

Florida Bar Board of Governors  
September 30, 2016  
The Hermitage Hotel  
Nashville, TN

**1. Roll Call.**

William J. Schifino, Jr., President  
Michael J. Higer, President-Elect  
Stephen H. Echsner, 1st Circuit  
Lawrence E. Sellers, Jr., 2nd Circuit  
Fred D. Franklin, Jr., 4th Circuit  
Michael G. Tanner, 4th Circuit  
Renée E. Thompson, 5th Circuit  
Joshua T. Chilson, 6th Circuit  
Sandra Fascell Diamond, 6th Circuit  
Sam N. Masters, 7th Circuit  
Carl B. Schwait, 8th Circuit  
Mary Ann Morgan, 9th Circuit  
Paul L. SanGiovanni, 9th Circuit  
Wayne L. Helsby, 9th Circuit  
C. Richard Nail, 10th Circuit  
Roland Sanchez-Medina, Jr., 11th Circuit  
Dori Foster-Morales, 11th Circuit  
Deborah B. Baker-Egozi, 11th Circuit  
Dennis G. Kainen, 11th Circuit  
Steven W. Davis, 11th Circuit  
John H. Hickey, 11th Circuit  
F. Scott Westheimer, 12th Circuit  
Thomas Roe Bopp, 13th Circuit  
Lansing C. Scriven, 13th Circuit  
Michael S. Hooker, 13th Circuit  
John W. Manuel, 14th Circuit  
Adam T. Rabin, 15th Circuit  
Ronald P. Ponzoli, Jr., 15th Circuit  
Michelle Renee Suskauer, 15th Circuit  
Gary S. Lesser, 15th Circuit  
Wayne LaRue Smith, 16th Circuit  
Jay Kim, 17th Circuit  
Lorna E. Brown-Burton, 17th Circuit  
Jay Cohen, 17th Circuit  
Adam G. Rabinowitz, 17th Circuit  
O. John Alpizar, 18th Circuit  
Ian M. Comisky, Out of State  
Eric L. Meeks, Out of State  
Brian D. Burgoon, Out of State  
Katherine Hurst Miller, YLD President

Lawrence Worley Tyree, Public Member  
Sharon B. Middleton, Public Member

**Members Absent**

Melissa N. VanSickle, 2nd Circuit  
Bruce W. Robinson, 3rd Circuit  
Leslie J. Lott, 11th Circuit  
Margaret Diane Mathews, 13th Circuit  
Diana Santa Maria, 17th Circuit  
John M. Stewart, 19th Circuit  
Laird A. Lile, 20th Circuit  
Marcy Lynn Shaw, 20th Circuit  
Edward Duffy Myrtetus, Out of State  
Zackary T. Zuroweste, YLD President-Elect

**2. Staff in Attendance**

John F. Harkness, Jr., Executive Director  
John Berry, Director, Legal Division  
Adria Quintela, Director, Lawyer Regulation  
Roselyn A. Scott, Assistant to the President  
Gary Blankenship, Senior Editor, Florida Bar News

**3. Guests**

Javier Lopez, President-elect, Cuban American Bar Association  
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 Brian Burgoon delivered the invocation and board member Eric Meeks led the board in the Pledge of Allegiance.

**5. Appearance by Vanderbilt University Vice Chancellor David Williams**

Williams, who is also a law professor, welcomed the board to Nashville and talked about the rapid growth in Nashville, Vanderbilt's emphasis on education including for its athletes, and the importance of education and the law for democracy.

**6. Minutes Approval**

The board approved the minutes from its July 29 meeting in Miami Beach with board member Jay Kim noting he wished to be recorded at that meeting as opposing amendments to Rule 4-7.22 (Lawyer Referral Services), 4-7.23 (Lawyer Directories), 4-7.12, 4-7.13, 4-7.16, and 4-7.17. The July minutes initially reflected one opposing vote to those amendments and now show two opposing votes.. That approval including ratifying actions taken by the Executive Committee since the board's July meeting, including:

- At an August 23, 2016, meeting, the Executive Committee approved 12-0 nominating Denise K. Beamer, Thomas B. Feiter, and Lisa G. Guerro, all of Orlando, for a seat on the Ninth Circuit Judicial Nominating Commission to fill a vacancy created by the resignation of Meredith L. Sasso.

- At a September 6, 2016 meeting, the Executive Committee voted 13-0 to approved a joint response by the Rules of Judicial Administration Committee and the Court Interpreters Certification Board to supplemental comments filed by the 11<sup>th</sup> Circuit Trial Court Administrator in *In re: Amendments to the Florida Rules of Judicial Administration*, SC15-1594 (Rule 2.560, Appointment of Spoken Language Court Interpreters for Non-English-Speaking and Limited-English-Proficient Persons and Rule 2.565, Retention of Spoken Language Court Interpreters for Non-English-Speaking and Limited-English Proficient Persons by Attorneys or Self-Represented Litigants).

