

Florida Bar Board of Governors
May 26, 2017
Margaritaville Hotel
Key West, Florida

1. Roll Call.

William J. Schifino, Jr., President
Michael J. Higer, President-Elect
Stephen H. Echsner (01-01)
Lawrence E. Sellers, Jr. (02-01)
Melissa N. VanSickle (02-02)
Bruce W. Robinson (03-01)
Fred D. Franklin, Jr. (04-01)
Michael G. Tanner (04-02)
Renée E. Thompson (05-01)
Joshua T. Chilson (06-01)
Sandra Fascell Diamond (06-02)
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)
Deborah B. Baker-Egozi (11-04)
Dennis G. Kainen (11-05)
Steven W. Davis (11-06)
John H. Hickey (11-07)
F. Scott Westheimer (12-01)
Thomas Roe Bopp (13-01)
Lansing C. Scriven (13-02)
Margaret Diane Mathews (13-03)
Michael S. Hooker (13-04)
John W. Manuel (14-01)
Adam T. Rabin (15-01)
Ronald P. Ponzoli, Jr. (15-02)
Michelle Renee Suskauer (15-03)
Gary S. Lesser (15-04)
Wayne LaRue Smith (16-01)
Diana Santa Maria (17-02)
Lorna E. Brown-Burton (17-03)
Adam G. Rabinowitz (17-05)
O. John Alpizar (18-01)
John M. Stewart (19-01)

Marcy Lynn Shaw (20-02)
Edward Duffy Myrtetus (OOS-01)
Ian M. Comisky (OOS-02)
Eric L. Meeks (OOS-03)
Brian D. Burgoon (OOS-04)
Katherine Hurst Miller, YLD President
Lawrence Worley Tyree (PM-01)

Members Absent

Leslie J. Lott (11-03)
Jay Kim (17-01)
Jay Cohen (17-04)
Laird A. Lile (20-01)
Zackary T. Zuroweste, YLD President-Elect
Sharon B. Middleton (PM-02)

2. Staff in Attendance

John F. Harkness, Jr., Executive Director
John Berry, Director, Legal Division
Lori Holcomb, Division Director, Ethics and Consumer Protection
Adria Quintela, Director, Lawyer Regulation
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

Leore Freire, President of the Florida Association for Women Lawyers.
Antonya Johnson, President, Virgil Hawkins Florida Chapter, National Bar Association
David Aronberg, Government Lawyer Representative
Vivian Hodz, President, Tampa Hispanic Bar Association
Andy Sasso, Parliamentarian

4. Invocation and Pledge of Allegiance

Board member Wayne Smith delivered the invocation and board member Sam Masters led the board in the Pledge of Allegiance.

5. Introduction of Incoming Board Members

Newly elected board members, who will be sworn in in June, were introduced to the board: Stephanie Marchman of the Eighth Circuit was introduced by retiring board member Carl Schwait, Julia Frey of the Ninth Circuit was introduced by retiring board member Paul San Giovanni, Amy Fariior of the 13th Circuit was introduced by retiring board member Lanse Scriven, and Young Lawyers Division President-elect Designate Christian George was introduced by YLD President Katherine Miller.

6. Welcome by 16th Circuit Chief Judge Mark H. Jones

Judge Jones welcomed the board to Key West. He talked about the geographic and climate advantages of Key West as well as the local history, art, and culture. He noted the county courthouse is nearby as well as a branch federal courthouse. The unique location of the Keys leads to correspondingly unique civil litigation in environmental, land use, and property rights cases and the circuit also has dedicated veterans and drug courts. Judge Jones presented President Schifino with a proclamation making him an Honorary Conch.

7. Real Property, Probate and Trust Law Section Report

Chair Deborah Goodall said the nearly 11,000-member section maintains an active and full CLE schedule because of the various legal fields covered by the section. The section has an extensive legislative program and Goodall thanked the Bar for its help. The section's Executive Council meets several times a year. She also said the section has undertaken the There's No Place Like Home pro bono program to help low-income families who cannot prove ownership of their property, usually because it has been in the family for generations and has never gone through probate.

