

Florida Bar Board of Governors
January 20, 2017
DoubleTree Hotel
Tallahassee, Florida

1. Roll Call.

William J. Schifino, Jr., President
Michael J. Higer, President-Elect
Stephen H. Echsner (01-01)
Lawrence E. Sellers, Jr. (02-01)
Melissa N. VanSickle (02-02)
Bruce W. Robinson (03-01)
Fred D. Franklin, Jr. (04-01)
Michael G. Tanner (04-02)
Renée E. Thompson (05-01)
Joshua T. Chilson (06-01)
Sandra Fascell Diamond (06-02)
Mary Ann Morgan (09-01)
Paul L. SanGiovanni (09-02)
Wayne L. Helsby (09-03)
Roland Sanchez-Medina, Jr. (11-01)
Dori Foster-Morales (11-02)
Deborah B. Baker-Egozi (11-04)
Dennis G. Kainen (11-05)
Steven W. Davis (11-06)
John H. Hickey (11-07)
F. Scott Westheimer (12-01)
Thomas Roe Bopp (13-01)
Lansing C. Scriven (13-02)
Margaret Diane Mathews (13-03)
Michael S. Hooker (13-04)
John W. Manuel (14-01)
Adam T. Rabin (15-01)
Michelle Renee Suskauer (15-03)
Gary S. Lesser (15-04)
Jay Kim (17-01)
Lorna E. Brown-Burton (17-03)
John M. Stewart (19-01)
Laird A. Lile (20-01)
Marcy Lynn Shaw (20-02)
Edward Duffy Myrtetus (OOS-01)
Ian M. Comisky (OOS-02)
Eric L. Meeks (OOS-03)
Brian D. Burgoon (OOS-04)
Katherine Hurst Miller, YLD President
Zackary T. Zuroweste, YLD President-Elect

Lawrence Worley Tyree (PM-01)
Sharon B. Middleton (PM-02)

Members Absent

Sam N. Masters (07-01)
Carl B. Schwait (08-01)
C. Richard Nail (10-01)
Leslie J. Lott (11-03)
Ronald P. Ponzoli, Jr. (15-02)
Wayne LaRue Smith (16-01)
Diana Santa Maria (17-02)
Jay Cohen (17-04)
Adam G. Rabinowitz (17-05)
O. John Alpizar (18-01)

2. Staff in Attendance

John F. Harkness, Jr., Executive Director
John Berry, Director, Legal Division
Cynthia Jackson, Director of Administration
Adria Quintela, Director, Lawyer Regulation
Patrick “Booter” Imhof, General Counsel
Lori Holcomb, Division Director, Ethics and Consumer Protection
Elizabeth Clark Tarbert, Ethics Counsel
Tom Kroeger, Bar Counsel, Miami
Jonathon Israel, Director, Practice Resource Institute.
Kelly Berglund, Rules Coordinator
Kathy Bible, Disciplinary Procedure Counsel
Terry Hill, Director, Programs Division
Mike Garcia, Director, Research, Planning and Evaluation
Francine Walker, Director, Public Information and Bar Services
Rosalyn A. Scott, Assistant to the President
Gary Blankenship, Senior Editor, Florida Bar News

3. Guests in Attendance

Javier Lopez, President-elect, Cuban American Bar Association
Leora Freire, President, Florida Association for Women Lawyers
Antonya Johnson, President, Virgil Hawkins Florida Chapter, National Bar Association
David Aronberg, Government Lawyer Representative
Vivian Hodz, President, Tampa Hispanic Bar Association
Andrew Sasso, Board Parliamentarian

4. Invocation and Pledge of Allegiance

Board member Gary Lesser delivered the invocation and board member Melissa VanSickle led the board in the Pledge of Allegiance.

5. Minutes Approval

The board unanimously approved the minutes from its December 9, 2016, meeting.

6. Consent Agenda

The board approved the consent agenda, including:

- Appointing Chad Alvaro as an attorney member to UPL Committee 9B
- Approving an amendment to Rule 6-19.2 Definitions: Rule 6-19.2(a) is being amended to specify what aviation law includes, adding aeronautical/aerospace activities, space travel, the use of outer space, and aviation/airline employment.
- Agreeing not to oppose the Real Property, Probate and Trust Law Section taking the following legislative position: Supports proposed amendments to §§ 736.08135(3) and 736.1008(3), F.S., to clarify the duty of a trustee to account to the qualified beneficiaries of a trust and the form and content of a trust accounting prepared on or after July 1, 2017, and to clarify that the period for which qualified beneficiaries can seek trust accountings.
- Agreeing not to oppose the Real Property, Probate and Trust Law Section taking the following legislative position: Opposes the amendment of Ch. 726, F.S., by replacing the Uniform Fraudulent Transfer Act with the Uniform Voidable Transactions Act (the “UVTA”) unless changes are made to protect the rights of Florida citizens to engage in certain sound and legitimate business, estate, and tax planning techniques and transactions which are currently permitted under Florida law; which do not hinder, delay or defraud creditors; and which do not enhance or diminish the utilization of self-settled spendthrift trusts or single-member limited liability companies by Florida citizens.

