

The Florida Bar Board of Governors
December 12, 2014
Omni Amelia Island Plantation Resort
Amelia Island, Florida

1. Roll Call

Gregory W. Coleman, President
Ramon A. Abadin, President-elect
Stephen H. Echsner, 1st Circuit
Lawrence E. Sellers, Jr., 2nd Circuit
William H. Davis, 2nd 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
Mary Ann Morgan, 9th Circuit
Paul Louis SanGiovanni, 9th 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
Dennis G. Kainen, 11th Circuit
Steven W. Davis, 11th Circuit
John H. (Jack) Hickey, 11th Circuit
F. Scott Westheimer, 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
Ronald Peter Ponzoli, Jr., 15th Circuit
Michelle R. Suskauer, 15th Circuit
Gary Shepard Lesser, 15th Circuit
Walter G. Campbell, Jr., 17th Circuit
Lorna E. Brown-Burton, 17th Circuit
Jay Cohen, 17th Circuit
Adam Glenn Rabinowitz, 17th Circuit
O. John Alpizar, 18th Circuit
John M. Stewart, 19th Circuit
Laird A. Lile, 20th Circuit
Richard A. Tanner, Out of State

Ian M. Comisky, Out of State
Eric L. Meeks, Out of State
Brian D. Burgoon, Out of State
Michael F. Orr, YLD President
Gordon J. Glover, YLD President-elect
Anthony Holloway, Public Member

Members Absent

Bruce W. Robinson, 3rd Circuit
Sandra C. Upchurch, 7th Circuit
Michael J. Higer, 11th Circuit
Timothy J. Koenig, 16th Circuit
Diana Santa Maria, 17th Circuit
Marcy L. Shaw, 20th Circuit
Winston W. Gardner, Jr., Public Member

2. Staff in Attendance

John F. Harkness, Jr., Executive Director
John Berry, Director, Legal Division
Adria Quintela, Director, Lawyer Regulation
Paul Hill, General Counsel
Marcy Jackson, Director of Administration and Chief Financial Officer
Mary Ellen Bateman, Director, Ethics and Advertising, UPL, and Special Projects
Terry Hill, Director, Programs Division
Lori Holcomb, Director, Unlicensed Practice of Law
Elizabeth Clark Tarbert, Ethics and Advertising Counsel
Kathy Bible, DPC liaison and Advertising Counsel
Francine Walker, Director, Public Information and Bar Services
Rosalyn A. Scott, Assistant to the President
Gary Blankenship, Senior Editor, Florida Bar News

3. Guests

Ricardo Martinez-Cid, President, Cuban American Bar Association
Robin Bresky, President, Florida Association for Women Lawyers
Ellen Simon, Chair, Government Lawyer Section

4. Invocation and Pledge of Allegiance

Board member Fred Franklin delivered the invocation and board member Michael Tanner led the board in the Pledge of Allegiance.

5. Minutes Approval

The board approved the minutes from its October 24, 2014, meeting in Philadelphia, PA. That approval included ratifying Executive Committee actions taken since that meeting:

- On November 10, 2014, the Executive Committee voted 10-0 to recommend approval of out-of-cycle rule amendments proposed by the Rules of Judicial Administration Committee

adding provisions to Rule 2.420 to conform with legislative changes effective July 1, 2014, and to correct a statutory reference in that rule in subdivision (d)(1)(B)(iv).

- On November 25, 2014, the Executive Committee voted 12-0 to allow the Real Property, Probate and Trust Law Section to file an amicus brief with the Florida Supreme Court in *Rogers v. United States* after finding the issue was beyond the scope of permissible legislative or ideological activity for The Florida Bar but within the section's subject matter interest 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. The vote additionally approved the filing of the section's proposed amicus curiae brief, further waiving any technical violations of SBP 8.10(a) associated with the matter, and authorizing the executive director and/or general counsel to monitor and report further progress of the final filing as necessary.

6. Consent Agenda Approval

The board approved the consent agenda after the removal of item 5 (b)(i), to be acted on during the Board Review Committee on Professional Ethics report. The approval included:

- Appointing Daniel Hilbert as an attorney member to Unlicensed Practice of Law Committee 7B, Maya Chatterjea as an attorney member to UPL Committee 14, and Michael David Leader as an attorney member to UPL Committee 17C.
- Approval of an amendment to Rule 3-3.1, Supreme Court of Florida; Disciplinary Agencies: Amendments comply with the court's style guidelines. There are no substantive changes to the rule.
- Approval of an amendment to Rule 3-3.2 Board of Governors of The Florida Bar; Amendments comply with the court's style guidelines. There are no substantive changes to the rule.
- Approval of an amendment to Rule 3-3.4, Grievance Committees: Amendments comply with the court's style guidelines. There are no substantive changes to the rule.
- Approval of an amendment Rule 3-3.5, Circuit Court Jurisdiction: Amendments comply with the court's style guidelines. There are no substantive changes to the rule.
- Approval of an amendment Rule 3-4.3, Misconduct and Minor Misconduct: Amendments comply with the court's style guidelines. There are no substantive changes to the rule.
- Approval of an amendment Rule 3-4.4, Criminal Misconduct: Amendments comply with the court's style guidelines. There are no substantive changes to the rule.
- Approval of an amendment Rule 3-4.6, Discipline By Foreign or Federal Jurisdiction; Choice of Law: Amendments comply with the court's style guidelines. There are no substantive changes to the rule.
- Approval of an amendment Rule 3-4.7, Oath: Amendments comply with the court's style guidelines. There are no substantive changes to the rule.
- Approval of an amendment Rule 3-5.4, Publication of Discipline: Amendments comply with the court's style guidelines. There are no substantive changes to the rule.
- Agreeing not to oppose the following new legislative positions from the Real Property, Probate and Trust Law Section:
 - Supports amendment to F.S. § 48.23(1) re lis pendens to include those receiving a mortgage or other lien of property in the protections provided by this statute.
 - Supports legislation to provide a non-exclusive list of factors for trial courts to use when exercising their discretion whether and to what extent attorneys' fees and costs should

be assessed against a part of an estate or trust, including amendments to F.S. §§ 733.106, 736.1005, and 736.1006.

- Supports amendments to estate tax apportionment statutes, including F.S. § 733.817, to update and clarify existing law.
- Supports legislation which provides that a lawyer, or certain people related to, or affiliated with the lawyer will not be entitled to receive compensation for service as a fiduciary if the lawyer prepared the instrument making the appointment unless: (a) the lawyer or person appointed is related to the client; or (b) certain disclosures are made to the client before the instrument is signed and confirmed in writing signed by the client.
- Supports proposed legislation to remove barriers to a fiduciary's access to electronic records, including the Florida Fiduciary Access to Digital Assets Act, F.S. Ch. 740.
- Supports legislation to ensure prompt objections to various aspects of probate administration and to clarify the rights and duties of parties when a personal representative of an estate is unqualified to act or is no longer qualified to act in that capacity.
- Supports amendments to the Florida Uniform Transfer to Minors Act, Chapter 710, Florida Statutes, to allow for certain custodianships to terminate when the minor attains age 25, and to provide for a procedure to qualify transfers to certain custodianships that terminate when the minor attains age 25 for the federal gift tax annual exclusion.
- Supports amendments to the Florida condominium law pertaining to the termination of condominiums to protect unit owners and provide certainty and predictability to the process.
- Agreed not to oppose the following new legislative position from the Business Law Section: Supports anti-hacking legislation including the passage of the Computer Abuse and Data Recovery Act (CADRA).
- Agreed not to oppose the following new legislative position from the Tax Section: Supports legislation eliminating the documentary stamp tax on deeds and mortgage assumptions between persons who are married.
- Agreed not to oppose the following legislation positions from the Public Interest Law Section:
 - Supports legislation requiring unanimous jury verdicts in death penalty sentencing.
 - Supports federal and state legislation and regulations to strengthen privacy protections for personally identifiable information in the Homeless Management Information System.
 - Supports legislation adding homeless status, mental or physical disability, or advanced age of the victim to the Hate Crimes Reporting Act (Fla. Stat. § 877.19) to require reporting on all protected classes under the Hate Crimes Law (Fla. Stat. § 775,085).

7. Public Reprimands

President Coleman administered two public reprimands.

8. Budget Committee Report

Chair-elect Dori Foster-Morales presented the committee recommendations for four amendments to the 2014-15 budget: \$12,000 for certification exam consultants, \$13,000 for website work, \$5,000 for the Bar's Speakers Bureau, and \$3,900 for the Senior Lawyers Committee. The board approved all four amendments. Foster-Morales updated the board on the committee's continuing

reviews on the Bar's budgeting process and how it affects sections and committees and on fiscal aspects of the Bar's Annual Convention.

9. Board of Legal Specialization and Education Report

BLSE Chair Jack Pelzer said certification continues to grow, both in the number of certification areas offered and in the number of certified lawyers. He noted that longtime Director of Legal Specialization and Education Dawna Bicknell will be retiring in January 2015.