8. Moment of Silence for Beranton Whisenant

Board member Lansé Scriven reported that Leadership Academy graduate and South Florida Assistant U.S. Attorney Beranton Whisenant recently had been found dead under suspicious circumstances near the beach in Hollywood. The board observed a moment of silence to honor Whisenant.

9. Minutes Approval

The board unanimously approved the minutes from its March 24, 2017, meeting in St. Augustine. That included ratifying the following action taken by the Executive Committee after the March meeting. On April 24, 2017, the Executive Committee recommended approval by an 11-0 vote of amendments to Florida Rules of Appellate Procedure 9.146(g)(3)(B) and 9.210(f) to clarify the rules and eliminate differing due dates in response to early briefs in multi-party and single-party cases.

10. Consent Agenda

The board unanimously approved the consent agenda, including the following items:

- Appointing Elizabeth Everett Constantine as an attorney member to UPL Circuit Committee 6A and Alyssa M. Hohren as an attorney member to UPL Circuit Committee 12.
- Appointing Adrian Neiman Arkin and Yolando Ann-Marie Hewling as attorney members and N. Abraham Issa, Susan Papagikos, Paul Pelton, Jill Klaskin Press, and Brian M. Rubright as public members, and reappointing Paulita E. Kundid as a public member to the Standing Committee on UPL.
- Appointing Meredith G. Gibson-Zornek and Kimberly H. Pullen and Florida Registered Paralegal members and Winifred L. Acosta Nesmith as an attorney member, and reappointing Nora E. Portuondo and Susan Papagikos and FRP members and Raheela Ahmed as a public member to the Florida Registered Paralegal District Committee.
- Approving on second reading Rule 14-7.1 Immunity and Confidentiality:
Nonsubstantive changes conform the rule to the court's style guide.

- Approving on second reading 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.

- Approving on second reading BLSE Policy 1.02: In an effort to avoid possible anti-trust issues, this recusal process is proposed as a preventative measure. Former Chair of the Certification Plan of Appeals Committee Steve Echsner assisted in the drafting of this amendment when the language was previously approved and placed in the Board of Legal Specialization and Education policy 400 series to address the recusal process during an appeal. The Board of Legal Specialization and Education wanted this language also placed in the Administrative Procedure section of their policies to apply to all stages of the certification process.

- Approving on second reading BLSE Policy 5.10 Individual Credit Approval Guidelines: Amends subdivisions (f) and (g) to award 11 general credit hours and one technology credit hour for each full year of service during the applicable three-year continuing legal education reporting cycle for legislative and executive branch service.

- Appointing to the Legal Services of North Florida Board of Directors Carolyn D. Cummings of the Tallahassee Barristers Association; Jamie Marie Ito, M. Catherine Lannon, and Daniel H. Thompson of the Tallahassee Bar Association; and Sally C. Gertz of the Florida State University School of Law.

11. Legislation Committee Report

Chair Gary Lesser presented the following legislation position from the Business Law Section which the board agreed not to oppose: Opposing changes to Chapter 607, F.S., which address the filing of biennial reports by domestic and foreign corporations.

Outside Legislative Counsel Jim Daughton reported on the spring Legislative session, which he said went well for the Bar, although many bills and the budget were still pending before the governor. He noted that judges, state attorney, and public defenders got pay raises and many issues opposed by the Bar did not pass, including term limits for the appellate judiciary and a pay-for-performance scheme for compensating judges. The court budget was not cut although many of its additional priorities, particularly in the technical area, were not funded. Daughton said committee meetings for the 2018 session, which convenes in January, will probably begin in September.

12. Election of Executive Committee Members

The board elected board members Lorna Brown-Burton, Brian Burgoon, and Michael Hooker as its representatives on the 2017-18 Executive Committee.

13. Executive Session

The board went into executive session to discuss disciplinary matters and the hiring of a new executive director for the Bar.

