

Florida Bar Board of Governors
December 9, 2016
Sandpearl Resort
Clearwater, Florida

1. Roll Call

William J. Schifino, Jr., President
Michael J. Higer, President-Elect
Stephen H. Echsner (01-01)
Lawrence E. Sellers, Jr. (02-01)
Bruce W. Robinson (03-01)
Fred D. Franklin, Jr. (04-01)
Michael G. Tanner (04-02)
Renée E. Thompson (05-01)
Joshua T. Chilson (06-01)
Sandra Fascell Diamond (06-02)
Sam N. Masters (07-01)
Carl B. Schwait (08-01)
Mary Ann Morgan (09-01)
Paul L. SanGiovanni (09-02)
Wayne L. Helsby (09-03)
C. Richard Nail (10-01)
Roland Sanchez-Medina, Jr. (11-01)
Dori Foster-Morales (11-02)
Leslie J. Lott (11-03)
Deborah B. Baker-Egozi (11-04)
Dennis G. Kainen (11-05)
Steven W. Davis (11-06)
John H. Hickey (11-07)
F. Scott Westheimer (12-01)
Thomas Roe Bopp (13-01)
Lansing C. Scriven (13-02)
Margaret Diane Mathews (13-03)
Michael S. Hooker (13-04)
John W. Manuel (14-01)
Adam T. Rabin (15-01)
Ronald P. Ponzoli, Jr. (15-02)
Michelle Renee Suskauer (15-03)
Gary S. Lesser (15-04)
Wayne LaRue Smith (16-01)
Jay Kim (17-01)
Diana Santa Maria (17-02)
Lorna E. Brown-Burton (17-03)
Jay Cohen (17-04)
O. John Alpizar (18-01)
John M. Stewart (19-01)

Marcy Lynn Shaw (20-02)
Edward Duffy Myrtetus (OOS-01)
Ian M. Comisky (OOS-02)
Eric L. Meeks (OOS-03)
Brian D. Burgoon (OOS-04)
Katherine Hurst Miller, YLD President
Zackary T. Zuroweste, YLD President-Elect
Lawrence Worley Tyree (PM-01)
Sharon B. Middleton (PM-02)

Members Absent

Melissa N. VanSickle (02-02)
Adam G. Rabinowitz (17-05)
Laird A. Lile (20-01)

2. Staff in Attendance

John F. Harkness, Jr., Executive Director
John Berry, Director, Legal Division
Adria Quintela, Director, Lawyer Regulation
Patrick “Booter” Imhof, General Counsel
Lori Holcomb, Division Director, Ethics and Consumer Protection
Elizabeth Clark Tarbert, Ethics Counsel
Kathy Bible, Disciplinary Procedure Counsel
Terry Hill, Director, Programs Division
Diana Kellogg, Director, Legal Education and Specialization
Francine Walker, Director, Public Information and Bar Services
Bill Mulligan, Miami Office Bar Counsel
Tom Duarte, Miami Office Bar Auditor
Rosalyn A. Scott, Assistant to the President
Gary Blankenship, Senior Editor, Florida Bar News

3. Guests

Leora Freire, President, Florida Association for Women Lawyers
Antonya Johnson, President, Virgil Hawkins Florida Chapter, National Bar Association
David Aronberg, Government Lawyer Representative
Vivian Hodz, President, Tampa Hispanic Bar Association
Andy Sasso, Parliamentarian

4. Invocation and Pledge of Allegiance

Board member Sandy Diamond delivered the invocation and board member Josh Chilson led the board in the Pledge of Allegiance.

5. Minutes Approval

Board member Thomas Bopp noted a scrivener’s error in the September 30, 2016, in the report from the Florida Board of Bar Examiners in the minutes from the board’s Nashville meeting.

With that correction, the board unanimously approved the minutes. The approval included ratifying recent Executive Committee actions:

- On September 26, 2016, the Executive Committee voted 12-0 to allow the Entertainment, Arts and Sports Law Section file an amicus brief in *Flo & Eddie, Inc., etc. v. Sirius XM Radio, Inc. etc.*, case no. SC16-116 on two of the four questions certified by the 11th U.S. Circuit Court of Appeals to the Florida Supreme Court. Specifically, the section takes the position that Florida recognizes a common law copyright in sound recordings and that that copyright includes both reproduction and public performance rights. The section further takes the position that “publication” — selling one sound recording to the public — does not divest those common law copyright protections.

- On September 26, 2016, voted 12-0 to allow the Elder Law and Real Property, Probate and Trust Law sections to file separate amicus briefs in *Smith v. Smith*, case no. SC16-1312 which addresses the question of whether someone who has been declared incompetent and placed under a guardianship can marry without permission of the court. The Elder Law Section, joining with the Academy of Elder Law Attorneys agrees with the trial court and district court of appeal rulings that the marriage is void without prior approval of the court. The RPPTL Section agreed the marriage must be approved but said the statute was unclear when that approval must occur and that should be clarified to allow approval before or after the ceremony.

