

**The Florida Bar Board of Governors
July 17, 2009
Naples Grande Beach Resort
Naples, Florida**

Pursuant to notice, the regular meeting of the Board of Governors of The Florida Bar was called to order at 9:00 a.m., Friday, July 17, 2009, at the Naples Grande Beach Resort, Naples, Florida, with President Jesse Diner presiding.

1. Roll Call

Jesse H. Diner, President
Mayanne Downs, President-elect
Stephen H. Echsner, 1st Circuit
Lawrence E. Sellers, Jr., 2nd Circuit
Clay A. Schnitker, 3rd Circuit
S. Grier Wells, 4th Circuit
John J. Schickel, 4th Circuit
Andrew B. Sasso, 6th Circuit
Murray B. Silverstein, 6th Circuit
Carl B. Schwait, 8th Circuit
Mary Ann Morgan, 9th Circuit
Daniel L. DeCubellis, 9th Circuit
Scott M. McMillen, 9th Circuit
Ramon A. Abadin, 11th Circuit
David Rothman, 11th Circuit
Ervin A. Gonzalez, 11th Circuit
Michael J. Higer, 11th Circuit
Dennis G. Kainen, 11th Circuit
Juliet Roulhac, 11th Circuit
John H. Hickey, 11th Circuit
Dori Foster-Morales, 11th Circuit
L. Norman Vaughan-Birch, 12th Circuit
William J. Schifino, Jr., 13th Circuit
Lansing C. Scriven, 13th Circuit
Gwynne Alice Young, 13th Circuit
Gregory Coleman, 15th Circuit
Scott G. Hawkins, 15th Circuit
Lisa S. Small, 15th Circuit
Edwin A. Scales, 16th Circuit
Nancy W. Gregoire, 17th Circuit
Eugene K. Pettis, 17th Circuit
Jay Cohen, 17th Circuit
Clifton A. McClelland, Jr., 18th Circuit
John M. Stewart, 19th Circuit

Laird Lile, 20th Circuit
Scott W. Weinstein, 20th Circuit
Richard Arthur Tanner, Out of State
Ian M. Comisky, Out of State
Eric L. Meeks, Out of State
Brian D. Burgoon, Out of State
Roger J. Haughey II, Young Lawyers Division President
Renée Thompson, Young Lawyers Division President-elect
Arnell Bryant-Willis, Public Member
Alvin V. Alsobrook, Public Member

Members absent:

Dominic M. Caparello, 2nd Circuit
Denise A. Lyn, 5th Circuit
Charles Chobee Ebbets, 7th Circuit
Robert M. Brush, 10th Circuit
Clifford W. Sanborn, 14th Circuit
David C. Prather, 15th Circuit
Allison K. Bethel, 17th Circuit
Timothy A. Bailey, 17th Circuit

2. Guests

Tasha K. Dickinson, President, Florida Association for Women Lawyers
Roland Sanchez-Medina, President, Cuban-American Bar Association
Kenneth D. Pratt, President, Virgil Hawkins Florida Chapter, National Bar Association

3. Staff Attending

John F. Harkness, Jr., Executive Director
John T. Berry, Division Director, Legal Division
Allen Martin, Director, Finance and Accounting
Ken Marvin, Director, Lawyer Regulation
Francine Walker, Director, Public Information
Kathy Bible, Disciplinary Procedure Committee Counsel
Rosalyn A. Scott, Assistant to the President
Gary Blankenship, Senior Editor, Florida Bar *News*

4. Invocation and Pledge of Allegiance

The invocation was delivered by Father Michael Orsi, chaplain and research fellow at Ave Maria School of Law. Board member Laird Lile led the Pledge of Allegiance.

5. Appearance by State Rep. Tom Grady

Rep. Tom Grady welcomed the board to the Naples area. In his remarks, he noted the importance and value of having lawyers serve as state legislators, saying they can help in complex areas of the law.

6. Moment of Silence for Glenn Burton

President Diner declared a moment of silence for Glenn Burton, the incoming chair of the Trial Lawyers Section who was killed in a car accident just before the Bar's Annual Convention in June.

7. Swearing in of New Board Members – Agenda Item 2

President Diner welcomed new members to the board and swore in new and re-elected board members who were unable to attend the General Assembly at the Annual Convention.

