

The Florida Bar Board of Governors
October 24, 2014
Four Season Hotel
Philadelphia, PA

1. Roll Call

Gregory W. Coleman, President
Ramon A. Abadin, President-elect
Stephen H. Echsner, 1st Circuit
Fred D. Franklin, Jr., 4th Circuit
Michael G. Tanner, 4th Circuit
Renée Elise Thompson, 5th Circuit
Andrew B. Sasso, 6th Circuit
Sandra Fascell Diamond, 6th Circuit
Carl B. Schwait, 8th Circuit
Wayne L. Helsby, 9th Circuit
C. Richard Nail, 10th Circuit
Roland Sanchez-Medina, Jr., 11th Circuit
Dori Foster-Morales, 11th Circuit
Leslie J. Lott, 11th Circuit
Michael J. Higer, 11th Circuit
Steven W. Davis, 11th Circuit
John H. (Jack) Hickey, 11th Circuit
Lansing C. Scriven, 13th Circuit
Michael S. Hooker, 13th Circuit
John W. Manuel, 14th Circuit
David C. Prather, 15th Circuit
Ronald Peter Ponzoli, Jr., 15th Circuit
Michelle R. Suskauer, 15th Circuit
Lorna E. Brown-Burton, 17th Circuit
Adam Glenn Rabinowitz, 17th Circuit
Marcy L. Shaw, 20th Circuit
Ian M. Comisky, Out of State
Brian D. Burgoon, Out of State
Michael F. Orr, YLD President
Gordon J. Glover, YLD President-elect
Winston W. Gardner, Jr., Public Member
Anthony Holloway, Public Member

Members Absent

Lawrence E. Sellers, Jr., 2nd Circuit
William H. Davis, 2nd Circuit
Bruce W. Robinson, 3rd Circuit
Sandra C. Upchurch, 7th Circuit
Mary Ann Morgan, 9th Circuit

Paul Louis SanGiovanni, 9th Circuit
Dennis G. Kainen, 11th Circuit
F. Scott Westheimer, 12th Circuit
William J. Schifino, Jr., 13th Circuit
Margaret Diane Mathews, 13th Circuit
Gary Shepard Lesser, 15th Circuit
Timothy J. Koenig, 16th Circuit
Walter G. Campbell, Jr., 17th Circuit
Diana Santa Maria, 17th Circuit
Jay Cohen, 17th Circuit
O. John Alpizar, 18th Circuit
John M. Stewart, 19th Circuit
Laird A. Lile, 20th Circuit
Richard A. Tanner, Out of State
Eric L. Meeks, Out of State

2. Staff in Attendance

John F. Harkness, Jr., Executive Director
John Berry, Director, Legal Division
Adria Quintela, Director, Lawyer Regulation
Mary Ellen Bateman, Director, Ethics and Advertising, UPL, and Special Projects
Rosalyn A. Scott, Assistant to the President
Gary Blankenship, Senior Editor, Florida Bar News

3. Guests

Robin Bresky, President, Florida Association for Women Lawyers
Hans Ottinot, Sr., Government Lawyer Section

4. Invocation and Pledge of Allegiance

Board member Ian Comisky delivered the invocation and board member Brian Burgoon led the Pledge of Allegiance.

5. Approval of Roll Call Grievance Items

Board member Michelle Suskauer announced there were no non-roll call grievance items and the board unanimously approved the roll call items on the grievance agenda.

6. Minutes Approval

The board unanimously approved the minutes from its July 25, 2014 meeting. That approval included ratifying the following Executive Committee actions since that meeting and at one meeting before the July meeting:

- On July 10, the Executive Committee decided not to invoke SBP 1400 on unjust criticism of judges concerning comments made about a Miami-Dade judge who presided over same-sex marriage lawsuits. The committee also gave conceptual approval to the Family Law Section filing an amicus brief in *Shaw v. Shaw* which was being appealed to the Second District Court of Appeal from the 13th Circuit and which deals with divorce for same-sex couples married

in other states. The approval recognized the issue would be presented to the board at its July 25 meeting.

