

Florida Bar Board of Governors
July 24, 2015
The Biltmore Hotel
Coral Gables, Florida

1. Roll Call

Ramon A. Abadin, President
William J. Schifino, Jr., President-elect
Stephen H. Echsner, 1st Circuit
Lawrence E. Sellers, Jr., 2nd Circuit
William H. Davis, 2nd Circuit
Bruce W. Robinson, 3rd Circuit
Fred D. Franklin, Jr., 4th Circuit
Michael G. Tanner, 4th Circuit
Renée Elise Thompson, 5th Circuit
Andrew B. Sasso, 6th Circuit
Sandra Fascell Diamond, 6th Circuit
Sam Nicholas Masters, 7th Circuit
Carl B. Schwait, 8th Circuit
Mary Ann Morgan, 9th Circuit
Paul Louis SanGiovanni, 9th Circuit
Wayne L. Helsby, 9th Circuit
C. Richard Nail, 10th Circuit
Roland Sanchez-Medina, Jr., 11th Circuit
Dori Foster-Morales, 11th Circuit
Leslie J. Lott, 11th Circuit
Michael J. Higer, 11th Circuit
Steven W. Davis, 11th Circuit
John H. (Jack) Hickey, 11th Circuit
F. Scott Westheimer, 12th Circuit
Thomas Roe Bopp, 13th Circuit
Lansing C. Scriven, 13th Circuit
Margaret Diane Mathews, 13th Circuit
Michael S. Hooker, 13th Circuit
John W. Manuel, 14th Circuit
Ronald Peter Ponzoli, Jr., 15th Circuit
Michelle R. Suskauer, 15th Circuit
Gary Shepard Lesser, 15th Circuit
Walter G. Campbell, Jr., 17th Circuit
Lorna E. Brown-Burton, 17th Circuit
Jay Cohen, 17th Circuit
Adam Glenn Rabinowitz, 17th Circuit
O. John Alpizar, 18th Circuit
John M. Stewart, 19th Circuit
Marcy L. Shaw, 20th Circuit

Edward Duffy Myrtetus, Out of State
Ian M. Comisky, Out of State
Eric L. Meeks, Out of State
Brian D. Burgoon, Out of State
Gordon J. Glover, YLD President
Katherine Hurst Miller, YLD President-elect
Lawrence Worley Tyree, Public Member

Members Absent

Dennis G. Kainen, 11th Circuit
David C. Prather, 15th Circuit
Diana Santa Maria, 17th Circuit
Laird A. Lile, 20th Circuit
Anthony Holloway, Public Member
(16th Circuit seat is vacant)

2. Staff in Attendance

John F. Harkness, Jr., Executive Director
John Berry, Director, Legal Division
Adria Quintela, Director, Lawyer Regulation
Paul Hill, General Counsel
Mary Ellen Bateman, Director, Ethics and Advertising, UPL, and Special Projects
Lori Holcomb, Director, Client Protection
Elizabeth Tarbert, Ethics Counsel
Terry Hill, Director, Programs Division
Alan Pascal, Bar Counsel
Jennifer Falcone, Bar Counsel
William Mulligan, Bar Counsel
Katie Drozd, Legal Assistant
Patrick Russell, Bar Counsel
Thomas Kroeger, Bar Counsel
Francine Walker, Director, Public Information and Bar Services
Rosalyn A. Scott, Assistant to the President
Gary Blankenship, Senior Editor, The Florida Bar News

3. Guests

Kristin Ann Norse, President, Florida Association for Women Lawyers
Anthony Hall, President Virgil Hawkins Florida Chapter, National Bar Association
Carlos Martinez, Government Lawyer Representative

4. Invocation and Pledge of Allegiance

Board member Michael Higer delivered the invocation and led the board in the Pledge of Allegiance.

5. Introduction of New Members and Swearing in of Members

New board members Thomas Bopp, Edward Myrtetus, Katherine Miller, and Lawrence Tyree introduced themselves to the board. President Abadin announced that newly elected 16th Circuit board member Bernadette Restivo had resigned for personal reasons. President Abadin swore in new and returning members who were unable to take their oaths at the Bar Annual Convention.

6. Introduction of Citizens Advisory Committee Members

Committee members Sharon Middleton, Ruth Lynch, Rick Sarner, Vic Truetel, Paul Martinez, and Steve Deneke introduced themselves to the board.

