

Florida Bar Board of Governors  
March 24, 2017  
Casa Monica  
St. Augustine, 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)  
Sam N. Masters (07-01)  
Carl B. Schwait (08-01)  
Mary Ann Morgan (09-01)  
Paul L. SanGiovanni (09-02)  
Wayne L. Helsby (09-03)  
C. Richard Nail (10-01)  
Roland Sanchez-Medina, Jr. (11-01)  
Dori Foster-Morales (11-02)  
Leslie J. Lott (11-03)  
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)  
Ronald P. Ponzoli, Jr. (15-02)  
Michelle Renee Suskauer (15-03)  
Gary S. Lesser (15-04)  
Wayne LaRue Smith (16-01)  
Jay Kim (17-01)  
Diana Santa Maria (17-02)  
Lorna E. Brown-Burton (17-03)  
Jay Cohen (17-04)  
Adam G. Rabinowitz (17-05)  
O. John Alpizar (18-01)  
John M. Stewart (19-01)

Laird A. Lile (20-01)  
Marcy Lynn Shaw (20-02)  
Edward Duffy Myrtetus (OOS-01)  
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

Sandra Fascell Diamond (06-02)  
Adam T. Rabin (15-01)  
Ian M. Comisky (OOS-02)

**2. Staff in Attendance**

John F. Harkness, Jr., Executive Director  
John Berry, Director, Legal Division  
Cynthia Jackson, Director of Administration  
Patrick “Booter” Imhof, General Counsel  
Lori Holcomb, Division Director, Ethics and Consumer Protection  
Elizabeth Clark Tarbert, Ethics Counsel  
Kathy Bible, Disciplinary Procedure Counsel  
Terry Hill, Director, Programs Division  
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  
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 Carl Schwait delivered the invocation. The honor guard of the St. Johns County Sheriff’s Office presented the flag and led the board in the Pledge of Allegiance.

**5. Welcome by St. Johns County Sheriff David Shoar**

Sheriff Shoar welcomed the board to the county and recounted that lawyers, police, and doctors share a common trait – no one wants them until they need one “and then they want the absolute best they can get.”

## **6. Minutes Approval**

The board approved the minutes from its January 20, 2017, meeting in Tallahassee. That action included ratifying the following Executive Committee actions taken since that meeting:

- On February 7, 2017, the Executive Committee recommended approval 10-0, at the request of the Appellate Court Rules Committee, of amendments to Florida Rule of Appellate Procedure 9.200 to encourage the filing of an appendix as a single PDF, to conform bookmarking requirements, and to prohibit the filing of condensed transcripts without leave of the court.

- On February 28, 2017, the Executive Committee voted 11-0 to not oppose the requests from the Family Law Section to adopt two legislative positions. On the first, the section supports legislation which bases the percentage of the elective share upon the length of the decedent's marriage to the surviving spouse, in a scale that provides a low percentage for shorter-length marriages and a higher percentage for longer-length marriages. On the second, the section opposes any legislation that permits the administrative establishment of a timesharing schedule or parenting plan.

- On March 1, 2017, the Executive Committee voted 11-0 to allow the Elder Law Section to file amicus briefs in three cases, the first two of which were expected to be consolidated. The cases are *Giraldo v. AHCA* and *Mobley v. AHCA* which are being appealed to the Florida Supreme Court and *Delgado v. AHCA* pending at the First District Court of Appeal.

- On March 6, 2017, The Executive Committee voted 8-0 to approve two amendments, requested by the Budget Committee, to the Bar's 2016-17 budget. The first was to offset expenses for the Media Law Conference if current revenue plans do not cover increased expenses. Although the change is revenue neutral, it requires a budget amendment since the projected source of funding may not materialize. The second amendment is for funding for the Bar's Incubator Project which aims to help lawyers run profitable law firms and reach more clients using technology. Although the project is not expected to result in permanent increased costs to the Bar, there are start-up costs for a technology consultant and Technology Committee meetings until the project is finished.

- On March 7, 2017, the Executive Committee voted 11-0 to approve the Tax Section hiring Dean Cannon as a legislative consultant.

- On March 7, 2017, the Executive Committee voted 9-0 to forward recommended nominees suggested by the Bar's JNC screening committees for seats on the Second DCA, Third DCA, and Sixth, Seventh and 20<sup>th</sup> circuit judicial nominating commissions. The new nominations were required by the governor rejecting the original slates nominated by the Bar for those JNCs in 2016.