- On July 30, 2014, the Executive Committee took three actions:
 - Approved a response by the board to the petition filed by more than 50 Bar members with the Supreme Court under Rule 1-7.3. The petition asks to allow the board to increase Bar membership fees by up to \$100 with the extra money going to The Florida Bar Foundation for legal aid programs.
 - Recommended approval of an out-of-cycle rules amendment from the Rules of Judicial Administration Committee to Rule 2.420 (Public Access to Judicial Records) in response to statutes which became effective July 1, 2014, on the confidentiality of forensic behavioral studies.
 - Approved the request of the Real Property, Probate and Trust Law Section to file an amicus brief in *Golden v. Jones*, if the case proceeds to the Supreme Court. The case addresses when the statute of limitations begins for creditor claims in estates when those creditors are “reasonably ascertainable” by the personal representative of the estate.
- On August 22, 2014, the Executive Committee voted, on the recommendation of the Juvenile Court Rules Committee, to file a petition with the Supreme Court requesting amendments to the juvenile rules, because of statutory amendments in Chapters 2014-162, 2014-227, 2014-224, and 2014-166, Laws of Florida.
- On August 22, 2014, the Executive Committee approved two lists of six applicants for upcoming vacancies on the Second DCA and the 15th Judicial Circuit judicial nominating commissions. The nominations were necessitated by the gubernatorial rejection of earlier candidate lists for those JNC posts. Nominated for the Second DCA JNC were: Robert E. Biasotti, St. Petersburg, Sharon M. Hanlon, Naples, John L. Hart, New Port Richey, Kristie Hatcher-Bolin, Winter Haven, Bradford D. Kimbro, Tampa, and Marcy L. Shaw, Ft. Myers. Nominated for the 15th Circuit JNC were: F. Malcolm Cunningham, Jr., West Palm Beach, Michael J. Gelfand, West Palm Beach, Michael J. McCluskey, Jupiter, Michael D. Mopsick, Boca Raton, Elisha D. Roy, Palm Beach Gardens, and William N. Shepherd, Palm Beach Gardens.
- On August 27, 2014, the Executive Committee approved the request of the Business Law Section to file an amicus brief supporting a petition for writ of certiorari from the U.S. Supreme Court in *Baker Botts LLPP v. Asarco, LLC*. The case addresses bankruptcy courts’ discretion to award compensation for professionals for their time spent successfully defending fee applications. The Executive Committee found the matter outside the scope of permissible activity of the Bar, within the subject matter interest of the section, and one that does not carry the potential of deep philosophical or emotional division among a substantial segment of the Bar’s membership.
- On September 29, 2014, the Executive Committee recommended approval of out-of-cycle fast track amendment to Florida Probate Rules in response to 2014 legislative changes and to conform Fla. P. Rule 5.590 to Chap. 2014-124, Laws of Florida.

7. Consent Agenda Approval

The board unanimously approved the consent agenda, including:

- Appointing Janis G. Eldridge and David L. Stimpson as public members to UPL Committee 4, Patricia A. Perzel as a public member to UPL Committee 6A, and Robin Vazquez as a public member to UPL Committee 20.
- Giving final approval to Rule 3-2.1, Definitions Generally: Rule is amended to comply with the Court's style guidelines. There are no substantive changes to the rule.
- Giving final approval to Clients Security Fund Regulation D 1, Payment and Caps: Adds, "except as provided elsewhere in these regulations" due to the amendment to Regulation D 2.
- Giving final approval to CSF Regulation D 2, Payment and Caps: Provides that misappropriation claims approved in the amount of \$1,000 or less will be paid on approval.
- Approving the legislative consulting contract between the Workers' Compensation Section and Fausto Gomez.