7. Minutes Approval

The board approved the minutes from its May 22, 2015, meeting in Key West. That approval included ratifying the following Executive Committee actions since that meeting:

- At a May 28, 2015, meeting, the committee voted 12-0 to file a motion to stay proceedings with the Florida Supreme Court on the Bar's petition to amend Bar Rule 4-1.5, Fees and Cost for Legal Services, dealing with fees for extraordinary services in medical lien resolution when those liens are resolved by an attorney who is not the attorney for the underlying personal injury matter. The Bar is seeking consideration of alternative amendments to Rule 4-1.5.
- At a July 8, 2015, meeting, the committee voted 11-0 to file a motion to stay proceedings with the Florida Supreme Court in Case No. SC14-2126 on amendments to the lawyer referral service rules in light of interim reports and recommendations from Vision 2016 committees. (The Court subsequently denied the motion for stay.)

8. Consent Agenda Approval

The board approved the consent agenda, with the exception of item 5b(i), review of Advertising Inquiry 34719, which Board Review Committee on Professional Ethics Chair Carl Schwait said would be presented as part of the BRCPE report. The approval included:

- Appointing Don Zerivitz as a public member to UPL Committee 9A, Hal Steven Vogel as an attorney member to UPL Committee 11C, and Beverly VanDan as a public member of UPL Committee 13A.
- Approving on second reading an amendment to Rule 3-7.5, Procedures Before the Board of Governors: Within subdivision (e), adds that the bar may re-open a case in which no probable cause has been found if there is later a reason to re-open. Non-substantive edits conform the rule to the Supreme Court of Florida style guide.
- Appointing Ellen Wile as a paralegal member of the Florida Registered Paralegal District Committee.
- Appointing Sally Gertz to fill an unexpired term on the Legal Services of North Florida, Inc., Board of Directors.

9. Public Reprimand

President Abadin delivered one public reprimand.

10. Introduction of Young Lawyers Division Board of Governors and YLD Report

Members of the YLD Board of Governors, who were meeting elsewhere in the hotel, introduced themselves to the board. YLD President Gordon Glover reported that the YLD has been actively pursuing its social media campaign and is recruiting lawyers for its mentoring program for new attorneys. He said the division is beginning a new monthly free lunchtime technology CLE webinar open to all Bar members. The YLD board is looking at an amendment that would allow law students to serve as certified legal interns while the Florida Board of Bar Examiners conducts their fitness and character reviews. He implored the board to remember the plight of new lawyers who may be graduating with \$200,000 of student loan debt and have difficulty finding employment.

11. President-elect Report

President-elect William Schifino noted the approach of the annual Bar strategic plan review and emphasized its importance in providing continuity in Bar programming. He reviewed the five main goals of the Bar, including preserving an independent judiciary, obtaining adequate funding for the courts, ensuring access to legal services, providing value to Bar members, and ensuring diversity in the profession.

12. Vision 2016 Report

Board member Jay Cohen, the administrator for Vision 2016, noted the recent controversy over a preliminary recommendation from one Vision 2016 committee concerning admission by motion and reciprocity. He said no action would be taken on that or any other recommendation until the normal, thorough vetting required by board procedures was followed. In this case, he added that there was no motion on the issue pending before the board, and it was only receiving a report on the committee's actions. Cohen said the committee would seek member input before issuing its final report.

13. Vision 2016 Bar Admissions Subgroup Report

Board member Lansing Scriven, chair of the Vision 2016 Bar Admissions Subgroup, presented for information only the preliminary report from the subgroup's Multijurisdictional Practice – State Focus Committee. He said the report proposed motion by admission to The Florida Bar for lawyers from other states which offered reciprocity for Florida Bar members. He said 39 other states and the District of Columbia offer some form of admission by motion. Those applying in Florida would have to meet several standards under the proposal, including: having a J.D. or LL.B. from an accredited law school; being admitted in a jurisdiction which requires passing a written bar exam for membership and that would admit members of The Florida Bar by motion; not having failed the Florida bar exam within the past five years; being engaged in the active practice of law in another jurisdiction for five of the past seven years prior to the application for admission by motion; being in good standing in all jurisdictions where licensed; not being the subject of any ongoing grievance complaint in any other jurisdiction; and passing the character and fitness review of the Florida Board of Bar Examiners. While the proposal would make it easier for out-of-state lawyers to be admitted to practice in Florida, it would also give Florida lawyers more opportunities, including meeting the out-of-state legal needs of their clients. The board took no action and did not discuss the report.

14. Budget Committee Report

Chair Dori Foster-Morales presented four budget amendments. Two of the amendments were to rollover unspent appropriations from the 2014-15 Bar budget into the 2015-16 budget. Those amendments were: \$6,996 for a Justice Teaching grant; \$70,000 for a parking lot project at the Bar's Tallahassee headquarters. Two other items were new budget amendments: \$42,000 for the Bar's social media campaign; and \$99,000 for a public relations consultant per Communications Committee report (final agreement to be approved by Executive Committee). The board approved the committee's recommended budget amendments without dissent.

