

The Florida Bar Board of Governors  
January 29, 2016  
The Hotel Duval  
Tallahassee, Florida

**1. Roll Call**

Ramon A. Abadin, President  
William J. Schifino, Jr., President-elect  
Stephen H. Echsner, 1st Circuit  
Lawrence E. Sellers, Jr., 2nd Circuit  
William H. Davis, 2nd Circuit  
Bruce W. Robinson, 3rd Circuit  
Fred D. Franklin, Jr., 4th Circuit  
Michael G. Tanner, 4th Circuit  
Renée Elise Thompson, 5th Circuit  
Andrew B. Sasso, 6th Circuit  
Sandra Fascell Diamond, 6th Circuit  
Carl B. Schwait, 8th Circuit  
Mary Ann Morgan, 9th Circuit  
Paul Louis SanGiovanni, 9th Circuit  
Wayne L. Helsby, 9th Circuit  
Roland Sanchez-Medina, Jr., 11th Circuit  
Dori Foster-Morales, 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  
Thomas Roe Bopp, 13th Circuit  
Lansing C. Scriven, 13th Circuit  
Margaret Diane Mathews, 13th Circuit  
Michael S. Hooker, 13th Circuit  
John W. Manuel, 14th Circuit  
Ronald Peter Ponzoli, Jr., 15th Circuit  
Michelle R. Suskauer, 15th Circuit  
Gary Shepard Lesser, 15th Circuit  
Wayne LaRue Smith, 16th Circuit  
Walter G. Campbell, Jr., 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  
Edward Duffy Myrtetus, Out of State  
Ian M. Comisky, Out of State

Eric L. Meeks, Out of State  
Brian D. Burgoon, Out of State  
Gordon J. Glover, YLD President  
Katherine Hurst Miller, YLD President-elect  
Lawrence Worley Tyree, Public Member  
Anthony Holloway, Public Member

#### Members Absent

Sam Nicholas Masters, 7th Circuit  
C. Richard Nail, 10th Circuit  
David C. Prather, 15th Circuit  
Diana Santa Maria, 17th Circuit  
Laird A. Lile, 20th Circuit  
Marcy L. Shaw, 20th Circuit

#### **2. Staff in Attendance**

John F. Harkness, Jr., Executive Director  
Adria Quintela, Director, Lawyer Regulation  
Marcy Jackson, Director, Administration  
Kathy Bible, Disciplinary Procedure Counsel  
Paul Hill, General Counsel  
Rick Courtemanche, Assistant General Counsel  
Lori Holcomb, Director, Ethics and Advertising, UPL, and Special Projects  
Elizabeth Clark Tarbert, Ethics Counsel  
Mary Ellen Bateman, Public Records Counsel  
Ali Sackett, Chief Branch Disciplinary Counsel, Tallahassee  
Tom Kroeger, Chief Branch Disciplinary Counsel, Miami  
Alan Pascal Chief Branch Disciplinary Counsel, Ft. Lauderdale  
Sheila Tuma, Chief Branch Disciplinary Counsel, Tampa  
Francine Walker, Director, Public Information and Bar Services  
Rosalyn A. Scott, Assistant to the President  
Gary Blankenship, Senior Editor, The Florida Bar News

#### **3. Guests**

Kristin Ann Norse, President, Florida Association for Women Lawyers  
Anthony Hall, President, Virgil Hawkins Florida Chapter, National Bar Association  
Carlos Martinez, Government Lawyers Representative

#### **4. Pledge of Allegiance and Invocation**

Board member Larry Sellers led the board in the Pledge of Allegiance and board member Bill Davis delivered the invocation.

#### **5. Disciplinary Review Committee Report**

Chair Michelle Suskauer reported there were no discussion items and moved approval of all non-roll call items. The board unanimously approved.

## **6. Minutes Approval**

The board approved the minutes from its December 4, 2015, meeting in Naples, Florida. That approval included ratifying the actions taken by the Executive Committee at a December 21, 2015, meeting. The committee voted 8-0 to allow the Rules of Judicial Administration Committee and the County Interpreters Certification Board to file a joint response to comments filed on amendments to Fla. R. Jud. Admin. 2.560 and new R. Jud. Admin 2.565 dealing with court interpreters.