8. Discussion of Rule 4-4.2

President Greg Coleman reminded the board that it will be discussing a proposed change to the comment to Bar Rule 4-4.2 at its December meeting. The change is being proposed by the Government Lawyer and City, County and Local Government Law sections relating to lawyers contacting government officials about subjects under or likely to be under litigation without contacting the government lawyers representing those officials. President Coleman noted the issue has generated much debate with strong feelings on both sides and that the Board Review Committee on Professional Ethics will be vetting the issue and making a recommendation. He urged board members to discuss the issue with their constituents and with Bar sections and committees for which they serve as liaisons.

9. Budget Committee Report

Chair Michael Higer said the committee had no action items for the meeting, but was continuing its ongoing reviews of the Annual Convention and the Bar's overall budgeting process. He and President Coleman also said the Bar is upgrading its accounting software to provide more timely responses to sections about their budget information.

10. Audit Committee Report

Executive Director John F. Harkness, Jr., said the audit report for the Bar's 2013-14 fiscal year will be presented at the board's December meeting.

11. Investment Committee Report

Chair Ian Comisky said the committee recommended two changes in Bar investment policies. In the Bar's short-term investment portfolio, the committee proposed moving the Bar's \$7.9 million in the PIMCO low duration institutional fund to two other short-term bond funds. The committee made the recommendation because of a change in managers at the PIMCO fund. The money would be split 60/40 between the Vanguard Short Term Bond Index Fund, and the Black Rock low duration fund. The second change is selling \$883,000 in the Bar's long term investment fund in the liquid alternatives sector currently held in Mainstay Marketfield and allow the Bar's investment advisor decide how to reallocate it among the three remaining liquid alternative funds in the Bar's portfolio, PIMCO All Asset Fund, FPA Crescent, and Invesco Balanced Risk. He reported the Bar's long term portfolio, which began the year with around \$43 million had \$49.1

million at the end of September. The board unanimously approved the recommendations. Comisky said the committee at its next meeting would be reviewing management fees for the funds in the Bar's portfolio and fees paid to its manager.

12. Legislation Committee Report

Chair Michael Tanner reported that the committee expected to present initial legislative positions for the 2014-16 biennium from those sections that have not already had some approved at the board's December meeting, and positions for the Bar and its committees at the board's January meeting.

13. Family Law Section Amicus Brief

President Coleman said the Family Law Section plans to ask permission to file an amicus brief in pending litigation on same-sex marriages in support of allowing those marriages in Florida. He said that will come to the board at its December meeting.

14. Disciplinary Procedure Committee Report

Chair Ron Ponzoli presented nine rule amendments on first reading. He said all of the amendments were non-substantive and made to conform the rules to the Supreme Court style guidelines. The changes are to rules 3-3.1, 3-3.2, 3-3.4, 3-3.5, 3-4.3, 3-4.4, 3-4.6, 3-4.7, and 3-5.4.

15. Program Evaluation Committee Report

Chair David Prather presented the committee's unanimous recommendation to create the Special Committee on Unethical and Illegal Solicitation of Legal Business, and the board unanimously approved. President Coleman announced that former Bar President Howard Coker would chair the committee, which will convene in January and is scheduled to report by January 31, 2016. Coleman and Prather said the committee is needed to investigate the rising number of reports of improper solicitations to potential clients by lawyers or third parties. Prather also said the PEC has voted to recommend that the Animal Law Committee be allowed to become a section, and the committee will present that to the board at its December meeting.

16. Rules Committee

Chair Marcy Shaw presented on first reading an amendment to Bar Rule 4-5.8, Procedures for Lawyers Leaving Law Firms and Dissolution of Law Firms: Within the comment, revisions clarify the rule by addressing issues such as when the negotiations and notification of clients should occur, which clients must be notified, obligations to clients who neither the departing lawyer nor the firm intends to represent, the method by which contact may occur, and obligations to provide contact information to the clients. Non-substantive edits conform the rule and comment to the Supreme Court of Florida style guide.

