

The Florida Bar Board of Governors
May 23, 2014
Casa Monica
St. Augustine, FL

1. Roll Call

Eugene K. Pettis, President
Gregory W. Coleman, 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
Michael G. Tanner, 4th Circuit
Renée Elise Thompson, 5th Circuit
Andrew B. Sasso, 6th Circuit
Sandra C. Upchurch, 7th Circuit
Carl B. Schwait, 8th Circuit
Mary Ann Morgan, 9th Circuit
Paul Louis SanGiovanni, 9th Circuit
Scott R. McMillen, 9th Circuit
C. Richard Nail, 10th Circuit
Ramon A. Abadin, 11th Circuit
Dori Foster-Morales, 11th Circuit
Michael J. Higer, 11th Circuit
Dennis G. Kainen, 11th Circuit
Steven W. Davis, 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
Michael S. Hooker, 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
Lorna E. Brown-Burton, 17th Circuit
Adam Glenn Rabinowitz, 17th Circuit
John M. Stewart, 19th Circuit
Laird A. Lile, 20th Circuit
Marcy L. Shaw, 20th Circuit
Richard A. Tanner, Out of State

Brian D. Burgoon, Out of State
Melanie S. Griffin, YLD President
Michael F. Orr, YLD President-elect
Winston W. Gardner, Jr., Public Member

Members Absent

Sandra Fascell Diamond, 6th Circuit
Leslie J. Lott, 11th Circuit
Diana Santa Maria, 17th Circuit
Jay Cohen, 17th Circuit
O. John Alpizar, 18th Circuit
Ian M. Comisky, Out of State
Eric L. Meeks, Out of State
Anthony Holloway, Public Member

2. Staff in Attendance

John F. Harkness, Jr., Executive Director
John Berry, Director, Legal Division
Adria Quintela, Director, Lawyer Regulation
Beth Brenneis, Director, Finance and Accounting
Mary Ellen Bateman, Director, Ethics and Advertising, UPL, and Special Projects
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
Rosalyne A. Scott, Assistant to the President
Gary Blankenship, Senior Editor, Florida Bar News

3. Guests

Ricardo Manoel Martinez-Cid, President, Cuban American Bar Association
Brittany Maxey, President, Florida Association for Women Lawyers
Bruce Mount, Jr., President, Virgil Hawkins Florida Chapter, National Bar Association
Diana Bock, Government Lawyer Section

4. Invocation and Pledge of Allegiance

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

5. Welcome by Stephen Faustini, St. Johns County Bar Association President

Faustini welcomed the board to St. Augustine and gave some history of the city and the Casa Monica hotel, including the first free African American settlement in the U.S., created just north of St. Augustine by the King of Spain before 1740.

6. Introduction of New Members

New board members Bruce Robinson of the 3rd Circuit, Fred Franklin of the 4th Circuit, Roland Sanchez-Medina from the 11th Circuit and Young Lawyers Division President-elect designate

Gordon Glover were introduced to the board. A brief bios was given for new member Wayne Helsby of the 9th Circuit, who was not at the board meeting but attended the previous day's new member orientation.

7. Minutes Approval

The board approved the minutes from its March 28, 2014, meeting in Palm Coast. That included approving the decision by President Eugene Pettis April 2, 2014 to not oppose the following emergency legislative position for the Real Property, Probate and Trust Law Section: Opposes legislation that changes the definition of the practice of law to exclude from the definition a community association manager's interpretation of documents or statutes that govern a community association, determination of title to real property, or completion of documents that require interpretation of statutes or the documents that govern a community association, including opposition to SB 1466, SB1496, HB 7037, and CS/HB 7039 (2014).

8. Consent Agenda Approval

The board approved the consent agenda after item 5bii was removed because it was deferred by the Board Review Committee on Professional Ethics. The approval included:

- Appointing Michael R. Freed, Amanda Parker Baggett, and Thomas Michael Farrell IV as attorney members to UPL Circuit Committee 4, Marlies M. Gluck as a public member to UPL Circuit Committee 12, Susan Papagikos as a public member to UPL Circuit Committee 15B, and Nancy Ann M. Stuparich as an attorney member to UPL Circuit Committee 18B.