- On September 29, 2016, the Executive Committee voted 11-0 to allow the Civil Procedure Rules Committee to file a response to comments filed on proposed Form 1.983, Prospective Juror Questionnaire, including recommending revising the form to provide law enforcement officers with arrest powers are in the category of disqualified jurors and to clarify that only clerks of court can summon jurors.

- On October 15, 2016, the Executive Committee considered the requests by the Real Property, Probate and Trust Law, Business Law, and City, County and Local Government Law sections to file amicus briefs taking differing positions in *Ober v. Town of Lauderdale by the Sea*, case no. 4D14-4597 on F.S. § 48.23, the lis pendens statute, and whether a duly filed notice of lis pendens after the final judgment of foreclosure but before the judicial foreclosure sale bars enforcement of liens and interest on the subject property. The committee voted 13-0 to allow the sections to file their proposed amicus briefs.

- On October 17, 2015, the Executive Committee voted 8-0 to allow the Juvenile Court Rules Committee to recommend to the Supreme Court to adopt proposed amendments to Rule of Judicial Administration 2.505 that will provide for the unique roles within juvenile courts; and, if the court does not adopt the proposed amendment to Rule 2.505, to adopt one of two proposed amendments to Rule of Juvenile Procedure 8.000. The rule amendments are a part of a comment that will be filed *In re: Amendments to the Florida Rules of Judicial Administration, Florida Rule of Criminal Procedure 3.010, and Florida Rule of Appellate Procedure 9.440*, SC16-1062.

6. Consent Agenda Approval

The board unanimously approved the consent agenda, after the two advertising appeals (items 5b(i) and 5b(ii)) had been removed to the Board Review Committee on Professional Ethics report. That approval includes:

- Appointing Steven D. Fichtman as an attorney member to UPL Circuit Committee 5, Steven Ernest Hitchcock as an attorney member to UPL Circuit Committee 6A, Radoyka Jinet Minaya as an attorney member to UPL Circuit Committee 17C, Cathy M. Silverthorn as a public

member to UPL Circuit Committee 20, Mike Doubek and Christie L. Bruner as public members to UPL Circuit Committee 1A, and David A. Miller to UPL Circuit Committee 10.

- Final approval of Rule 4-6.5 Voluntary Pro Bono Plan: Amendments fix grammatical errors, conform to the Supreme Court of Florida style guide, and remove outdated language.

- Final approval of Rule 6-1.2 Public Notice: This amendment adds the words “board certified” in front of the words “specialist” and “expert” to indicate those that have been certified by The Florida Bar, for the general information of the public.

- Final approval of BLSE Policy 2.02: This amendment adds Juvenile Law and Condominium and Planned Development Law under 2.02 (b) with the Court effective date.

- Final approval of BLSE Policy 2.02 Areas of Certification: Within subdivision (e), removes the requirement for an annual review of certification areas that include fewer than 75 members. Instead, these areas will be monitored and an evaluation report will be conducted only if requested by the Program Evaluation Committee.

- Final approval of BLSE Policy 2.07: This amendment adds "Juvenile Law" under 2.07 (a) (2), Cycle 2, and "Condominium and Planned Development Law" under 2.07 (a) (1), Cycle 1.

- Final approval of BLSE Policy 2.12 Examination Preparation and Administration: Revision to subsection (a)(1)(E) requiring certification committees to provide example questions as an available resource to study for examinations. The revision also requires the committee to review the example questions annually and modify or substitute information if the law has changed since the last draft.

- Final approval of BLSE Policy 3.01(a) Accreditation of Lawyer Certifying Organization: Within subdivision (a), adds the words "board certified" before the word "specialist" and "expert," to identify lawyers who have demonstrated special competence, skills, and proficiency, as well as character, ethics, and professionalism in the practice of law.

- Final approval BLSE Policy 4.08 Computation of Time: Removes the rule reference to the Florida Rules of Judicial Administration, as the current listing is not correct. Adds the possibility of an extension being granted.

- Not opposing the Administrative Law Section taking the following legislative position: Supports the use of technology to reduce costs and expedite administrative proceedings.

- Not opposing the Business Law Section taking the following Legislation position: Support amendments to the Uniform Fraudulent Transfer Act promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL).

- Not opposing the Health Law Section taking the following legislative position: Supports amendment of F.S. §456.0635 to provide discretion to the practitioners' licensing board and when there is no board, to the Department of Health, regarding eligibility for initial licensure and license renewal to assure that the practitioner has due process of law in obtaining or maintaining a Florida professional healthcare license.

- Not opposing the International Law Section taking the following legislative positions: Supports omnibus legislation relating to international arbitration and conciliation that would further promote Florida as an attractive forum for the resolution of international disputes and specifically address: 1) International commercial conciliation proceedings (based on the 2002 U.N. Model Law) and enforcement of conciliation agreements; 2) Statute to further clarify F.S. §684.0047, addressing the enforcement or annulment procedure for international commercial arbitration awards in our state courts; and 3) Statute granting Florida Courts the authority to order discovery from person(s) within their jurisdiction for use in an international

arbitration taking place outside of the United States (analogue to the federal statute, 28 U.S.C. §1782).