10. Public Interest Law Section Report

Chair Laura Boeckman noted the section supported a new certification area for juvenile law, which is pending before the Supreme Court. She reported the section has nearly 400 members, five very active committees and has been operating for 25 years. The section has active pro bono programs, including finding lawyers for children aging out of the state's foster care system, some of whom have been victimized by identity theft by their guardians. The section worked with the Florida Coastal law school review to do an issue devoted to public interest law issues. Boeckman said the section plans to actively participate with the new Access to Justice Commission.

11. Investment Committee Report

Chair Ian Comisky reported that the Bar had a good year with its long-term investment portfolio rising by about 4 percent to almost \$50 million. He reported that at the recommendation of its outside advisor, the committee modified its target investments to increase the amount in large cap equities and reduce the amount in emerging markets, which have been sluggish. The investment plan had a target of 10 percent for emerging markets with a minimum of 5 percent and a maximum of 15 percent, while the large caps were targeted at 12 percent, with a minimum of 7 percent and a maximum of 17 percent. The new targets, which were unanimously approved by the board, are a target of 5 percent for emerging markets with a minimum of zero and a maximum of 10 percent, and a target of 17 percent for large caps, with a minimum of 12 percent and a maximum of 22 percent. He said the committee also voted to replace the Aston/Montag & Caldwell Growth fund with the Lazard US Equity Concentrated fund and to replace the RS Global Natural Resources fund with iShares North American Natural Resources fund. The board approved both of those changes. Comisky said the committee has reviewed the Bar's investment advisory and mutual fund management fees it pays on its investments and the weighted average is 58 basis points, which he said the committee found satisfactory.

12. Audit Committee Report

Chair Paul SanGiovanni reported that the Bar received a clear audit for its 2013-14 fiscal year with no recommendations in the accompanying management letter. The board unanimously approved the audit committee report. SanGiovanni said the committee is continuing to work on the Bar's disaster recovery program.

13. Appellate Court Rules Committee

Chair Wendy Loquasto presented an out-of-cycle rule change to address pro se paper filings to appellate courts. The change deletes the requirement filings be stapled or bound so they can more efficiently be scanned. The change would also require that pages be consecutively numbered. The board by a 40-0 vote recommended amendment.

14. Disciplinary Procedure Committee Report

Chair Ron Ponzoli noted all of the committee's action items were approved on the consent agenda. He said the committee discussed whether any new Bar policies may be needed to protect lawyers who become involved in the distribution of "Charlotte's Web" low-THC marijuana under the state's new medical marijuana law. The committee also discussed whether lawyers who are under house arrest but don't have a felony conviction should have to tell clients about their confinement. He said at the moment the committee had no recommendations on those matters.

15. Scrapbook Presentation to Former Bar President Eugene Pettis

President Coleman presented scrapbooks to immediate Past President Eugene Pettis commemorating his year leading The Florida Bar.

16. Executive Session

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

17. Judicial Qualifications Commission Appointment

Board member Lanse Scriven, who chaired a special screening committee, reported the committee recommended Michelle Kane Cummings, Eugene Pettis, and Gwynne Young for an upcoming six-year term on the Judicial Qualification Commission. The board elected Pettis for the position.

18. Criminal Procedure Rules Committee Report

Committee Vice Chair Meredith Charbula presented additional three-year cycle rules amendments, revoked the prior recommendation of two amendments, and proposed out-of-cycle rule amendments. The board by a 38-0 vote recommended all of the committee's actions.

19. Juvenile Court Rules Committee

Chair Deborah Schroth presented a minor amendment to previously board-endorsed changes to Rule 8.870 and the board by a 36-0 vote recommended the alteration.

20. City, County and Local Government Section Report

Chair Dana Lynne Crosby-Collier said the section has 1,700 members, split between the public and private sector attorneys, and is reaching out to young lawyers and affiliate members and also working to enhance technology for members. The section offers a variety of CLE programs, including a certification review course, and this year had its 40th annual public law employment seminar. Crosby-Collier said the section has provided \$20,000 in grants to local governments to hire student interns and to co-sponsor minority mentoring picnics.

21. Board Review Committee on Professional Ethics

Chair Carl B. Schwait reported that the BRCPE voted 7-1 to recommend that the Board of Governors reverse the decision of the Standing Committee on Advertising in advertising file 14-03357. That action would determine that the law firm name "PowerLegal" does not characterize the law firm's skills, experience, reputation or record in a way that is not objectively verifiable under Rule 4-7.13(b)(3) and is therefore permissible. The Board of Governors approved the BRCPE recommendation on a voice vote.