15. Investment Committee Report

Chair Ian Comisky said the Bar continued to have positive results for its long-term and short-term investments, with long-term investments being up 3 percent for the year. He said the committee recommended selling its PIMCO All Asset Fund and splitting the money between cash and three other funds in the Bar's portfolio in that same asset category: Lazard U.S. Equity Concentrated Portfolio, a Congress Asset fund; and Oppenheimer International Growth. The board unanimously approved the recommendation.

16. Audit Committee Report

Chair Eric Meeks reported on the committee's recent review of the response to a Request For Proposal for audit services. The committee recommended hiring Law Redd Crona & Monroe, P.A., with a five-year contract which allows for an earlier cancellation if the Bar desires. The board unanimously approved the recommendation.

17. Criminal Procedure Rules and Appellate Court Rules Out-of-Cycle Report

Scott Fingerhut, chair of the Criminal Procedure Rules Committee, and Jeff Kuntz, chair of the Appellate Court Rules Committee, presented out-of-cycle rule amendments necessitated by recent statutory changes. One amendment addressed resentencing of juveniles facing life imprisonment and a second dealt with expunging criminal records for victims of human trafficking. Another change conformed rule 9.140(b)(1)(D) to the ability of a defendant to appeal orders under new Rule 3.802. The Appellate Court Rules Committee also presented amendments to appellate rules dealing with the electronic transmission of records to comply with a request for comment from the Supreme Court. The board recommended approval of the amendments by a 38-0 vote.

18. Legislation Committee Report

Chair Michael Tanner presented legislative consulting contracts between the Bar and: Metz, Husband & Daughton, P.A.; Matt Bryan, Jeff Hartley, Jim A. Naff, David Daniel, and Andrea B. Reilly; and Pamela Burch Fort. He also presented the legislative consulting contracts between the Business Law Section and Metz, Husband & Daughton, P.A.; between the Family Law Section and Nelson Diaz and Edgar Castro of the Southern Strategy Group of Miami LLC; between the Real Property, Probate and Trust Law Section and Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A.; and between the Trial Lawyers Section and Bob L. Harris and Mark Herron of Messer, Caparello, P.A. He also presented the legislative consulting contracts for The Florida Bar and the Circuit Court Judges Conference with Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth and for The Florida Bar and the Conference of County Court Judges with The Advocacy Group at Cardenas Partners LLC. The board unanimously approved the contracts.

Legislative Counsel Jim Daughton updated the board on the upcoming special session on redistricting congressional seats and discussed the funding shortfall for county clerks of courts.

19. Board Review Committee on Professional Ethics Report

Chair Carl Schwait reported on Advertising Inquiry 34719 (agenda item 5b(i) from the consent agenda) that the Board Review Committee on Professional Ethics voted 8-0 to recommend that the Board of Governors reverse the decision of the Standing Committee on Advertising. The recommendation included finding that an advertisement delivered via text message is not a prohibited solicitation under Rule 4-7.18(a), but must comply with the requirements of Rule 4-7.18(b) based on the inquirer's representations that recipients are never charged for the texts, that the inquirer is in compliance with FCC regulations for commercial text messages, and that the recipient may opt out of receiving texts. The Board of Governors voted to approve the BRCPE recommendation on voice vote with some objections.

Schwait reported that the BRCPE voted 8-0 to defer action on amendments to Rule 4-4.2 proposed by the City, County and Local Government Law Section, Government Lawyers Section, and Florida Association of County Attorneys until at least the Board of Governors October 2015 meeting, after the proponent announced to the committee that they are seeking alternative amendments. The delay will allow opponents an opportunity to review the new proposal and make comments.

Schwait also reported that a joint meeting with the board's Technology Committee was held based on a referral by Bar leadership of the issue of on-line matching services after the Supreme Court of Florida denied a stay in case number SC14-2126 seeking changes to Rule 4-7.22 on lawyer referral services.

20. Constitution Revision Commission Report

President-elect Schifino reported he had created a board committee to prepare the Bar for the upcoming Constitution Revision Commission, which is set to begin meeting in January 2017. Chair of the committee is board member Sandy Diamond. Other initial members are board members Michael Tanner, Gary Lesser, Jay Cohen, Leslie Lott, Michael Higer, Lanse Scriven, Roland Sanchez-Medina, Larry Sellers, and the Young Lawyers Division President Gordon Glover and President-elect Kathrine Hurst Miller.

21. Executive Session

The board went into executive session to discuss confidential matters.

22. Probate Rules Committee Report

Probate Rules Committee Chair Matthew Triggs presented additional three-year cycle and out-of-cycle rule amendments on several topics which the board voted to recommend for approval by a 39-0 vote.