## **7. Consent Agenda Approval**

The board unanimously approved the consent agenda, including:

- Appointing Mari Molina as a public member to UPL Committee 7A, Jaime L. Dalgado-Ramos as an attorney member to UPL Committee 12, Carie Lynn Hall as an attorney member to UPL Committee 13A, Craig Marc Rappel as an attorney member to UPL Committee 19, Timothy T. McCourt as an attorney member to UPL Committee 5, Chris Engasser as a public member to UPL Committee 9B, and Bob Cohen as a public member to UPL Committee 11B.

- Agreeing not to oppose the Family Law Section taking the following legislative position: Supports legislation to combat forced marriages. Supports legislation providing that the

legal age to marry should be 18 with the exception of minors who have been adjudicated emancipated by a court of competent jurisdiction.

- Agreeing not to oppose the Criminal Law Section taking the following legislative position: Supports a unanimous verdict in the penalty phase of death penalty cases, if there is to be a death penalty in the State of Florida.

- Approving the refunding of the portion of annual membership fees used for legislative activities to Bar members who have objected to Bar legislative positions for the 2016-18 biennium.

### **8. Special Committee on Parental Leave in Court Actions Report**

Robert Eschenfelder, chair of the special committee, and committee member Craig Leen presented the committee's final report and recommended proposed Rule of Judicial Administration 2.570 on first reading: A motion for continuance based on parental leave of the lead attorney in the case shall be granted if made within a reasonable time after learning the basis for the continuance unless substantial prejudice to the opposing party is shown. Three months shall be the presumptive length of a continuance granted for parental leave absent good cause for a longer time. If the court denies the requested continuance, the court shall state on the record the specific grounds for denial. If the motion for continuance is challenged by an opposing party proffering a basis for a claim of substantial prejudice, the attorney seeking the continuance shall have the burden of demonstrating the lack of substantial prejudice to the opposing party.

The comment to the proposed rules reads: The profession is committed to parental leave and to the importance for attorneys to be able to balance work and family. This rule provides a strong presumption that a continuance for parental leave, generally not exceeding three months, will be granted when the request for relief is made within a reasonable time after the basis for continuance is reasonably discernible. Substantial prejudice to an opposing party could be the need for emergency or time sensitive relief that would be unreasonably delayed by a continuance, or the fact that many continuances have already been granted and the substantial rights of the parties may be affected.

Eschenfelder and Leen gave the history of how the committee was formed and its deliberations and reported the final report was approved 9-0 and the proposed rule was recommended 5-4. Board members asked several questions about the report and rule. The board is scheduled to debate and vote on the proposed rule at its May 26, 2017, meeting.

### **9. Trial Lawyers Section Report**

Chair Thomas Bishop noted the section members have diverse practice areas, including personal injury, commercial, intellectual property, insurance, and probate, among others. He said section CLE programs include an annual trial advocacy program where 60 lawyers go through an intensive five-day training with critiques by judges and other lawyers. The section also sponsors a trial summit and runs the annual Chester Bedell Mock Trial competition for law students. The section is continuing its very successful law school for teachers which instructs middle and high school teachers about the legal system and the third branch of government. The section is continuing its legislative advocacy program which is based on protecting the independence of the judiciary. He noted the section will shortly be celebrating its 50<sup>th</sup> anniversary.

### **10. Legislation Committee Report**

Chair Gary Lesser presented one position from the Business Law Section and recommended the board not oppose the section taking this legislative position: Opposing changes that weaken contracts governed under current franchise laws and expand claims available under Florida's Unfair and Deceptive Trade Practices Act.

He reported the committee reconsidered its January action not to recommend the Bar support calling for a comprehensive review by all three branches of government of the death penalty and again voted to recommend the board not take action on that issue. Legislative Counsels Jim Daughton and Aimee Diaz-Lyon updated the board on the ongoing legislative session, including a proposed constitutional amendment to impose term limits on Florida's appellate judiciary and a scheme in the House to base judicial pay on judges' efficiency and productivity.

### **11. Executive Session**

The Bar went into executive session to discuss the Bar search for a new executive director..

