

The Florida Bar Board of Governors
July 26, 2013
Omni Resort
Amelia Island, Florida

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 Fascell Diamond, 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
Leslie J. Lott, 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
Walter G. Campbell, Jr., 17th Circuit
Diana Santa Maria, 17th Circuit
Lorna E. Brown-Burton, 17th Circuit
Jay Cohen, 17th Circuit
Adam Glenn Rabinowitz, 17th Circuit

O. John Alpizar, 18th Circuit
John M. Stewart, 19th Circuit
Marcy L. Shaw, 20th Circuit
Richard A. Tanner, Out of State
Ian M. Comisky, Out of State
Eric L. Meeks, 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
Anthony Holloway, Public Member

Members Absent

Dori Foster-Morales, 11th Circuit
Edwin A. Scales, III, 16th Circuit
Laird A. Lile, 20th Circuit

2. Staff in Attendance

John F. Harkness, Jr., Executive Director
John Berry, Director, Legal Division
Ken Marvin, Director, Lawyer Regulation
Marcy Jackson, Director of Administration and Chief Financial Officer
Paul Hill, General Counsel
Beth Brenneis, Director, Finance and Accounting
Elizabeth Clark Tarbert, Ethics and Advertising Counsel
Francine Walker, Director, Public Information and Bar Services
Rosalyn A. Scott, Assistant to the President
Gary Blankenship, Senior Editor, Florida Bar News

3. Guests

Sandra Ferrera, 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 Clay Schnitker led the board in the Pledge of Allegiance and delivered the invocation.

5. Welcome By Fourth Circuit Judge Brian Davis

Judge Davis welcomed the Bar and noted the scenic and historic attractions of the area and discussed challenges facing the legal system and programs that Bar President Eugene Pettis is implementing to address them.

6. Swearing In of Board Members

President Pettis administered the oath of office to new and re-elected board members who were not sworn in at the Annual Convention.

7. Introduction of Citizens Forum Members

Forum members Paulette Hatchett Simms, Paulita Kundid, Bill Conrad, Ralph Merritt, Ralph McNamara, Susannah Grady, Linda Goldstein, Val Demings, and Larry Tyree introduced themselves to the board and were welcomed by President Pettis. Public board member Anthony Holloway is chair of the forum.

8. Approval of Minutes

The board approved the minutes from its May 31 meeting in Sarasota. That included ratifying the July 15, 2013, 12-0 vote of the Executive Committee to approve a budget amendment to allow the Young Lawyers Division to appropriate a \$100,000 contribution from excess revenue funds for The Florida Bar Foundation. The vote also ratified the July 17 vote of the Executive Committee to nominate Leonard E. Ireland, Jr., Kristine J. Van Vorst, and Stuart S. Walker, all of Gainesville, for a vacancy on the Eighth Circuit Judicial Nominating Commission.

9. Approval of the Consent Agenda

The board approved the consent agenda with the exception of item 5d(iii)(4), which was withdrawn. That approval included:

- Appointing Todd German and Rae Burns as public members to UPL Circuit Committee 16 and Roger Eaton as a public member of UPL Circuit Committee 20.
- Final approval of Rule 2-7.3 Creation Of Sections And Divisions (By-law 2-7.3): Deletes subdivisions (a) and (b) listing the standing committees and divisions of the bar. Adds that the bar will maintain current lists of standing committees and divisions of the bar and will post those lists on the bar's website.
- Final approval of Rule 3-5.1 Generally (Disciplinary Suspensions): Within subdivision (e), clarifies that suspension may be for a specified time as imposed by the Court's order or until further order of the Court as in a contempt order.
- Final approval of Procedures For Issuing Advisory Opinions Relating To Lawyer Advertising Or Solicitation: Throughout the advertising procedures, references to the lawyer advertising rules were updated to reflect re-numbering of rules from a prior Court opinion and non-substantive amendments were made to conform the procedures to the Supreme Court of Florida style guide.
- Signing legislative consulting contracts between the Bar and Metz, Husband & Daughton, P.A. and between the Bar and Pamela Burch Fort.
- That the Bar does not object to the Real Property, Probate and Trust Law Section taking the following legislative positions:
 - Supports legislation to standardize procedures and to clarify the timing, content and preparation fees relating to estoppel letters issued by condominium and homeowners' associations, including amendments to F.S. §§718.116 & 720.30851.
 - Supports legislation to remove the requirement that statutory late fees must be set forth in a condominium or homeowners' association declaration or bylaws in order for those

charges to be imposed, to allow for the collection of such fees by all condominium and homeowner associations, including amendments to F.S. §§718.116 & 718.3085.

