

The Florida Bar Board of Governors
May 31, 2013
Ritz-Carlton
Sarasota, Florida

1. Roll Call

Gwynne A. Young, President
Eugene K. Pettis, 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
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
Scott R. McMillen, 9th Circuit
C. Richard Nail, 10th Circuit
Dori Foster-Morales, 11th Circuit
Leslie J. Lott, 11th Circuit
Michael J. Higer, 11th Circuit
Dennis G. Kainen, 11th Circuit
Juliet M. Roulhac, 11th Circuit
John H. Hickey, 11th Circuit
L. Norman Vaughan-Birch, 12th Circuit
William J. Schifino, Jr., 13th Circuit
Lansing C. Scriven, 13th Circuit
Margaret Diane Mathews, 13th Circuit
John W. Manuel, 14th Circuit
David C. Prather, 15th Circuit
Gregory W. Coleman, 15th Circuit
Michelle R. Suskauer, 15th Circuit
Edwin A. Scales, III, 16th Circuit
Walter G. Campbell, Jr., 17th Circuit
Adele I. Stone, 17th Circuit
Lorna E. Brown-Burton, 17th Circuit
Jay Cohen, 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
Paige Adonna Greenlee, Young Lawyers Division President
Melanie Shoemaker Griffin, Young Lawyers Division President-elect
Winston W. Gardner, Jr., Public Member

Members absent:

Lawrence Scott Kibler, 5th Circuit
Paul Louis SanGiovanni, 9th Circuit
Ramon A. Abadin, 11th Circuit
Dennis G. Kainen, 11th Circuit
Michael S. Hooker, 13th Circuit
Gary Shepard Lesser, 15th Circuit
Timothy L. Bailey, 17th Circuit
Laird A. Lile, 20th Circuit
Anthony Holloway, Public Member.

2. Staff in Attendance

John F. Harkness, Jr., Executive Director
Marcy Jackson, Director of Administration and Chief Financial Officer
Paul Hill, General Counsel
Beth Brenneis, Director, Finance and Accounting
Arne Vanstrum, Associate Director of Lawyer Regulation
Mary Ellen Bateman, Director, Ethics and Advertising, UPL, and Special Projects
Elizabeth Clark Tarbert, Ethics and Advertising Counsel
Kathy Bible, DPC Liaison 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

Susan Healey, Immediate Past President, Florida Association for Women Lawyers
Ward Griffin, Government Lawyer Section

4. Invocation and Pledge of Allegiance

Board member Norman Vaughn-Birch delivered the invocation and led the board in the Pledge of Allegiance.

5. Appearance by 12th Circuit Judge Lee Haworth

Judge Haworth welcomed the board to Sarasota and thanked the board for supporting the judiciary in legislative matters.

6. Introduction of Incoming Board Members

Newly elected board members Renée Thompson, Scott Westheimer, Ron Ponzoli, Diana Santa Maria, Adam Rabinowitz, and Michael Orr, who will be sworn in at the June Annual Convention, were introduced to the board. Newly elected governor Steven Davis was not at the meeting. New ex-officio members Brittany Maxey from FAWL and Bruce Mount, Jr., Virgil Hawkins Florida Chapter, National Bar Association, and Diana Bock, Government Lawyer Section, were introduced to the board.

7. Minutes Approval

The board approved the minutes from its April 19, 2013, meeting. That vote also ratified the following actions taken since that meeting by the Executive Committee:

- At a May 2, 2013, meeting, the committee voted 12-0 to approve the nomination of David B. Earle, Stuart, Howard E. Googe, Jr., Palm City, and Jason L. Odom, Vero Beach for a vacancy on the 19th Circuit Judicial Nominating Commission created by the appointment of Alan O. Forst to the Fourth District Court of Appeal.

- At a May 2, 2013, meeting the committee voted 11-0 to approve the request from President-elect Eugene Pettis to increase the membership of the inaugural class of the Leadership Academy from 40 to 60 members.

- At a May 25, 2013, meeting, the committee voted 8-0 to nominate: Timothy M. Cerio of Tallahassee, David B. Pleat of Destin, and JoLen R. Wolf of Tallahassee for a vacancy on the First District Court of Appeal Judicial Nominating Commission; Paul A. Donnelly of Gainesville, James E. Messer, Jr., of Tallahassee, and Gigi Rollini of Tallahassee, for a second vacancy on the First DCA JNC; and Thomas M. Findley, Kelly O'Keefe, and Chastity H. O'Steen, all of Tallahassee, for a vacancy on the Second Circuit JNC.