### **12. Special Committee on Trust Accounting Solutions Report**

Parliamentarian Andy Sasso and Steven Frazier from FIS, a financial services company, presented a pilot program for a free trust accounting program that, as long as Bar members enter the correct information when they make deposits and withdrawals, will automatically have them in compliance with Chapter 5 of the Rules Regulating The Florida Bar. The process will also be easier than current trust accounting paperwork required to comply with Chapter 5, Frazier said. The test program, which will run for up to six months, will begin around August 1 after final contract details between the Bar and FIS are worked out, and will involve around a dozen firms which have multiple client trust accounts. The plan will establish an omnibus Bar trust account in which the firms can deposit trust funds with subaccounts for each client. The trust account will be accessible through the Bar's website. Because the funds will be split among several banks, all client deposits regardless of size will be completely covered by FDIC insurance and the interest earned on the accounts will be substantially higher, benefitting The Florida Bar Foundation's IOTA income and also paying for the program's costs. Program Evaluation Committee Chair Michael Tanner reported that committee unanimously recommended the pilot program and the board voted unanimously to accept that recommendation.

### **13. Presentation on Digital Security**

Bar Technology consultant Adriana Linares gave a presentation on the increasing threats of hacking and otherwise accessing confidential information online and tips on how lawyers and law firms can improve their digital security. Technology Committee Chair John Stewart said the committee is studying the problem and will make recommendations, including software products to help lawyers address the problem.

### **14. Florida Probate Rules and Code and Rules of Evidence Committees Joint Report**

Probate rules Co-chair Jon Scuderi presented a report to address a conflict between the evidentiary code and the probate rules on attorney fiduciary responsibility which recommended the court adopt F.S. § 90.5021 to the extent it is procedural. The board voted 41-0 to endorse that recommendation.

### **15. Budget Committee Report**

Committee Chair Paul SanGiovanni said due to better than expected investment returns, the Bar's projected deficit for the 2016-17 budget would be almost \$2 million less than expected or approximately \$1.4 to \$1.6 million. He presented one amendment to the current budget, \$19,400 for a PR consultant, which was unanimously approved by the board. Chair-elect Steve Davis presented the 2017-18 Bar budget which keeps annual membership fees at \$265 for active members and \$175 for inactive members and projects expenses of \$42.9 million and revenues of \$41.8 million. He said the \$1.1 million projected deficit is less than the committee originally expected and may push back an expected future increase in annual membership fees for a year. The board unanimously approved publishing the budget for Bar member comments, which will be considered at the board's May 26 meeting.

### **16. Audit Committee Report**

Chair Duffy Myrtetus reported on the new membership portal on the Bar's website through which Bar members will be able to transact their Bar business, including paying membership fees, signing up for, paying for, and reporting CLE credits, and other matters. He said the committee is conducting a review on the security of the Bar's online digital operations and plans to have a report at the board's July meeting.

### **17. Communications Committee Report**

Chair Jay Cohen said the committee had launched several initiatives this year which were doing well. A new "Board Bulletin" is now being distributed to board members prior to each of its meetings. The new online TV broadcast of Bar News stories has been successful and reached a wide audience, and the committee has decided to continue the second optional six months of the one-year contract with TheLaw.TV which produces the segments. He said the committee is overseeing a redesign of the Bar's website and committee member Paul SanGiovanni, who heads the subcommittee leading that effort, gave a preview to the board. He said the redesign should be implemented by Annual Convention.

### **18. Investment Committee Report**

Chair Ian Comisky, in a recorded presentation, reported the Bar's long-term investment portfolio was up about \$2 million for the first quarter of 2017. He presented changes the committee recommended to funds in the Bar's short-term portfolio, which were unanimously approved by the board. Comisky said the committee is continuing to work on RFPs for its overall investment fund advisor although that does not mean the committee will ultimately recommend a change.

### **19. Special Appointments**

The board reappointed Jonathan T. Levy of West Palm Beach for a four-year term on the Statewide Nominating Commission for Judges of Compensation Claims. The board also approved nominations recommended by various board judicial nominating commission review committees for candidates to five JNCs where Governor Rick Scott had rejected the Bar's initial slate of nominees. Those nominated were:

- For the Second DCA JNC, Beth M. Coleman of St. Petersburg, Richard E. Fee of Tampa, and Whitney C. Glaser of Sarasota.
- For the Third DCA JNC, Dorothy F. Easley of Coral Gables, Mindy L. Pallot of Miami Beach, and Miranda L. Soto of Miami.

