

Florida Bar Board of Governors
July 27, 2012
Renaissance Eden Roc Hotel
Miami Beach, Florida

1. Roll Call

Gwynne A. Young, President
Eugene K. Pettis, President-elect
Stephen H. Echsner, 1st Circuit
Lawrence E. Sellers, Jr., 2nd Circuit,
William H. 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
Carl B. Schwait, 8th Circuit
Mary Ann Morgan, 9th Circuit
Paul Louis SanGiovanni, 9th Circuit
Scott R. McMillen, 9th 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
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
Ian M. Comisky, Out of State
Eric L. Meeks, Out of State
Brian D. Burgoon, Out of State
Paige Adonna Greenlee YLD President
Melanie Shoemaker Griffin, YLD President-elect
Winston W. Gardner, Jr., Public Member
Anthony Holloway, Public Member

Members Absent:

C. Richard Nail, 10th Circuit
Juliet M. Roulhac, 11th Circuit
Edwin A. Scales, III, 16th Circuit
Timothy L. Bailey, 17th Circuit
Richard A. Tanner, Out of State

2. Guests

Vivian de las Cuevas-Diaz, Cuban American Bar Association
Aramis Ayala, Virgil Hawkins Florida Chapter, National Bar Association
Laura Wendell, Florida Association for Women Lawyers

3. Staff in Attendance

John F. Harkness, Jr., Executive Director
John Berry, Staff Counsel
Paul Hill, General Counsel
Ken Marvin, Director, Lawyer Regulation
Allen Martin, Director of Finance and Accounting
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
Rosalyn A. Scott, Assistant to the President
Gary Blankenship, Senior Editor, Florida Bar *News*

4. Invocation and Pledge of Allegiance

Board member Dennis Kainen delivered the invocation and led the board in the Pledge of Allegiance.

5. Appearance by Miami Beach Mayor Matti Bower

Mayor Bower, the first Hispanic and first female mayor of Miami Beach, welcomed the board to Miami Beach.

6. Swearing in of Board Members

President Gwynne Young administered the oath to reelected and newly elected board members who had been unable to attend the General Assembly at the Bar Annual Convention.

7. Minutes Approval

The board approved the minutes from its May 18, 2012 meeting. Included in that approval were actions taken by the Executive Committee on behalf of the board, including:

- At a May 9, 2012, meeting, the committee voted 9-0 to allow the Real Property, Probate and Trust Law Section to file an amicus brief in an appeal of a Third District Court of Appeal case pending at the Florida Supreme Court. The case deals with the retroactivity of a law passed by the Legislature in 2010, with section support, relating to escrow account requirements for buyers' deposits in certain condominium purchases.

- At a May 25, 2012, meeting, the committee meeting recommended approval of amendments to Family Law Rules 12.010(a)(1), 12.070(d), 12.080 (a)(2), (b), 12.200(a)(1)(l)(a)(1)(K), 12.285(a)(1), 12.490(c), 12.492(a), 12.610(b)(1)(E), (b)(2)(B)-(b)(2)(C), (b)(4), (c)(1)(B),(c)(7), and 12.750(m) to conform with changes to F.S. § 784.0485 which allows an injunction for protection against stalking. The changes were proposed by the Family Law Rules Committee.

- At a June 14, 2012, meeting, the committee voted 10-1 to allow the Family Law Section to file an amicus brief in an appeal at the Second DCA supporting termination of a father's rights in adoption if the father had not registered with the state's Putative Father Registry, including provisions in F.S. §63.063 that "a birth father is in a superior position and he has a duty to protect himself against fraud."

8. Consent Agenda Approval

The board unanimously approved the consent agenda, with one exception as noted below. That approval included:

- Appointing Patricia Ann Eables, Michael Browning, and Cristina Lyn Spottswood as attorney members, and Audra Hill, Ed Salazar, Anthony Romano, and Justin Hayskar as public members to the 16th Circuit UPL Committee.

- Appointing Lynn Miyamoto as an attorney member and Corie C. Wise-Jones as a public member to the Second Circuit UPL Committee.

- Amending Rule 3-4.1 Notice and Knowledge of Rules; Jurisdiction over lawyers of other states and foreign countries: The proposed amendment would require The Florida Bar to notify European Union countries of Florida discipline of attorneys licensed in their jurisdiction(s), where such information regarding foreign licensing is made known to Florida Bar staff before or at the time of such discipline.

- Amending Rule 4-1.7 Conflict of Interest; Current Clients; (relationship): Within subdivision (d), clarifies that family relationship is by blood or marriage.