• Not opposing the following legislative positions of the Real Property, Probate and Trust Law Section:

• Support the passage of an amendment to existing § 713.132(3) to allow termination of a notice of commencement, provided for under §713.135 F.S., at any time whether or not construction has ceased as required under existing law.

• Support proposed legislation to revise Florida law to provide that the Attorney General is the proper party to receive notice for matters concerning charitable trusts and further define the manner in which the Attorney General will receive such notices, including changes to §§736.0110(3), 736.1201, 736.1205, 736.1206(2), 736.1207, 736.1208(4)(b), and 736.1209, Florida Statutes.

• Support proposed legislation to expand and modernize the statutory authority for trustees to "decant" by distributing trust principal from one trust into a second trust and expand the notice requirements for the transaction, including changes to F.S. 736.04117.

• Support changes to Florida law to permit a court to approve a guardian's request to initiate a petition for dissolution of marriage of a ward without the requirement that the ward's spouse consent to the dissolution, including amendments to § 744.3725, Florida Statutes.

• Support proposed legislation removing the statutory cap on amounts which guardians, with prior court approval, may expend for funeral related expenses, including a change to § 744.441(16), Fla. Stat.

• Support creation of new statutory procedures for the service of examining committee reports and deadlines for the service and filing of objections to such reports in incapacity proceedings, including revisions to § 744.331, Fla. Stat.

• Support proposed legislation which would amend §736.0708(1), Florida Statutes, to provide that when multiple trustees serve together as co-trustees, each co-trustee is entitled to reasonable compensation and that the aggregate compensation charged by all the trustees may be greater than reasonable compensation for a single trustee.

• Support proposed legislation to reaffirm Florida's well-established jurisprudence in favor of donative freedom so that the settlor's intent is paramount when applying and interpreting both Florida trust law and the terms of a trust, including changes to F.S. §§736.0103(11), 736.0105(2)(c), and 736.0404.

• Support proposed legislation to recognize Physician Orders for Life Sustaining Treatment (POLST) under Florida law with appropriate protections to prevent violations of due process for the benefit of the citizens of Florida and the protection of medical professionals and emergency responders who withhold or withdraw treatment based upon a POLST, including the amendment of §§ 395.1041, 400.142, 400.487, 400.605, 400.6095, 401.35, 401.45, 429.255, 429.73, 765.205, 456.072, and the creation of § 401.46, Florida Statutes.

• Support proposed legislation allowing a testator to deposit their original will with the clerk's office for safekeeping during their lifetime, and for other custodians to deposit original wills with the clerk for safekeeping when the testator cannot be located.

• Support revisions to Florida Elective Share Statute, Sections 732.201-732.2155, that after careful review are believed to be warranted, including changes to the manner in which protected homestead is included in the elective estate and how it is valued for purposes of satisfying the elective share; quantify the amount of the elective share which the surviving spouse is entitled with reference to the length of the marriage; enlarge the time for filing the

election; add a provision to assess interest on persons who are very delinquent in fulfilling their statutory obligations to pay or contribute towards satisfaction of the elective share; add a new section that specifically addresses awards of attorney's fees and costs from elective share proceedings; and make changes to Chapter 738 to assure qualification for certain elective share trusts that contain so called unproductive property.

- Not opposing the Tax section taking the following legislative position: Oppose adoption of the Uniform Voidable Transactions Act in Florida.
- Approval of the legislative consulting contract between the Public Interest Law Section and Alice Vickers.
- Approval of bylaws changes for Florida Lawyers Assistance, Inc.
- Approval of an amendment to The Florida Bar Health Reimbursement Plan.

7. Public Reprimand

President Schifino administered one public reprimand.

8. Appellate Practice Section Report

Chair Duane Daiker reported the section had its first retreat and long-range planning session in about 10 years and is looking to modernize the section, including having a social media presence. The section's quarterly publication is switching from printed version to an electronic one and its pro se handbook will be offered online as well as in a printed format. The section's monthly CLE programs will be offered online instead of via telephone and made available to all lawyers instead of just section members. The section is updating its bylaws, Daiker said, and continues to offer a variety of CLE courses including an eight-hour session on the essentials of appellate practice.

9. Florida Bar Foundation Annual Report

Foundation President Matt Brenner presented a 10-minute video the Foundation is using to explain its operations and is showing to voluntary bar associations and other organizations around the state. He noted the Foundation is 60 years old and continues to pursue its mission of providing greater access to justice through representation and advocacy for low-income people, improving the administration of justice, and making public service integral to the law schools. The Foundation has funded the Justice Technology Center, which in turn has created the online gateway to help low- and middle-income consumers find help with their legal needs. A pilot for the gateway was being tested in Clay County and a report was expected early in 2017. Brenner said the foundation is working with the Supreme Court's Commission on Access to Civil Justice. The Foundation continues to have tight financing, with IOTA revenues averaging \$5.5 million for the past seven years, after reaching a peak of \$72.6 million in 2006-07. The Foundation built up reserves of \$88 million, but in 2018, will have used up all its reserves. Foundation funding for legal aid offices has declined from 33 percent of those offices' budget to 8 percent, and the foundation is focusing its grants where it will have maximum impact, including being matched by other revenue sources. Brenner also announced that Foundation Executive Director Bruce Blackwell has agreed to continue serving for another three years.