8. Introduction of Citizens Forum

Members of the Citizens Forum attending the meeting were recognized: Mary Evertz, Shirley Gooding Butler, Ron Kalapp, Giselle Carson, Carole Green, and Marni Stahlman.

9. Local Bar Officials

President Diner recognized the attendance of Dominic Lucarella, President of the Florida Association of Criminal Defense Lawyers, Kim Spiker, President of the Collier County Women's Bar Association, Pieter Van Dien, President of the Collier County Bar Association, and Jon Scuderi, President-elect of the Collier County Bar Association.

10. Recognition of the Young Lawyers Division Board of Governors

Members of the Young Lawyers Division Board of Governors were recognized and introduced themselves.

11. Public Reprimands – Agenda Item 10a

President Diner administered one public reprimand.

12. Non-Roll Call Items – Agenda Item 2

Governor David Rothman, chair of the Disciplinary Review Committee announced the non-roll call items for the grievance agenda: 7, 13, 14, 17, 18, 19, and 20.

13. Approval of Minutes – Agenda Item 4

The board approved the regular and grievance minutes from its May 29, 2009, meeting. The vote included ratifying the following Executive Committee Actions:

- From a June 15, 2009, meeting, approving budget amendments from the Tax Section and approving the appointment of Yolanda L. Siples to serve on the UPL Second Circuit Committee.

- Approving the amicus brief from the Family Law Section to be filed in *Florida Department of Children and Families v. In Re: Matter of Adoption of X.X.G. and N.R.G.* (Case No. 3D08-3044) in support of the invalidation of F.S. §63.042(3) which prohibits homosexuals from adopting. The committee voted 10-0 specifically to find the issue advocated in the section's brief is beyond the scope of permissible legislative or ideological activity of The Florida Bar; the issue is within the area of subject matter interest of the section as described in its bylaws or official charge; and the issue is not one that carries the potential of deep philosophical or emotional division among a

substantial segment of the membership of the Bar. Members additionally voted 10-0 to consent to the filing of the Family Law Section's proposed amicus curiae brief.

14. Approval of Consent Agenda – Agenda Item 5

The board approved the consent agenda as presented without change. That included:

- Appointing Randall Lawrence Sidlosca to Unlicensed Practice of Law Committee 11D.
- Not opposing the Real Property, Probate and Trust Law Section's adoption of this legislative position: Oppose amendment of F.S. §607.1202 and §608.4262 to require a Florida corporation or limited liability company to publish notice of its proposed sale of assets other than in regular course of business, or to publish notice of dissolution.
- Approving the Business Law Section's legislative consultant contract with Bill Wiley.
- Approving the Trial Lawyer Section's legislative consultant contracts with Bob Harris, Mark Herron, and Kristen Plyler.
- Approving the Real Property, Probate and Trust Law Sections legislative consultant contracts with Pete Dunbar, Martha Edenfield, Gene Adams, and Josh Aubuchon.
- Approving the second amendment for the Retiree Health Plan Certificate.

15. Young Lawyers Division Report – Agenda Item 9

YLD President Haughey reported on division activities, which include adding three new courses to its basic skills course offerings for new Bar members, planning its annual affiliate outreach program in January, and promoting pro bono, including partnering with Florida Children's First and the Family Law Section in providing attorneys for children aging out of the state's foster care system. The division will also be participating in November's minority law student mentoring picnic.

16. Report of the Member Benefits Committee – Agenda Item 28

Board member Clay Schnitker, liaison to the committee, presented two new benefits programs, which were approved by the board. Affiniscape Merchant Solutions offers credit card services for law firms. The second benefit program offers Bar members discounts on Brooks Brothers clothing.

17. Appearance by Mitch Counts, Associate Dean of the Ave Maria School of Law – Agenda Item 3b

Dean Counts relayed the history of the law school, which recently moved from Michigan to the Naples area, and outlined its mission.

18. Report of the Code and Rules of Evidence Committee – Agenda Item 27

Committee member Judge Hugh D. Hayes presented the committee's triennial changes, which consisted of amendments to Rule 90.404(2)(b)2. The amendments bring the statutory code and court rules into agreement and thereby avoid the problem of determining which portions of these statutory code provisions are procedural and which are substantive. The board voted 38-0 to recommend acceptance of the changes.