- Amending Rule 7-1.4 (Clients' Security Fund) Definitions: Clarifies that when the lawyer is acting as a fiduciary it must be in connection with a lawyer-client relationship for the misappropriation to be considered a reimbursable loss. Adds comment language.

- Amending Clients' Security Fund Regulation B 1 Claim Prerequisites: Amends time period in which a claim must be filed to within 2 years after the date the discipline becomes final or 2 years after the date of the lawyer's death, allows claims filed outside of the time period to be

considered for good cause shown, adds the claimant attempting to exhaust remedies as good cause, deletes language that is no longer relevant with the change.

- Amending Clients' Security Fund Regulation C 3 (Claims Ordinarily Denied): Clarifies that if the lawyer is not acting in a lawyer-client relationship, the claim will ordinarily be denied. Deletes unnecessary language.

- Amending the Bylaws of the Elder Law Section: Article II, Section 1. (b), allows professional guardians to join the section as affiliate members. Article V, Section 3. (i), new subdivision adds and establishes the Veterans' Benefits Special Committee as a permanent substantive division committee of the section.

The consent calendar vote also sunset the previous biennium's legislation positions for the Bar and its committees and sections. The vote placed the board as not objecting to the requests from several sections to renew various section legislative positions. The board vote reauthorized:

- Nine positions by the Administrative Law Section.
 - One position by the Appellate Practice Law Section.
 - Forty-one positions by the Business Law Section.
 - Four positions by the Criminal Law Section.
 - Twenty-four positions by the Elder Law Section.
 - Two positions by the Entertainment, Arts and Sports Law Section.
 - Ninety-four positions by the Family Law Section.
 - Five positions by the Government Lawyer Section.
 - Nine positions by the Health Law Section.
 - Five positions by the International Law Section.
 - Thirty-two positions by the Public Interest Law Section.
 - Fifty-eight positions by the Real Property, Probate and Trust Law Section. Board member W. Bud Gardner voted against the section position supporting amendments to F.S. Chap. 718 on condominiums and Chap. 719 on cooperatives that would require engineers, architects, and other design professionals and manufacturers warrant the fitness of the work they perform on condominiums and cooperatives.
- Nine positions by the Tax Section.
 - Ten positions by the Workers' Compensation Section.
 - One position by the Out of State Lawyers Division.
 - One position by the Young Lawyers Division.

The board by its vote also approved legislative consulting contracts between the Bar and Matt Bryan, Pamela Burch Fort, and G. Herb Sheheane, between the Family Law Section and Nelson Diaz, and between the Business Law Section and William Wiley.

9. Public Reprimands

President Young administered two public reprimands.

10. Young Lawyers Division Report

With the YLD board in attendance, YLD President Paige Greenlee reported on division activities. She said in the coming year, the YLD will work on diversity issues, compile a guide for new lawyers on working with outside counsel, and work to establish a residency program for new lawyers, similar to the residency program for doctors.

11. Civil Procedure Rules Committee Report

Judge Richard Nielsen presented the three-year cycle rule amendments with several updates and five new substantive rules. The board recommended approval of the changes 41-0.

12. Probate Rules Committee Report

Board member Laird Lile presented the three-year cycle rule amendments for the committee and noted all were unanimously approved by the committee. The board recommended approval 40-0.

13. Legislation Committee Report

Chair Laird Lile reported that the committee recommended approval of the legislative consulting contract between the Trial Lawyers Section and Bob L. Harris, Mark Herron, and Angela Pico. The board unanimously approved the contract.

Lile said the Legislation and Communication committees also recommended that the Family Law Section be allowed to hire, subject to an Executive Committee review of the final contract, a media consulting firm to assist the section in its legislative campaign opposing attempts to end permanent alimony. He noted that a group supporting the end of permanent alimony and other alimony changes had hired public relations firms to assist in its legislative lobbying and the section wanted help in getting its views out in venues that affect public opinion. The board unanimously approved the request.

Lile also reported on the committee's deliberations on constitutional Amendment 5 on the November general election ballot. The amendment allows the House speaker to request confidential records from the Judicial Qualifications Commission for any reason and not just as part of an impeachment proceeding; requires Senate confirmation of gubernatorial appointments to the Supreme Court as long as that does not take more than 90 days; and allows the Legislature to revoke a Supreme Court-approved procedural rule by a simple majority vote of both chambers, rather than the two-thirds vote of the membership now required. The majority required is a simple majority vote, not a majority of the membership. The court also would be prohibited from reinstating exactly the same rule that was overturned by the Legislature. He said the committee expected to present a recommendation to the board at its October 5 meeting. The board extensively discussed the issue, particularly the provision on repealing procedural rules. The board voted 32-1 to find the issue within the purview of allowed Bar legislative activity. After a quorum call established that 45 board members were present, the board rejected a motion to oppose the amendment 28-12 (approval required a two-thirds vote of present board members). The board then approved a motion from board member Jay Cohen for the Legislation Committee to reconsider the issue and report back to the board within 10 business days.