## **7. Consent Calendar**

The board approved the consent calendar, including giving final approval to:

- Appointing Wiley Braxton Gillam IV as an attorney member and Elicia M. Pellish as a public member to UPL Circuit Committee 4.
- Rule 6-3.7, Inactive Status (to replace Emeritus Specialist Status): Creates an inactive certification status for judges, law professors, active duty military, professional neutrals (mediators, arbitrators and voluntary trial resolution judges), and for substantial or material hardship cases.
- Rule 6-13.2 Definitions, (Appellate Practice Certification Rule Amendments): Adds new subdivision (b)(1), which defines what appellate actions will be accepted from either initial or recertification applicants. Including that if the filing date of the principal brief, response or petition, as defined in Rule 6-13.2(b)(f) or (g) is outside the current filing period, the appellate action will not count towards the required total. Adds new subdivision (b)(2), which clarifies that any briefs on the merits, following acceptance in the U.S. Supreme Court, and may be considered a separate appellate action. Adds new subdivision (b)(3), which defines what appellate actions will be accepted from either initial or recertification applicants. Within subdivision (e), defines the primary responsibility of an applicant who is not the author on the brief and allows that applicant to obtain credit for the brief if accompanied by certification from at least one of the designated authors that the applicant had the most substantial and direct participation in the preparation of the brief. Within subdivision (f), defines what principal briefs in appeals mean for initial and recertification applicants, clarifies “cross appeals,” and adds that for good cause, the committee may treat a combined answer brief and initial brief on cross-appeal as separate principal briefs if the brief reflects a level of effort and preparation comparable to that required to produce separate principal briefs.
- Rule 6-13.3 Minimum Standards, (Appellate Practice Certification Rule Amendments): Within subdivision (c), clarifies that any oral argument presented to an appellate court need not be presented in the same cases listed on the appellate actions exhibit.
- Rule 6-13.4 Recertification, (Appellate Practice Certification Rule Amendments): Within subdivision (c), clarifies that any oral argument presented to an appellate court need not be presented in the same cases listed on the appellate actions exhibit.
- Rule 10-9.1, Procedures For Issuance Of Advisory Opinions On The Unlicensed Practice Of Law: Within subdivision (b) clarifies procedure to request a formal advisory opinion; within subdivision (g) removes requirement that a copy of the proposed advisory opinion be sent by certified mail to the petitioner but keeps the requirement that a copy be furnished to the petitioner, allows the filing of a memoranda instead of a brief, allows the filing of comments without leave of court and allows interested parties to file a comments in favor of the proposed opinion; amends language to conform to style guidelines.
- Bylaws – Real Property, Probate and Trust Law Section: The Real Property, Probate and Trust Law Section (“the Section”) by-laws were amended in the following respects: Within Article II, Section 1, subsection (b), the section proposes to make affiliate section membership available to qualified students enrolled in any accredited law school, wherever located. Within Article IV, Section 3, the section proposes to permit the appointment of co-chairs of the section’s CLE seminar coordination committee and legislation committee and that each co-chair will be a member of the executive committee and entitled to one vote. Within Article VI, Section 2, the section proposes to

provide that, with respect to section committees, the use of the term “chair” includes co-chairs, to recognize the need where appropriate for co-chairs of section committees, particularly for the largest of the section committees. Within Article VIII, Section 3, the section proposes to authorize the appointment of co-chairs for the section’s legislation committee, one for real property and one for probate and trust. Within Article IX, Section 1, the section proposes to provide a reasonableness test in determining the existence of a conflict of interest on the part of a member of its Executive Council or a member of one of the section’s committees, requiring the member to bring that conflict to the attention of those present, while permitting the member to continue to participate in the debate, but not to participate in a vote.

- Not prohibiting the following legislative position of the Elder Law Section: Support physician orders for life-sustaining treatment legislation which has sufficient and comprehensive safeguards to protect the public.

- Not prohibiting the following legislative positions of the Public Interest Law Section:
  - Supports implementation of a death penalty moratorium in Florida pending action in response to the Board of Governor’s legislative position supporting a comprehensive review of Florida’s entire death penalty process by all branches of government, which ideally would place emphasis upon a range of concerns identified in credible research like the findings and recommendations of the American Bar Association’s Florida Death Penalty Assessment Team Report (2006) that bear upon the fairness, accuracy and impartiality of the administration thereof.

- Supports legislation to reduce barriers to reentry and community reintegration faced by people with arrest and conviction records.

- Supports legislation to reduce barriers to employment for people with arrest and conviction records.

- Supports legislation to reduce barriers to securing housing for people with arrest and conviction records.

- Supports the restoration of individuals’ civil rights to vote, eligibility to serve on a jury, and hold public office upon completion of sentence for all applicable Florida felony convictions of record.