- Ratifying the Board Review Committee on Professional Ethics 8-0 vote to affirm the Standing Committee on Advertising decision in the Yellow Pages advertisement in Advertising Appeal 14-01315, determining that the following statements improperly compare the advertising law firm's skills, experience, reputation or record, unless the comparison is objectively verifiable under Rule 4-7.13(b)(3): There's a difference between "TV lawyers" and our law firm; "This legal guide may make us unpopular with some of the big TV law firms. Too bad. We're trying to level the playing field for Florida accident victims." –John Della Costa; Tampa Bay attorneys John Della Costa and David Neville met while working at large local law firms that operated with what they call the "Mill Mentality." The goal of the "Mill Mentality" is to attract as many cases as possible and then push them through the legal system quickly. It was a volume business that produced great revenue for the law firms, but John and David always felt the clients weren't getting the personal attention they deserved; in 2006 John and David decided to do things differently. They envisioned a law firm where clients could work directly with their attorneys – not paralegals, case workers, or assistants like they would at a typical "TV law firm."

- Approving an amendment to Rule 3-7.11 General Rules of Procedure,(Clarifying service through postal requirements, allowing for e-mail service in staff level matters): Within subdivisions (b) and (c), amends rule to make clear that certified postal mail service on respondents is required only for service of formal complaints in referee proceedings. Service on respondents during the investigatory phases of Bar proceedings may be made via e-mail or facsimile.

- Appointing Johnny C. Watson, Nora E. Portuondo, and Susan Papgikos as paralegal members and Raheela Ahmet as an attorney member to the Florida Registered Paralegal District Committee.

9. Report from Conference of County Court Judges

Judge Jim McCune, president of the conference, thanked the board for the Bar's legislative support of court priorities in the recent legislative session.

10. Public Reprimand

President Pettis delivered one public reprimand.

11. Trial Lawyers Section Report

Section Chair Ted Eastmoore recounted the section's many CLE seminars, its annual Chester Bedell Mock Trial Competition and its ongoing legislative activities. A successful new section venture has been the Teachers Law School, which got glowing reviews from the 80 participating teachers, who in turn will reach up to 25,000 students a year. The program has attracted support from the Legislature, which this year appropriated \$100,000, including \$50,000 in recurring revenues, to the Chester Bedell Foundation to pay for the project. (The appropriation was later vetoed by the governor.)

12. Budget Committee Report

Chair David Prather presented three budget amendments for the 2013-14 budget: \$35,939 for Annual Convention seminars; \$5,000 for CLER certified mail expenses; and \$40,000 for a grant to the Innocence Project which was being moved forward from the 2014-15 budget. The board unanimously approved the amendments. Chair-elect Michael Higer presented a revised 2014-15 budget subsequent to a budget objection by Executive Director John F. Harness, Jr. Higer said that Harkness had fine tuned the budget after the board's approval at its March meeting and further reduced expenditures by \$254,000. The board unanimously approved the revised budget.

13. Investment Committee Report

Committee Vice Chair Clay Schnitker said the Bar continues to earn good returns on its investments, with its long-term portfolio rising between 1.6 and 1.8 percent in the past three months. He said the committee recommended that the board amend investment policies to allow the Bar to hold a loan receivable as an asset, which would allow the Bar to make a proposed \$6 million loan to the Florida Bar Foundation. In response to a question, Schnitker said the Bar would not have to require security to make a loan from its investments. The board approved that motion by voice vote with one dissent.

14. Legislation Committee Report

Committee Vice Chair Michael Tanner noted that all Bar, section, and committee legislative positions will sunset as of June 30, 2014, and reported the committee will be reviewing Bar positions to see which ones should be readopted. Bar Legislative Consultant Jim Daughton noted the Bar had a good legislative year and was very successful in three areas: supporting the court system's top goal of improving pay for court staff, including state attorney and public defender office personnel; getting \$2 million for the Florida Civil Legal Assistance Act; and obtaining three new district court of appeal judgeships as well as money for badly needed DCA maintenance and construction projects. The latter includes \$7.1 million for a new Fourth DCA courthouse.

15. 2014 President's Task Force to Study Enhancement of Diversity on the Bench and the JNCs Report

Chair Frank Scruggs presented the task force's final report, with 10 specific recommendations for increasing diversity on judicial nominating commissions and on the bench. He noted that Gov. Rick Scott will appoint three members to each of the state's 26 JNCs this year, two of whom will be based on slates nominated by the Bar and called it a golden opportunity to improve diversity. The board unanimously adopted the report, and President Pettis said he would deliver it to the governor. President-elect Coleman said he would have update reports at each of the coming year's board meetings on how the recommendations are being carried out.

