

The Florida Bar Board of Governors
July 25, 2014
The Breakers
Palm Beach, 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
Sandra C. Upchurch, 7th Circuit
Carl B. Schwait, 8th Circuit
Paul Louis SanGiovanni, 9th Circuit
Wayne L. Helsby, 9th Circuit
C. Richard Nail, 10th Circuit
Dori Foster-Morales, 11th Circuit
Leslie J. Lott, 11th Circuit
Michael J. Higer, 11th Circuit
Dennis G. Kainen, 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
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
Timothy J. Koenig, 16th Circuit
Walter G. Campbell, Jr., 17th Circuit
Diana Santa Maria, 17th Circuit
Lorna E. Brown-Burton, 17th Circuit
Jay Cohen, 17th Circuit
Adam Glenn Rabinowitz, 17th Circuit
John M. Stewart, 19th Circuit
Laird A. Lile, 20th Circuit
Marcy L. Shaw, 20th Circuit
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
Winston W. Gardner, Jr., Public Member
Anthony Holloway, Public Member

Members Absent

Bruce W. Robinson, 3rd Circuit
Mary Ann Morgan, 9th Circuit
Roland Sanchez-Medina, Jr., 11th Circuit
Steven W. Davis, 11th Circuit
Michael S. Hooker, 13th Circuit
O. John Alpizar, 18th Circuit
Richard A. Tanner, Out of State

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, Disciplinary Procedure Committee 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
Hans Ottinot, Sr., City, County and Local Government Law Section

4. Welcome and JQC Report From Judge Krista Marx

Judge Marx welcomed the board to Palm Beach County. She serves on the Judicial Qualifications Commission and briefed the board on JQC activities and operations.

5. Invocation and Pledge of Allegiance

Board member Gary Lesser delivered the invocation and led the board in the Pledge of Allegiance.

6. Welcome From Palm Beach County Bar Association President Theo Kypreos

Kypreos, accompanied by PBCBA Executive Director Patience Burns, offered assistance to board members for anything they need in Palm Beach County and noted the PBCBA is very active with several programs. He also noted that Bar President Greg Coleman and Supreme Court Chief Justice Jorge Labarga are both from Palm Beach County.

7. Recognition of New Board Members

New board members Fred D. Franklin, Wayne L. Helsby, and Gordon J. Glover were introduced to the board.

8. Introduction of Citizens Advisory Committee Members

Committee members Linda Goldstein, Steven D. Deneke, Judy Doyle, Ralph MacNamara, Ralph Merrit, Sharon B. Middleton, Richard A. Sarner, Paulette Hatchett Simms, and Lawrence W. Tyree introduced themselves to the board.

9. Swearing In of New and Reelected Board Members

President Coleman administered the oath of office to new and returning board members who had not taken the oath at the Bar's June Annual Convention.

10. Minutes Approval

The board approved the minutes from its May 23, 2014 meeting. The approval included ratification of its grievance minutes from the May 23, 2014 meeting, and of the following Executive Committee Actions:

- On May 28, the Executive Committee voted 9-0 to recommend approval of an addition to the three-year-cycle rule amendments sent to the Supreme Court earlier by the Traffic Court Rules Committee.
- On June 13, the Executive Committee voted 11-0 to appoint John M. Shea to the Florida Legal Services, Inc., Board of Directors to fill an unexpired term of a board member who resigned to become an officer in the organization.

11. Consent Calendar Approval

Board Review Committee on Professional Ethics Chair Carl Schwait announced that item 5b(i) had been withdrawn from the agenda and will be considered at a future meeting. With that change, the board approved the Consent Agenda. The vote includes:

- Appointing R. Joseph Childs as a public member to UPL Committee 10.
- Approving the Standing Committee on Advertising's ratification of a staff action refusing to issue an opinion on an attorney's contract with Legal Match on the grounds the inquiry involves interpretation of a contract and a determination of the validity of the contract in advertising inquiry 33771..
- Approving an amendment to Bar Rule 1-3.7, Reinstatement to Membership (CLER and BSCR Additions and effective date): Within subdivision (f), adds CLER and BSCR delinquency so that a lawyer will not be disciplined for practicing law while delinquent if reinstatement occurs within 60 days of the delinquency and changes "accomplished" to "approved" and changes "shall be deemed to relate back to the date" to "is effective on the last business day." Non-substantive changes conform to the Supreme Court Style Guide.