- Not prohibiting the following legislative positions of the Real Property, Probate and Trust Law Section:

- Opposes the expansion of F.S. Chapter 709 to include the authority of a parent to assign the custody and control of a minor child through a power of attorney unless proper procedural safeguards are included to assure the proper care and welfare of the minor children are included.

- Opposes legislation to expand the potential plaintiffs who can file an action on behalf of a vulnerable adult who has been abused, neglected, or exploited as specified in F.S. Chapter 415 without the consent of the vulnerable adult and without clear requirements that any recovery from successful litigation be paid to the vulnerable adult or their estate.

- The appointment of Renee Gordon from the Tallahassee Barristers Association, Travis A. Bright, Jr., from the Escambia-Santa Rosa Bar Association, and Julie Sheppard from the Escambia Santa Rosa Bar Association to three-year terms on the Legal Services of North Florida Board of Directors beginning March 1, 2016.

## **8. Budget Committee Report**

Chair Dori Foster-Morales presented one amendment for the 2015-16 Bar budget, \$72,400 for increased printing and postage required by three special Bar *Journal* issues. The board unanimously approved the amendment. Chair-elect Paul SanGiovanni reported the 2016-17 budget will be presented at the board’s March 11 meeting, and he said that budget will be “challenging” and the committee is working harder to balance the Bar’s needs with the current revenue stream.

## **9. Investment Committee Report**

Chair Ian Comisky reported the end of year numbers for the Bar's investment portfolio were in good shape, ending up for the fourth quarter but down about 3 percent for the year. He said the Bar's investment advisor recommended a number of changes which were approved by the committee and recommended to the board. In its Liquid Alternatives category, the recommendation was to sell 100 percent of the \$1,218,000 investment in FPA Crescent (which makes up 2.7 percent of the Bar's portfolio) with about \$702,000 of the proceeds being added to the Galliard Fund and the remainder going to cash. In the Large Cap Equity category, the investment in Powershares would be increased by \$72,000, be decreased in Winslow Capital by \$307,000, and be increased in Lazard U.S. Equities by \$358,000. The extra money for those large cap changes would come from selling \$335,000 of the Congress fund in the Mid Cap Equity category, with the extra \$212,000 going to cash. The board unanimously approved the changes. Comisky said the committee, with its advisor, began the annual review management fees for the funds in the Bar's portfolio, which average 62 basis points. Comisky said that is typical for similar sized portfolios. He also said the committee has begun examining potential new investments with the goal of reducing volatility of the portfolio while generating higher returns.

## **10. Audit Committee Report**

Chair Eric Meeks reported the committee had its final meeting with its current auditors who praised Bar financial operations. The Audit Committee then met with the Bar's new auditors.

## **11. ABA House of Delegates Report**

Edith Osman, a former Bar president and a state delegate to the ABA House of Delegates, reported that Florida attorney Hillarie Bass was in line to become president-elect designate of the ABA at its Midyear meeting early in February. She also said Florida attorney Josh Marcus would be joining the ABA Board of Governors in a seat that Florida alternates holding with Texas, and two other Florida Bar members would be representing sections on the ABA BoG. She said Linda Klein, a former president of the State Bar of Georgia, is the president-elect of the ABA and would be making various appointments. Osman urged Florida lawyers to apply for those posts.

## **12. Joint Technology Committee and Board Review Committee on Professional Ethics Report**

Technology Committee Chair John Stewart noted his committee has been meeting with the BRCPE on lawyer referral related issues and will continue to do so. He pointed to the January Bar *Journal* special issue on technology which was also published in a special digital online format to make it easier to read. BRCPE Chair Carl Schwait reported that, on amendments to Rule 4-4.2 proposed by the City, County and Local Government and Government Lawyer sections and the Florida Association of County Attorneys, the committee took no action. He said no committee member moved to adopt amendments proposed by the groups after the committee took testimony on the proposals.

Schwait presented for final action proposed amendments to Rule 4-7.18 (Solicitation), The BRCPE voted 9-0 on October 15, 2015, to recommend that the Board of Governors approve amendments to Rule 4-7.18(a) regarding direct solicitation that omit the prohibition against direct contact to prospective clients via telegraph and facsimile and add a prohibition against direct contact electronically that is face-to-face (such as Skype). The Board of Governors approved the amendments on voice vote without objection

Schwait gave a report on proposed amendments to Rule 4-7.14(a)(4) - Advertising of Specialization and Expertise. He said that amendments in light of a federal judge's are ruling still under discussion, and the BRCPE voted 8-0 to defer the issue for lack of time for a full discussion.

