

The Florida Bar Board of Governors
October 5, 2012
Four Seasons Hotel, Atlanta, GA

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
Ramon A. Abadin, 11th 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
Margaret Diane Mathews, 13th Circuit
Michael S. Hooker, 13th Circuit
John W. Manuel, 14th Circuit
David C. Prather, 15th Circuit
Gregory W. Coleman, 15th Circuit
Michelle R. Suskauer, 15th Circuit
Gary Shepard Lesser, 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
Laird A. Lile, 20th Circuit
Richard A. Tanner, 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
Anthony Holloway, Public Member

Members Absent

Lawrence Scott Kibler, 5th Circuit
Paul Louis SanGiovanni, 9th Circuit
Lansing C. Scriven, 13th Circuit
Michael S. Hooker, 13th Circuit
Timothy L. Bailey, 17th Circuit
Marcy L. Shaw, 20th Circuit
Ian M. Comisky, Out of State

2. Guests

Vivian de las Cuevas-Diaz, President, Cuban American Bar Association
Laura Wendell, President, Florida Association for Women Lawyers
Aramis Ayala, President, Virgil Hawkins Florida Chapter, National Bar Association
Ward Griffin, Government Lawyer Section

3. Staff in Attendance

John F. Harkness, Jr., Executive Director
John Berry, Staff Counsel,
Paul Hill, General Counsel
Ken Marvin, Director, Lawyer Regulation
Mary Ellen Bateman, Director, Ethics and Advertising, UPL, and Special Projects
Elizabeth Clark Tarbert, Ethics and Advertising Counsel
Lori Holcomb, Unlicensed Practice of Law Counsel,
Rosalyn A. Scott, Assistant to the President
Gary Blankenship, Senior Editor, Florida Bar *News*

4. Invocation and Pledge of Allegiance

Board member Brian Burgoon delivered the invocation and led the board in the Pledge of Allegiance.

5. Minutes Approval

The board approved the regular and grievance minutes from its July 27 meeting in Miami Beach. That approval included the following actions taken by the Executive Committee:

- At an August 6, 2012, meeting the committee voted 10-0 to approve Donald Matsuura as a public member of the Standing Committee on the Unlicensed Practice of Law.
- At a September 5 meeting, the committee:
 - Voted 5-5 to reject a motion to offer no accommodation following a 30-7 vote by the Board of Governors at its July 27 meeting affirming an opinion from the Standing Committee on Advertising and rejecting an appeal of LawButler.com. The committee then voted 10-0 to allow LawButler.com to honor any existing contracts based on an earlier staff opinion for

up to one year, as long as LawButler.com provides evidence to the Bar on the existence of the contract and no contract of a shorter duration is extended.

- Voted 10-0 to approve the revised letter of agreement between the Family Law Section and the Moore Communications Group to help the section advance its legislative positions regarding alimony.

- Voted 10-0 to allow the Family Law Section to file an amicus brief in support of the respondent in *Florida Department of Children and Families and Guardian Ad Litem Program v. In re: The Interest of R.L.-R., a minor*, which is pending before the Third District Court of Appeal. The committee voted 10-0 to allow the Public Interest Law Section and Trial Lawyers Section to co-sign a separate amicus brief supporting the defendant and which includes 10 former Bar presidents. The committee voted 10-0 to allow the Legal Needs of Children to also participate in that brief. The committee voted 10-0 to not allow The Florida Bar to participate in that brief.

6. Consent Agenda Approval

After item 5(b)(ii) (Advertising Appeal 31508) was removed for presentation later in the meeting, the board approved the Consent Agenda.

That approval included:

- Appointing Susan Wandersman as a public member of UPL Circuit Committee 15B; appointing Nicholas Adam Fouraker as a public member and Tenesia Connelly Hall as an attorney member of UPL Circuit Committee 18B; appointing Jeri Michelle Ostuw as an attorney member of UPL Circuit Committee 7A; and Toni Carol Bernstein as an attorney member to UPL Circuit Committee 2.

- Ratifying the Board Review Committee on Professional Ethics 5-3 vote on Advertising Appeal 13-00058 to recommend that the Board of Governors affirm the Standing Committee on Advertising decision on the television advertisement in file number 13-00058 that the italicized language in the statement “Board Certification is synonymous with the term ‘specialist or expert’ because of its *high standards for professional excellence*” characterizes the quality of legal services, in violation of Rule 4-7.2(c)(2).