- For the Sixth Circuit JNC, Brandon D. Bellew of Clearwater, Lee L. Haas of Clearwater, and Beth A. Horner of St. Petersburg.
- For the Seventh Circuit JNC, Isabelle C. Lopez of St. Augustine, Katherine H. Miller of New Smyrna Beach, and Alexander Penalta of Daytona Beach.
- For the 20th Circuit JNC: Jesus M. Casas of North Fort Myers, Kathleen M. Fitzgeorge of Ft. Myers, and Marcy L. Shaw of Ft. Myers.

## **20. Disciplinary Procedure Committee Report**

Chair Dennis Kainen presented two items on second reading, both of which were unanimously approved by the board:

- Rule 3-7.2(d)(e) (f) and (i) 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 presented two items on first reading:

- Rule 14-7.1, Immunity and Confidentiality: Nonsubstantive changes conform the rule to the Court's style guide.

- Rule 14 Rules I Through VIII, Grievance Mediation and Fee Arbitration: Within rule II(a), describes when a party may withdraw consent to arbitrate. Within rule III, clarifies that the arbitrator or panel will be provided with a copy of a transcript of the proceedings within four days if transcribed. Within subdivision (a) of rule IV, adds facsimile and electronic transmittals to the types of acceptable service of the notice of hearing. Within subdivision (d) of rule IV, requires communications with arbitrator or panel to be furnished simultaneously to all parties.

Kainen said the committee is working on the problem of finding enough inventory attorneys, noting many Bar members fail, as required by Bar rules, to designate an inventory attorney to wind down their practice if they become disabled or die. He also said the committee continues to explore a diversion program for attorneys who are disruptive in the courtroom or other legal proceedings.

## **21. Young Lawyers Division Report**

YLD President Katherine Hurst Miller reported on the YLD Board of Governors' recent out-of-state trip to Dallas and other recent division activities. She reported that Christian George had been elected as the YLD president-elect designate. She noted the division hosted a summit with the Florida Board of Bar Examiners and law school deans which included Supreme Court Justice Charles Canady and which looked at bar exam subjects, a uniform bar exam, and related topics. The YLD's Practicing With Professionalism course, which is required for all new Bar members, is now available online. The YLD is monitoring several issues of interest to its members, including the work of the Gender Bias/Diversity Committee, the effort in the Legislature to send

to voters a constitutional amendment to term limit DCA judges and Supreme Court justices, court continuances for parental leave, promoting pro bono, and possible cuts to the Legal Services Corporation budget.

## **22. Rules Committee Report**

Chair Margaret Mathews presented on second reading Standing Board Policy 1.60: 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. The board unanimously approved the change.

Mathews presented Standing Board Policy 5.22: Within subdivision (c), deletes "in the Bar Journal" regarding publication of annual committee reports. She recommended waiving first reading and passing the revised policy on second reading and the board unanimously approved that. She explained the change would save the *Journal* \$24,000 in expenses.

As requested by the Supreme Court, Mathews presented an amendment to proposed new Rule 4-1.19, Collaborative Law Process in Family Law which requires disclosure to clients of fees related to the collaborative process. The previously approved parts of the new rule address the collaborative law process act passed by the legislature in 2016, require the lawyer to obtain the client's informed consent after disclosure of specific information before representing a client in the collaborative law process, prohibit the lawyer from representing a client in the collaborative law process unless all participating lawyers and clients sign an agreement setting forth specific requirements, and require the lawyer to assess domestic violence issues initially and continually and prohibit the lawyer from representing a client in a collaborative law matter where domestic violence issues are present under specified circumstances. The board unanimously approved the changes, which were filed with the court shortly after the meeting.

