

The Florida Bar Board of Governors  
January 28, 2011, 9 a.m.  
Hotel Duval  
Tallahassee, Florida

**1. Roll Call**

Mayanne Downs, President  
Scott G. Hawkins, President-elect  
Lawrence E. Sellers, Jr., 2nd Circuit  
William H. Davis, 2nd Circuit  
Clay A. Schnitker, 3rd Circuit  
S. Grier Wells, 4th Circuit  
John J. Schickel, 4th Circuit  
Andrew B. Sasso, 6th Circuit  
Murray B. Silverstein, 6th Circuit  
Carl B. Schwait, 8th Circuit  
Mary Ann Morgan, 9th Circuit  
Daniel L. DeCubellis, 9th Circuit  
Scott M. McMillen, 9th Circuit  
Ramon A. Abadin, 11th Circuit  
David Rothman, 11th Circuit  
Leslie Jean Lott, 11th Circuit  
Michael J. Higer, 11th Circuit  
Dennis G. Kainen, 11th Circuit  
Juliet Roulhac, 11th Circuit  
John H. Hickey, 11th Circuit  
Dori Foster-Morales, 11th Circuit  
L. Norman Vaughan-Birch, 12th Circuit  
William J. Schifino, Jr., 13th Circuit  
Lansing C. Scriven, 13th Circuit  
Gwynne Alice Young, 13th Circuit  
Michael S. Hooker, 13th Circuit  
John W. Manuel, 14th Circuit  
Gregory Coleman, 15th Circuit  
Michelle R. Suskauer, 15th Circuit  
Edwin A. Scales, 16th Circuit  
Walter G. Campbell, Jr., 17th Circuit  
Eugene K. Pettis, 17th Circuit  
Jay Cohen, 17th Circuit  
Timothy A. Bailey, 17th Circuit  
John M. Stewart, 19th Circuit  
Laird Lile, 20th Circuit  
Richard Arthur Tanner, Out of State  
Brian D. Burgoon, Out of State  
Renée Thompson, Young Lawyers Division President

Sean T. Desmond, Young Lawyers Division President-Elect  
Arnell Bryant-Willis, Public Member  
Alvin V. Alsobrook, Public Member

**Members Absent:**

Stephen H. Echsner, 1st Circuit  
Denise A. Dymond Lyn, 5th Circuit  
Sandra C. Upchurch, 7th Circuit  
C. Richard Nail, 10th Circuit  
David C. Prather, 15th Circuit  
Lisa S. Small, 15th Circuit  
Nancy W. Gregoire, 17th Circuit  
Clifton A. McClelland, Jr., 18th Circuit  
Scott W. Weinstein, 20th Circuit  
Ian M. Comisky, Out of State  
Eric L. Meeks, Out of State

**2. Guests**

Manny Garcia-Linares, Past President of the Cuban American Bar Association

**3. Staff in Attendance**

John F. Harkness, Jr., Executive Director  
John Berry, Director, Lawyer Regulation  
Allen Martin, Director, Finance and Accounting  
Ken Marvin, Director, Lawyer Regulation  
Paul Hill, General Counsel  
Mary Ellen Bateman, Division Director, Ethics and Advertising, UPL, and Special Projects  
Elizabeth Clark Tarbert, Ethics Counsel  
Lori Holcomb, Unlicensed Practice of Law Counsel  
Kathy Bible, Assistant Ethics Counsel  
Francine Walker, Director, Public Information and Bar Services  
Roselyn Scott, Assistant to the President  
Gary Blankenship, Senior Editor, Florida Bar *News*

**4. Invocation and Pledge of Allegiance**

Board member Arnell Bryant-Willis delivered the invocation and led the board in the Pledge of Allegiance.

**5. Appearance by Tallahassee Bar President Terrell C. Madigan**

Madigan, introduced by board member Bill Davis, welcomed the board to Tallahassee and discussed local events held in conjunction with the board's visit.

## **6. Approval of the Minutes**

The board approved the minutes from its December 10, 2010, meeting in Amelia Island. The approval included ratifying the following Executive Committee actions:

- At a December 20, 2010, meeting, the committee approved an additional \$30,000 for legislative assistance for the 2011 session and a contract with G. Herb Sheheane for legislative services.

- At a January 3, 2011, meeting, the committee voted not to oppose the following two legislative positions sought by the Real Property, Probate and Trust Law Section. The positions had been reviewed by the Legislation Committee but through an oversight not voted on at the board's December meeting:

- Supports legislation permitting the reformation and modification of wills in Florida to provide for an award of taxable fees and costs, including attorneys' fees and guardian ad litem fees in such actions, including creating sections 732.615, 732.616, and 733.1061.

- Supports amendments providing that the revocation of a will or a revocable trust can be challenged on the grounds of fraud, duress, mistake or undue influence after the death of the testator or settlor, including proposed amendments to F.S. 732.5165, 732.518, 736.0207, 736.0406 and 744.441.