- Approving 17 new legislative positions requests from the Real Property, Probate and Trust Law Section.

- Approving the legislative consulting contract between the Public Interest Law Section and Alice Vickers.

- Ratifying the appointment of Tonya S. Chavis by the Florida Government Bar Association to the Board of Directors of Legal Services of North Florida.

7. Board Review Committee on Professional Ethics Report

Committee Chair Carl Schwait reported that on Advertising Appeal 31508, the Board Review Committee on Professional Ethics voted 5-3 to recommend that the Board of Governors reverse the decision of the Standing Committee on Advertising determining that a captive law firm in which all the lawyers are salaried employees of an insurance company that represents insureds may hold itself out as “Dalessio and Murano” where the 2 named lawyers jointly supervise all the other lawyers in the insurance company unit as long as the name “Dalessio and Murano” is accompanied by a disclosure that they are salaried employees of the insurance company and the

captive law firm meets all the requirements of Rule 4-7.9(g). The Board of Governors approved the recommendation on voice vote.

The BRCPE voted 8-0 to recommend that the Board of Governors affirm staff's response regarding Ethics Inquiry 30779. In that case, staff indicated that a lawyer cannot practice law as a salaried employee as the staff attorney for a religious-affiliated nonprofit corporation run by a nonlawyer/reverend to handle immigration appeals and some civil cases, and to be a "program manager" for criminal cases that may be actually handled by the public defender's office, in which a "suggested donation" would be solicited from the clients that is described as a "voluntary fee schedule." The staff had concerns regarding assisting in the unlicensed practice of law and solicitation, and that the Bar cannot determine whether U.S. Supreme Court cases supersede the anti-solicitation rule, 4-7.4(a). The Board of Governors approved the recommendation on voice vote without objection.

Schwait also reported that the BRCPE reviewed the final report of the Special Committee on Lawyer Referral Services, discussed the special committee's recommendations, plans to hold conference calls to work on the issue between regular board meetings, and plans to have amendments for first reading by the board's January 2013 meeting.

8. Rules Committee Report

Chair Margaret Mathews presented one item for final approval by the board – Clients' Security Fund. Rule 7-2.2 Investigations. The amendment gives the Clients' Security Fund Committee the authority to request a subpoena when necessary to investigate a claim and sets forth the procedure for the issuance of the subpoena. The board approved the change unanimously.

Mathews presented two items on first reading. CSF Regulation B 5 Claim Prerequisites: New regulation setting forth what may be considered for proof of payment for a Clients' Security Fund claim. CSF Regulation C 3 Claims Ordinarily Denied (Comment), adding a new comment to regulation C3 explaining that where there is no attorney-client relationship, the claim will be denied.

Mathews reported the committee considered at a September 4 conference call a possible amendment to Rule 4-3.5 and decided that no action was necessary.

9. Budget Committee Report

Committee member Ray Abadin noted the updated financial statements in the board materials and reported there were no budget amendments to consider.

10. Investment Committee Report

Vice Chair Leslie Lott reported that Bar investment earnings were \$1.2 million for the third quarter and around \$2.4 million since the beginning of the year. The Bar's investment advisors, she said, are slightly adjusting the Bar's investments within the parameters for each investment type to achieve a more risk neutral status for the Bar's portfolio. She also reported that the 100 percent coverage of FDIC insurance on the Bar's bank balances, under a federal program instituted during the financial crisis, will cease at the end of the year and the committee is looking at ways to ensure the safety of Bar funds in banks.

11. Audit Committee Report

Chair Clay Schnitker reported that the Bar had received a clean audit for the 2011-12 fiscal year and that the written report would be ready for the board at its December meeting. He also said the three-year contract with the auditors, Carr, Riggs & Ingram, was expiring and the committee was finishing negotiations with the company for a new three-year contract.

12. Member Benefits Committee Report

Board member Schnitker, liaison to the committee, presented two new programs to the board. RPost Registered Email Services will provide verification of delivery and content of emails for Bar members, as well as related services. Corporate Creations will offer discounts to Bar members for corporate creation and reporting services in Florida. The board unanimously approved adding both to the Bar's Member Benefits Program.