19. Executive Session – Agenda Item 10b

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

20. Legislation Committee Report – Agenda Item 21

Chair Larry Sellers presented the Legislation Committee's recommendation that the Bar adopt the ABA position opposing the Federal Trade Commission's inclusion of lawyers in its Red Flags Rule, which requires lenders to adopt policies to protect borrowers from identity theft. The board, in separate votes and by more than a two-thirds margin, found the issue with the purview of the Bar and approved the committee's recommendation to adopt it as a Bar legislative position.

21. Budget Committee Report – Agenda Item 14

Chair Jake Schickel presented four budget reauthorizations for items approved but unspent in the 2008-09 budget and one amendment for the 2009-10 budget. The rollover amendments were \$250,000 for air conditioning work at Bar headquarters, \$48,700 for painting at headquarters, \$43,160 for security cameras at headquarters, and \$38,074 for a survey in connection with an upcoming review of advertising policies. The new budget amendment is \$31,830 to pay for work on inputting disciplinary records to the Find a Lawyer section of the Bar website. The board approved all of the amendments.

22. Investment Committee Report – Agenda Item 15

Chair Ian Comisky reported that for the second quarter ending June 30 the Bar enjoyed a healthy return, with short-term investments increasing by 3.3 percent and long-term rising from about \$26.8 million to more than \$28 million. He also said that the Bar's cash holdings, at 9.4 percent, were back within the Bar's investment guidelines of no more than 10 percent. He said that happened because of the rising value of the Bar's equity portfolio and because of recent investments.

23. Judicial Administration and Evaluation Committee Judicial Candidate Self-Disclosure Form – Agenda Item 13b

Program Evaluation Committee Chair Gwynne Young presented a "self-disclosure form" to be presented to trial judge candidates, and proposed by the Judicial Administration and Evaluation Committee. The board had earlier approved the concept of having such a form for trial judge candidates to help educate the public about their record and qualifications. Young said the PEC and JAEC agreed on minor changes to the JAEC's form – which is similar to the application used by judicial nominating commissions – and the board approved the form, which will be available for trial judge candidates in the 2010 elections.

24. Report of the Civil Procedure Rules Committee – Agenda Item 26

Former committee member Ken Walton presented 19 amendments that were the committee's recommendations from its three-year cycle review of the rules, plus an out-of-cycle amendment to Form 1.996, which deals with final foreclosure judgments. The board recommended acceptance of both sets of amendments by a 41-0 vote.

25. Report from The Florida Bar Foundation – Agenda Item 3a

Bar Foundation President Adele Stone reported that the Florida Legislature, despite the tight budget year, appropriated \$1 million for the Civil Legal Assistance Act, which is run through the Foundation. With income from IOTA declining, the Foundation is looking to boost private contributions. Stone said the Foundation also is budgeting up to \$800,000 for grants to legal aid agencies that come up with innovative ways to encourage pro bono work by attorneys. IOTA revenues, which were \$44 million three years ago, declined to \$24 million two years ago, \$11 million last year and are projected at \$5.7 million for the coming year. The Foundation, Stone said, set up reserves during the high income years, but those were based on a “worst case scenario” of \$12 million in IOTA income.

26. Disciplinary Procedure Committee Report – Agenda Item 11

Chair Andy Sasso presented on final reading and the board approved an amendment to Standing Board Policy 15.75: Within subdivision (b)(2), removes direct review by the designated reviewer and the disciplinary review committee of an inquiry or case that is closed by bar counsel at staff level; substantial restructure and rewrite of the policy and title to conform with existing style protocol, clarify the authority and procedure, reduce redundancy, and to clarify that the policy's intent is to establish a review process and not an appeal process.

Sasso presented three rule amendments on first reading, which are scheduled to come back to the board at its September meeting for final approval:

- Rule 3-7.3: Within subdivision (a), clarifies that The Florida Bar Grievance Mediation and Fee Arbitration Program is the reviewer for fee disputes under rule 14-4.1, Rules Reg. The Fla. Bar.

- Rule 3-7.10: Within subdivision (a), clarifies that this rule applies to attorneys who have been suspended for 91 or more days and extends the exception for applicability beyond membership fees to all types of delinquency; within subdivision (f), adds new subdivision (4) to include educational requirements as a factor for the referee to consider when determining fitness of the applicant for reinstatement or readmission; also within subdivision (f)(1), adds new subdivision (N) and renumbers subsequent subdivisions accordingly, to require that a felony suspended lawyer submit proof that the affected lawyer's civil rights have been restored before the lawyer may be reinstated as a member in good standing.