23. Rules of Judicial Administration Committee Report

Judson Cohen of the RJA Committee presented amendments to Rule 2.560 and the creation of Rule 2.565 to deal with a Supreme Court ruling setting up a certification and regulation system for foreign language interpreters. The board recommended approval of the amendments 41-0. In response to questions from board members, Cohen also discussed rule amendments being

considered by the committee dealing with limited appearances by attorneys in cases, including as part of unbundled legal services and when they are substitute counsel.

24. Report of the Vision 2016 Technology Subgroup

Board member John Stewart reported on the subgroup's recommendations, before the board on second reading, to increase the Bar's basic CLE requirement from 30 to 36 hours every three years with the extra six hours devoted to technology issues. The committee also proposed amending the comment to the Bar rule on competence, Rule 4-1.1, to say lawyers must have technological competence suitable to their area of practice and sufficient to protect client confidentiality. The board rejected a motion to amend the proposed change to Rule 4-1.1 to delete the first line of the comment amendment with addresses an attorney using nonlawyer experts for technical assistance. It then approved the subgroup's proposal by voice vote, with some dissents. On increasing the CLE requirements, after an extensive discussion, the board rejected an amendment to raise the number of CLE hours to 36, but only devote three of the extra hours to technology issues. The board then, by voice vote with several dissents, approved an amendment to increase the number of CLE hours from 30 to 33 every three years, with the extra three hours devoted to technology. The board then approved the amended main motion by voice vote with several dissents.

25. Appearance By Rep. Jose Felix Diaz

Rep. Diaz, a Bar member and chair of the House Regulatory Affairs Committee and a member of the Appropriations Committee, welcomed input from board members on issues falling under the Regulatory Affairs Committee's purview and talked about being a lawyer in the Legislature.

26. Program Evaluation Committee Report

Chair Michael Higer presented on first reading amendments to Bar rules to change the titles used by board certified lawyers in rules 6-4.1, 6-5.1, 6-7.1, 6-8.1, 6-9.1, 6-11.1, 6-13.1, 6-14.1, 6-15.1, 6-17.1, 6-18.1, 6-19.1, 6-20.1, 6-21.1, 6-22.1, 6-23.1, 6-24.1, 6-25.1, 6-26.1, 6-27.1, and 6-28.1, as well as amendments to Board of Legal Specialization and Education policies 3.01 through 3.17.

He presented two items on second reading which were unanimously approved by the board and which address technical issues on CLE reporting requirements:

- Rule 6-10.1, Continuing Legal Education Requirement: Within subdivision (b), clarifies that all members are required to complete and report continuing legal education requirements except those exempt under rule 6-10.3, and which CLE exempt members are automatically qualified and which must apply for the exemption.

- Rule 6-10.4, Reporting Requirements: Within subdivision (a), clarifies that all members are required to complete and report continuing legal education requirements except those exempt under rule 6-10.3, and which CLE exempt members are automatically qualified and which must apply for the exemption.

27. Communications Committee Report

Chair Renée Thompson reported the committee met with the Citizens Advisory Committee and also is implementing its Vision 2016 communication plan. The committee is working with leaders of sections and voluntary bars to help communicate to members information about the Bar, with a focus on the grievance system. The committee is also expanding the Bar's social

media presence and more people are following or getting information about the Bar from social media sources, including recently started podcasts.

28. Leadership Academy Report

Chair and former board member Juliet Roulhac reported the third academy class, with 52 members, is well underway and 38 percent of the class have been attorneys for less than five years. She said members are providing feedback at the end of each session, which helps improve the program, and past academy graduates have been tapped to help with the program and recruit future classes. At the request of President-elect Schifino, Roulhac said the theme for the year will be “maintaining the relevance of lawyers.”

29. Rules Committee Report

Chair Margaret Mathews presented two items on first reading:

- Rule 1-12.1, Amendment to Rules; Authority; Notice; Procedures; Comments (Notice Requirements): Within subdivisions (g), and (h), changes the requirement of publication of the full text of proposed amendments from the bar *News* to the bar's website and adds that a summary of rules amendments to be filed with the Court will be published in the bar *News*. Within subdivision (h), clarifies that a summary of the Court's final action on amendments will be published in the bar *News*.

- Standing Board Policy 1.60 (Notice Requirements): Within subdivision (b) clarifies that a summary of rules amendments will be published. Within subdivision (e)(1), changes notice requirements for amendments to before second board reading and where practicable before first reading.

30. Board Expenses and Time Requirements

Board member Bill Davis recounted discussions with government attorneys who said they are disinclined to run for Board of Governors seats because of the expense of attending board meetings and the time that must be devoted to Bar work, which in turn can create the perception of the board as elitist. He asked if the costs and time requirements could be determined. President Abadin said that information would be compiled and made available.

31. Time and Place of Next Meeting

There being no further business before the board, President Abadin adjourned the meeting at 2:05 p.m. The next board meeting is October 16 at the One Ocean Resort & Spa in Atlantic Beach.

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