8. Consent Calendar Approval

The board approved the consent calendar as presented. That included:

- Appointing Ernst Arthur Bell as an attorney member of UPL Circuit Committee 4, Damien Michael Richards as an attorney member of UPL Circuit Committee 7A, Sophie Darling as a public member of UPL Circuit Committee 11C, Jason Crews as a public member to UPL Circuit Committee 13A, and Leland High Talcott as an attorney member to UPL Circuit Committee 15B.

- Appointing Sean Jay Greene as an attorney member to the UPL Standing Committee.

- Appointing Sara Macks as an attorney member to Florida Registered Paralegal District Committee 6Z.

- Approving an amendment to Rule 4-5.5 Unlicensed Practice of Law, Multijurisdictional Practice of Law (Changing Ad Rules Reference): Within the comment, changes rules 4-7.1 through 4-7.10 in subchapter 4-7.

- Approving an amendment to Rule 10-2.1 Generally (Lawyers from Other Jurisdictions Advertising in Florida): Within subdivision (c), changes "state" to "jurisdiction."

9. Public Reprimands

President Young administered two public reprimands.

10. Family Law Section Report

Chair Carin Porras recounted the section's efforts on alimony legislation that the section opposed which was passed by the Legislature but vetoed by Gov. Rick Scott. Aside from that, the section conducted several CLE courses and held its annual retreat and fall retreat. Section membership has increased significantly and two section members will be participating in the Leadership Academy.

11. Legislation Committee Report

Chair-elect Jay Cohen reported on a special subcommittee formed to review the proposal to have a Florida Bar Day at the Legislature similar to the ABA Day held in Washington during Congressional sessions. He said the consensus was that any program had to be effective, and the most likely option would be to have a reception for legislators during one of its pre-session committee weeks, possibly while the

board has its Tallahassee meeting in January. Chief Legislative Counsel Steve Metz said the Bar had a good year in the Legislature with no major challenges to the court system. He said state agencies were given the authority of paying Bar annual membership fees and CLE costs for their attorney employees, the courts and legal aid agencies received money from the National Mortgage Settlement to help handle foreclosures, the filing fee waiver was kept for indigents, court staffers were included in a pay raise for state employees, and judges got an additional 2 percent raise. The Legislature passed \$1 million for the Florida Access to Civil Legal Assistance funding although that appropriation was vetoed by the governor. A bill to strip the Supreme Court of rulemaking authority for death penalty post conviction appeals was dropped after the Supreme Court appointed a special committee to study the handling of those matters.

12. Investment Committee Report

Chair Ian Comisky presented a new asset allocation and benchmarks for the Bar's long-term portfolio based on a seven-year projection from the Bar's investment consultant, Morgan Stanley. The board approved the new allocation guidelines, and Comisky said the committee would have further recommendations on the Bar's investments at the board's July meeting.

13. Budget Committee Report

Committee Chair Lanse Scriven presented one amendment for the 2012-13 budget, \$770 to cover travel costs of the Bar's new director of administration. The board approved the amendment. He also reported that there were no member comments or suggested changes for the 2013-14 budget approved by the board at its April meeting. The FY 2013-14 budget is now considered final.

14. Executive Session

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

15. Rules Committee

Committee member Richard Tanner presented two items on first reading:

- 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 its standing committees and divisions and will post those lists on the bar's website.
- 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 the changed rule numbering and non-substantive amendments were made to conform the procedures to the Supreme Court of Florida style guide.

Tanner also reported the committee has looked at retainer and advance fee provisions in Rule 4-1.5 and voted to add the word "unreasonable" to the rule. That will be presented to the board at a future meeting.