14. Judicial Qualifications Commission Report

Chair Miles McGrane noted the JQC will be having changes, with its long-time executive director retiring and three to six of the 15 commission members will be leaving, with the Board of Governors filling three of those vacancies. He summarized the duties of the JQC in investigating and filing charges against judges, including the extensive amount of time required of JQC members. McGrane also expressed concern about Amendment 5 on the November general election ballot. Currently the House Speaker can request JQC records on a judge, which otherwise are confidential, as part of a House impeachment investigation. The amendment would allow the speaker to request those records for any reason, and McGrane said the speaker could ask for records if desired by any House member and then those records could be distributed to all 120 House members. McGrane said that could lead to fishing expeditions and it would be unlikely that information distributed to all House members would remain confidential. That in turn, McGrane said, could discourage some people from filing complaints with the JQC for fear of reprisals if their identities were revealed.

15. Florida Board of Bar Examiners Report

Chair Alan Aronson noted more than 3,600 applicants took the bar exam in July and the board now handles around 5,000 applications a year, including those seeking to be certified legal interns. The board also follows up on conditionally admitted Bar members. He noted the Board of Governors will soon be making two appointments to the Board of Bar Examiners for terms that begin November 1.

16. Investment Committee Report

Chair Ian Comisky recapped the Bar's investment program and the policies that guide it. He noted the long-term investment portfolio was up 3.8 percent for the first six months of 2012, an impressive performance since interest earnings on the cash, cash equivalent, and bond portions of the portfolio are minimal because of historically low interest rates.

17. Florida Bar Foundation Report

President Maria Henderson said the Foundation's IOTA income remains severely depressed because of low interest rates, and the Foundation anticipates \$5.76 million this year in IOTA funds which is the same as last year. The Foundation, Henderson said, got an unexpected \$2.025 million award from a Washington State federal bad acts suit and that money will be used over four years to cushion the 71 percent reduction in funding for legal aid programs. The foundation has also submitted a request for \$29.1 million to the Florida Attorney General for the national mortgage settlement. She also noted the Foundation has received several donations from Bar sections.

18. Audit Committee Report

Chair Clay Schnitker noted the Bar's the three year-contract with its auditing firm, Carr, Riggs and Ingram, is ending with the completion of the 2011-12 fiscal year audit and the committee is negotiating a new three-year contract which will be presented to the board at its October meeting. The committee also received an audit of the employee retirement health plan, which received a clean audit report.

19. Budget Committee Report

Chair Lanse Scriven reported the committee recommended one amendment for the 2012-13 Bar budget from the Operating Reserve, \$20,000 for the Florida Courts E-filing Authority Board, which oversees the statewide portal which will handle e-filing for the state court system. He reported the committee also recommended reauthorizing several amendments from the 2011-12 budget year and which have carried over into the current budget. Those are: \$209,537 for the Bar's merit retention education campaign, \$10,000 for the Real Property, Probate and Trust Law Section's diversity initiative, \$15,000 for renovations at the Bar's Ft. Lauderdale branch, \$2,305 for furniture at the Ft. Lauderdale branch, \$1,960 for printing equipment for the Ft. Lauderdale branch, \$32,000 for a computer consultant for the Bar's IT operations, and \$5,428 for a law school rule book for the Bar's Professionalism Center. The board unanimously approved the committee's recommendations.

20. Appearance by ABA Board of Governors Member Edith Osman

Osman, a former Florida Bar President, discussed the operation of the ABA Board of Governors and issues pending with the ABA.

21. Board Review Committee on Professional Ethics Report

On the Professional Ethics Committee recommendation on ABA Ethics Commission 20/20 proposal on confidentiality and technology, Chair Carl Schwait reported that the BRC voted 7-0 to recommend that the Board of Governors provide the recommendations to its ABA delegates to assist them in decision making regarding the ABA Ethics Commission 20/20 proposals relating to confidentiality and technology for the August 2012 ABA House of Delegates meeting. The Board of Governors approved the BRC recommendation on voice vote.

Schwait reported that on the Professional Ethics Committee Recommendation on ABA Ethics Commission 20/20 Proposal on Outsourcing that the BRC voted 7-0 to recommend that the Board of Governors provide the recommendations of the Professional Ethics Committee to its ABA delegates to assist them in decision making regarding the ABA Ethics Commission 20/20 proposals relating to outsourcing for the August 2012 ABA House of Delegates meeting. The Board of Governors approved the BRC recommendation on voice vote.