- On September 16, 2016, the Executive Committee voted 12-0 to approve a revised list of applicants for a vacancy on the Ninth Circuit JNC following the withdrawal of one person approved by the committee at its August 23 meeting. The nominees are Thomas B. Feiter, Lisa G. Guerrero, and William C. Vose, all of Orlando.

## **7. Consent Agenda Approval**

The board approved the consent agenda for the meeting. That included:

- Appointing Jeffrey Cynamon and Luis Mena as attorney members and Stanley I. Foodman as a public member of UPL Committee 11B, Andrew L. Gutierrez as an attorney member of UPL Committee 11C, Randall Sidlosca and Maria Teresa Hoyos as attorney members and Betsy Suero Skipp as a public member of UPL Committee 11D, Bruce A. Malasky as a public member and Michael J. Pike, Alicia Romero Castillo, and Tania Maria Williams as attorney members of UPL Committee 15A, and Robert Lees as a public member and Sara Coen as an attorney member of UPL Committee 15B.

- Gave final approval to:

- Rule 16-1.2 Definitions: Amends eligibility requirements to become a foreign legal consultant.

- Rule 16-1.3 Activities: Clarifies foreign legal consultant title and information about jurisdictional limitations required to be used by foreign legal consultants; removes certain disclosure requirements not relating to status.

- Rule 16-1.4 Certification: Reorganizes rule and changes required documentation attached to the foreign legal consultant application. Sworn statement deleted from this rule and moved to new rule 16-1.7.

- Rule 16-1.5 Withdrawal or Termination of Certification: Changes conform rule to Supreme Court of Florida style guide.

- Rule 16-1.6 Discipline: Within subdivision (c), removes unnecessary language regarding Florida Bar notification to other jurisdictions.

- Rule 16-1.7 Annual Sworn Statement: Creates new rule 16-1.7, moving requirement of an annual sworn statement of continued eligibility from current rule 16-1.4(b).

- BLSE Policy 2.04(i) Emeritus Application Fee Removal: Removes Policy 2.04(i) Emeritus Application Fee because the Emeritus Specialist Status has been repealed.

### **8. Florida Board of Bar Examiners Report**

Vice Chair Scott Richardson reported to the board on examiners activities. He noted more than 3,400 applicants took the July bar exam and 68.2 percent passed. He reviewed FBBE procedures for reviewing bar applicants and noted the FBBE has reduced the time for character and fitness reviews in the past year and been successful in getting law school students to apply earlier in their academic careers for bar membership. Richardson said the FBBE continues to study proposals related to a uniform bar exam and testing fewer subjects on the bar exam.

### **9. Report on the Uniform Bar Exam**

Franklin Harrison, who serves on the National Conference of Bar Examiners, is an emeritus member of the FBBE, and a former FBBE chair, discussed the uniform bar exam which is now used by 25 states. He said states using the UBE do most of the scoring of the test, can set their own passing score, can do additional testing on state-specific issues, and remain in charge of their own character and fitness reviews. He explained the various parts of the UBE and how the multiple choice and essay questions are developed and tested. He said it will be up to the FBBE and the Supreme Court to determine whether incorporating the UBE into bar admission procedures would be an improvement in the already high caliber Florida admission process.

### **10. Out of State Division Report**

President Larry Kunin noted about 14,000 Bar members live out of state and that the division is working to get more of those lawyers as members, including educating them that their out-of-state CLE courses qualify for meeting the Bar's CLE requirements. He said the division has Executive Council meetings throughout the year and around the country, including one in conjunction with the Board of Governors' out-of-state meeting. Kunin also said the division is ready to help members meet the new tech CLE requirements just approved by the Supreme Court.

### **11. Legislation Committee Report**

Chair Gary Lesser presented one item, approval of the legislative consulting contract between the Workers' Compensation Section and Fausto Gomez. The board unanimously approved the contract. Lesser said the committee will present its recommendations on the Bar's master list of legislative positions, which is has been reviewing since July when all Bar legislative positions expired, at the board's December meeting.

### **12. Communications Committee Report**

Chair Jay Cohen presented the committee's recommendation to hire Law.tv under a one-year contract, with a cancellation option after six months, for \$3,500 a month to prepare TV stories of Bar *News* articles for presentation on the Bar's websites and other outlets. He reported the project had been reviewed and approved by the Budget Committee. The board unanimously approved the committee's recommendation. The committee, Cohen said, continues to work on the Bar's website, improving relations with local bars and sections, and working with the Young Lawyers Division to publicize its many activities.

