direct participation of all the lawyers contributing to that task. Only one lawyer may claim primary responsibility for any such task. Where primary responsibility is used to meet a requirement, the applicant shall specifically identify any other lawyer who provided substantial assistance with the task and demonstrate to the satisfaction of the Appellate Practice Certification Committee that the applicant's level of participation was primary. Within new subdivision (f), provides a definition of "principal briefs in appeals" This means the primary brief on the merits and excludes reply briefs, jurisdictional briefs, supplemental briefs, and amicus briefs, provided that for good cause shown, the appellate practice certification committee may treat a reply brief, jurisdictional brief, supplemental brief, or amicus brief as a principal brief for the purpose of these rules, if the brief is substantial and reflects a level of effort and preparation comparable to that required to produce a principal brief. Within new subdivision (g), provides a definition of "petitions or responses in extraordinary writ cases" This refers to a petition or response to a petition that seeks a writ from an appellate court to challenge a ruling or the jurisdiction of a lower tribunal or administrative agency. The term also includes a petition or response to a petition for a writ of certiorari filed in the Supreme Court of the United States, but does not include any other petition or response to a petition that merely requests discretionary appellate review, such as a notice to invoke the discretionary jurisdiction of the Supreme Court of Florida or for permission to appeal to a United States Court of appeals an order of a district court pursuant to, for example, 28 U.S.C. §1292(b) or Federal Rule of Civil Procedure 23(f)." Within new subdivision (h), provides a definition and guide to good cause exceptions. "Good cause exceptions are intended to grant the appellate practice certification committee the discretion to waive technical compliance with the relevant requirement to allow the certification or recertification of an individual where the applicant's proffered circumstances demonstrate that the applicant has, in the experience and judgment of the appellate practice certification committee, the special knowledge, skill, and proficiency, or the equivalent thereof, that technical compliance with that requirement is intended to demonstrate. The appellate practice certification committee is required to consider whether good cause is shown only upon the specific request of an applicant and to consider only those facts specifically identified by the applicant." The amendment also adds the words "appellate practice" before the word "committee" to make the reference to the committee consistent throughout the rule.

- Rule 6-13.3, Standards for Certification of a Board Certified Appellate Lawyer, Minimum Standards: Within subdivision (b), strikes the current language addressing how "primary responsibility" is identified. Within subdivision (c), strikes current language that describes this requirement in terms of having had "primary responsibility" for oral arguments, adds that the applicant must have "presented" the oral arguments. Additional amendments are made to conform rules to the Supreme Court style guide and do not offend the substance of the rule.

- Rule 6-13.4, Standards for Certification of a Board Certified Appellate Lawyer, Recertification: Within subsection (b), strikes the current language addressing how "primary responsibility" is identified. Within subsection (c), strikes the current language that describes this requirement in terms of having had "primary responsibility" for oral arguments; adds that the applicant must have "presented" the oral arguments. Within subsection (g), adds a reference to the new, overall definition of "good cause" in the proposed new subsection (h) of Rule 6-13.2.

Other amendments are made to conform to the Supreme Court of Florida style guide and do not amend the substance of the rule.

Stewart said at the board's May meeting, he expects to report the results of several ongoing reviews, including on the Bar's Henry Latimer Center for Professionalism, the Public Interest Law Section, the Bar's special applications and ratings forms, Board of Legal Specialization and Education Policy revisions, and revisions to the Family Law Section bylaws. The committee may also have a report on the proposed Senior Lawyer Division at that meeting. Stewart reported that the committee recommended merging the Equal Opportunities Section with the Special Committee on Diversity and Inclusion and that the special committee become a standing board committee. The standing committee would continue to oversee the Bar's diversity grants program and carry out the diversity goals of the Bar's Strategic Plan, among other duties. The board unanimously approved that recommendation. Stewart said the PEC will have the bylaws for the new diversity standing committee ready for board approval at the May meeting.

24. Young Lawyers Division Report

YLD President Paige Greenlee reported the division recently has its out-of-state meeting in Austin, TX, and along with the Texas bar young lawyers did a joint pamphlet on what businesses are looking for when they hire outside counsel. The section is working on revising its webinars and on May 10 have scheduled a basic skills seminar on technology issues.

25. Government Lawyer Section Report

Section Chair Diana Bock reported the section has adopted a five-year plan at its recent annual retreat and that the section continues working on ways to reach the 17 percent of Bar members who are government lawyers. She said the section is looking at offering many of its CLE programs in one-hour, online packages because government lawyers frequently have limited attendance time and can't travel to seminars. The section has also made its newsletter electronic. The section is surveying its current members and government lawyers on how best to serve them and will be conducting a membership drive based on the results.

26. Special Appointments

The board appointed: Dwight O. Slater of Tallahassee to a two-year term on the Supreme Court's Bar Admissions Committee; Gary E. Frazier of St. Petersburg and Jonathan T. Levy of West Palm Beach to four-year terms on the Statewide Nominating Commission for Judges of Compensation Claims; and Yara Lorenzo of Miami to fill an unexpired term on The Florida Bar Foundation Board of Directors.

27. President-elect's Report

President-elect Pettis presented the list of chair and vice chair appointments for standing committees for the 2013-14 Bar year. The board approved the appointments.

28. Executive Director's Report

Executive Director John F. Harkness, Jr., noted that the Bar is offering 18 free online CLE courses through the Bar's website and those courses have accounted for more than 164,000 hours of CLE credit.

29. President's Report

President Young reported that public board member Winston Gardner had been appointed by the court to a second two-year term on the board.

30. Judicial Nominating Commission Appointments

Board member Bill Davis reported that Gov. Rick Scott recently rejected the board's slate of nominees from both 2011 and 2012 for appointment to the First District Court of Appeal, which has resulted in two ongoing vacancies on that JNC. President Young, noting that other slates had previously been rejected by the governor, said board members would need to continue to recruit lawyers to apply for JNC appointments so those vacancies could be filled.

31. Time and Place of Next Meeting

There being no further business before the board, President Young adjourned the meeting at 1:51 p.m. The next board meeting is May 31 at the Ritz-Carlton in Sarasota.

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