- Rule 5-1.2: Within subdivision (e)(7), allows the chair or vice chair of a grievance committee to request an audit of a bar member's trust account records.

27. Report of the Probate Rules Committee – Agenda Item 24

Board member Andy Sasso presented a package of rule amendments completed by the committee for its three-year cycle review. The board recommended acceptance of the amendments 37-0.

28. Communications Committee Report – Agenda Item 18

Chair Juliet Roulhac reported that the committee will primarily be concerned this year with improving the Bar's website. The committee also oversees the Citizens Forum,

which, she said, will be looking at the Bar's disciplinary sanctions, merit selection for judges, the 2002 report from the Commission on the Legal Needs of Children, how the judicial self-disclosure form approved earlier in the board's meeting should be distributed to judicial candidates, and the Bar's certification program.

29. Report of the Real Property, Probate and Trust Law Section – Agenda Item 3c

Chair John Neukamm reviewed the activities of the section, which was begun 55 years ago and now has more than 10,000 members. The section is working on e-filing, has an active CLE program, active legislative and amicus programs, and is working to expand its diversity efforts. Section pro bono efforts including working with the Florida Attorneys Saving Homes program, and Neukamm said volunteer attorneys are still needed for that.

30. Report of the Small Claims Rules Committee – Agenda Item 25

President-elect Mayanne Downs present the three-year cycle rule amendments from the Small Claim Rules Committee, and the board recommended acceptance 36-0.

31. Program Evaluation Committee Report – Agenda Item 13

Chair Gwynne Young presented on first reading Council of Sections and Tax Section bylaw amendments. She also presented on first reading BLSE policy 2.10: Within subdivision (b), reconfigures CLE calculation for grade review panel service from 5 hours for panel service to a maximum of 5 hours per petition reviewed; within new subdivision (c), specifies the maximum amount of CLE that may be granted for preparation of certification examination questions and model answers; revises other subdivision entries as editorially necessary to accommodate this new matter.

On another matter, the committee recommended and the board approved disbanding The Florida Bar/Florida Medical Association Committee on Physician/Attorney Relations. Young said the committee was inactive and the FMA had not appointed members to the panel.

Young also announced in the coming year the PEC will review Florida Lawyers Assistance, Inc., the Member Outreach Committee and the Bar diversity efforts it oversees, the Bar's procedural rules committees, and the Bar's Legal Publications Department.

32. Clients' Security Fund Review Committee II – Agenda Item 29

Chair Greg Coleman said the committee will be following up the major overhaul of the program approved by the board in May to make sure details of the program function smoothly. He said the committee will be looking at clarifying appellate policies, statute of limitations for claims, exhaustion of other remedies before filing a claim, and the definition of "useful services."

33. Report of the Family Law Rules Committee – Agenda Item 30

Board member Nancy Gregoire, liaison to the committee, presented committee comments on changes to existing forms and new forms approved by the Supreme Court

in response to changes to F.S. Chap. 61 made by the Legislature in 2008. The board authorized the committee to file the comments by a 35-0 vote.

34. Report of the Juvenile Court Rules Committee – Agenda item 31

Board member Lisa Small, liaison to the committee, presented five rule amendments proposed to conform the rules to laws passed earlier this year by the Legislature. The board recommended acceptance of the amendments 38-0.

35. President's Report – Agenda Item 6

President Diner reported on his top priorities for the coming Bar year. Those include working on the electronic filing system for the courts, continuing to support adequate funding for a fair and impartial judiciary, addressing the legal needs of children, and helping lawyers impacted by the current difficult economic times. He welcomed suggestions from board members about other priorities for the coming year.

36. Rules Committee – First Reading – Agenda Item 12

The board received on first reading from the Rules Committee this amendment for Bar Rule 4-1.5: Within the comment to rule 4-1.5, adds that lawyers may have statutory restrictions on fees, including in areas such as workers compensation.

37. Time and Place of Next Meeting – Agenda Item 34

The board will next meet September 23-26 at the Westin Diplomat Hotel in Hollywood. There being no further business, President Diner adjourned the meeting at 2:06 p.m.

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