### **13. Investment Committee Report**

Chair Ian Comisky reported that the Bar's long-term investments have been performing well, and were up 6 percent for the calendar year. He said the committee continues to review the content of

the Bar's investment portfolio because of the changing financial world and also to measure the performance of Bar-held funds against other benchmarks funds. The Bar also is requesting proposals for investment advisors, although that does not mean it will change its investment advisor.

#### **14. Budget Committee Report**

Chair Paul SanGiovanni presented two recommendations. The first was to appropriate \$42,000 from the Bar's new program reserve fund for the Law.tv contract to prepare video reports on Bar *News* articles. The board approved that amendment by voice vote. The second item was a \$26,600 amendment for the Gender Bias/Diversity Committee for consultants and meeting expenses, with \$12,600 among from the new program reserve fund. The board by voice vote approved that amendment. SanGiovanni said the committee continues a broad review of Bar finances and spending.

#### **15. Rules Committee Report**

Vice Chair John Alpizar noted six items received final approval on the consent agenda. He presented one other item for final approval – Rule 17-1.5 Termination or Withdrawal of Registration (Recertification): Adds new subdivision (e), to allow for the recertification of authorized house counsels whose status was terminated for failure to pay annual fees or complete continuing legal education or basic skills course requirements in the same manner as delinquent members of The Florida Bar are reinstated. The board approved the amendment by voice vote. Alpizar presented two items on first reading:

- 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.

- 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.

#### **16. Program Evaluation Committee Report**

Chair Michael Tanner presented amendments to the bylaws of the Business Law and the Entertainment, Arts and Sports Law sections and recommended waiving second reading and giving final approval to both. The board unanimously by voice vote approved waiving second reading and then approving the amendments for both sets of bylaws. Tanner reported the committee has approved bylaw amendments for the Criminal Law and Tax sections and for BLSE policies on standards for certification in appellate practice which will be presented to the board in December. The committee is reviewing the Leadership Academy and the Leadership Academy Committee, the Senior Lawyers Committee, the Annual Convention, the Citizens Advisory Committee, the Judicial Administration and Evaluation Committee, and the Member Benefits Program. PEC has also establish an implementation subcommittee, Tanner said, to look at compliance with previous committee recommendations for various programs and activities.

#### **17. Certification Plan Appeal Committee Report**

Chair Rick Nail presented 11 items on first reading:

- Rule 6-1.2 Public Notice (specialist/expert): 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.
- BLSE Policy 2.02 (Adding Juvenile Law and Condominium and Planned Development Law to listing of approved areas): This amendment adds Juvenile Law and Condominium and Planned Development Law under 2.02 (b) with the Court effective date.
- BLSE Policy 2.02 Areas of Certification (Evaluation Results): 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.
- BLSE Policy 2.07 (Adding Juvenile Law to 2nd Cycle Areas and Condominium and Planned Development Law to 1st Cycle Areas): 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.
- 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.
- BLSE Policy 3.01(a) Accreditation of Lawyer Certifying Organization (specialist/expert): 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.
- BLSE Policy 4.06 Right of Reply (Recusal): This amendment adds subdivision (c) regarding reasons for a recusal and the process.
- 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.
- BLSE Policy 4.10 Review by the Board of Governors (Recusal): 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 (Pending 6-10.3 approval): Adds a technology definition in subsection (g), outlining what constitutes receiving technology CLE credit in the event Rule 6-10.3 is 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.

### **18. Young Lawyers Division Report**

YLD President Katherine Hurst Miller reported the YLD Board of Governors is working on a CLE program, to help mark October as pro bono month, to instruct lawyers how to help temporary caregivers for children fill out forms for health care, education, and other matters. It will also, she said, encourage young lawyers to get in the habit of doing pro bono work. She said the division has finished the filming necessary to put its Practicing With Professionalism course online, and it should be ready sometime in the spring. The YLD board is advocating for fewer

subjects to be tested on the bar exam, but has not taken a position on using the uniform bar exam. The division is setting up a separate website for its Lawyers Advising Lawyers program, which should be ready in January, she said.

### **19. Board Review Committee on Professional Ethics**

Chair Carl Schwait said the committee had no action items. He reported that eight comments from lawyers and companies were filed with the Supreme Court on the Bar's proposed extensive revision of lawyer referral service rules which would classify all entities that seek to link lawyers with lawyers or legal services as "qualifying providers." Schwait said some comments supported and some opposed with some contending the Bar had not gone far enough with its proposed regulations and some arguing the Bar had gone too far.