- At a January 5, 2011, meeting, the committee approved the Family Law Rules Committee filing comments with the Supreme Court on proposed *Fla.R.Jud. Admin.* 2.516 – E-mail Service Rule.

- At a January 21, 2011, meeting, the Executive Committee voted not to prohibit the Business Law Section from taking this legislative position: Supports amendments to section 608.433, F.S., to clarify the charging lien and other rights of judgment creditors with respect to members of Florida Limited Liability Companies (LLC's). The vote also included not prohibiting the Real Property, Probate and Trust Law Section from taking this legislative position: Supports clarification that the charging order lien is the sale and exclusive remedy which judgment creditors of a member use to satisfy a judgment from a judgment debtor's membership interests in a multi-member LLC, including an amendment to F.S. §60B.433.

## **7. Approval of Consent Agenda**

The board approved the consent agenda as presented. That included:

- Appointing Linda Joy Sullivan as a public member to UPL Committee 11A and Maithe Gonzalez as an attorney member to UPL Committee 11D.

- Upholding the 5-0 decision of the Board Review Committee on Professional Ethics in Advertising Appeal 10-03209 to affirm the Standing Committee on Advertising decision that the language "we can help . . . get your medical bills paid. . . . And we can even help take care of your lost wages" promises results, in violation of 4-7.2(c)(1)(G).

- Approved on second reading an amendment to Bar Rule 10-7.2(c)(3) Proceedings For Indirect Criminal Contempt: Clarifying that in a proceeding for indirect criminal contempt the date and time of the hearing to determine guilt or innocence shall be set at the arraignment and the respondent shall enter a plea.

- Approved on second reading an amendment to Standing Board Policy 16.20 Qualifications for UPL Committee Membership: Allowing for appointment of circuit UPL committee members between meetings of the Board of Governors.
- Approved the Third Amendment to the Pension Plan for Bar employees, the Third Amendment to the Deferred Compensation Plan, the Secretary's Certificate to the Executive Committee of the Board of Governors on the pension plan changes, and the Summary of Material Modifications to the Pension Plan related to the third amendment.

#### **8. Appearance by ABA President Steve Zack**

Zack spoke on the necessity of adequate funding for the court system, and the necessity to educate the public about civics, including the importance of the judicial branch to the proper functioning of government. He asked the board for support on three initiatives: having an Opening of the Legal Year Ceremony for Florida courts to help promote the role of the legal system; having a commission on civics to promote civics education including the importance of access to the legal system; and support for the Katrina rule, which allows out-of-state lawyers to come in and provide emergency assistance after a disaster.

#### **9. Appearance by Florida Bar Foundation President John Noland**

Noland recounted the programs funded by the Foundation to help the poor who need legal services, law students who might be interested in a career in legal aid, and to improve the administration of justice. He also reported how low interest rates have devastated the Foundation's IOTA income. Three years ago, the Foundation got \$44 million, two years ago that dropped to \$11.5 million, last year it declined further to \$5.5 million and it may be less than that this year. The Foundation created reserves when its income was high, but Noland said it didn't anticipate the current recession would be as severe or as long lasting. The Foundation is now seeking contributions to make up for the reductions in IOTA funding, but still faces cutting grants to legal aid agencies in 2012 and 2013.

#### **10. Report of the Trial Lawyers Section**

Section Chair Clifford Higby said the section was trying to act as a voice of reason and balance in legislative matters, and to defend the court system. The section is also working on its publications and CLE programs to make them relevant and useful to section members. A Trial Lawyers Section Summit has been started and is expected to be annual, he said. Higby paid tribute to Glenn Burton, the section chair-elect who died in a car crash two days before the 2009 Bar Annual Convention, and immediate past Chair Bob Mansbach, who died of cancer in December.

#### **11. Public Reprimands**

President Downs administered three public reprimands.

#### **12. Report of the Administrative Law Section**

Chair Cathy Sellers reported on the section's membership recruitment efforts, focusing on young lawyers, and its ongoing CLE programs. The section is also working on

amendments to the state's rules of administrative procedure. The section is also continuing its pro bono efforts to help the developmentally disabled in administrative hearings that affect their benefits.

### **13. Budget Committee Report**

Chair Dan DeCubellis recommended and the board approved a one-time appropriation of \$20,000 to the Florida E-Filing Authority to help set up the statewide Internet portal for the court's new e-filing system. Chair-elect William Schifino noted the committee will be presenting the 2011-12 budget to the board at its March 25 meeting.