10. Welcome by Clearwater Mayor George Cretekos

Mayor Cretekos welcomed the board to Clearwater, talked about the dynamic growth of the city, and the necessity of spreading truth instead of rumor in the discussion of public policy.

11. Diversity and Inclusion Committee Report

Chair Brittany Maxey said the committee works to promote diversity and inclusion in the Bar, legal education, and the justice system. The committee's five priorities are, she said, establishing a presence at all 12 law schools in the state, continuing its annual \$50,000 grant program for local bars that sponsor diversity and inclusion programs, establishing a multicultural program development subcommittee which will address legal assistance in the wake of bias-related incidents like the Pulse nightclub shootings and is also promoting gender equality education, establishing a subcommittee to encourage diverse people to seek leadership positions including appointment to judicial nominating commissions and the bench, and the fifth is having a diversity and inclusion summit tentatively set for November 9-10, 2017, in Orlando.

12. Board Review Committee on Professional Ethics Report

Chair Carl Schwait reported that on agenda item 5b(ii) Advertising Appeals 16-03631 and 16-03632 that the BRCPE voted 7-2 to recommend that the Board of Governors reverse the Standing Committee on Advertising decision that internet banner advertisements that contain the abbreviated name Williams Parker, instead of the firm's legal name Williams, Parker, Harrison, Dietz & Getzen, P.A., violate Rule 4-7.12(a)(2). That rule requires that all advertisements contain the name of either the advertising lawyer or law firm. The BRCPE approval was conditioned to allow the firm to use the abbreviated version of its name where the firm name is a traditional law firm name composed solely of names of the partners or shareholders of the firm, in which the firm name is shortened, but the order of names is not changed, and the firm has registered the abbreviated firm name as a fictitious name of the firm. The Board of Governors approved the recommendation on voice vote with objections.

On a request from the Professional Ethics Committee Request to adopt a Proposed Advisory Opinion on Dividing Fees with Out-of-State Law Firm with Nonlawyer Owners, the BRCPE voted 9-0 to recommend that the Board of Governors direct that the Professional Ethics Committee adopt a formal advisory opinion on the issue of Florida Bar members dividing fees with out-of-state lawyers as co-counsel, with whom Bar members are otherwise authorized to divide fees, where those lawyers are in firms in which there is nonlawyer ownership because nonlawyer ownership is allowed in that jurisdiction. The BRCPE recommended that any opinion must state that Florida Bar rules prohibit nonlawyer ownership of law firms. The PAO was requested by the Professional Ethics Committee and the Vision 2016 commission Bar Admissions Sub-group. The Board of Governors approved the recommendation on voice vote without objection.

Schwait reported that the BRCPE declined the Professional Ethics Committee request to adopt a formal advisory opinion on a lawyer lobbying the Legislature when the lawyer's partner is a legislator (Ethics Inquiry 35426). The PEC acted after a Florida Bar member requested reinstatement of Florida Ethics Opinion 67-5, regarding conflicts involved for a lawyer lobbying the legislature when the lawyer's partner is a legislator, in Ethics Inquiry 35426.

Schwait reported that on agenda item 5b(i) Advertising Inquiry 35832 the BRCPE voted 8-1 to recommend that the Board of Governors affirm the decision of the Standing Committee on Advertising that the tag line "Results So Good, You'll Think It's Magic!" used by a law firm that wants to advertise traffic ticket cases can be reasonably interpreted by a consumer as a prediction of success and therefore violates Rule 4-7.13(b)(1). The Board of Governors approved that recommendation on a voice vote with objections. Schwait reported that the BRCPE voted 6-3 to

recommend that the Board of Governors reverse the decision of the Standing Committee on Advertising that the image of a wizard and the name "Ticket Wizard" in advertising inquiry 35832 from a law firm that wants to advertise traffic ticket cases can be reasonably interpreted by a consumer as a prediction of success and that they therefore do not violate Rule 4-7.13(b)(1). The Board of Governors approved the recommendation 24-20. The BRCPE voted 8-1 to recommend that the Board of Governors affirm the decision of the standing committee that the tag line "Results So Good, You'll Think It's Magic!" in advertising inquiry 35832 from a law firm that wants to advertise traffic ticket cases characterizes the lawyer or law firm's skills, experience, reputation, or record but violates Rule 4-7.13(b)(3) only if the characterization is not objectively verifiable. The Board of Governors approved on voice vote with objections. Schwait reported that the BRCPE voted 6-3 to recommend that the Board of Governors affirm the decision that the image of a wizard and the name "Ticket Wizard" in advertising inquiry 35832 characterizes the lawyer or law firm's skills, experience, reputation, or record under Rule 4-7.13(b)(3), but that the law firm can use the image and name only if the law firm can objectively verify the implication that the firm are masters or experts at that area of practice. A motion was made, seconded, and approved 23-19 to amend the motion to instead state that the Board of Governors affirm the decision that the image of a wizard and the name "Ticket Wizard" characterize the lawyer or law firm's skills, experience, reputation or record under Rule 4-7.13(b)(3), but that the law firm can use the image and name only if the law firm can objectively verify that implication. The motion passed on voice vote with objections.