16. Executive Session

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

17. Florida Bar Foundation Report

Foundation President John Patterson presented historical information on Foundation finances and IOTA income, along with projections of future interest rates as background for a proposed loan from the Bar to the Foundation. Patterson said the loan will help the Foundation maintain an adequate level of funding for legal aid agencies as its reserves run out and until interest rates rise and restore the Foundation's IOTA funding. He said the original proposal for a \$6 million loan over three years had been modified to \$6 million over two years. He also said some of the money would be used to study new ways of delivering legal services to the poor and middle class. President Pettis said the final details would be presented at the board's July meeting. The board voted unanimously in concept to approve the loan, subject to those details.

18. Disciplinary Procedure Committee Report

Chair Jay Manuel presented on first reading 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, and telephone numbers 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's Style Guide.

Manuel presented on second reading and the board unanimously approved an amendment to Rule 3-7.10 Reinstatement and Readmission Procedures (Subdivision (b) - Timing of filing a petition for reinstatement): Amends subpart (b)(1) of Rule 3-7.10 to specify that a respondent may not file a petition for reinstatement until that respondent has completed 80 percent of the respondent's total period of suspension. Nonsubstantive changes are proposed to conform to the Supreme Court of Florida's style guide.

Manuel presented a proposed board policy regarding lawyers who may be asked to consult on the state's new medical marijuana law which conflicts with federal drug laws. The policy provides that, "The Florida Bar will not prosecute a Florida Bar member solely for advising a client regarding the validity, scope, and meaning of Florida statutes regarding medical marijuana or for

assisting a client in conduct that the lawyer reasonably believes is permitted by Florida statutes, regulations, orders, and other state or local provisions implementing them, as long as the lawyer also advises the client regarding related federal law and policy.” After discussion, the board approved the policy by voice vote with one dissent.

19. Board Review Committee on Professional Ethics Report

Chair Carl Schwait reviewed agenda item 5bi which the board approved on the consent agenda and the board ratified that action with a voice vote with one dissent.

The Board Review Committee on Professional Ethics voted 5-3 to recommend that the Board of Governors withdraw Florida Bar Staff Opinion 31741 and direct staff to issue a staff opinion that concludes that the proposed subscription service to report clients’ non-payment of attorneys’ fees is permissible under the parameters expressed in both the written opinion and as stated orally by the inquirers at the BRC meeting. The BRC motion failed 17-20. A motion to affirm Florida Bar Staff Opinion 31741 as written passed on voice vote. The staff opinion concludes that the conduct is permissible when reporting non-payment only if the amount owed is not in dispute and if the representation is terminated, because of confidentiality, conflicts of interest, and past precedent.

On Ethics Appeal 32261, the BRCPE voted 8-0 to recommend that the Board of Governors affirm Florida Bar Staff Opinion 32261 as revised by the Professional Ethics Committee. The opinion concludes that lawyers must hold funds in trust when third parties have valid legal claims to the funds and the lawyer owes a legal duty to those third parties. The lawyer may not notify third parties to whom the lawyer owes a legal duty that the funds will be held for 30 days to negotiate payment, after which the funds would be disbursed to the client if negotiations were unsuccessful. The Board of Governors approved the BRC recommendation on voice vote without objection.

Schwait reported that the Board Review Committee on Professional Ethics heard a report from Rules of Judicial Administration Subcommittee A involving proposed amendments to the Rules of Judicial Administration relating to “coverage attorneys” but that the BRCPE made no recommendation as there was no issue properly before it on which to take action.

Schwait gave an informational report that the Standing Committee on Advertising voted 4-0 to respond to the Board of Governors that the committee has determined that a proposed advisory opinion is unnecessary because of subsequent communications with LinkedIn.

Schwait gave an informational report on providing notice to Florida Bar members via the website and notices placed inside advertising opinions on filings regarding the new board policy on reviewing advertisements, which is effective July 1, 2014: The Board of Governors policy regarding review of lawyer advertisements is that any change of any kind to an advertisement renders the advertisement a new advertisement with a new filing fee of \$150 per timely filed advertisement and \$250 per untimely filed advertisement. The only exception is a revision to an existing advertisement that is solely to comply with a bar opinion that the advertisement does not comply with the lawyer advertising rules, for which no additional fee will be charged. Any change includes, but is not limited to, any change to wording, illustrations, photographs,

typographical marks, layout, or color scheme. The Board of Governors also directs staff to monitor cost of program administration compared with fees and report to the Board of Governors whether a reduction in filing fees is warranted.