- Approving an amendment to Rule 3-5.1 Types of Discipline (Administrative Proceedings, Notice to Clients, Restitution): Within subdivision (h), adds a provision that a disbarred or suspended lawyer must notify all state, federal, or administrative bar associations of which the lawyer is a member that the lawyer has been suspended or disbarred. Also within subdivision (h), adds that in the affidavit furnished to the bar the lawyer must include the telephone numbers of all persons and entities who have been notified of the lawyer's disbarment or suspension. Within subdivision (j) adds that a member who fails to comply with a restitution agreement or order is delinquent; and that the respondent must provide to the bar the names, addresses, telephone numbers and email addresses (where available) of all individuals or entities to whom the respondent owes restitution. Also includes style changes to other sections of the rule to comply with the Supreme Court Style Guide.

- Approving an amendment to Rule 7-2.4, Prerequisites to Payment: Amends language regarding good standing by listing the status where the lawyer would no longer be in good standing, adds claims against lawyers placed on the incapacity list not related to misconduct as eligible for payment.

- Approving an amendment to Client Security Fund Regulation A3, Claim Processing, Amends language from disbarred or resigned to status as a member of The Florida Bar revoked or terminated to encompass the different proceedings which may be used to terminate a lawyer's license to practice law.

- Approving amendments to the Bylaws of the Health Law Section: Article VII of the Health Law Section Bylaws were amended throughout for clarity and consistency with the Supreme Court of Florida Style Guide. Within Article VII, Section 1, subsection (e), the Health Law Section proposes changes in determining past health law section participation as a basis for nomination for an executive council position. Within Article VII, Section 5, the Health Law Section proposes to amend its bylaw to individually vote for candidates for termed executive council seats, and in the event the seats remain unfilled after the election, the seats will be filled by election of the executive council at its next scheduled meeting. They will vote by voice vote initially, and if the voice vote is unclear, a hand vote will occur for clarity. Within Article VII, Section 6, subsection (c), the Health Law Section proposes to amend its bylaws to individually vote for officers on the executive council. They will vote by voice vote initially and require a simple majority vote for those entitled to vote at the meeting. In the event any section member disputes the chair's determination of whether a candidate has received a simple majority of favorable votes in a voice vote, that election will be completed by a hand vote for clarity. Non-substantive edits proposed to conform to the Supreme Court of Florida style guide.

- Approving Florida Bar legislative consulting contracts with: Metz, Husband & Daughton; Smith Bryan & Myers; and Pamela Burch Fort.

- Approving the Business Law Section legislative consulting contract with Aimee Diaz Lyon of Metz, Husband & Daughton.

- Approving the Trial Lawyers Section legislative consulting contract with Bob Harris of Messer, Caparello.

- Approving revisions to the petition for reinstatement forms for lawyers seeking to end their inactive status, end their membership fee delinquency, or end their retirement status.

- Approving adding to the Membership Benefits Program the services of TheLaw.TV, a firm which helps lawyers and law firms produce education videos which can be placed online to reach potential clients.

12. Introduction of Young Lawyers Division Board of Governors

Members of the YLD Board of Governors introduced themselves and were welcomed to the meeting by President Coleman.

13. Public Reprimands

President Coleman administered three public reprimands.

14. Young Lawyers Division Report

YLD President Michael Orr said the division is working on a wide variety of issues, including developing a number of webpages to educate its membership about judicial nominating commissions, judicial campaigns, legislative matters, and other issues. The division is also expanding its webinars and the division is improving the technology it uses in delivering online seminars. The division is also improving its social media presence and is joining with the General Practice, Solo and Small Firm Section on a technology seminar at the Midyear Meeting.

15. Budget Committee Report

Chair Michael Higer presented three rollover budget amendments from the 2013-14 Bar budget to the 2014-15 Bar budget. The three amendments were for \$420,000 for upgrading the Bar's website, \$12,385 for Justice Teaching grants, and \$10,500 for diversity voluntary bar grants. Higer also reported that the Budget Committee has begun working on the 2015-16 Bar budget, which will be presented at the board's March 2015 meeting. He said the committee will undertake two projects, one a thorough review of the Bar's budgeting process and how it meshes with the Bar's long-range plans along with a review of Standing Board policies that affect the budget, and an examination of the Bar's Annual Convention.