Committee member Jay Cohen presented on second reading the proposed amendment to Rule 4-1.5 Fees and Costs for Legal Services (Lien Resolution): Within Rule 4-1.5(f)(4), adds new subdivision (E) that the lawyer in a personal injury or wrongful

death case charging a contingent fee must provide ordinary lien resolution as part of the lawyer's representation of the client under the fee contract, that the lawyer may not charge any additional fee to the client for providing such services if all fees for the personal injury matter plus lien resolution exceed the contingent fee schedule, that extraordinary services for subrogation and lien resolution may be referred to another only with the client's informed consent, that additional fees by the other lawyer must comply with all provisions of the fee rule, and that the lawyer providing the extraordinary subrogation and lien resolution services may not divide fees with the lawyer handling the personal injury or wrongful death claim. Within rule commentary, explains what lien resolution services are required as part of the original fee contract and what extraordinary services entail. After discussion, the board approved the proposed amendment.

16. Communications Committee Report

Chair Mary Ann Morgan said the committee will be presenting the six-month review of the Bar's social media policy at the board's July meeting and is looking at how it should be recorded on a member's information on the Bar's website when that member receives an emergency suspension. Such members are given 30 days to close down their practice, during which the website continues to list them as a member in good standing, which could be misleading for members of the public looking on the website. The committee also is looking at what verbiage should be used on the website when a member has a discipline pending.

President Young announced that the Bar would be receiving the LexisNexis award for outstanding public service program by a bar with more than 18,000 members for its The Vote's in Your Court program. Executive Director John F. Harkness, Jr., noted this is the third time in 20 years the Bar has won the award.

17. Board Review Committee in Professional Ethics

Chair Carl Schwait said the committee will present its proposed amendments for the rules pertaining to lawyer referral services, in Rule 4-7.2 with an expected final vote by the board coming at its December meeting.

18. Disciplinary Procedure Committee

Chair-elect Jay Manuel presented two items on second reading, both of which were approved by the board:

- Rule 3-5.3 Diversion of Disciplinary Cases to Practice and Professionalism Enhancement Programs: Within subdivision (c) and the comment, the proposed change would allow bar members who have received a diversion to be eligible for a diversion for a different type of conduct, for which a diversion program exists, as long as the subsequent conduct occurred one year or more after the first diversion. Within subdivision (c) the proposed amendment also would shorten the period between diversions for the same type of conduct from 7 years to 5 years.

- Rule 3-5.2 Emergency Suspension and Interim Probation (frozen trust accounts): Within subdivision (c) and new subdivisions (d) and (e), and renumbered subdivisions (h) and (k), proposed rule amendments would provide a mechanism for owners of funds in a lawyer's frozen trust account, to assert claims of ownership on these funds as part of the Bar's referee procedures in suspension and emergency suspension cases through a referee or receiver. Remaining rule provisions would

renumbered and additional non-substantive changes would be made to conform to the Supreme Court style guide.

Manuel presented one item on first reading: 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 and adds that all suspensions except by contempt order must be for a finite period of time.

19. Young Lawyers Division Report

YLD President Paige Greenlee reported the division had a successful year with CLE courses, including having a first-ever technology basic skills course, which attracted mostly older lawyers. The YLD scheduled for June 18 on its website its residency law seminar. It is also reviewing its Practicing with Professionalism program, including recommendations that it be made available online.

20. Annual Convention Committee Report

Chair Michelle Suskauer reported that, like the ABA "Tech Show," Wednesday at the convention will feature a variety of technology-related courses and that journalist Soledad O'Brien will be the speaker at the judicial luncheon. There will be 25 different seminars and a convention app will help participants navigate and organize their convention activities.

21. Scrapbooks Presentation to Immediate Past President Scott Hawkins

President Young presented scrapbooks to immediate Past President Scott Hawkins to commemorate his year leading the Bar. Hawkins in recollecting his experiences particularly praised the board for its work on The Vote's In Your Court which he said had a historic impact beyond the state's boundaries.

22. Program Evaluation Committee Report

Chair John Stewart recommended and the board approved changes to three rules affecting certification standards for appellate lawyers:

- Rule 6-13.2, Standards for Certification of a Board Certified Appellate Lawyer, Definitions: Within new subdivision (e), provides a definition of "primary responsibility" for filing a brief, petition, or response. This means having the most substantial and direct participation of all the lawyers contributing to that task. Only one lawyer may claim primary responsibility for any such task. Where primary responsibility is used to meet a requirement, the applicant shall specifically identify any other lawyer who provided substantial assistance with the task and demonstrate to the satisfaction of the appellate practice certification committee that the applicant's level of participation was primary.