13. Executive Session

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

14. Rules Committee Report

Chair Margaret Mathews presented two items for final approval by the board, both of which were passed without dissent:

- Rule 2-9.7 Insurance for Members of Board of Governors, Officers, Grievance Committee Members, UPL Committee Members, Clients' Security Fund Committee Members, and Employees: Amends the rule to provide that indemnification for persons acting in official capacities on behalf of the Bar will be indemnified as provided in standing board policies.

- Chapter 21 Military Spouse Authorization to Engage in the Practice of Law in Florida: Creates new Chapter 21 which would permit spouses of members of the U.S. armed forces to practice law in Florida without taking the bar exam while the spouse is stationed in Florida, requiring affiliation with a Florida Bar member under specified circumstances. The new chapter sets forth the requirements for eligibility, application, certification by the Supreme Court of Florida, renewal, permissible activities while certified, continuing legal education, and termination of the eligibility to practice law by the military spouse.

Mathews presented two items on first reading:

- Rule 4-1.2 Objectives and Scope of Representation: Within subdivision (c), creates an exception from the requirement that client consent for legal services that are limited in scope be in writing for lawyers giving advice through a nonprofit limited legal services program under new proposed rule 4-6.6.

- Rule 4-6.6 Nonprofit and Court-Annexed Limited Legal Services Programs: Adopts new Rule 4-6.6 addressing a slight relaxation of application of the rules on conflicts of interest in

the context of short term, limited representation through a nonprofit organization, court, government agency, bar association or an American Bar Association-accredited law school.

15. Technology Committee Report

Chair John Stewart reported that the committee is continuing to work on its incubator program, which it started at the Bar's Fall Meeting in October. The program is aimed at helping lawyers starting their own practices provide affordable and profitable services to low- and middle-income consumers who cannot afford traditionally modeled legal services. The committee's second focus is on digital security for law firms and its importance in protecting client confidences. Stewart said the committee is working to identify minimum standards for protecting electronic records and said Bar members need to be educated about the Florida Data Breach Security Act which requires notifying clients if records are compromised.

16. Strategic Plan, Technology Goals Report

Board member John Stewart, who oversees implementing Bar Strategic Plan technology goals, said several efforts are underway. Those include offering more than 60 hours of free technology CLE programs on the Bar's Practice Resource Institute website, the special committee working to provide automatic trust accounting software for law firms, and improving the Bar's website.

17. Special Committee on Parental Leave in Court Action Report

Chair Rob Eschenfelder reported the committee has met several times and hopes to vote on a report to the board when it meets at the Bar's Winter Meeting in January. He asked the board if it wanted a discussion of the issue or a recommendation for or against a rule and if for a rule did it want proposed language for the rule. President Schifino replied that the board would like to see proposed rule language and he praised the committee for its hard work.

18. Leadership Academy Committee Report

Committee Vice Chair Kevin McNeill said the academy had held its third session, on leadership in the 21st century and its fourth session was devoted to lawyer advertising, past, present, and future. He said the committee would be having a reunion for past academy classes at the Winter Meeting and noted some current board members are academy graduates.

19. Rules of Judicial Administration Committee Report

Judge Scott Stephens, chair of the committee, presented the panel's three-year rule amendments, including a proposal that the RJAC review rule amendments by other procedural rules committees to see if there is an element of common application in those amendments. The board recommended approval of the amendments 43-0. Stephens then presented the RJAC's out-of-cycle report, which, in light of comments, filed with the Supreme Court proposed changes to previously filed amendments to R. Jud. Admin. 2.505 defining how attorneys may enter and leave cases and defining lead, additional, and limited representation counsel. The new changes address special circumstances in criminal, juvenile, or shelter hearings in dependency cases in the lead counsel proposed rules and attorneys working for governmental entities in the additional and limited counsel proposed rules. The board recommended approval of the changes 47-0.

20. Appellate Court Rules Committee

Chair Kristen Norse presented the committee's three-year cycle rule amendments, which covered several major and minor revisions. The board recommended approval of the amendments 46-0.

21. Investment Committee Report

Chair Ian Comisky reported on the strength of a strong stock market the Bar's investments, particularly in its long-term portfolio, were performing well. In response to a rise in interest rates, the committee recommended reducing investment in the Vanguard short-term bond fund from 30 to 20 percent of the Bar's short-term portfolio and increasing investment in the Blackrock short-term bond fund from 20 to 30 percent. In the long-term portfolio, Comisky said the committee recommended increasing the investment in the Powershares Large Cap Equity fund by 2 percent and the Oakmark International Equity fund by 1 percent, and reducing investment in the Oppenheimer, JP Morgan, and Lord Abbett High Yield funds by 1 percent each. All the changes were unanimously approved by the board. Comisky reported the committee is developing an RFP for its investment advisor and expects to present more information on that at the board's January 2017 meeting.