### **14. Investment Committee Report**

Chair Ian Comisky, appearing via video recording, reported that the Bar had an 11.3 percent annual return for 2010 for its long-term investments. The board approved the committee's recommendation to change the manager of its large cap growth fund from Turner Large Cap Growth Fund to Winslow Capital. Comisky said the committee is looking at a recommendation to increase by 1 percent its investment in mid cap, small cap, and high yield funds and by 0.5 percent in fixed income investments. That would be offset by a 3 percent reduction in international funds and the rest would be from a reduction in cash.

### **15. Executive Session**

The board went into executive session to discussion disciplinary and other confidential matters.

### **16. Legislation Committee Report**

Chief Legislative Counsel Steve Metz reported that the Bar will have a challenging legislative session with a new governor and several new legislators combined with an extraordinarily tight budget.

Committee Chair Ed Scales said the committee recommended, and the board agreed not to prohibit, the following legislative position for the Business Law Section: Supports clarification of Florida Statutes, Section 213.758 "Transfer of tax liabilities" in order to streamline the transfers of businesses and stocks of goods.

The committee recommended and the board found it within the Bar's legislative purview and adopted the following legislative position, with the proviso no Bar resources will be used in its advocacy: To adequately promote and protect the legal rights and remedies of children, The Florida Bar supports the development of a comprehensive system and structure for child representation that includes Guardian and litem representation, Public Defender representation, and legal representation by both government paid counsel and pro bono attorneys by way of legislation substantially similar to the draft legislation approved by the Standing Committee on the legal Needs of Children on November 16, 2009 which would create a statewide program of legal representation with some or all of the following components:

- 1) no child shall be denied the right to have the representation by an attorney for the child appearing on the child's behalf in a dependency case whether volunteer or state paid;
- 2) provides for representation that is paid for by the state of Florida in conjunction with local, foundation or pro bono support in certain critical categories of dependency cases, recognizing that the ability to create such mandatory representation depends on the amount of new and dedicated revenue appropriated by the Florida Legislature and subject to the protection of the funding of the GAL program and funding for the Courts; and/or
- 3) permits representation of children in other discretionary categories of children in dependency cases and for other children, recognizing that the ability to create such discretionary representation depends on the amount of new dedicated revenue appropriated by the Florida Legislature and subject to the protection of the current funding of the GAL program and funding for the Courts.

The committee recommended and the board found it within the Bar's purview and adopted an amendment to the previous legislative position on funding the court system to include adequate funding for court clerks. That position now reads: 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.

Scales brought two items to the board that had not been reviewed by the Legislation Committee. After discussion, the board voted to find within the Bar's legislative purview and to support amending Article V, Section 8 of the Florida Constitution, to increase the mandatory retirement age for justices and judges, from 70 years to 75 years of age. President Downs said that could help the Bar preserve judicial retirement benefits as the higher retirement age would cut overall judicial retirement costs for the state.

In order to give the Young Lawyers Division more time to comment, the board voted to table taking a position on a proposed constitutional amendment to increase from five to 10 the years of Bar membership required for a lawyer seeking a trial court judgeship.

### **17. Appearance by Florida House Speaker Dean Cannon**

Speaker Cannon told the board the state faces a severe budget problem that will be a challenge. He said he is a strong supporter of the separation of powers among the branches of government, but that each branch must respect the other branches' prerogatives. Cannon called for the Legislature to have more authority over constitutional amendments it places on the ballot and for streamlining criminal appeals. He said beyond the current year's budget difficulties, expanding Medicaid coverage will strain future state budgets.

### **18. President's Report**

President Downs reported she has had inquiries about private lawyer referral services, including from state legislators. She said a special committee is continuing to look into

that issue. She reiterated that the Bar will keep on pushing for court funding by emphasizing that an efficient court system is essential to Florida being a business-friendly state.

#### **19. Appearance by Chief Justice Charles Canady**

Chief Justice Canady warned that the coming year could be the toughest financially for the court in a series of rough years, and that it will be essential for The Florida Bar to continue working close with the judicial branch to obtain adequate funding for the court system. He added that all parts of the judicial system – clerks, state attorneys, public defenders, and others – need adequate funding.

#### **20. Communications Committee Report**

Board member Jack Schickel, who chairs a subcommittee on the Bar's website, showed a preview to the board on planned website improvements. He said those upgrades are planned for May 1 and include a cleaner presentation, faster navigation around the website, an improved Find-a-Lawyer function, and a way to easily backtrack through the website. Committee Chair Murray Silverstein encouraged board members to nominate candidates for the Bar's Citizens Forum and asked board members to participate in the Benchmarks program – which focuses on civics education for adults – and created by the Bar's Member Outreach Committee. He also reported the committee is working on creating an application for smart phones and other compact computer devices that will allow Bar members to download the Bar *News* in an easily viewable format.