Within new subdivision (f), provides a definition of "principal briefs in appeals". This means the primary brief on the merits and excludes reply briefs, jurisdictional briefs, supplemental briefs, and amicus briefs, provided that for good cause shown, the appellate practice certification committee may treat a reply brief, jurisdictional brief, supplemental brief, or amicus brief as a principal brief for the purpose of these rules, if the brief is substantial and reflects a level of effort and preparation comparable to that required to produce a principal brief. Within new subdivision (g), provides a definition of "petitions or responses in extraordinary writ cases." This refers to a petition or response to a petition that seeks a writ from an appellate court to challenge a ruling or the jurisdiction of a lower tribunal or administrative agency. The term also

includes a petition or response to a petition for a writ of certiorari filed in the Supreme Court of the United States, but does not include any other petition or response to a petition that merely requests discretionary appellate review, such as a notice to invoke the discretionary jurisdiction of the Supreme Court of Florida or for permission to appeal to a United States Court of Appeals an order of a district court pursuant to, for example, 28 U.S.C. § 1292(b) or Federal Rule of Civil Procedure 23(f)."

Within new subdivision (h), provides a definition and guide to good cause exceptions. "Good cause exceptions are intended to grant the appellate practice certification committee the discretion to waive technical compliance with the relevant requirement to allow the certification or recertification of an individual where the applicant's proffered circumstances demonstrate that the applicant has, in the experience and judgment of the appellate practice certification committee, the special knowledge, skill, and proficiency, or the equivalent thereof, that technical compliance with that requirement is intended to demonstrate. The appellate practice certification committee is required to consider whether good cause is shown only upon the specific request of an applicant and to consider only those facts specifically identified by the applicant." The amendment also adds the words "appellate practice" before the word "committee" to make the reference to the committee consistent throughout the rule.

- Rule 6-13.3, Standards for Certification of a Board Certified Appellate Lawyer, Minimum Standards: Within subdivision (b), strikes the current language addressing how "primary responsibility" is identified. Within subdivision (c), strikes current language that describes this requirement in terms of having had "primary responsibility" for oral arguments, adds that the applicant must have "presented" the oral arguments. Additional amendments are made to conform rules to the Supreme Court style guide and do not amend the substance of the rule.

- Rule 6-13.4, Standards for Certification of a Board Certified Appellate Lawyer, Recertification: Within subsection (b), strikes the current language addressing how "primary responsibility" is identified. Within subsection (c), strikes the current language that describes this requirement in terms of having had "primary responsibility" for oral arguments; adds that the applicant must have "presented" the oral arguments. Within subsection (g), adds a reference to the new, overall definition of "good cause" in the proposed new subsection (h) of Rule 6-13.2. Other amendments are made to conform to the Supreme Court of Florida style guide and do not amend the substance of the rule.

Stewart presented 11 recommendations based on the committee's review of the Henry Latimer Center for Professionalism and the board approved those recommendations. Stewart presented eight recommendations based on the committee's review of the Public Interest Law Section and the board approved those recommendations. Stewart and committee member Sandy Diamond presented the committee's recommended revisions to the Special Appointment Application Form and a screening committee rating form used to make special Bar appointments and nominations. The application form includes a voluntary section to collect gender and ethnic information to help the Bar evaluate its diversity and inclusion efforts. After discussion and clarifying that failing to fill out that section would not be held against an applicant, the board approved the committee's recommendations. Stewart and committee member Jay Cohen presented the objectives, makeup and schedule for the new Standing Committee on Diversity and Inclusion, which the board approved at its April meeting.

Stewart presented to the board on first reading revisions to the Family Law Section bylaws. He also reported that the PEC approved creating a new Senior Lawyers Committee, which will come to the board for its approval in July. The PEC has also approved amendments to BLSE policies, which will be presented in July. President-elect Pettis presented his idea, which was endorsed by the PEC, for changing the name of the new Leadership Academy to the Wm. Reece Smith, Jr., Leadership Academy. The board unanimously approved that recommendation.

Stewart reported that the PEC approved in concept Pettis' proposal for Commission 2016: A Comprehensive Study of the Future Practice of Law. Pettis said the commission will look at technology, legal education, bar admissions, and pro bono and legal aid services.

23. Executive Committee Elections

President-elect Pettis announced he had chosen board members Leslie Lott and Lanse Scriven as his appointments to the Executive Committee. The board elected Michael Higer, Carl Schwait, and John Stewart as its representatives on the Executive Committee.

