

The Florida Bar Board of Governors
October 1, 2010, 8:30 a.m.
Roosevelt Hotel
New Orleans, LA

1. Roll Call

Mayanne Downs, President
Scott G. Hawkins, President-elect
Stephen H. Echsner, 1st Circuit
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
Sandra C. Upchurch, 7th Circuit
Carl B. Schwait, 8th Circuit
Mary Ann Morgan, 9th Circuit
Daniel L. DeCubellis, 9th Circuit
Scott M. McMillen, 9th Circuit
C. Richard Nail, 10th 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
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
Nancy W. Gregoire, 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
Scott W. Weinstein, 20th Circuit
Richard Arthur Tanner, Out of State
Eric L. Meeks, 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:

Denise A. Dymond Lyn, 5th Circuit
Juliet Roulhac, 11th Circuit
David C. Prather, 15th Circuit
Lisa S. Small, 15th Circuit
Clifton A. McClelland, Jr., 18th Circuit
Scott W. Weinstein, 20th Circuit
Ian M. Comisky, Out of State

2. Guests

Manuel A. Garcia-Linares, President, Cuban American Bar Association
Gigi Rollini, President, Florida Association for Women Lawyers
Deana H. Ingraham, President Virgil Hawkins Florida Chapter, National Bar Association

3. Staff in Attendance

John F. Harkness, Jr., Executive Director
Ken Marvin, Director, Lawyer Regulation
Mary Ellen Bateman, Division Director, Ethics and Advertising, UPL, and Special Projects
Elizabeth Clark Tarbert, Ethics Counsel
Rosalyn Scott, Assistant to the President
Gary Blankenship, Senior Editor, Florida Bar *News*

4. Pledge of Allegiance and Invocation

Board member Andy Sasso led the board in the Pledge of Allegiance and delivered the invocation.

5. Minutes Approval

The board approved the minutes from its July 23 meeting in Sarasota. The approval also included Executive Committee actions since the last board meeting:

- On July 27, the committee voted 11-0 to recommend approval for the Criminal Procedures Rules Committee's out-of-cycle filing of amendments to Rules 3.111, 3.704, 3.720, and 3.986. Changes for Rule 3.986 were necessary to conform to legislative changes, and the remainder were approved by the Rules Committee at earlier meetings.
- On August 17, the committee approved three separate items by a 12-0 vote:

- A stipulation in the bankruptcy case involving disbarred attorney Daniel Fox so claims from abandoned clients would not be discharged in the bankruptcy proceedings.
- Approving the Dade County Bar Association taking over lawyer referral services for Miami-Dade County beginning October 1.
- Approving allowing the Workers' Compensation Rules Advisory Committee to file comments and proposed revisions with the Division of Administrative Hearings and the Office of Judges of Compensation Claims on Rule 600-6.1 07(4), Fla. Admin. Code on verified petitions for attorneys' fees.
- On September 2, voting 11-1 to allow the Trial Lawyers Section to make an amicus appearance in *Charlie Crist et al v. Robert M. Ervin et al / Alex Sink et al v. Robert M. Ervin et al*, which challenged the constitutionality of sending some court filings fees to the state's general revenue fund. The committee voted 11-0 that the matter is outside the Bar's allowable legislative or ideological activities, within the section's areas of interest, and does not cause a deep philosophical or emotional division among Bar members.
- On September 9, the committee voted 8-0 to direct the Board Review Committee on Professional Ethics to continue its ongoing review of advertising rules, complete as much of that review as possible at its September 30 meeting, and adopt the approach recommended by Bar outside counsel Barry Richard. The committee also voted 8-0 to authorize Richard to represent to the court in the *Harrell* case that the advertising review is proceeding within the framework recommended by Richard.
- On September 14, the committee voted 12-0 to allow the Workers' Compensation Section to appear as an amicus in *B.F. v AMS Staff Leasing et al* and *Kauffman v. Community Inclusions*. By the same vote, the committee waived the section's violation of SBP 8.10(a)(5) and determined that the matter is outside the Bar's allowable legislative or ideological activities, within the section's areas of interest, and does not cause a deep philosophical or emotional division among Bar members.

6. Consent Agenda

The board approved the consent agenda without changes. Board members Greg Coleman and Michelle Suskauer recused themselves from the vote.