### **20. Constitution Revision Commission Report**

Chair Sandy Diamond noted that Supreme Court Chief Justice Jorge Labarga, Gov. Rick Scott, and incoming Senate President Joe Negron were soliciting applications for their appointments to next year's Constitution Revision Commission. She said a similar action from incoming House Speaker Richard Corcoran was expected soon. She also said the process is waiting for Gov. Scott's office to announce the administrative structure of the CRC. The committee, Diamond said, is preparing an RFP for a public relation's firm to help get out the Bar's message and educational materials on the CRC.

### **21. Special Committee on Trust Accounting Solutions**

Chair Andy Sasso said the committee has received positive input about its efforts and is working with FIS Global to develop a program that would automatically generate required trust accounting reports and reconciliations as long as lawyers feed in the correct information. He said the initial cost for the program is expected to be around \$25,000.

### **22. Technology Committee Report**

Committee member Renée Thompson noted the committee has been looking at cybersecurity and protection of confidential information. It will gather at the Fall Meeting to discuss incubators to help train new lawyers, including on technology matters. She noted the Supreme Court, on the day before the board meeting, approved the Bar's request to increase required CLE from 30 to 33 hours every three years, with the extra three hours being devoted to technology matters. She said the Bar already offers free CLE on its website to meet that extra requirement.

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

President-elect Higer reported the Gender Bias Committee was planning a meeting October 7 and 8 in Tampa to hear from experts in the field and others with the goal of reporting to the board in December. (The meeting was postponed because of Hurricane Matthew.)

### **24. Executive Director's Report**

Executive Director John F. Harkness, Jr., referring to the expanded CLE requirement, noted the Bar has 197 different CLE programs offered on its website, many of them free. He said that 2,500 lawyers have already met the extra technology requirement, although it doesn't actually become effective until January 1, 2017.

**25. President's Report**

President Schifino reported on his extensive travels around the state visiting editorial boards and local bars. He said he has also met with legislative leaders from both parties and among the topics of conversations was term limits for judges, and Schifino said he told legislators that would be a mistake. The Bar, he said, will be dealing with the Constitution Revision Committee in the coming year, and continue to work with the Florida Board of Bar Examiners and The Florida Bar Foundation on issues of common interest.

**26. Member Benefits Committee Report**

Board member Paul SanGiovanni presented the committee's recommendation to add eFileMadeEasy, which helps lawyers do electronic filing through the state court system's statewide internet portal, to the Bar's Member Benefits Program. The board unanimously approved the recommendation.

**27. Executive Session**

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

**28. Time and Place of Next Meeting**

There being no further business before the board, President Schifino adjourned the meeting at 12:40 p.m. The next board meeting is December 9 at the Sandpearl Resort in Clearwater Beach.



SUBJECT INDEX

APPEARANCE BY VANDERBILT UNIVERSITY VICE CHANCELLOR DAVID WILLIAMS.....	2
BOARD REVIEW COMMITTEE ON PROFESSIONAL ETHICS REPORT.....	7
BUDGET COMMITTEE REPORT .....	5
CERTIFICATION PLAN APPEAL COMMITTEE REPORT.....	5
COMMUNICATIONS COMMITTEE REPORT .....	4
CONSENT AGENDA APPROVAL .....	3
CONSTITUTION REVISION COMMISSION COMMITTEE REPORT .....	7
EXECUTIVE DIRECTOR'S REPORT .....	7
EXECUTIVE SESSION.....	8
FLORIDA BOARD OF BAR EXAMINERS REPORT .....	4
GUESTS .....	2
INVESTMENT COMMITTEE REPORT .....	4
INVOCATION AND PLEDGE OF ALLEGIANCE.....	2
LEGISLATION COMMITTEE REPORT .....	4
MEMBER BENEFITS COMMITTEE REPORT .....	8
MINUTES APPROVAL.....	2
OUT OF STATE DIVISION REPORT.....	4
PRESIDENT'S REPORT .....	8
PRESIDENT-ELECT'S REPORT .....	7
PROGRAM EVALUATION COMMITTEE REPORT.....	5
ROLL CALL.....	1
RULES COMMITTEE REPORT.....	5
SPECIAL COMMITTEE ON TRUST ACCOUNTING SOLUTIONS REPORT .....	7
STAFF IN ATTENDANCE .....	2
TECHNOLOGY COMMITTEE REPORT .....	7
TIME AND PLACE OF NEXT MEETING.....	8
UNIFORM BAR EXAM REPORT.....	4
YOUNG LAWYERS DIVISION REPORT.....	6