7. ABA Report by Edith Osman, State Delegate to the House of Delegates

Osman noted the ABA Midyear Meeting was coming up shortly and would be in Miami and that former Florida Bar President Steve Zack would be receiving the ABA’s Spirit of Excellence Award at the meeting. She noted that Miami attorney Hillarie Bass will take over as ABA president in August and was making committee appointments and invited interested lawyers to contact her if they were interested in serving on an ABA committee.

8. Citizens Advisory Committee Recognition

President Schifino recognized members of the Citizens Advisory Committee in attendance at the meeting: Herb Polson, Sylvia Carra-Hahn, Kristin Norse, Jan Jung, Louis Kalivoda, Steve Deneke, Ruth Lynch, and public board member Sharon Middleton.

9. Investment Committee Report

Chair Ian Comisky announced the Bar’s investments had benefited from a fall and post-election bump in stock prices and the investment returns for the fiscal year were ahead of projections. He noted that returns on the Bar’s short-term portfolio remain at less than 1 percent because of continued low interest rates. He also said with a recent interest rate increase by the Federal Reserve, further raises are expected. The Bar’s long-term portfolio for the calendar year was up \$2.9 million, Comisky reported. He reported the Investment Committee was recommending changes in the Bar’s investment portfolio after getting advice that international investments are expected to outperform domestic investments in the coming year. That includes increasing the investment in Oakmark International Fund by 1.5 percent. Cash in the long term portfolio would be used to fund the Oakmark purchase. The committee also approved reducing the Bar’s

investment in the Galliard Bond Fund by 2 percent. The committee recommended replacing J.P. Morgan High Yield fund which makes up 2 percent of the portfolio with Prudential High-Yield fund making up 4 percent of the portfolio. All the changes fall within the range set for each type of investment in the Bar's portfolio. The board unanimously approved all of the recommendations. Comisky said the committee is continuing to review its investment advisor and will be sending out a request for proposals. The review does not mean the committee will recommend replacing the manager but wants to hear different proposals and will report its finding to the board later this year, he said.

10. Budget Committee Report

Chair Paul SanGiovanni reviewed the Bar's 2016-17 budget and said it is on target. Chair-elect Steve Davis said the committee completed its preliminary review of the proposed 2017-18 budget with Bar staff earlier in the week and would present the budget to the board at its March 24, 2017, meeting.

11. Health Law Section Report

Chair Steven Grigas reported the section is following the debate over the future of the Affordable Care Act. In the past year, the section has held a health law certification exam review class as well as a variety of other courses and seminars and worked with the Young Lawyers Division to find mentors for younger lawyers interested in health law. The section is also working to interest more law students in health law and has worked through local voluntary bars to recruit new members.

12. Administrative Law Section Report

Chair Jowanna Oates said the section is working on "recruitment, retention, and reclamation" and recently approved its first strategic plan covering the next five years. The section will be using social media to reach out to members and potential members, and it working on networking for members and with law students who are potential future members. The section sold out its annual Pat Dore administrative law seminar, she reported.

13. Audit Committee Report

Chair Duffy Myrtetus said the committee spent time with the Bar's new auditing firm going over Bar systems and the committee discussed the upcoming IT review of current and newly implemented systems. He noted that Bar members this year for the first time will be contacted electronically about their annual membership fees and encouraged to pay online through the Bar's secure portion of its website, although they will retain the option of paying by mail as well.

14. Program Evaluation Committee

Chair Michael Tanner presented three items for final action, all of which were unanimously approved by the board:

- Rule 6-13.2 Definitions: Adds a cross appeals subsection, 6-13.2(b)(4), to allow a cross-appeal and a direct appeal to count as two separate appellate actions if the applicant had primary responsibility for the filing of two separate principle briefs.
- Bylaws amendments for the Criminal Law and Tax sections.

Tanner reported that seven subcommittees are examining current Bar activities and programs, including the Annual Convention, the Judicial Administration and Evaluation Committee, the Leadership Academy, the Leadership Academy Committee, the Member Benefits Program, the Citizens Advisory Committee, and the Senior Lawyers Committee. A separate subcommittee is looking at whether past recommendations from the committee that have been approved by the board have been carried out. Those subcommittees will be submitting reports at the committee's March meeting.