20. Workers' Compensation Section Report

Chair Christopher Brown Smith noted that worker's compensation law has changed rapidly in the state. He said two cases currently pending at the Supreme Court will have a great impact on workers' compensation practice, including one case that challenges the constitutionality of the severely restricted attorneys' fees for plaintiffs' attorneys imposed in a 2009 rewrite of the state's WC laws. The section has varied CLE programs and judges of compensation claims participate in several of those, he said.

21. Special Appointments

The board nominated Scott J. Baena, Brandice D. Dickson, Hassia T. Ibrahim Diolombi, Melida P. Gamot, Frank Allan Kreidler, and Peter L. Wechsler to the Supreme Court for two Florida Board of Bar Examiners vacancies. The two chosen by the court will serve five-year terms beginning November 1. In addition, the board approved the nomination of 156 lawyers, as chosen by its various screening committees, for two upcoming vacancies on each of the state's 26 judicial nominating commissions. Gov. Rick Scott will make the final appointments for the four-year terms, which begin July 1. Board member Tim Koenig was recused from the vote.

The board made several special appointments, including:

- Jack E. Fernandez of Tampa, Leslie A. Goller of Jacksonville, Michael L. Guttmann of Pensacola, John M. Shea of Tampa, and Charles R. Stepter, Jr., of Winter Park for two-year terms, beginning July 1, on the Florida Legal Services, Inc., Board of Directors.
- Mark Journey of Ft. Lauderdale, Kathi Lee Kilpatrick of Chattahoochee, and Wayne LaRue Smith of Key West as attorney members, and Barry M. Crown of South Miami and Patricia Fowler of Altamonte Springs as non-lawyer members of the Florida Lawyers Assistance, Inc., Board of Directors. They will serve three-year terms starting July 1.
- Debra A. Henly of Tallahassee to a two-year term, starting July 1, on the Florida Medical Malpractice Joint Underwriting Association.
- Patricia E. Lowry of West Palm Beach for a four-year term, beginning July 1, on the Supreme Court's Judicial Ethics Advisory Committee.
- Maria C. Gonzalez and Caroline E. Johnson Levine for four-year terms, beginning July 1, on the Supreme Court's Commission on Professionalism.
- Administrative law Judge Suzanne Van Wyk of Tallahassee to fill a vacancy for a term ending June 30, 2015, on the Florida Bar Foundation Board of Directors.
- Mark D. Nichols of Ft. Lauderdale for a two-year term, beginning in August, as an under-35 delegate to the ABA House of Delegates.

22. Communications Committee Report

Chair Michelle Suskauer recapped the committee's year, which included expanding help and services offered on the Bar's website, expanding the Bar's social media presence including hiring a social media coordinator, issued the best practices guide for electronic communications, created an app – which will be duplicated this year – for the Bar's Annual Convention, and working on technology issues, including developing a new conference call platform.

23. Traffic Court Rules Committee Report

Chair Marynelle Hardee presented the committee's three-year cycle rule amendments, which were recommended for approval by the board by a 37-0 vote.

24. Government Lawyer Section Report

Chair Barbara Wingo said the section concentrates on offering CLE courses and networking opportunities for section members and has worked to improve its publications and other information distributed to section members. The section also supports the State and Federal Government and Administrative Practice board certification area.

25. Family Law Rules Committee Report

Vice Chair Elizabeth Blackburn presented out-of-cycle rule amendments governing the use of telephonic communications to provide testimony in hearings. The board recommended approval of the amendments by a 38-0 vote.

26. Rules Committee Report

Vice Chair Marcy Shaw presented four items on first reading:

- Rule 1-3.7 Reinstatement to Membership (CLER and BSCR Additions & 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.

- Rule 4-4.2 Communication with Person Represented by Counsel: Within subdivision (a) adds "contemporaneously" as part of the requirement to copy the represented person's lawyer and replaces "party" with "person." Within the comment, adds "If a lawyer does not know whether the government agency, private person or organization is represented in a matter, the lawyer should make inquiry, and in all instances, identify himself or herself as a lawyer who is representing a client." Within the comment adds "as set forth within subdivision (a)" regarding independent justification for speaking with a person represented by counsel. Within the comment clarifies that a lawyer who is a party to a controversy with the governmental agency may communicate directly with government officials about the matter. Within the comment, adds "Also, in representing a client in a matter with a government agency, a lawyer may communicate with a government officer or board as part of a public hearing when an administrative or quasi-judicial matter is pending before that agency as permitted by rules 4-3.5 and 4-3.9." Other non-substantive changes conform the rule to the Supreme Court style guide.