22. City, County and Local Government Section Report

Chair Jeannine Williams said the section has almost 1,700 members, including public and private attorneys. She said the section is continuing with in-person CLE programs since section members appreciate the networking opportunities and the section is also working to have seasoned members help younger members. The section is updating its website, Williams said, and working on joint CLE programs with other sections.

23. Solo and Small Firm Section Report

Chair Jennifer Dietz noted that 62 percent of the Bar's members belong to solo or small firms. She said the section has around 2,600 members and that the section is actively providing both information using technology and educating its members about technology. The section for several years has had a technology seminar during the Bar's Winter meeting and will do so again at the 2017 Winter Meeting. The section continues to offer a wide range of CLE courses, including an annual ethics update and an out-of-country seminar.

24. Legislation Committee Report

Chair Gary Lesser presented 15 Bar legislative positions for approval, all of which were part of the Bar's 2014-16 legislative platform. The board took two votes, unanimously finding all of the positions within the purview of the Bar and unanimously approving all of the legislative positions. The positions are:

- Supporting 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.
- Supporting a merit-based process for selecting Florida judges through independent judicial nominating commissions and opposes any changes to the current JNC process that would impair the independence of the commissions.
- Supporting legislation consistent with the Supreme Court of Florida's certification of need for new judges.

- Supporting amendment of 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.
- Opposing term limits for judges at any level of Florida's state court system.
- Opposing 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.
- Opposing amendment of Article V, Section 2(a) of the Florida Constitution that would restrict the Supreme Court's authority to adopt rules for practice and procedure in all courts; further opposes any amendment of Article V that would change the manner by which rules of the Judicial Qualifications Commission, rules for judicial nominating commission, or rules for practice and procedure in all courts may be repealed by the legislature.
- Supporting language in the Legislative Appropriations Act to permit the payment of government attorneys' Florida Bar membership fees and continuing legal education costs from funds within budget entities. (YLD and Government Lawyers Section).
- Supporting legislation to create reasonable financial student loan assistance for all government lawyers and legal aid attorneys who have served in that capacity for more than three years. (YLD and Government Lawyers Section).
- Supporting adequate funding for civil legal assistance to indigent persons through the Florida Access to Civil Legal Assistance Act. (Florida Bar Foundation).
- Supporting the preservation of, and opposes policies and procedures that have the effect of eroding, the attorney-client privilege and work product doctrine, both of which are essential to maintaining the confidential relationship between client and attorney required to encourage clients to discuss their legal matters fully and candidly with their counsel so as to: (a) promote compliance with law through effective counseling; (b) ensure effective advocacy for the client; (c) ensure access to justice; and (d) promote the proper and efficient functioning of the American adversary system of justice. (Special Florida Bar Task Force on the Attorney-Client Privilege).
- To provide enhanced protection for attorney work product and attorney-client privilege, supports amendment of F.S. § 119.071 revising the exemption from the attorney's work product of a public agency; and supports amendment of F.S. §286.011 revising the criteria for the attorney-client sessions of a public agency. (Government Lawyers Section and special Florida Bar Task Force on the Attorney-Client Privilege).
- To adequately promote and protect the legal rights and remedies of children, supports the development of a comprehensive system and structure for child representation that includes Guardian ad 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: (a) 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; (b) 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 (c) 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. (Special Florida Bar Commission and Committee on the Legal Needs of Children)

- Supporting adequate funding of the Legal Services Corporation by the federal government, and opposes any funding cuts. (ABA)
- Supporting an adequately funded federal justice system and judiciary. (ABA)

The committee also recommended and the board unanimously approved, with the two-part vote, renewing two legislative positions of the Legal Needs of Children Committee:

- Consistent with the 2002 Final Report of The Florida Bar's Commission on the Legal Needs of Children, The Legal Needs of Children Committee opposes the direct filing of children to adult court in Florida and supports the use of the judiciary as being solely responsible for making the decision as to whether a child should be prosecuted as an adult.

- The committee supports legislation that recognizes children sentenced in adult court for more than 10 years should have a meaningful opportunity for early release based on demonstrated maturity and rehabilitation.

The committee also recommended and the board approved, with the two-part vote, renewing this position for the Young Lawyers Division, which is to support the Bar position advocating for legislation to create reasonable financial student loan assistance for all government lawyers and legal aid attorneys who have practiced in that capacity for more than three years.

Bar Legislative Consultant Aimee Diaz Lyon told the board that the state House and Senate would have extensive committee meetings in January and February preparing for the March Regular Session. She also said that a constitutional amendment to impose term limits on at least some part of the judiciary, backed by House Speaker Richard Corcoran, would be sure to come up during the session and if unsuccessful this year in the 2018 session as well as the upcoming Constitution Revision Commission. Other issues that could come up is Supreme Court oversight of rules for judicial nominating commission, the Judicial Qualifications Commission, and procedural rules for the courts.