16. Florida Lawyers Mutual Insurance Company Report

William Loucks, president and CEO, and Ray Ferrero, chair, of FLMIC recounted the history of FLMIC and how it helped Florida lawyers counter a malpractice liability insurance crisis for lawyers in the mid- and late-1980s. Ferrero announced that in recognition of the Bar's role in helping create FLMIC that the company would begin this year funding an endowment to the Bar to promote and enhance professionalism among Florida lawyers.

17. Investment Committee Report

Chair Ian Comisky reported that the Bar's investment portfolio rose 3.25 percent in the second quarter and continued to perform well. He said that the committee recommended, on advice of the Bar's financial advisors, that the Bar increase its maximum allowed investment in its liquid alternatives category from 6 to 8 percent. The board unanimously approved the recommendation. Comisky said investment ranges for other funds would be adjusted to offset the change to the liquid alternatives category.

18. Florida Bar Foundation Loan

Chair Comisky, on behalf of the Investment Committee, reported on the negotiations with The Florida Bar Foundation for a \$6 million loan to help the Foundation continue services to the poor until interest rates rise and improve income from its IOTA program. Loan provisions include that

the Foundation may draw an initial \$3 million as soon as August 15, 2014, or later, and a second \$3 million withdrawal one year after the first. One million dollars of each withdrawal must be dedicated to technology to improve efficiencies in delivering legal services to the poor. The Foundation will begin paying annual interest payments on the first anniversary of the initial loan and principal repayments, in a minimum amount of \$375,000 quarterly, will begin no later than January 2, 2018. The loan must be repaid no later than seven years after the initial disbursement and the Bar will request that future IOTA income be used to secure the loan. After discussion, the board approved the loan with one dissent.

19. Criminal Procedure Rules Committee Report

Vice Chair Brian Fernandes presented both three-year-cycle rule amendments and out of cycle amendments, which were recommended for approval by the board by a 36-0 vote.

20. Florida Board of Bar Examiners Report

FBBE member Scott Richardson gave an overview of the examiners' operations, including that they meet eight or nine times a year around the state and members spend conservatively 300 hours a year on FBBE business. He noted that in 1994, 2,000 people took the July bar exam, a number that grew to 2,700 in 2004 and 3,500 this year. He said the board spends the bulk of its time checking character references and he outlined the investigative and hearing process the board follows when questions are raised about Bar applicants.

21. Juvenile Court Rules Committee Report

Chair Deborah Schroth presented the committee's three-year-cycle rule amendments, which the board recommended for approval by a 34-0 vote.

22. Audit Committee Report

Chair Paul SanGiovanni reported that the committee has other duties besides the annual audit, including disaster preparation and recovery. The committee is reviewing the Bar's disaster recovery plan and how its IT systems would recover from a hurricane or other disruption. He also reported that the committee will be sending out an RFP for next year's audit.

23. Legislation Committee Report

Chair Mike Tanner reported that all Bar, section, and committee legislative positions had expired on June 30 and that several sections had presented previous legislative positions to the committee, seeking to renew them for the 2014-16 biennium. He recommended the board not oppose the positions presented by the Administrative Law, Appellate Practice, Criminal Law, Elder Law, Entertainment, Arts and Sports Law, Family Law, Government Lawyer, Health Law, Public Interest Law, Real Property, Probate and Trust Law, and Workers Compensation sections and the Out-of-State Division. The board approved that recommendation on a voice vote with one dissent. In addition, board member Winston Gardner opposed the RPPTL position of amending F.S. Chap. 718 and Chap. 719 "to require that engineers, architects and other design professionals and manufacturers warrant the fitness of the work they perform on condominiums or cooperatives." Tanner said he expects to have requests for renewals of legislative positions from the Trial Lawyers, Tax, and Business Law sections and the Young Lawyers Division at the

Board's December meeting. He also said the committee was continuing to study which Bar positions should be adopted for the 2014-16 biennium.

24. Program Evaluation Committee Report

Chair David Prather presented the committee's recommendation to approve rule amendments necessary to create a new board certified category for Juvenile Law. The board unanimously approved the amendments. He presented two items on first reading to the board:

- 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.

- Clients' Security Fund Regulation D 2, Payment and Caps: Provides that misappropriation claims approved in the amount of \$1,000 or less will be paid on approval.

Prather announced the committee's projects and evaluations for the coming year. They include: a complete evaluation of the Board of Legal Specialization and Education, which oversees certification, and the 24 existing certification areas; reviewing Standing Board Policies; reviewing the Administrative Law Section; considering the request from the Animal Law Committee to become a section: studying a proposal that lawyers who are in Florida because their military spouses are stationed here be admitted temporarily to the Bar without taking the bar exam; and at the request of President Coleman, looking at the unethical solicitation of business by lawyers.