7. Out of State Division Report

Division President Michael Busenkell said the division works to assist out-of-state Bar members, primarily through CLE courses and networking opportunities. The section also opposes laws that discriminate against out-of-state members. Busenkell said the section offers a three-CLE credit course on professional obligations on its website. The section, which represents about 15 percent of all Bar members, is sending its monthly electronic newsletter to all out-of-state Bar members and is reaching out to law students as potential future division members.

8. Appellate Practice Section Report

Chair Raoul Cantero noted that most state bars don't have appellate sections. The section this year had a reception at the Conference of District Court of Appeal Judges and next year plans to have a joint education seminar with the conference.

9. Executive Session

The board went into executive session to discuss disciplinary cases and other issues.

10. Rules Committee Report

Chair Nancy Gregoire presented an amendment to rule 4-3.4 on second reading, which was approved by the board: Rule 4-3.4 Fairness to Opposing Party and Counsel (Paying Witnesses); Within subdivision (b), provides that a lawyer may pay a witness a reasonable amount to compensate for the witness' time in preparing for, attending, or testifying at proceedings.

Gregoire presented three items on first reading:

- Bylaw 2-5.2 Rules of Procedure: Deletes entire rule provision regarding procedures for adopting resolutions at the Bar's annual meeting.
- Rule 10-9.1 Procedures For Issuance Of Advisory Opinions On The Unlicensed Practice Of Law: Within subdivision (c), requires the standing committee to issue a formal advisory opinion despite a pending case or controversy under circumstances described by the Supreme Court of Florida in *Harold Goldberg v. Merrill Lynch Credit Corp.*, 35 So. 3d 905 (Fla. 2010). Within subdivision (f)(1), amends the public notice requirement for a hearing so that the newspaper advertisement, instead of including the full question presented, need only include a general description of the subject matter of the request along with the bar website and address where a full copy of the question presented can be obtained.
- Regulations of the Clients' Security Fund: New regulation and comment allow claims to be closed by staff with consent of the chair if the claim is clearly not covered by the Fund due to missing information.

11. Budget Committee Report

Chair Dan DeCubellis presented three budget amendments, which were approved by the board:

- \$1,800 for the Education Law Committee for expenses.
- \$2,100 for the Judicial Nominating Procedures Committee for expenses.
- \$50,000 to assist the Special Committee on Court Funding.

DeCubellis also reported that the Bar's 2009-10 budget realized a \$3.6 million surplus, instead of the \$600,000 deficit expected in initial budget projections.

12. Program Evaluation Committee

Chair Greg Coleman presented three items on first reading:

- BLSE Policy 5.05(h), Adult Civics Teaching Presentations: Reverses the order of subdivision (f) Executive Branch Service CLE Credit Policy and subdivision (g), Justice Teaching CLE policy; adds new subdivision (h), to allow participants in the Benchmarks: Raising the Bar on Civics Education program to receive 1 ethics credit hour per presentation, with a cap of 3 credit hours in a single 3-year CLER reporting cycle for such activity.

- Rule 6-25.2(e) Standards for Certification of a Board Certified State and Federal Government and Administrative Practice Lawyer, Definitions, Certification Committee: Within subdivision (e), reduces the minimum number of committee members in private practice from 3 to 2; replaces the requirement that at least 1 committee member be "employed" by a federal government entity with the requirement that at least 1 member have substantial experience with the Federal Administrative Procedure Act; establishes that at least 2 members have substantial experience in government litigation; also removes the requirement that the committee include at least 2 members whose state and federal government and administrative practice is primarily non-litigation and that all members should have experience in rulemaking and adjudication.

- Rule 6-25.5 Standards for Certification of a Board Certified State and Federal Government and Administrative Practice Lawyer, Manner of Listing Area of Concentration: Adds "Florida administrative practice" as a third option available for a member to abridge his or her board certification in state and federal government and administrative practice listing and sets the requirement for limiting the listing to this practice concentration.

On other matters, Coleman reported the committee recommended, along with the Communications Committee a new Law Day YouTube contest sponsored by the Law Related Education Committee. He also said the PEC has begun a review of what the Bar can do to help lawyers facing difficult economic times. The committee is to continue with its review of professionalism operations, the fee arbitration program, online applications for special Bar appointments, and the possibility of mandatory regulation of paralegals.

13. Legislation Committee Report

Chair Ed Scales reported that the Bar's top legislative priority will continue to be obtaining adequate funding for the court system. He also said that at the December board meeting the committee will be presenting for renewal some legislative positions that sunsetted after the 2008-10 biennium.