24. Special Appointments

The board voted to seek more applicants for two seats on the ABA House of Delegates. The board appointed Edrick E. Barnes of West Palm Beach, Dolly Voorhees Davis of Boca Raton, Odelia Goldberg of Hollywood, Monique L'Italien of Palm Springs, William Manikas of Boynton Beach, and Eric M. Sodhi of Miami to two-year terms on the Florida Legal Services Inc., Board of Directors. The board appointed attorneys Garrick N. Fox of Daytona Beach, Barnaby L. Min of Miami, and Thomas J. Schulte of Stuart, and non-lawyers R. Fairlie Brinkley of Dunedin and Dr. Judy S. Rivenbark of Fernandina Beach to three-year terms on the Florida Lawyers Assistance, Inc., Board of Directors. The board nominated Nancy McClain Alfonso of Zephyrhills, Kristina E. Feher of St. Petersburg, Walter G. Latimer of Miami, Miles A. McGrane III of Miami, Alan S. Wachs of Jacksonville, and Elizabeth J. Walters of Panama City Beach for two five-year terms on the Florida Board of Bar Examiners. The Supreme Court will make the final appointments. The board ratified the Executive Committee nominations of Timothy M. Cerio of Tallahassee, David B. Pleat of Sandestin, and JoLen R. Wolf of Tallahassee for a vacant seat on the First District Court of Appeal Judicial Nominating Commission; Paul A. Donnelly of Gainesville, James E. Messer, Jr., of Tallahassee, and Gigi Rollini of Tallahassee for a second vacancy on the First DCA JNC; and Thomas M. Findley, Kelly O'Keefe, and Chastity H. O'Steen, all of Tallahassee, for a vacant seat on the Second Circuit JNC.

25. Comments for the Good of the Order

Outgoing board members Adele Stone, Paige Greenlee, Juliet Roulhac, and Norman Vaughn-Birch, and ex officio member Ward Griffin praised, the high level of debate, camaraderie, and opportunity to improve the justice system tied to their years of service on the board.

26. President's Report

President Young called the opportunity to serve as Bar president a "special experience." She praised board members for their willingness to tackle tough jobs. She said The Vote's in Your Court was an issue that was at the "heart" of democracy

and allowed the Bar to make a difference on an important topic. She praised the Bar's advances on diversity and inclusion, including creating the new standing committee, and said the Bar has done much to promote awareness of the need for legal services for the poor. She praised the Commission 2016 as a way to help deal with coming changes to the practice.

27. Time and Place of Next Meeting

There being no further business, President Young adjourned the meeting at 3:03 p.m. The next board meeting is July 26 at the Omni on Amelia Island.

SUBJECT INDEX

ANNUAL CONVENTION COMMITTEE REPORT	6
APPEARANCE BY 12 th CIRCUIT JUDGE LEE HAWORTH.....	2
BOARD REVIEW COMMITTEE ON PROFESSIONAL ETHICS REPORT	5
BUDGET COMMITTEE REPORT	4
COMMENTS FOR THE GOOD OF THE ORDER	8
COMMUNICATIONS COMMITTEE REPORT	5
CONSENT AGENDA APPROVAL	3
DISCIPLINARY PROCEDURE COMMITTEE REPORT	5
EXECUTIVE COMMITTEE ELECTIONS.....	8
EXECUTIVE SESSION	4
FAMILY LAW SECTION REPORT	3
GUESTS	2
INTRODUCTION OF INCOMING BOARD MEMBERS	2
INVESTMENT COMMITTEE REPORT	4
INVOCATION AND PLEDGE OF ALLEGIANCE	2
LEGISLATION COMMITTEE REPORT	3
MINUTES APPROVAL.....	2
PRESIDENT’S REPORT	8
PROGRAM EVALUATION COMMITTEE REPORT.....	6
PUBLIC REPRIMANDS	3
ROLL CALL.....	1
RULES COMMITTEE REPORT	4
SCRAPBOOKS PRESENTATION FOR IMMEDIATE PAST PRESIDENT	
SCOTT HAWKINS	6
SPECIAL APPOINTMENTS.....	8
STAFF IN ATTENDANCE	2
TIME AND PLACE OF NEXT MEETING.....	9
YOUNG LAWYERS DIVISION REPORT.....	6