#### **21. Program Evaluation Committee Report**

Chair Greg Coleman presented on first reading revisions to the bylaws of the Entertainment, Arts and Sports Law Section. He and Jay Cohen, who chairs a subcommittee on assisting lawyers hurt by the economy, presented a recommendation for the Lawyers Helping Lawyers program, which will have the Bar offer employment, law office management, trust accounting help, practice information, and other services to help attorneys affected by the ongoing recession. The program will be formally started with the expected May 1 unveiling of the Bar's revised website. The board unanimously approved creating the program. Coleman also reported that the Bar's Special Committee to Study Mandatory Paralegal Regulation will report first to the PEC and then the board at the board's March meeting on its recommendations. Those include that lawyers not be allowed to refer to their staffers as paralegals in any communications unless those staffers are Registered Florida Paralegals.

#### **22. Certification Plan Appeals Committee Report**

Chair Norman Vaughn-Birch reported on the 11<sup>th</sup> U.S. Circuit Court of Appeals ruling in the *Zisser* case, which upheld the use of confidential peer reviews.

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

Chair Carl Schwait reported that the committee received input from the Citizens Forum and from a public comment meeting on its proposed rewrite of the Bar's advertising

rules. As a result, the committee expects to do some significant rewriting of its recommendations, which will be presented to the board later in the year.

#### **24. Special Committee on Diversity and Inclusion**

Chairs Dori Foster-Morales and Arnell Bryant-Willis reported that the committee had received 29 proposals totaling \$56,000 in requests for its local bar diversity grant program. They said the committee would be meeting shortly after the board's meeting to review the requests.

#### **25. Young Lawyers Division Report**

YLD President Reneé Thompson reported that the division's annual Government Symposium attracted about 200 online viewers and can be downloaded from the section's website. The Law Student Division is planning a community service day on February 19 involving all of the state's 11 law schools and the student division is looking for additional pro bono projects. The YLD had its annual Affiliate Outreach program in mid-January, which attracted 38 local affiliates. The division handed out \$40,000 in grants as part of that program. Thompson announced that Paige Greenlee of Tampa has become the YLD president-elect designate.

#### **26. Special Appointments**

The board reappointed Douglas M. Halsey and appointed David B. Rothman to three-year terms on The Florida Bar Foundation Board of Directors for terms beginning July 1.

#### **27. Disciplinary Procedure Committee Report**

Chair Andy Sasso said the committee is working with The Florida Bar Foundation on trust accounting forms to add to the comments of the Bar's trust accounting rules to help lawyers. The committee is also looking at the definitions of community and civic service required as part of the rehabilitation of suspended lawyers. In addition, the committee is working on trust accounting compliance language on the Bar's annual membership fee forms to make it clear that Bar members must answer the trust accounting questions.

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

President-elect Hawkins announced he planned to have another Bar legislative reception next year, following the success of the one held two days before the board meeting.

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

There being no further business, President Downs adjourned the meeting at 3 p.m. The board's next meeting is March 25 at the Disney Yacht and Beach Club in Orlando.

## SUBJECT INDEX

ADMINISTRATIVE LAW SECTION REPORT .....	4
APPEARANCE BY ABA PRESIDENT STEVE ZACK .....	4
APPEARANCE BY CHIEF JUSTICE CHARLES CANADY .....	7
APPEARANCE BY FLORIDA BAR FOUNDATION PRESIDENT JOHN NOLAND.....	4
APPEARANCE BY FLORIDA HOUSE SPEAKER DEAN CANNON .....	6
APPEARANCE BY TERRELL C. MADIGAN, PRESIDENT, TALLAHASSEE BAR ASSOCIATION.....	2
BOARD REVIEW COMMITTEE ON PROFESSIONAL ETHICS REPORT.....	7
BUDGET COMMITTEE REPORT .....	5
CERTIFICATION PLAN APPEALS COMMITTEE REPORT .....	7
COMMUNICATIONS COMMITTEE REPORT .....	7
CONSENT AGENDA APPROVAL.....	3
DISCIPLINARY PROCEDURE COMMITTEE REPORT.....	8
EXECUTIVE SESSION.....	5
GUESTS .....	2
INVESTMENT COMMITTEE REPORT.....	5
INVOCATION AND PLEDGE OF ALLEGIANCE.....	2
LEGISLATION COMMITTEE REPORT .....	5
MINUTES APPROVAL.....	3
PRESIDENT'S REPORT .....	6
PRESIDENT-ELECT'S REPORT .....	8
PROGRAM EVALUATION COMMITTEE REPORT.....	7
PUBLIC REPRIMANDS .....	4
ROLL CALL.....	1
SPECIAL APPOINTMENTS.....	8
SPECIAL COMMITTEE ON DIVERSITY AND INCLUSION REPORT .....	8
STAFF IN ATTENDANCE .....	2
TIME AND PLACE OF NEXT MEETING.....	8
TRIAL LAWYERS SECTION REPORT .....	4
YOUNG LAWYERS DIVISION REPORT.....	8