14. Disciplinary Procedure Committee

Chair Andy Sasso said the committee is continuing to work on a more accurate trust accounting compliance statement for lawyers in large firms who don't have control over the firms trust accounts. As an ancillary, he said the committee is working on forms, instructions, and perhaps computer software to help lawyers comply with trust accounting rules.

15. Young Lawyers Division Report

Board member and YLD President Renée Thompson recounted division efforts on basic skills courses, orientations at the state's 11 law schools, and grants for affiliates for courthouse improvements for children involved in legal cases. YLD board members participated in Stetson Law School's national pretrial competition and will be a part of November's minority mentoring picnic in Miami. Thompson reported that 30 percent of Bar members applying for certification are young lawyers. She also appealed to older Bar members to volunteer for the division's SCOPE program, which provides assistance for younger lawyers.

16. Investment Committee

Committee Vice Chair Clay Schnitker reported that returns from the Bar's long-term portfolio were up 7.9 percent for the third quarter of the year and 4.6 percent for the year as a whole. He noted that the board had earlier approved the committee recommendation that part of the portfolio be diversified into a "fund of funds" for hedge funds and managed futures. He said 5 percent of the portfolio is in managed futures and 5.7 percent in hedge funds. When the stock market declined by 4 to 5 percent in August, those funds rose about 5 percent, Schnitker said, and when the stock market rebounded in September, the funds rose about 1 percent.

17. Alternative Dispute Resolution Section Report

Board member Jake Schickel reported the nascent section had its first meeting at the September Midyear meeting, with about 40 section members in attendance. Around 300 lawyers have joined the section, which is more than the initial projections, he said.

18. Committee to Study the Decline in Jury Trials Report

Co-chair Jay Cohen said the committee met for the first time at the Midyear Meeting and had a wide-ranging discussion. It included ways to help young lawyers who might have difficulty getting trial experience. Co-chair David Rothman noted the number of judges has not kept up with the rising population and amount of casework, which makes it harder to have trials. He noted recent news reports about misconduct by government prosecutors, and said that would have never come to light if the cases had been settled with plea bargains instead of going to trial.

19. Communications Committee Report

Chair Murray Silverstein presented the Board of Legal Specialization and Education's strategic communications plan, which was approved by the board. The committee also recommended and the board approved spending \$1,000 for a YouTube contest for high school students for Law Day next year, as previously noted. The contest will ask students to post a video based on the Bar's Legal Guide for New Adults.

20. Rules of Judicial Administration Report

Board member Murray Silverstein presented the Rules of Judicial Administration's proposed Rule 2.516, which mandates using e-mail to serve case documents. After discussion, the board recommended approval of the rule by a vote of 36-3. The rule now goes to the Florida Supreme Court. The board also voted to include related rule changes in traffic and small claims rules (6.370, 7.050, and 7.080) in that package.

21. President's Report

President Downs noted that the new Past Presidents Advisory Council held its first meeting at the September Midyear Meeting, with 17 former presidents in attendance. She also praised the Reporters Workshop held in September as an outstanding way to educate journalists about the legal system. She said the Bar's main focus in the upcoming legislative session will remain on funding for the court system, including protecting retirement benefits for judges and justice system employees. She also talked about the

Bar's continuing diversity efforts, which led to a wide ranging discussion on the topic by board members. She also presented the recommendation from the Elections Committee that Standing Board Policy 2.20 on president-elect elections be suspended and instead the committee will meet with candidates to set the ground rules. That was approved by the board on a unanimous voice vote.

22. President-elect's Report

President-elect Hawkins reiterated President Downs' emphasis on the importance of diversity, especially sections and local bars identifying young lawyers who are potential leaders and grooming them for leadership positions. He also said the Bar's top legislative priority will continue to be court funding. He warned board members they may get calls from bar members who have become delinquent on their annual membership fees as the number is higher than normal.

23. Executive Director's Report

Executive Director Harkness reported that around 2,000 Bar members had failed to pay their annual membership fees. He also reported on the Bar's expanding use of online CLEs through the Bar website as a way to expand education availability to Bar members. He said since YLD basic skills courses became available online, the number of new lawyers suspended for failing to take the classes declined from around 25 a month to about two every two or three months.

24. Time and Place of Next Meeting

The board meets again December 10 at the Ritz Carlton in Amelia Island. There being no further business before the board, President Downs adjourned the meeting at 11:50 a.m.

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