Schwait reported that the BRC voted 7-0 to recommend that the Board of Governors request the Professional Ethics Committee to issue a formal opinion on whether and under what circumstances lawyers may permit non-lawyers under their supervision (staff) to use the lawyer's access credentials (log-in name and password) for filing documents with a court using the E-Portal as a topic of interest among a significant number of Florida Bar members. The Board of Governors approved the BRC recommendation on voice vote.

Schwait reported that the BRC voted 4-3 to recommend that the Board of Governors affirm the Standing Committee on Advertising decision in advertising appeals 11-0241 and 11-02642 that the lawyer referral service LawButler.com fee arrangement with participating lawyers, in which lawyers pay a fixed fee of \$300 to the lawyer referral service for each case accepted as a referral from the service and which the lawyer bills to the client as a cost, constitutes a division or

sharing of fees with a nonlawyer in violation of Rule 4-7.10(a)(2) and 4-5.4(a). The board voted 30-7 to approve the BRC recommendation.

Schwait reported that the BRC voted 7-0 to recommend that the Board of Governors request that the Standing Committee on Advertising issue a formal opinion on lawyers' use of metatags and hidden text on websites to optimize position in search engine results as a topic of interest among a significant number of Florida Bar members. The Board of Governors approved the BRC recommendation on voice vote.

Schwait reported that the BRC reported that it voted 7-0 to defer indefinitely Ethics Appeal 28724, which is a request for review of Florida Bar Staff Opinion 28724 on the ethical propriety of performing medical lien negotiation work under a reverse contingent fee agreement at the request of the inquirer. The BRC reported that the Special Committee on Lien Resolution had been re-appointed and was working on a different proposed amendment to the Rules Regulating The Florida Bar to address the issue of medical lien resolution fees.

Schwait reported that the BRC voted 7-0 to recommend that the Board of Governors request that the Professional Ethics Committee issue a formal opinion on lawyers' use of cloud computing a topic of interest among a significant number of Florida Bar members. The Board of Governors approved the BRC recommendation on a voice vote.

22. Labor and Employment Law Section Report

Chair Sherril Colombo reported on the section's several CLE programs, including that its certification review course is being expanded to also be a law update course to attract more attendance. She said the section is looking to make its activities more family friendly as a way to improve attendance, and is doing a monthly reachout to section members. The section is also reviewing its certification standards to see if those need to be changed for in-house counsel.

23. Code and Rules of Evidence Committee Report

Chair Thomas Shults presented three proposed amendments to the evidence rules, matching recent statutory changes to the code. One change expanding the attorney-client privilege to include when the lawyer is acting in a fiduciary capacity. The second creates a new hearsay exception for when a witness is absent because of the wrongdoing of a party. The board recommended approval of those changes 33-0. The third change conforms to a 2011 law that requires out-of-state experts in medical and dental malpractice cases to register with the Department of Health. After an extensive discussion, the board voted to recommend rejection of the recommended rule and to ask the committee to collect further information and testimony and revisit the issue at its September 21 meeting and then report back to the board at its October meeting.

24. Family Law Rules Committee Report

Former committee member Laura Davis Smith presented an out-of-cycle rule change on amendments to forms for required disclosures when nonlawyers help others fill out the forms. The board recommended approval of the changes 34-0.

25. Juvenile Court Rules Committee Report

Chair Mercedes Scopetta reported on five rule and one form change affecting violence against children, sexually exploited children, complying with recent statutory changes and affecting termination of parental rights. The board recommended approval of the amendments 33-0.

26. Executive Session

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

27. Special Committee on Lawyer Referral Services Report

Chair Grier Wells reported on the conclusions of the committee, including that nonlawyers were approaching potential clients to sign them up for representation and there were conflicts with services that make legal and other professional referrals, including at least an unspoken expectation that lawyer members would refer clients for other professional services offered through the referral service. The committee's recommendations include that lawyers belonging to referral services should register with the Bar, lawyers may not accept referrals from services that also do referrals for other professional services, that the initial contact after a referral must be made by the potential client and not the law firm, a law firm must have a designated lawyer responsible for referrals made to the firm, referred clients must be told about the lawyer's participation in referral services, and the Bar should enhance enforcement of referral rules and improve public education about referral services. President Young said the recommendations would be referred to the appropriate committees for implementation.