14. Special Committee on Parental Leave in Court Action Report

President Schifino presented the final report of the committee, which called for adoption of new Rule of Judicial Administration 2.570: 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. YLD President Miller reported both the YLD Executive Committee and the YLD Board of Governors unanimously supported the rule. After more discussion, the board unanimously approved the rule, which now goes to the Supreme Court.

15. Investment Committee Report

Chair Ian Comisky reported the Bar has had a tremendous fiscal year for earnings in its long-term portfolio with the result the Bar's projected deficit for the 2016-17 fiscal year will be about \$2 million below expectation. He said the committee recommended moving \$250,000 held in cash in the portfolio into the Oppenheimer International Growth Fund. Comisky said the committee is continuing reviewing RFPs for financial advisors, although he said the current advisor has done an outstanding job, and the committee may not recommend any change.

16. Budget Committee Report

Budget Committee Chair Paul SanGiovanni said because of the investment earnings, the Bar's projected deficit for 2016-17 has been reduced from \$3.3 million to \$1.2 million and will likely delay a projected annual membership fee increase by a year, from the 2020-21 budget to the 2021-22 budget. Incoming Budget Committee Chair Steve Davis presented the final budget for 2017-18 to the board, which had four minor changes from the budget approved by the board at its March meeting. Those are: A slight change to the Out of State Division operations expenses, an increase of \$19,500 for an outside PR consultant, an extra \$100,000 for the Bar's planned education campaign on the Constitution Revision Commission, and an extra \$40,000 for Florida Lawyers Assistance, Inc., to help hire a new professional for that program. The board unanimously approved the 2017-18 budget, which maintains annual membership fees at \$265 for active members and \$175 for inactive members.

17. Special Committee on Gender Bias/Diversity Report

The board accepted the final report from President-elect Higer, who, along with former Florida Association for Women Lawyers President Kristen Norse, presented its 12 recommendations and designated the entities charged with carrying out each recommendation. He also said he has reappointed the committee for the coming year, with President-elect Michelle Suskauer as chair, to help reach its enumerated goals. Higer noted the committee took its own survey, considered a YLD survey, and consulted national experts, and he presented extensive findings from the committee's work. The recommendations are:

- The Florida Bar's Diversity and Inclusion Committee will create a subcommittee on Women in the Profession that will be responsible for overseeing implementation efforts for all of the special committee's recommendations.

- The Florida Bar and its sections will seek to initiate continuing legal education courses that address gender bias topics such as implicit bias; the business case for gender inclusion; gender neutral hiring and evaluation criteria; conflict avoidance and resolution; and fixed vs. growth mindset. The Florida Bar will promote ethics credit allocation toward diversity training and civility, as well as gender bias and other discriminatory issues and practices. Such topics should also be addressed within the Wm. Reece Smith, Jr. Leadership Academy curriculum.

- The Florida Bar will identify, assess, and promote gender bias toolkits featuring, but not limited to identifying: implicit bias obstacles and institutional disrupters; micro aggressions and created bias interrupters; best practices for maternity/paternity/family leave; best practices for onboarding after parental leave; fair and transparent compensation and promotion practices; gender neutral hiring; the NFL Rooney Rule; and the importance of critical mass. In those instances where successful toolkits and other resources are already in place, the Bar will seek to utilize and promote those resources. The Bar will assemble links to those resources and make available in a consolidated space online.

- The Florida Bar will review its ethics rules and rules of professional responsibility to determine if additional rules or policies are necessary.

- The Florida Bar should seek to establish a reporting mechanism for individuals and small and large firms, with confidentiality protections for lawyers who are victims of gender biased misconduct, both for the reporting phase and during the process until and unless a decision for public discipline is made. The collection of data should be kept and compiled. The Bar should research and affirm that existing gender bias training programs are in place for the judiciary.

- The Florida Bar should create and promote a “Blue Ribbon Firm” designation to be awarded to law firms committed to gender diversity. The designation will set targets and best practices for legal employers interested in such a designation to meet, tailored to different firm sizes, and may provide for levels of success. The designation should be expanded beyond law firms to include categories for other legal employers.

- The Florida Bar will embark on an initiative designed to seek better information regarding compensation and promotion best practices, family leave, advancement and leadership statistics, and other data designed to establish baseline metrics that can be used for informational purposes and measured at intervals to determine progress.