15. Executive Session

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

16. Legislation Committee Report

Chair Gary Lesser presented two new Bar legislation positions which were unanimously adopted by the Legislation Committee. The board unanimously found both positions within the purview of allowable Bar legislative activity and then unanimously approved both positions:

- Opposing amendment to the Florida Constitution that restricts or overturns the courts' authority to review the constitutional validity of legislation.
- Opposing amendment to the United States Constitution that restricts or overturns the courts' authority to review the constitutional validity of legislation.

Lesser presented six positions from the Code and Rules of Evidence Committee that were also committee positions for the 2014-16 biennium. The board found them within the purview of the Bar and approved the committee taking these legislative positions:

- Supports amendments to §§90.202(9) & 90.205, F.S. regarding judicial notice, to modernize language.
- Supports an amendment to §90.406, F.S. regarding relevance to conform to Fed. R. Evid. 406 and to codify Florida common law.
- Supports amendments to §§90.603-90.607, F.S. regarding witnesses to make provisions consistent with other statutes and federal rule counterparts, to clarify that a child testifying must understand both the need to tell the truth and the duty not to lie, and the standard for determining the need for an interpreter and to ensure that the interpreter is properly qualified.
- Supports revisions to four subdivisions of §90.803, F.S. regarding hearsay to make usage/grammatical/punctuation changes and to conform to the Federal Rules of Evidence.
- Supports amendments to §90.951 F.S. regarding contents of writings, recordings, and photographs to modernize language by adding new technology such as magnetic resonance imaging (MRI).
- Supports amendments to §§458.3175(2)(b), 459.066(2)(b), and 466.005(2)(b), F.S. to add "if otherwise qualified under Chapters 90 and 766, F.S." at the end of each subdivision so that existing language is not construed as overriding detailed predicates for expert testimony contained in Chapter 766, F.S. and general expert qualifications in Chapter 90 – with the further understanding that The Florida Bar considers §766.102(12), F.S. to be unconstitutional.

Lesser reported that the committee recommended – and the board unanimously approved – that that the Bar not oppose the Real Property, Probate and Trust Law Section taking the following legislation position: Opposes legislation, including 2017 Florida Senate Bill 206, regarding electronic wills, powers of attorney and living wills unless such legislation: (a) eliminates

references to powers of attorney and living will; (b) is amended to safeguard the citizens of Florida from fraud and exploitation; (c) includes protections to ensure the integrity, security, and authenticity of an electronically signed will; (d) provides sufficient evidence to authenticate execution by the testator, and (e) retains the requirements that two subscribing witnesses sign in the physical presence of the testator.

Lesser presented a contract between the Bar and Christopher M. Kise for legislative services which was unanimously recommended by the committee. The board unanimously approved the contract. Lesser also presented the committee's recommendation to approve a contract between the Bar, the Conference of County Court Judges and Buchanan Ingersoll & Rooney, P.C, for legislative services and the board unanimously agreed.

17. Juvenile Court Rules Committee Report

Committee member Kara Fenlon presented an amendment to Rule 8.000 to note that Florida Rule of Judicial Administration 2.505 will not apply to juvenile rules. The board recommended approval 36-0.

18. Rules Committee Report

Chair Margaret Mathews presented two items for final action, both of which were approved by the board:

- Rule 4-1.2 Objectives and Scope of Representation: Within subdivision (c), creates an exception from the requirement that client consent for legal services that are limited in scope be in writing for lawyers giving advice through a nonprofit limited legal services program under new proposed rule 4-6.6.
- Rule 4-6.6 Short-Term Limited Legal Services Programs: Proposes new rule 4-6.6 addressing a slight relaxation of application of the rules on conflicts of interest in the context of short term, limited representation through a nonprofit organization, court, government agency, bar association or an American Bar Association-accredited law school.

Mathews presented one item on first reading – Standing Board Policy 1.60 Board Action on Proposed Rule or Policy Amendments: Within subdivision (a), adds Florida Bar Procedures for Issuing Advisory Opinions Relating to Lawyer Advertising or Solicitation to those items that must undergo substantive, fiscal, planning, and procedural review by the Board of Governors to be amended.

19. Leadership Academy Report

President Schifino recognized the attendance of the fellows of the Leadership Academy. Juliet Roulhac, chair of the Leadership Academy Committee, noted the fellows are diverse in race, gender, ethnic background, experience, and types of practice. The first ever reunion of past fellows was scheduled for the upcoming Winter Meeting and Roulhac said academy graduates are already taking leadership positions in the profession, including on the Board of Governors.