28. Communications Committee Report

Chair Mary Ann Morgan reported that the Citizens Forum had met with the committee, and that the forum is reviewing several issues. Morgan presented the committee's recommendation to enact proposals from the Hawkins Commission on handling high profile grievance cases and those that have a widespread impact. The board unanimously approved the recommendation. The committee also recommended, Morgan said, an amendment to the Bar's social media policies to accommodate practices by Facebook on comments to postings. The board unanimously approved the recommendation.

29. Disciplinary Procedure Committee Report

Chair Dennis Kainen said the committee is working on a recommendation from the Supreme Court to allow clients access to funds in the frozen trust accounts of suspended attorneys. He also said the committee is reviewing policies on respondents and their counsel contacting the designated reviewer in their grievance cases. Kainen also reported that the committee agreed with the recommendation of the Hawkins Commission to change rules and policies to allow greater use of the diversion process. He said the committee would be presenting the necessary amendments at a future board meeting.

30. Rules Committee Report

Chair Margaret Matthews reported the committee had voted to make no changes to the Bar rules on nonrefundable fees.

31. Program Evaluation Committee Report

Chair John Stewart reported the committee had finished its review of the SCOPE program and would be presenting its recommendations at the board's October 5 meeting. He said the committee reviewed the request from the Registered Paralegal of Florida Committee on having a nonlawyer chair and concluded that was already allowed under the current rules at the discretion of the president-elect, who appoints the chair of that committee. In the coming year, Stewart said the PEC will review the Bar's diversity and inclusion operations, including the Special Committee on Diversity and Inclusion and the Equal Opportunity Law Section. The committee will also review the Public Interest Law Section, the Media and Communications Law Committee, the forms the Board of Governors uses to evaluate applicants for special appointments, standing board policies, a request -- if received during the year -- to create a Senior Lawyers Division, and changing the name of the Elder Law Section to the Elder Law and Disability Section.

32. Certification Plan Appeals Committee

The board approved the recommendation of Chair Steve Echsner to deny the request for review from applicant FLR09-048 who was denied recertification in marital and family law.

33. President's Report

President Young reviewed activities related to the Bar's The Vote's in Your Court voter education project for the merit retention judicial elections on the November general election ballot. She urged board members to continue to be active in supporting the program and reported the Bar had printed 250,000 voter guides and distributed most of them.

34. Time and Place of Next Meeting

There being no further business, President Young adjourned the meeting at 4:18 p.m. The next board meeting is October 5, 2012, in Atlanta, GA.

SUBJECT INDEX

APPEARANCE BY ABA BOARD OF GOVERNORS MEMBER EDITH OSMAN.....	7
APPEARANCE BY MIAMI BEACH MAYOR PATTI BOWER.....	3
AUDIT COMMITTEE REPORT.....	6
BOARD REVIEW COMMITTEE ON PROFESSIONAL ETHICS REPORT.....	7
BUDGET COMMITTEE REPORT.....	6
CERTIFICATION PLAN APPEALS COMMITTEE REPORT.....	10
CIVIL PROCEDURE RULES COMMITTEE REPORT.....	5
CODE AND RULES OF EVIDENCE COMMITTEE REPORT.....	8
COMMUNICATIONS COMMITTEE REPORT.....	9
CONSENT AGENDA APPROVAL.....	3
DISCIPLINARY PROCEDURE COMMITTEE REPORT.....	9
EXECUTIVE SESSION.....	8
FAMILY LAW RULES COMMITTEE REPORT.....	9
FLORIDA BAR FOUNDATION REPORT.....	6
FLORIDA BOARD OF BAR EXAMINERS REPORT.....	6
GUESTS.....	2
INVESTMENT COMMITTEE REPORT.....	6
INVOCATION AND PLEDGE OF ALLEGIANCE.....	2
JUDICIAL QUALIFICATIONS COMMISSION REPORT.....	5
JUVENILE COURT RULES COMMITTEE REPORT.....	8
LABOR AND EMPLOYMENT LAW SECTION REPORT.....	8
LEGISLATION COMMITTEE REPORT.....	5
MINUTES APPROVAL.....	3
PROBATE RULES COMMITTEE REPORT.....	5
PRESIDENT'S REPORT.....	10
PROGRAM EVALUATION COMMITTEE REPORT.....	10
PUBLIC REPRIMANDS.....	5
ROLL CALL.....	1
RULES COMMITTEE REPORT.....	10
SPECIAL COMMITTEE ONLAWYER REFERRAL SERVICES REPORT.....	9
STAFF IN ATTENDANCE.....	2
SWEARING IN OF BOARD MEMBERS.....	3
TIME AND PLACE OF NEXT MEETING.....	10
YOUNG LAWYERS DIVISION REPORT.....	5