- The Florida Bar will continue to make a concerted effort to reach out to and recruit women for leadership positions within the Bar and encourage local and voluntary bar associations to do the same. Additionally, the Bar will more frequently spotlight successful women and organizations.

- The Florida Bar will study law school activities designed to address gender bias, other state bar association programs and other industry initiatives to identify successful programs that can be implemented by the Bar.

- The Florida Bar will promote the benefits of family and paternity leave, in addition to maternity leave, through continuing legal education, promotion of data and best practices, and articles in its publications.

- The Florida Bar should coordinate with leaders of small and large law firms, as well as thought leaders in relevant fields, to continue the conversation and study of eliminating gender bias, with a particular focus on issues impacted or influenced by law firm economics.

- The Florida Bar will research and identify member benefits (such as emergency child care resources) designed to support family responsibilities.

18. Committee on the 2017 Constitution Revision Report

Chair Sandy Diamond outlined the Bar's plans to educate and involve Bar members and the public in the ongoing Constitution Revision Commission. The Bar's campaign will use the motto, Protect Florida Democracy: Our Constitution, Our Rights, Our Courts. The Bar will set up a website, protectfldemocracy.org, which along with other materials will feature quotes from prominent historical and current officials. Bar officials will meet with media editorial boards to promote the Bar's positions, and the Bar will use digital advertising and social media to both inform residents and lead them to the new website. The website will be up in the summer and a kickoff press conference will be held in the fall.

19. Board Review Committee on Professional Ethics

Chair Carl Schwait reported the committee, in response to a question from a Bar member in advertising inquiry 35636, found that the Avvo Advisor program is a lawyer referral service under current Bar rules. However, he said the committee recommended the board defer taking action on that finding until its July meeting since Bar leaders may be discussing lawyer referral issues with Supreme Court justices before then. The board approved that recommendation. The committee deferred action on advertising inquiry 36812, regarding how a lawyer referral service may be paid.

20. Communications Committee Report

Vice chair Scott Westheimer reported the Bar's social media presence is continuing to grow and that 67,000 Bar members had signed up for the new portal, which is used to pay annual membership fees, report CLE, pay for CLE courses, and other actions, on the Bar's website. He said the Bar's new website is up and kinks are being worked out. In the coming year, the committee will work on issues outlined by the Bar's Strategic Plan and the annual membership survey.

21. Program Evaluation Committee Report

Chair Michael Tanner reported the committee had finished its evaluations of four Bar programs and groups and issued reports with recommendations. Those are the Leadership Academy and the Leadership Academy Committee, the Senior Lawyers Committee, the Citizens Advisory Committee, and the Student Education and Admissions to the Bar Committee. The board unanimously accepted the PEC's reports and recommendations on all four evaluations.

22. Young Lawyers Division Report

YLD President Miller thanked the board for its vote on the parental leave rule and reported the division had held diversity symposiums in the northern, middle, and southern parts of the state in the spring. The YLD also designated May as Health and Wellness Month and distributed \$50,000 in grants to local affiliates to do related programs. The division is continuing to offer CLE credits via webinars having done one recently on constitutional law and planning another in June on government practice.

23. Rules Committee Report

Chair Margaret Mathews presented an amendment to Clients' Security Fund Regulation E: Within subdivision (4), deletes the requirement that annual publication be in the Bar *Journal*.

She recommended that the board waive first reading and give final approval to the change so it would be effective this year. The board voted to waive first reading and then unanimously approved the amendment.

Mathews presented two items on first reading:

- Rule 1-3.7 Reinstatement to Membership: Within subdivision (c), changes 10 hours to 11 hours for the number of continuing legal education hours required for each year or partial year of retirement or delinquency. Within subdivision (g)(2), changes 30-hour continuing legal education requirement to 33-hour continuing legal education requirement for reinstatement of inactive members who are required to complete continuing legal education requirements to be reinstated.