- Supports legislation to differentiate the administration of nonresidential condominiums from residential condominiums and to eliminate for nonresidential condominium associations certain provisions not appropriate in a commercial setting, including amendments to F.S. Ch. 718.

- Approving the legislative consultant contract between the Trial Lawyers Section and Bob Harris, Mark Herron, and Brittney Burch.

- Approving the legislative constant contract between the Business Law Section and William Wiley.

- Approving the legislative consultant contract between the Family Law Section and Nelson Diaz and Edgar Castro.

- Approving the Appointment of William J. “West” Ritchie and Renee Gordon to the Legal Services of North Florida Board of Directors.

- Approving proposed Prepaid Legal Service Plan Amendments – Chapter 9.

- Approving the appointments, respectively, of LaShawn Donyale Riggins, Joyce Christine Fuller, and Kristin Maria Ahr to serve as chairs of Florida Registered Paralegal Committee’s 1Z, 9Z, and 15Z.

- Approving amendments to the Florida Legal Services, Inc., Articles of Incorporation.

10. Young Lawyers Division Board of Governors Recognition

President Pettis acknowledged the attendance of the YLD Board of Governors, and YLD board members introduced themselves.

11. Public Reprimand

President Pettis administered one public reprimand.

12. Young Lawyers Division Report

YLD President Melanie Griffin reported the division has launched a campaign to increase readership of its quarterly electronic newsletter and the visibility of its Facebook presence, and is also doing a circuit report of its BoG meeting activities. She reported the YLD has donated \$100,000 to The Florida Bar Foundation and \$50,000 to the Bar’s new Leadership Academy. The YLD is looking at putting its Practicing with Professionalism seminar online and will explore that in depth at its August meeting.

13. Budget Committee Report

Committee Chair David Prather presented four rollover amendments from the 2012-13 budget to the 2013-14 budget and two new amendments for the 2013-14 budget. The four rollover amendments were \$45,000 for an information technology consulting contract, \$15,000 for renovations to the Bar’s Ft. Lauderdale branch office, \$33,868 in capital outlay for equipment at the Bar headquarters, and \$19,993 for the Justice Teaching program. The two new amendments are \$100,000 for the Florida Law Related Education Associations’ adult education programs and \$40,000 for the Florida State University Center for the Advancement of Human Rights to help in an ongoing review of the state’s death penalty process. The board approved all of the amendments.

14. Investment Committee Report

Committee Chair Ian Comisky reported the committee is continuing its updating of Bar investment policies and that the Bar's long-term investment fund is performing well and is at an all time high.

15. Audit Committee Report

Chair Leslie Lott said work has begun on the 2012-13 fiscal year audit and the committee expects a preliminary report in September and a final report by the end of the calendar year.

16. Executive Session

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

17. Legislation Committee Report

Chair Jay Cohen noted the legislative consultant contracts that had been approved on the consent agenda and added the committee recommended waiting to approve a proposed contract between the Family Law Section and a public relations firm so that it could be reviewed by the Communications Committee. The committee recommended and the board approved legislative consulting contracts between the Bar and Smith, Bryan & Myers and G. Herb Sheheane and between the Real Property, Probate and Trust Law Section and Pete Dunbar. Cohen reported that the committee is preparing to address a wide range of national and state issues that could confront the Bar. The committee also is considering, at the request of the Program Evaluation Committee, whether its name should be changed to the Governmental Affairs Committee.