Chair Schwait gave an informational report that the committee met on Thursday, December 11, 2014, and heard comments regarding proposed amendments to Rule 4-4.2 (Communication with Represented Persons) from Marion Radson (City County & Local Government Law Section), Patrick McCormack (Florida Association of County Attorneys) and Michael Gelfand (Real Property Probate and Trust Law Section). The committee urged the proponents of the amendments to review the comments received on the proposal and communicate with those who have concerns about the proposal to determine if the proposal can be re-written. The matter will return to the committee at a later meeting.

The board heard a presentation from its legal counsel, Barry Richard summarizing United States Supreme Court jurisprudence on lawyer advertising and the effect of the First Amendment on state regulation of lawyer advertising. The presentation also included the decision in *Rubenstein v. The Florida Bar*, case no. 14-CIV-20786-BLOOM-Nalle, in which the United States District Court for the Southern District of Florida entered summary judgment for the plaintiffs on December 8, 2014, Richard also summarized the findings of Magid and Associates, which had conducted a survey of Florida consumers related to lawyer advertising commissioned by The Florida Bar. Copies of the *Rubenstein* decision and the Magid report were distributed to all members of the board prior to the meeting. After discussion, the board voted unanimously to repeal all guidelines relating to lawyer advertising rules and to interpret and apply the advertising rules to allow accurate advertising of past results, including references to monetary recoveries and the amount of such recoveries in all media including television and billboards.

22. Certification Plan Appeal Committee Report

Chair Steve Echsner reported on the committee's activities and presented a report that covered appeals filed from 1983 to 2014. In the past two years, only two appeals were filed, but were concluded at the committee level and BOG review was not requested by the appellant. He noted that the committee is limited to determining procedural error or a misapplication of BLSE policies in any appeal filed.

23. Legislation Committee Report

Chair Michael Tanner reported that the committee recommended approval of the legislative and executive branch consulting contract between the Family Law Section and the Rutledge Ecenia law firm and the board unanimously approved. Tanner presented the several legislative positions from the Business Law and Tax sections which had been part of their 2012-14 legislative positions and which they were seeking to renew for the 2014-16 biennium. The board unanimously agreed not to oppose those positions. Tanner presented two Bar legislative positions which had been part of the Bar's 2012-14 legislative platform and which he recommended be included as new items among the Bar's 2014-15 legislative positions. The board found the two positions within the allowable legislative activities of the Bar and unanimously approved both. They are that the Bar:

- Opposes amendments to the Florida Constitution that would alter the authority of the Supreme Court of Florida to regulate the admission of persons to the practice of law or the discipline of persons admitted.

- Supports adequate funding of the state courts system, state attorneys' offices, public defenders' offices, court-appointed counsel, and the offices of the clerks of the circuit and county courts performing court-related functions.

Chair Tanner said he expected to present more Bar legislative positions at the board's January 2015 meeting.

24. President's Report

President Coleman presented a beta version of the Practice Resource Institute website, which is scheduled to be operational around February 1. The institute will offer help for lawyers in office technology, finance and accounting, marketing, management, and new practices. The site will offer podcasts, a chat room, links and other information for lawyers and incorporates part of the Bar's former Law Office Management Assistance Service. As part of the institute, Coleman said the Member Benefits Committee reviewed and recommended several mostly technology related services and products for Bar members. Duke Fagan, vice chair of the Member Benefits Committee, presented the offerings, which were unanimously approved by the board. They are:

- CrossStar Network Solutions and Peritus Affinity Partners. The company buys bulk telecom access from the carriers like Verizon, Sprint, AT&T, and T-Mobile and then passes along the discounts to customers
- Social Finance, Inc. The company helps lawyers with student loan debt refinance that debt at lower interest rates, usually between 1 and 4 percent lower
- NextPoint. This is a document, evidence, and litigation management software aimed at large lawsuits, which can be especially helpful for small and mid-size firms getting into more complex litigation.
- Ruby Receptionists. The company is a remote telephone call handling service that provides more than the typical answering service and allows firms to get its calls handled at a fraction of the cost of a full-time receptionist.
- ServeManager. The company vets process servers and ties them to law firms, which can track the status of outstanding service matters, including GPS and photo verification of service as well as affidavits.
- Rocket Matter, Clio, MyCase, and Amicus Attorney. These four programs address practice technology needs of lawyers, helping manage files, contacts, calendars, tasks, and communications.
- TheFormTool PRO. This software takes any document generated by a lawyer and converts it into a form, and then allows it to be modified as needed.
- Bill4Time. This billing software program works with existing programs and allows lawyers to track time on computers as they work.