13. Appearance by Judge Sara Doyle of the Georgia Court of Appeals

Judge Doyle, who got her undergraduate degree from the University of Florida, talked about the differences between the Florida and Georgia court systems including that Georgia only has one intermediate appellate court versus the five in Florida and appellate judges run in direct, contested nonpartisan elections as opposed to merit retention in Florida. She noted attempts by special interests to defeat two incumbent Supreme Court justices in 2004 and 2006, but said since those unsuccessful efforts there have not been similar efforts to defeat incumbent judges and justices.

14. Unlicensed Practice of Law Report

Board member Bill Schifino, liaison to the Standing Committee on UPL, reported that the committee recommended that the board oppose amendments to the ABA Model Rules being considered by the ABA Commission on Ethics 20/20 that would allow attorneys licensed in other countries in some instances to work as corporate counsel in Florida or appear pro hac vice in Florida cases. Schifino said the committee was concerned about the difficulty of confirming a foreign attorney's credentials. The board unanimously approved the committee's recommendation.

15. Executive Session

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

16. Legislation Committee Report

Chair Laird Lile reported that the committee recommended that The Florida Bar oppose constitutional Amendment 5 on the November 6, 2012, general election ballot. The board by voice votes exceeding the necessary two-thirds threshold found that issue within the purview of the Bar and subsequently approved that recommendation.

17. Communications Committee Report

Board member Mary Ann Morgan, chair of the committee, reported that the committee recommended hiring Adriana Linares to advise the Bar on technological matters including helping Bar members cope with changes in technology. The board approved the recommendation on a voice vote.

Morgan reported that the committee, by a 7-6 vote, recommended allowing BLSE and certified lawyers to use four suggested slogans in marketing aimed at potential legal consumers. The slogans are: When you need a certified expert lawyer on your side; Evaluated for professionalism, tested for expertise; Be confident you have a legal expert on your side; and, The Florida Bar's only expert designation. After an extensive discussion, the board approved the recommendation by voice vote with several dissents.

Morgan said the committee would have recommendations on carrying out communications-related recommendations from the Hawkins Commission ready for the board's December meeting.

18. The Vote's In Your Court Report

Board member Sandra Diamond reported on the Bar's merit retention voter education program. She noted that Bar President Gwynne Young has visited 14 newspaper editorial boards and most have written favorable editorials about the merit retention system and criticized attempts to politicize it. The Bar has an active speakers bureau on the subject and has initiated a social media campaign on Facebook and Twitter. The Bar also paid for promotional spots on public radio stations, Diamond said. President Young reported that the Bar had printed 250,000 voter education guides and the Trial Lawyers Section paid to have another 100,000 printed, and most of those have been distributed to voters. The League of Women Voters has incorporated that information into its voters guide, which has been distributed to around one million people. Young said the Bar's steering committee for the program meets biweekly to monitor the program

19. Young Lawyers Division Report

YLD President Paige Greenlee said the division has added two new courses – on bankruptcy and foreclosure and collections – to its basic skills courses and will have a technology basic skills course in Tampa in May. The YLD is also working with technology consultant Adriana Linares on an October 11 webinar on metadata and lawyers' ethical responsibilities. The division, with help from the General Practice, Solo and Small Firm Section, is planning a one-day technology conference in April in conjunction with the Board of Governors meeting in Tampa. Greenlee said the division's proposed legal residency program has attracted great interest, including from the ABA and from lawyers who want to participate in the program and the YLD is actively pursuing that effort.

20. Program Evaluation Committee Report

Board member Ray Abadin, a member of the committee, reported the committee recommended approval of amendments to the Criminal Law Section bylaws and for changes to the SCOPE (Seek Counsel of Professional Experience) program, which will now become the Lawyers Assisting Lawyers program. The board unanimously approved the recommendation.

22. President-elect's Report

President-Elect Eugene Pettis reported on the Get Involved Campaign, his effort to work with local and specialty bars and other organizations to recruit applicants for Bar committees and grooming them for future involvement with the Bar as a way to improve inclusiveness and diversity. That includes getting all the information about serving on a committee on one page on

the website so interested members can quickly find necessary information about serving. He also announced that he had set the schedule and locations for the Board of Governors meetings for the 2013-14 Bar year.

21. Time and Place of Next Meeting

There being no further business before the board, President Young adjourned the meeting at 11:40 a.m. The next board meeting is scheduled for December 7 at Amelia Island.

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