17. Special Task Force to Study Enhancement of Diversity in the Judiciary and on the JNCs Report

Task force member Lorna Brown-Burton said the committee looked at the operations of the Judicial Nominating Procedures Committee and the Standing Committee on Diversity and Inclusion, both of which are working to improve diversity on the bench and JNCs. She said the

task force will help coordinate those efforts. Brown-Burton said the task force will also coordinate with other committees, such as the Constitutional Judiciary Committee, which may be working on those goals. President Coleman announced that he is appointing Florida Association for Women Lawyers President Robin Bresky to the task force.

18. Young Lawyers Division Report

YLD President Michael Orr reported that after the most recent Bar exam, the YLD membership stands at 25,444, or about a quarter of the Bar's total membership. He said the YLD, in conjunction with the board's Communications Committee, held the first social media and technology webinar which dealt with using Facebook, LinkedIn, and other social media. He said more than 2,200 lawyers preregistered from all over the world. The next webinar in the series will look at social media pitfalls. The YLD has begun a blog on Tumblr and will have its annual Affiliate Outreach Conference on January 16-17 in St. Petersburg. He also said the division has been finding mentors for students through its Law Student Division.

19. Communications Committee Report

Chair-elect Renée Thompson reported the committee put on a LinkedIn seminar at the Bar's Fall Meeting, that the number of followers on various Bar social media sites is increasing, and that the committee has approved a proposal to place up to 200 Q&A videos on YouTube and the website, pending approval of a budget amendment. The committee also approved a proposal to work with local bars to recruit 1,500 members for the Bar's Speakers Bureau, also pending approval of a budget amendment, and has completed work on a communications plan for the Vision 2016 project which has been sent to the overall administrator Jay Cohen. The Citizens Advisory Subcommittee met and is recommending training and orientation for members of the Citizens Advisory Committee to be held at the annual convention before their term begins as well as several charter changes. The committee has worked to change the Bar members profile page on the Bar's website to allow members to add a cell phone number, which will begin in March. The committee also is looking, at the request of the Media and Communications Law Committee, to add cash awards to its annual media awards, and a lifetime achievement award named for Susan Spencer-Wendel, a journalist who covered legal issues and who died earlier this year after writing a best-selling book about dealing with ALS.

20. Leadership Academy Report

Thompson, chair of the Leadership Academy Committee, noted that academy fellows met for their second session at the Bar's Fall Meeting and would be having regional meetings in mid-November. She said the Bar would begin accepting applications for its third class of academy fellows on December 1.

21. Board Review Committee on Professional Ethics

Chair Carl Schwait reported the committee was continuing to study the third sets of proposed changes to the Bar's guidelines for advertising past results and expected to report on that at the board's December meeting. He also said the committee will be reviewing proposed amendments to Rule 4-4.2 and will report on those in December as well.

22. Vision 2016 Report

Board member Lanse Scriven and Legal Division Director John Berry discussed the bar admission and legal education activities of the Vision 2016 commission. The board engaged in an extensive discussion of Vision 2016 activities and preliminary findings and the implications for the Bar, the Florida Board of Bar Examiners, and the profession.

23. Executive Director's Report

Executive Director John F. Harkness, Jr., reported that board members would be getting the results of two surveys. One was covered as part of the Vision 2016 discussion and included Bar members attitudes about Bar admission and legal education issues. The second polled the public about attitudes towards past results including monetary awards being used in lawyer advertising. Harkness encouraged board members to thoroughly review both surveys.

24. New Business

Board member Jack Hickey presented the board with a letter from the Miami-Dade County Chapter of the Florida Association for Women Lawyers asking the NBC television network to withdraw its program, "Bad Judge." He asked the board to consider passing a similar resolution because he said the show portrays women and the judiciary in a poor light. President Coleman said the issue has been referred to the Communications Committee for a report at the board's December meeting.

25. Time and Place of Next Meeting

There being no further business before the board, President Coleman adjourned the meeting at 12:04 p.m. The board's next meeting is December 12 at the Ritz Carlton in Amelia Island.

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