- CSF Regulation A 3 – 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.

- 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.

27. Young Lawyers Division Report

YLD President Melanie Griffin reported the division held a statewide diversity symposium, with presentations in Miami, Tampa, and Tallahassee on May 9, and has established diversity grants. The division was working on its last big event of the Bar year, its Government Symposium which was to focus on how lawyers could incorporate legislative activities into their practices.

28. President-elect's Report

President-elect Coleman presented the schedule for the board's 2014-15 Bar year meetings: July 23-26, Palm Beach; October 22-25, Philadelphia; December 10-13, Amelia Island; January 28-31, Tallahassee; March 25-28, St. Petersburg; and May 20-23, Key West. Coleman presented the officers for the Bar's standing committees for the coming year, and the board unanimously approved those appointments. Coleman announced he selected board members Renée Thompson and David Prather as his appointments to the Executive Committee. The board elected board members Brian Burgoon, Dori Foster-Morales, and Bill Schifino as its representatives on the Executive Committee.

29. Program Evaluation Committee Report

Chair Ray Abadin presented on first reading revisions to the Health Law Section's bylaws and a proposed new board certification area for Juvenile Law. He presented a rule amendment approved by PEC that will allow the Young Lawyers Division to offer its Practicing with Professionalism seminars online as an alternative to the in-person courses. The board unanimously approved that proposal, which included waiving second reading and which now goes to the Supreme Court. Abadin presented the committee's recommendation to terminate the Antitrust and Trade Regulation Law Certification, noting that the number of lawyers with that certification has declined from 20 to 14 in recent years and no one has applied to be certified since 2008. However, the board, after discussion, rejected that recommendation 15-25.

30. Leadership Academy Report

Board member Renée Thompson reported the first academy class would be graduating at the Bar's Annual Convention where the second class, with 61 participants, will begin its academy activities.

31. Comments for the Good of the Order

Departing board members Scott McMillen, Grier Wells, Melanie Griffin, and ex officio members Brittany Maxey, Bruce Mount, Jr., and Diana Bock made farewell remarks to the board.

32. President's Report

President Pettis recalled his service on the board and for the past year as Bar president, and thanked the board members for their service and assistance.

33. Time and Place of Next Meeting

There being no further business before the board, President Pettis adjourned the meeting at 4:45 p.m. The next board meeting is July 25 at The Breakers in Palm Beach.

SUBJECT INDEX

2014 PRESIDENT’S TASK FORCE TO STURY ENHANCE OF DIVERSITY ON THE BENCH AND THE JNCs REPORT	5
BOARD REVIEW COMMITTEE ON PROFESSIONAL ETHICS REPORT	6
BUDGET COMMITTEE REPORT	4
COMMENTS FOR THE GOOD OF THE ORDER	9
COMMUNICATIONS COMMITTEE REPORT	7
CONFERENCE OF COUNTY COURT JUDGES REPORT	4
CONSENT AGENDA APPROVAL	3
DISCIPLINARY PROCEDURE COMMITTEE REPORT	5
EXECUTIVE SESSION	5
FAMILY LAW RULES COMMITTEE REPORT	8
FLORIDA BAR FOUNDATION REPORT	5
GOVERNMENT LAWYER SECTION REPORT	8
GUESTS	2
INTRODUCTION OF NEW MEMBERS	2
INVESTMENT COMMITTEE REPORT	4
INVOCATION AND PLEDGE OF ALLEGIANCE	2
LEADERSHIP ACADEMY REPORT	9
LEGISLATION COMMITTEE REPORT	4
MINUTES APPROVAL	3
PRESIDENT’S REPORT	9
PRESIDENT-ELECT’S REPORT	9
PROGRAM EVALUATION COMMITTEE REPORT	9
PUBLIC REPRIMAND	4
ROLL CALL	1
RULES COMMITTEE REPORT	8
SPECIAL APPOINTMENTS	7
STAFF IN ATTENDANCE	2
TIME AND PLACE OF NEXT MEETING	9
TRAFFIC COURT RULES COMMITTEE REPORT	8
TRIAL LAWYERS SECTION REPORT	4
WELCOME BY ST. JOHNS COUNTY BAR ASSOCIATON PRESIDENT STEPHEN FAUSTINI	2
WORKERS’ COMPENSATION SECTION REPORT	7
YOUNG LAWYERS DIVISION REPORT	9