20. Special Committee on Trust Accounting Solutions

Parliamentarian Andy Sasso said work is continuing on a trust accounting program being developed with FIS, a banking services company. A proposal could be ready for the board's March meeting for a six-month test program with up to 10 law firms. The program will be

designed so that as long as the participating attorneys put the correct information in when they deposit or withdraw funds from their trust accounts, they will be in technical compliance with trust accounting rules. Sasso said there will also be other benefits: the program should prevent lawyers from accidentally overdrawing their accounts; it will provide better protection against employee theft; it should provide higher federal deposit insurance protection because funds will be pooled; and it could boost IOTA payments to The Florida Bar Foundation because participating banks will have lower administrative costs for the pooled funds. The program is being reviewed by the Program Evaluation Committee.

21. Strategic Plan Presentation to the Supreme Court

President Schifino and several board members updated attending members of the Florida Supreme Court on activities of the Bar related to diversity, gender bias, technology, the upcoming Constitution Revision Commission, Member Benefits, programs to help lawyers practice better, programs to help new lawyers, efforts to boost pro bono and access to legal services, and Bar activities to support the judicial branch.

22. Chief Justice's State of the Judiciary Address

Chief Justice Jorge Labarga said the judiciary will continue to function despite the upheavals associated with the recent national elections and judges will continue to impartially perform their duties. He talked about the importance of the Constitution Revision Commission process. He talked about the importance of the court's Commission on Access to Civil Justice and a new committee he has appointed to study security in for trial courtrooms, some of which have no safeguards.

23. Disciplinary Procedure Committee Report

Chair Dennis Kainen presented two items on first reading:

- Rule 3-7.2 Procedures on Criminal or Professional Misconduct; Discipline on Determination or Judgment of Guilt of Criminal Misconduct: Subdivisions (d), (e), (f) and (i) are amended to make clear that findings of guilty or nolo contendere in a felony case must be reported to the bar. The amendment clarifies in each subdivision that the judgment(s) referred to in the rule are judgments of guilt of a felony offense. The first sentence of subdivision (f) is amended to change "will" to "may."

- Rule 3-7.10(f)(4)(B) Reinstatement and Readmission Procedures: Amends subdivision (f)(4)(B) of Rule 3-7.10 to clarify that a petitioner may not file a petition for reinstatement before the petitioner has completed all the elements of rehabilitation, including re-taking and passing required portions of the Florida bar exam.

Kainen also reported the committee is considering a diversion program for lawyers who exhibit disruptive behavior that interferes with court or legal proceedings but may not yet rise to the level of a disciplinary action.

24. Certification Plan Appeals Committee Report

Vice Chair Dori Foster Morales presented one item for final action, which was unanimously approved by the board – BLSE Policy 5.10 Individual Credit Approval Guidelines: This policy amendment adds subdivision (k) to allow an enrolled advisor in The Florida Bar Lawyers

Advising Lawyers Program to receive one general credit hour for each referral, not to exceed five credit hours per year.

25. Young Lawyers Division Report

YLD President Katherine Hurst Miller thanked the board for passing the BLSE policy granting CLE credit for mentors in the Lawyers Advising Lawyers program and said the YLD had signed up 300 lawyers willing to act as advisors. She said the division eventually hopes to increase that number to 1,000. She noted the YLD's Law Student Division is also actively seeking mentors for law students and that the student division will have its annual day of service, called Raising the Bar, on February 26. She reported on the YLD's recent Affiliate Outreach Conference, and said the YLD Board of Governors would be discussing an ABA recommendation for CLE credits for mental health education. Miller also announced that the Practicing with Professionalism course was now available online as well as live seminars.

26. Technology Committee Report

Chair John Stewart said the committee would be making a presentation at the board's March meeting on data security. He noted that President Schifino would be appearing on a panel discussion, sponsored by the Solo and Small Firm Section, along with representatives from RocketLawyer, LegalZoom, and Avvo about where the Bar and those legal service providers can compete and where they can cooperate.

27. Communications Committee Report

Chair-elect Scott Westheimer said the committee is working on redesigning the Bar's website. He said the Florida Bar TV has been a success in its six-month trial with more than 233,000 "reaches" on the broadcasts, including one that was viewed 37,000 times. He said the Bar's social media program continues to perform well and that the Bar's website has garnered two million views since July.

28. Citizens Advisory Committee Report

Chair Lorna Brown Burton reported the committee is working on the review of its operations by the Program Evaluation Committee and received an update on what the Bar is doing.

29. Executive Director's Report

Executive Director John F. Harkness, Jr., announced this would be his last year with the Bar and pledged to stay on through the transition to a new executive director. He also said he planned to work with the Bar on Constitution Revision Commission issues through the 2018 November elections. President Schifino announced a search committee would be appointed to begin the search for the next executive director.

30. Time and Place of Next Meeting

There being no further business before the board, President Schifino adjourned the meeting at 2:13 p.m. The next board meeting is March 24, 2017, at the Casa Monica in St. Augustine.

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