25. Family Law Section Amicus Curiae Brief Request

President Coleman presented the request from the Family Law Section to file an amicus brief in a divorce case pending at the Second District Court of Appeal. The case involved a same-sex female couple who were married in Massachusetts in 2010 and then moved to Florida. They sought a divorce in 2013 and reached a mediated settlement. But the judge in the case ruled because the state constitution and statutes do not allow same-sex marriages in Florida or recognize same-sex marriages performed in other states, she was powerless to grant a divorce. Coleman said the concerns raised were not about the pros and cons of same-sex marriage but rather that the ruling denied access to the courts, with potentially devastating effects especially on any affected children. In a series of votes, the board:

- Found the issue was outside the permissible legislative or ideological activity of The Florida Bar.
- Found the issue was in the purview of the Family Law Section.
- Determined the positions taken in the proposed amicus brief did not contravene any positions taken by the Bar.
- Determined the brief would not cause the potential of deep philosophical or emotional division among a substantial segment of the membership of the Bar.
- Agreed the Family Law Section may file the amicus brief.
- Waived any technical violations in filing the brief because of the short time to file it.
- Authorized the Executive Director and General Counsel to review the brief on the board's behalf and further coordinate with the Executive Committee before it is filed.

26. Board Review Committee on Professional Ethics Report

Chair Carl Schwait reported the committee was delaying until the board's December meeting making recommendations on further changes to the board's guidelines for advertising past results

in lawyer billboard, television, and radio advertisements. He noted the guidelines had already been changed in March after they were approved in December, and said the committee wanted to get more input before making any more amendments so that further changes would not be needed. He noted the removal of item 5b(i) from the consent agenda was related to the guidelines issue.

27. Rules Committee Report

President Coleman reported that consideration of amendments to Rule 4-4.2, Communication with Person Represented by Counsel, had been postponed until the board's December meeting to get more input from Bar members.

28. Communications Committee Report

Chair John Stewart reported the committee approved a pilot program allowing the Young Lawyers Division to use Instagram as part of its social media program. He said the committee discussed a variety of issues with the Citizens Advisory Committee, including the petition filed at the Supreme Court to raise Bar annual membership fees to fund legal aid programs. He said the committee is working on a communications plan for 2016, reviewing the Bar's current social media policy, and looking for ways to improve letting the Bar's sections, divisions, and committees communicate and collaborate among themselves and receive Bar information. He said the committee is working with the Young Lawyers Division on a webinar on using social media outlets like Facebook, Twitter and LinkedIn. He said the committee is also working on a seminar on using LinkedIn.

29. Disciplinary Procedure Committee Report

Chair Ron Ponzoli presented amendments to Rule 3-5.1 and said the committee recommended waiving second reading so the amendments to be included in the Bar's biennial rules submission to the Supreme Court. The changes amend "subpart (h) of Rule 3-5.1 to state that all respondents who are suspended, even if they have already served all or part of their suspension when a court order is issued regarding the suspension, must furnish a copy of the court order or notice of commencement of the suspension to all of respondent's clients with pending matters, all courts, tribunals and adjudicative agencies in which respondent is counsel of record, and all opposing counsel and co-counsel in any of these matters. Also includes style changes to conform to Supreme Court Style Guide." The board unanimously approved the amendment and waiving second reading. Ponzoli presented on first reading an amendment 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." Ponzoli also reported the committee had approved an amendment to rule 5-1.1(g) to correct the address of The Florida Bar Foundation.

30. Leadership Academy Report

Board member Renée Thompson reported that the 59 members of the initial Leadership Academy class graduated during the Bar's Annual Convention in June, and the second class has already had its first two meetings, including a joint meeting with the Bar's Leadership Conference.

31. Special Appointments

The board selected Pedro Allende of Miami for a two-year term on the ABA House of Delegates, beginning at the end of the August ABA convention.

32. Comments for the Good of the Order

Board member Sandra Upchurch, who is leaving the board to become a circuit judge, praised ongoing Bar efforts to have lawyers help each other and to engender greater respect among lawyers. She thanked board members for their friendship and predicted that the board will have even more diversity over the next five years.

33. Executive Session

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

34. Time and Place of Next Meeting

There being no further business before the board, President Coleman adjourned the meeting. The next board meeting is October 24 at the Four Season hotel in Philadelphia.

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