## **23. Program Evaluation Committee Report**

Chair Michael Tanner presented recommendations from PEC reviews of three Bar programs. The first was of the Member Benefits Program, and Tanner said the main recommendation was to improve communications with members about the program. The board approved the committee's recommendations. The second committee proposal was to establish a subcommittee to monitor how past committee recommendations on various Bar programs and activities which had been approved by the board had been received and carried out. In some cases, Tanner said the approved PEC recommendations were never sent to the affected program. The board approved that recommendation. The third recommendation was to merge the Judicial Administration and Evaluation Committee with the Constitutional Judiciary Committee. Tanner said the latter committee had taken over many of the duties of the former and JAEC members questioned the need for their committee to continue. The board approved the recommendation to merge the two committees, with JAEC members serving out their current terms on the merged panel.

## **24. Special Committee on the 2017 Constitution Revision Report**

Vice Chair Michael Tanner noted the Constitution Revision Commission held its organizational meeting and swore in its members on March 20, and scheduled its first four public hearings in

the first 12 days of April. He said the committee was arranging for board members to attend each of those public hearings and President Schifino, who serves as a member of the CRC, said there should be at least one board member at each CRC meeting. He noted there was some controversy over the CRC's proposed procedural rules and the commission will be discussing that further at a separate meeting.

### **25. Certification Plan Appeal Committee Report**

Chair Rick Nail presented two items on first reading:

- BLSE Policy 1.02 Administrative Procedure: This amendment adds subdivision (i) regarding reasons for a recusal and the process.
- BLSE Policy 5.10 Individual Credit Approval Guidelines: Amends subdivisions (f) and (g) to award 11 general credit hours and 1 technology credit hour for each full year of service during the applicable 3-year continuing legal education reporting cycle for legislative and executive branch service.

### **26. Board Review Committee on Professional Ethics Report**

Chair Carl Schwait reported the committee tabled until its May meeting a question from an attorney who wanted to know if a for-profit lawyer referral service could use a "pay per lead" financial structure and also charge differing amounts depending on the type of case referred. He added the Bar would be arguing its revised lawyer referral service rules, which expands the definition of referral services to include as "qualifying providers" anyone who seeks to match lawyers and potential clients, on April 5.

### **27. Member Benefits Committee Report**

Board member Paul SanGiovanni, liaison to the committee, presented two new participants for inclusion in the Member Benefits program. The first is Office Depot/Office Max which will offer Bar members 10 percent discounts from online prices, in-store discounts, and free shipping on orders over \$50. The second is 360BizVue, which raises law firm profiles during web searches. The company will charge Bar members \$150 for the first six months of its service and \$300 a month thereafter instead of its normal \$500 a month charge. The board approved adding both to the Member Benefits program.

### **28. ABA Free Legal Answers Report**

Bar Program Division Director Terry Hill said 374 Bar members had signed up in the first 18 days of the program, more than enough for Florida to join this ABA online pro bono program. The project allows qualified consumers to pose questions online and lawyers at their convenience can pick a question to answer. He said a "soft launch" of the program in Florida will happen around April 24 and a "hard launch" will be around May 1.

### **29. Strategic Plan Review**

Various board members reported on ongoing efforts to carry out the Bar's Strategic Plan. Board member Carl Schwait noted a subcommittee chaired by board member Leslie Lott concluded that simplifying Bar rules was not practical because any changes would have adverse effects on due notice or due process for Bar members. He noted a proposal to streamline consideration by the Supreme Court of some procedural rules is pending for comment at the court. Board member Scott Westheimer reported that 33 free online CLE courses have been added for Bar members

and the Bar continues to add to its Member Benefits program, which will have an updated page on the upcoming redesign of the Bar's website. He said the Member Benefits Committee is working on discounts for Bar members with computer hardware companies Lenovo and Dell and discounts for cell service and an online service for printing business cards. Board member Paul San Giovanni said recommendations should be ready by the end of the year on promoting diversity on judicial nominating commissions and the bench.

### **30. Gender Bias/Diversity Committee Report**

President-elect Michael Higer said the committee was working on a draft of its report and would have at least one more meeting before presenting the report and recommendations at the board's May meeting.

### **25. President-elect's Report**

President-elect Higer noted the annual strategic planning meeting would be held April 24 and 25 in Tampa.

### **26. President's Report**

President Schifino praised board members Lanse Scriven and Michelle Suskauer for their campaigns for Bar president-elect and congratulated Suskauer on her victory.

### **27. Time and Place of Next Meeting**

There being no further business before the board, President Schifino adjourned the meeting at 3:40 p.m. The board next meets May 26 at the Margaritaville Resort & Marina in Key West.

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