- Rule 4-1.10 Imputation of Conflicts of Interest; General Rule: Removes commentary regarding imputation of conflicts when a lawyer changes firms and changes commentary titles.

24. Certification Plan Appeal Committee Report

Chair Rick Nail presented on first reading, BLSE Policy 5.10, Individual Credit Approval Guidelines: The amendment in subsection (j) corrects the title, “The Florida Board of Bar Examiners” and adds the clarification that any lawyer may receive CLE credit for preparing and grading the Florida bar exam, not just those on the Florida Board of Bar Examiners.

25. Member Benefits Committee Report

Board member Paul SanGiovanni, liaison to the committee, presented three proposed new participants in the Member Benefits Program. Dell and Lenovo computers will offer up to 30 percent discounts for Bar members and PracticePanther is offering a 15 percent discount on cloud-based practice management software. The board approved adding all three vendors. The discounts are offered to Bar members who go through the Practice Management Program’s website to access the companies.

26. Special Appointments

In a series of votes, the board:

- Appointed John F. Harkness, Jr., of Tallahassee and William N. Shepherd of West Palm Beach to two-year terms in the ABA House of Delegates.

- Appointed Steven C. Dupré of Tampa, Cathryn Henn of Boca Raton, Bridgette M. Lester of Largo, Kathryn M. Pugh of Ft. Myers, Stephen P. Smith of Port St. Lucie, and J. Samantha Vacciana of Boca Raton to two-year terms on the Florida Legal Services, Inc., Board of Directors.

- Appointed Matthew A. Gissen of Miami, Mark A. Journey of Ft. Lauderdale, and board member Wayne LaRue Smith of Key West as attorney members and Catherine A. Cullen of West Palm Beach and Patricia Fowler of Sanford and nonlawyer members for three-year terms on the Florida Lawyers, Inc., Board of Directors.

- Nominated for two vacancies for five-year terms on the Florida Board of Bar Examiners Suzanne D’Agresta of Orlando, Larry S. Hersch of Dade City, Doreen T. Inkeles of Boca Raton, Tom E. Lewis of Tallahassee, Barnaby L. Min of Miami, and Jennifer M. Mooney of Tampa. The Supreme Court will make the final appointments.

- Appointed Alexis M. Connell of Tampa to a four-year term on the Statewide Nominating Commission for Judges of Compensation Claims.

27. Strategic Planning Committee Report

President-elect Higer presented the findings from the April 24 committee workshop meeting in Tampa. He said the committee did not change the core goals of the strategic plan but did adopt five action items with implementation strategies for the 2017-18 Bar year. Those items are:

- Use technology to connect Florida Bar resources and information to Bar members and the general public.
- Continue to encourage inclusion in all aspects of the legal profession and the judiciary.
- Educate lawyers and the public about the ongoing Constitution Revision Commission process and provide expert subject matter assistance to the CRC.
- Effectively communicate The Florida Bar's message and provide benefits, services, and resources to its diverse membership, the general public, and targeted groups.
- Work on matters that affect the health and wellness of Bar members.

The board unanimously approved the five action items.

28. President-elect's Report

President-elect Higer reported he has appointed a special elections committee to look at the process of electing the Bar's president-elect. The committee will look at campaigning time frames; the process of seeking endorsements from board members and past Bar presidents; and communications with members via electronic media, social media, and print ads. Higer said the goal is to provide guidance for future candidates and he hopes the committee can have recommendations for the board's July meeting.

Higer also announced he has reappointed David Aronberg as the government lawyer representative ex officio member on the board and Andy Sasso as board parliamentarian for the coming year.

29. Comments for the Good of the Order

Ex officio members Antonya Johnson, Vivian Hodz, and Leora Freire, Young Lawyers Division President Katherine Miller, outgoing board members Carl Schwait, Paul SanGiovanni, and Lansing Scriven, and President Bill Schifino made comments at their final board meeting about their service, friends they have made, and the future of the Bar.

30. Time and Place of Next Meeting

There being no further business before the board, President Schifino adjourned the meeting at 4:45 p.m. The next meeting is July 21 at the Turnberry Isle resort in Miami.

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