25. Special Appointments

Board members appointed:

- Blake S. Hayward, Mercedes G. Hale, Thomas D. Wright, Stephen B. Bull, and Andrew M. Fisher to two-year terms on the Florida Realtor-Attorney Joint Committee.
- Jeffrey P. Battista for a three-year term and Suzanna M. Johnson for an unexpired term beginning January 1, 2017, and ending December 31, 2017, on the Florida Rural Legal Services, Inc., Board of Directors.
- Gregory W. Weiss for a four-year term on the U.S. Eleventh Circuit Judicial Conference.
- Gregory W. Coleman for a six-year term on the Florida Judicial Qualifications Commission.
- Murray B. Silverstein for a three-year term commencing July 1, 2017, and Angela Vigil for an immediate vacancy on The Florida Bar Foundation Board of Directors. Both terms end June 30, 2020.

26. Tax Section Report

Chair William Lane noted the section has around 2,000 members and continues a heavy emphasis on CLE courses. The section has five recurring annual courses, three on federal taxation and two on local and state taxation. In addition, the section offers 12 to 24 annual one-hour free CLE programs via telephone for members. The section sponsors a national moot court competition, has three annual bulletins, and contributes regular articles to *The Florida Bar Journal*. A new project, Lane said, is working with the state's law schools on a multi-year project to make recommendations for revising state and local tax policies to reflect the loss of oceanfront property due to the rising sea levels.

27. Family Law Rules Committee Report

Vice Chair Jack Moring presented the committee's three-year cycle rule amendments, which make technical and stylistic changes and conform the rules to recent statutory changes. He reported that amendments to Fam. L. Rule 12.285 were removed because of received comments and would likely be resubmitted as an out-of-cycle amendment. The board recommended approval of the amendments 38-0.

28. Audit Committee Report

Chair Duffy Myrtetus submitted the audit of the Bar's 2015-16 finances, which found no weaknesses or insufficiencies in Bar operations. The board unanimously approved the audit. Myrtetus reported the Bar began using a new accounting system and has converted to a new payroll system and work on those changes is continuing. The committee's next project, he said, is undertaking an information technology audit of the Bar. He also said the Bar is ready to comply with new Fair Labor Standard Act overtime regulations, although those have been stayed by a federal judge.

29. Budget Committee Report

Chair Paul SanGiovanni presented budget statements through October and reported that Bar operations are in line with projections on income and expenditures. He said the Bar's undesignated fund balance is expected to be \$27.695 million at the end of the fiscal year, or about 64 percent of its operating budget. Bar policies call for that balance to be between 33 and 67 percent of the operating budget and SanGiovanni said the balance is expected to decline annually until it reaches that 33 percent mark in the 2020-21 budget year. The board may then have to consider raising membership fees, although in the meantime the committee is looking at ways to cut expenses. He also reported work is beginning on the Bar's 2017-18 budget.

30. Strategic Plan Diversity Report

Board member Paul SanGiovanni said demographic information is being collected about the makeup of Bar members who apply for judicial nominating commissions and the judiciary. He said that information will be used to provide a baseline for future efforts and that the Bar has a three-year goal of having the demographics of the JNCs and judiciary match the demographics of the population at large.

31. Young Lawyers Division Report

YLD President Katherine Hurst Miller reported that the division, under contracts with FEMA and the ABA, geared up an emergency hotline for legal help for Floridians affected by

Hurricanes Hermine and Matthew. The YLD is seeking mentors for law students as well as new lawyers and is active on social media, including posting a weekly video blog. The division has finished filming for the online Practicing With Professionalism course and that should be ready early in 2017. Miller said the YLD has created “Who We Are” video which will be posted online in January and a revision of the website for Lawyers Helping Lawyers also will be finished in January. The YLD will have its annual Affiliate Outreach Conference in January with around \$50,000 in grant money for local bar young lawyers’ organizations public service projects.

32. Special Committee on Trust Accounting Solutions Report

Parliamentarian Andy Sasso reported the committee is making progress with FSI Global on developing a trust accounting program, which may soon be ready for a six-month test with SunTrust Bank. The program will allow lawyers to enter information when they make a trust accounting deposit or withdrawal and all necessary trust accounting records necessary to comply with Bar rules will automatically be done. Sasso said developing the program will cost around \$25,000 and then lawyers will pay a flat annual fee for each trust account that uses the system. He said once the number of accounts reached 5,000, the cost is expected to be \$25 per account. He said participating in any program will be voluntary.

33. Certification Plan Appeal Committee

Chair Rick Nail presented four items for final action, all of which were unanimously approved by the board:

- BLSE Policy 4.06 Right of Reply: This amendment adds subdivision (c) regarding reasons for a recusal and the process.
- BLSE Policy 4.10 Review by the Board of Governors: Within subdivision (c), adds the provision that a non-member of the Certification Plan of Appeals will report to and make the presentation of a petition to the Board of Governors.
- BLSE Policy 5.09 CLER Components Approval Guidelines: Adds a technology definition in subsection (g), outlining what constitutes receiving technology CLE credit after amendments to Rule 6-10.3 were approved by the Florida Supreme Court.
- BLSE Policy 5.10 Individual Credit Approval Guidelines: This amendment removes 5.10(c)(4), renumbers accordingly, and lists the information in an added (j) subsection, which would allow ethics credit to be awarded for the review of applications and attendance at investigation hearing panels related to a bar applicant's character and fitness.