25. Communications Committee Report

Chair John Stewart said the committee has approved a revised draft of the Bar's social media policy, which will be presented to the board. He said the committee also approved money for the Media and Communications Law Committee for its annual media awards. Stewart recognized President-elect Ramon Abadin who made a presentation on the Flipboard app for mobile devices. Abadin urged board members to get the app, which he said would help them share Bar-related information from news and social media sites. If successful, the use of Flipboard could be expanded to sections and committees, he said.

26. Florida Courts Technology Commission Report

Board member Laird Lile, who also serves on the FCTC, noted the commission is responsible for setting technology standards for the court system. The commission's 25 members include judges, clerks, court administrators, but only three attorneys, he noted. At the commission's next meeting, Lile said it would address uniform docket codes to the state courts' electronic filing system, adding it is difficult to get uniformity among the 67 clerks.

27. Young Lawyers Division Report

YLD President Michael Orr noted the division had received and was analyzing the results of its first membership survey. It showed that the balance between their professional and personal lives was the number one issue with YLD members and 82 percent were satisfied with their careers. Orr said the division would be having its annual Affiliate Outreach Conference in January and would have a follow up to its social media CLE at the Bar's Winter Meeting.

28. Rules Committee Report

Chair Margaret Mathews presented one item on final reading, on Rule 4-5.8, Procedures for Lawyers Leaving Law Firms and Dissolution of Law Firms: Within the comment, clarifies 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. The board unanimously approved the amendment.

Mathews presented three items on first reading:

- Rule 2-3.10, Meetings: Changes "The Florida Bar Center" to "in Tallahassee." Non-substantive changes conform to the style guide.
- Preamble – A Lawyer's Responsibilities: In terminology, definition of "lawyer," deletes "any court of" so that the term "lawyer" includes both Florida Bar members and other lawyers authorized to practice in the State of Florida.
- Rule 4-1.7, Conflict of Interest; Current Clients (Subdivision d – relationships between lawyers): Within subdivision (d), adds other significant relationships to the familial relationships requiring disclosure and consent when opposing in a representation. Within the commentary, defines other significant relationships.

29. Program Evaluation Committee Report

Chair David Prather presented on first reading bylaw changes for the General Practice, Solo and Small Firm Section and the Out of State Division. He also presented a guide on best practices for electronic communications, which was approved by committee and which will come to the board at its January meeting. On the committee's recommendation, the board waived first reading and gave final approval to two Board of Legal Specialization and Education policy changes:

- BLSE Policy 5.08(e), Computer Training: Revises policy to increase the CLE credit hours per course allowed for computer training from 3 to 5, and eliminates the credit cap during a single reporting cycle. Defines CLE credit eligibility for courses involving social media or networking sites.

- BLSE Policy 5.10(c)(4), Writing: Revises existing policy that allows up to 10 CLE credit hours for preparation of Florida bar examination questions to include same credit allocation for grading these questions.

On the committee's recommendation the board gave conceptual approval to a new certification area for condominium and planned unit development, which will come back to the board for final approval in January. Prather reported the committee is continuing its reviews of Standing Board Policies, the Administrative Law Section, the request of the Animal Law Committee to become a section, and BLSE policies.

30. Leadership Academy Report

Board member Renée Thompson reported the academy held its regional meetings in November and that members will meet again in January in conjunction with the board's next meeting. She urged board members to help find applicants for the academy's third class, which will begin in June 2015.

31. Vision 2016 Report

Board member Jay Cohen, who serves as administrator for Vision 2016, said the group's four committees are compiling information and beginning to formulate recommendations that will affect issues from foreign legal consultants to technology to legal education and admission to the Bar. Board member John Stewart, chair of the Vision 2016 Technology Committee, said his panel has found that technology and the marketplace in the form of online legal services, online legal forms, and the possibility of legal service shops in big box stores are changing so fast that responses cannot wait until the final Vision 2016 report in June 2016. His committee may begin making recommendations to the board, perhaps as soon as its January or March meetings.

32. Strategic Plan Report

President Coleman presented the Bar's Strategic Plan for 2015-18 and the board unanimously approved it.

33. Special Appointments

The board appointed Mark A. Perry of Delray Beach to a three-year term on the Florida Rural Legal Services, Inc., Board of Directors, and Kerry Ann Schultz of Navarre, Mercedes G. Hale of Wesley Chapel, Thomas D. Wright of Marathon, Stephen B. Bull of Palm Beach Gardens, and G. Thomas Ball of Orlando to two-year terms on the Florida Realtor-Attorney Joint Committee.

34. Time and Place of Next Meeting

There being no further business before the board, President Coleman adjourned the meeting at 3:27 p.m. The next board meeting is January 30 at Hotel Duval in Tallahassee.

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