18. Rules of Judicial Administration Committee Report

Board member Andy Sasso presented the three-year cycle rule and out-of-cycle rule amendments. The board voted 38-1 to recommend approval of the three-year cycle rule amendments and 41-0 to recommend approval of the out-of-cycle rule amendments. RJA Committee member Paul Regensdorf warned the board that rapid rule changes would be coming as the court systems moves to electronic filing and electronic record keeping. He noted the committee was working quickly on changes to accommodate electronic service of electronically filed documents.

19. Rules Committee Report

Chair John Alpizar reported that the committee reviewed the proposed rule amendment to be filed by Talbot D'Alemberte and Patsy Palmer to amend Bar rules to prohibit denying Bar membership based on citizenship status. As of the meeting, 110 Bar members had signed the petition. Alpizar said the committee voted to recommend that the Bar support the concept in the petition but recommend that the rule would be better placed in the Rules of the Supreme Court Relating to Admissions to the Bar, and that the board recommends to the Supreme Court of Florida that it seek input from the Board of Bar Examiners on the issue. The board by voice vote approved that recommendation with several dissents. Alpizar also said the committee is working to clarify the board's vote from its May meeting on an amendment to Rule 4-1.5, to specify that an attorney hired under a contingency fee contract cannot earn any extra fees or compensation if

another attorney or law firm is hired to handle medical subrogation and lien issues. The committee is also making minor clarifying changes to the comments for the amendment.

20. Board Review Committee on Professional Ethics Report

Chair Carl Schwait reported that the BRCPE voted 8-0 to defer action on Proposed Advisory Opinion A-12-1 on metatags until the next in-person meeting of the Board Review Committee on Professional Ethics. He said the committee voted 8-0 to recommend that the Board of Governors affirm Proposed Advisory Opinion 12-3 on cloud computing with minor changes to the final paragraph. Proposed Advisory Opinion 12-3 concludes that a lawyer may use cloud computing if the lawyer takes appropriate precautions to ensure that confidentiality of client information is maintained. The Board of Governors approved the BRC recommendation on voice vote. Schwait reported that the BRCPE voted 6-2 to recommend that the Board of Governors reverse the Standing Committee on Advertising decision in file numbers 13-03361, 13-03362, 13-03363 and determine that the television advertisements in files 13-03361, 13-03362, 13-03363 are misleading because they improperly use plural pronouns, implying multiple attorneys in the firms of sole practitioners, in violation of Rule 4-7.13(a) as noted below:

- File No. 13-03361: “*We* are your local personal injury law firm.” “*We* will be there for you when you need *us* most.”

- File Nos. 13-03361 through 13-03363: “If you have been seriously injured call *us* today to see how *we* can help.” “Personal injury law, it’s *our* business.”

The motion of the Review Committee on Professional Ethics failed 19-25, leaving standing the Standing Committee on Advertising decision that the advertisements are not misleading and are permissible because the advertising lawyer has support staff.

Schwait told the board that the BRCPE deferred the first reading of rule 4-7.22 Lawyer Referral Service amendments as the committee is considering additional amendments.

21. Program Evaluation Committee Report

Chair Ray Abadin reported on the committee’s projects for the upcoming Bar year. Those are: whether the PEC chair should be an automatic member of the Executive Committee; changing the name of the Legislation Committee to the Governmental Affairs Committee; looking at variations in certification criteria for different areas of law; evaluating the Bar’s Law Office Management Assistance Service; conducting the mandatory three-year review of the Alternative Dispute Resolution section; evaluating anti-trust and trade regulation certification; and whether there should be an additional charge beyond the initial \$150 fee when an ad submitted for Bar review is subsequently revised and must be re-reviewed. Abadin presented the committee’s recommendations for operating policies and guidelines for the new Senior Lawyers Committee the board approved at its May meeting, and the board approved those recommendations. He also presented a rewrite of the Family Law Section’s bylaws and the board approved those.