Nail presented two items on first reading:

- Rule 6-19.2 Definitions: Rule 6-19.2(a) is being amended to specify what aviation law includes, adding aeronautical/aerospace activities, space travel, the use of outer space, and aviation/airline employment.
- BLSE Policy 5.10 Individual Credit Approval Guidelines: This policy amendment adds subdivision (k) to allow an enrolled advisor in The Florida Bar Lawyers Advising Lawyers Program to receive one general credit hour for each referral, not to exceed five credit hours per year.

34. Program Evaluation Committee Report

Chair Michael Tanner reported the committee voted unanimously to ask permission for the Bar to negotiate a licensing agreement with the ABA for its Fast Legal Answers program so it can be run in Florida. The program allows qualifying consumers to post up to three legal questions a

year online which will be answered by volunteer lawyers. The board unanimously approved the request.

Tanner presented two items to the board on first reading:

- Rule 6-13.2 Definitions (Appellate Certification Cross Appeals): Adds a cross appeals subsection, 6-13.2(b)(4), to allow a cross-appeal and a direct appeal to count as two separate appellate actions if the applicant had primary responsibility for the filing of two separate principle briefs.

- Bylaws changes for the Criminal Law and Appellate Practice sections.

Tanner reported the PEC has eight subcommittees looking at a various Bar programs and activities, including the Leadership Academy, the Annual Convention, the Citizens Advisory Committee, member benefits, the Senior Lawyers Committee, and the Judicial Administration and Evaluation Committee. He also said an implementation subcommittee has been established to review whether past PEC recommendations for Bar programs have been followed.

35. Communications Committee Report

Chair Jay Cohen said the committee has four subcommittees working various issues, including the Bar's website, better communications with sections and voluntary bars, and implementation of the LawTV initiative. The committee is looking at a subscription service for Bar email communications so members get only electronic missives they want. He said the LawTV videos presenting televised versions of stories from *The Florida Bar News* have been well received with 35,000 views on Facebook, 1,500 views on YouTube, and shared 250 times from Facebook.

36. Vision 2016 Report

Administrator Jay Cohen presented final recommendations from the Vision 2016 commission for board action. He noted that Vision 2016 recommendations on the military spouse rule and sharing fees when acting as co-counsel from lawyers from other jurisdictions who are in firms with nonlawyer owners were addressed earlier in the meeting. He recommended the board approve all remaining recommendations, many of which called for taking no action. Those include:

- There should be no nonlawyer ownership interest in Florida law firms.
- Referring to the Program Evaluation Committee whether the board should consider having a liaison representing law schools as an ex officio member of the board.
- Referring to the Program Evaluation Committee having a permanent body, perhaps a revamped Student Education and Admissions to the Bar Committee, to work with the board on legal education issues.
- Not acting on the proposed "Katrina" rule which would allow out-of-state lawyers to temporarily open offices in Florida to serve their clients following a natural disaster in their home area.
- Not allowing lawyers licensed in other countries to practice pro hac vice in Florida.
- Not adopting, because existing Bar rules are sufficient, additional rules relating to conflicts, fees, communication with adverse parties who have limited scope counsel, and training for lawyers who have limited scope representation contracts with clients.
- Not appointing a Standing Committee in International Trade and Legal Affairs.
- Not allowing practice pending admission to the Bar for Bar applicants.
- Not proposing a rule addressing communicating with adverse parties who have a limited scope counsel.

- Not adopting a rule on fees for limited scope representation.
- Not requiring training for compliance with limited scope representation rules.

37. Constitution Revision Commission Special Committee Report

Chair Sandy Diamond noted the governor and Senate president have invited applications for their appointments to the CRC and the House speaker was expected to do so shortly. She said no staff has been hired for the commission and its rules have not been set. She said the Bar is preparing to offer expert advice to the CRC on issues it considers. The committee is also working to carry out the Bar's strategic plan goal of educating the public about the CRC.

38. President-elect's Report

President-elect Higer reported that the symposium on gender discrimination scheduled by the special committee he chairs has been rescheduled for February 24-25, 2017, in Tampa. The symposium was originally set for late September but had to be postponed because of Hurricane Hermine. Higer also invited board members to encourage qualified Bar members to apply for appointment to Bar committees.

39. President's Report

President Schifino showed the board a PowerPoint presentation he makes to voluntary bar associations and other groups around the state and which highlights the challenges facing the Bar and the legal system. Topics covered include gender bias, diversity, pro bono, technology and the profession, legislative challenges, member benefits, and how the upcoming Constitution Revision Commission can offer amendments directly to voters that can change the balance of power between the three branches of government. Schifino said the Bar cannot control all of the issues and challenges it will face but it can prepare to meet them. Board member Bruce Robinson observed that private attorneys can provide only so much pro bono service and ways have to be found so that government lawyers can also do pro bono. He also said the legal system has become too expensive, which limits its accessibility.

40. Time and Place of Next Meeting

There being no further business before the board, President Schifino adjourned the meeting at 3:05 p.m. The next board meeting is January 20, 2017, at the DoubleTree Hotel in Tallahassee.

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