22. Communications Committee Report

Chair Michelle Suskauer reported on the success of the Bar’s app for the Annual Convention and said more apps are in the pipeline, including one allowing Bar members to check their CLE status and report CLE credits. She said the Citizens Forum and the committee recommended that

notices of Supreme Court orders suspending and disbaring Bar members be noted on members' profile pages on the Bar's website as soon as possible instead of waiting for the 30-day period members are given to wind down their practices. The board approved that recommendation. Suskauer said the committee also recommended that notice of a pending disciplinary issue be posted on a member's profile page, with links to the public documents of the case, after a referee issues findings in that case. The board discussed that but took no action pending further committee review. Suskauer presented four additional recommendations from the committee, all of which were adopted by the board: That the upcoming Bar membership survey including questions on member use of technology and that the Bar do a separate electronic member survey on the use of technology in law practices; that the Bar post a weekly technology tip on its website homepage; that the Leadership Academy conduct a pilot project using Facebook and LinkedIn outside the Bar's current social media policy but with the use of public records retention software; and that a Facebook page and Twitter feed be set up, under current Bar social media policies, for the Bar president.

23. Bar Legislative Award Presentation to Rep. Matt Gaetz

President Pettis presented a Legislative Award to Rep. Gaetz recognizing his openness to the Bar for input on his Death Penalty Reform Act which passed the Legislature earlier this year. Gaetz praised the Bar for its legislative activities on behalf of the court system and to guarantee access to the courts for all Floridians. He said that government works best when the judicial and legislative branches exercise mutual deference for each other's responsibilities.

24. Leadership Academy Report

Board member Renee Thompson reported that the academy, with its 59 fellows, had held its first two meetings. The first was at the Annual Convention and then the North and South divisions had separate meeting earlier in July.

25. Discussion for the Good of the Order

President Pettis announced that he would be asking board members before each meeting about issues they thought were important for the profession but were not otherwise on the board's agenda, and would select one or two topics for discussion by the board. The first issue chosen, he said, was the Supreme Court's recent order for establishing the Code for Resolving Professionalism Complaints and possible confusion that could cause for current local professionalism programs and the Bar's grievance program. After discussion, Pettis said he would seek a meeting with the court to discuss the concerns presented.

26. Disciplinary Procedure Committee Report

Chair Jay Manuel noted the amendment to Rule 3-5.1(e) approved by the board in the consent agenda. He presented one item on first reading – Rule 5-1.2 Trust Accounting Records: The proposed amendments to Rule 5-1.2 would address maintenance of trust accounting records when a law firm is either dissolved or sold to an attorney or group of attorneys. These aspects of trust account record keeping had not previously been specifically addressed in the Rules Regulating The Florida Bar.

27. Appellate Court Rules Committee Report

Committee member John Hamilton presented the three-year cycle rule amendments, which were recommended for approval by the board 36-0. He presented extensive out-of-cycle rule amendments, which were recommended for approval by the board 39-0.

28. Family Law Rules Committee Report

Vice Chair Elizabeth Blackburn presented the three-year cycle rule amendments, which were recommended for approval 40-0 by the board.

29. Juvenile Court Rules Committee Report

Vice Chair Deborah Schroth presented two sets of out-of-cycle rule amendments, which were recommended for approval 40-0 by the board.

30. President-elect's Report

President-elect Coleman gave the tentative meeting schedule for the 2014-15 Bar year: Palm Beach in July, Philadelphia in the fall, Amelia Island in December, Tallahassee in January, St. Petersburg in March and the final meeting in Key West.

31. President's Report

President Pettis reported that the Vision 2016 commission was being formed, with letters going out to commission members. The first meeting of the panel is scheduled for September 26 or 27 during Bar committee meetings in Tampa. He encouraged board members to become involved in the Benchmarks adult civics education program and reported that local bar associations also have been encouraged to participate.

32. Special Appointments

The board elected Herman Russomanno and Edith Osman to two-year terms on the ABA House of Delegates. The board ratified the July 17 Executive Committee nominations of Leonard E. Ireland, Jr., Kristine J. Van Vorst, and Stuart S. Walker, all of Gainesville, for a vacancy on the Eighth Circuit Judicial Nominating Commission.

33. Time and Place of Next Meeting

There being no further business before the board, President Pettis adjourned the meeting. The next board meeting is October 4 at the InterContinental Hotel in Chicago.

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