Schwait reported that the BRCPE voted 8-0 to recommend that the Board of Governors affirm Florida Advisory Opinion A-00-1 as revised by the committee and published in the November 15, 2015, *Bar News*, which concludes that direct communications via live, real-time electronic messages in a chat room do not constitute prohibited solicitation if they do not involve face-to-face communications (such as video conferencing) and comply with the requirements for written communications in Rule 4-7.18(b). The Board of Governors approved the BRCPE recommendation on voice vote without objection.

Schwait reported on the follow up to the Supreme Court's September 24, 2015, order in case number SC14-2126, dealing with lawyer referral services. The court rejected the Bar's proposed amendments to lawyer referral service rules and instead directed the Bar to propose a rule that prohibits lawyers from accepting referrals from any lawyer referral service that is not owned and operated by a Florida Bar member, and propose any other restrictions necessary to address the court's concerns in its order. The court ordered that the Bar file the proposal on or before May 24, 2016. The BRCPE, with the Technology Committee, began discussion of the court's order on October 15, 2015, Schwait said, and continued discussion via both conference call and in-person meetings. He reported that the committee continues to work jointly with the Technology Committee to address the issue of on-line matching services as a related matter, has reviewed alternate drafts of amendments, directed staff to draft further amendments, and urged board members to review materials and discuss proposals with BRCPE and Technology committee members prior to the March board meeting.

Schwait reported the BRCPE deferred action on Advertising Inquiry 35636 both because it is part of the on-going discussion of on-line matching services by BRCPE and the Technology Committee and for lack of time for a full discussion. The inquiry concerns application of Rules 4-7.22 and 4-7.23, and requests an advisory advertising opinion on whether the Avvo Advisor function of the Avvo website meets the definition of a lawyer referral service or a lawyer directory.

### **13. Recognition of Citizens Advisory Committee**

President Abadin recognized the presence of members of the Bar's Citizens Advisory Committee. Members at the meeting were Sharon Middleton, Jan Jung, Judy Doyle, Ruth Lynch, and Val Demings.

### **14. Appearance by Scott Richardson, Florida Board of Bar Examiners**

Mr. Richardson, a member of the Florida Board of Bar Examiners, noted he was attending with FBBE Executive Director Michelle Gavagni and he praised the communications between the Bar and the FBBE over suggested changes to the certified legal intern rule and related issues.

### **15. Communications Committee Report**

Chair Renée Thompson asked for feedback on the digital issue of the January *Bar Journal*, noting the formatting made it easier to share the articles, take notes, or post a notice about an article to social media. All of the *Journal* issues through June 2016 will also be offered in digital formats and user analytics will be reviewed to determine whether to continue this format option. She said the committee will assist the Council of Sections on marketing Bar CLE programs. The committee is reviewing the marketing for the Lawyers Advising Lawyers program (formerly known as SCOPE), and will assist in efforts to increase the number of advisors including board certified lawyers.

Thompson updated the board on the Bar's social media efforts, including that the Bar now has more than 10,000 followers on Facebook, 5,000 followers on Twitter and has received more than 27,000 views of its YouTube videos.

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

Chair Michael Higer presented on first reading Bylaws - General Practice, Solo and Small Firm Section: The General Practice, Solo and Small Firm Section bylaws are amended throughout to reflect a new section name change, in which "General Practice" is removed from the section's name.

Higer also reported the committee approved a new certification area for International Litigation and Arbitration, which will be presented to the board in March. The committee is continuing its ongoing review of the certification and recertification program and should have recommendations in March, he said. The committee also expects to report then on its review of the Lawyers Helping Lawyers and the Bar's Lawyer Referral Service programs, Higer said.

#### **17. Legislation Committee Report**

Chair Michael Tanner presented a proposed legislative position from the Business Law Section. The board, by more than two-third votes, found the area within the purview of the section and agreed not to prohibit the section's proposed action. The position allows the section to support HB 1181 and SB 1298 or similar legislation regarding the Patent Troll Prevention Act. The Bar's Chief Legislative Counsel Jim Daughton reported on the ongoing legislative session and said issues would remain dynamic. That includes, he said, the possibility that a proposed constitutional amendment to place term limits on Florida's appellate judiciary – which is opposed by the Bar – could clear the Legislature, although the Senate has so far shown little interest in the measure. Daughton noted the proposal would have to pass both chambers by a three-fifths vote and then would go to voters where it would also require 60 percent approval.

#### **18. Administrative Law Section Report**

Chair Richard Shoop noted the section had recently been reviewed by the Program Evaluation Committee and has been going to law schools to talk about the section and administrative law. He referred the board to the section's written annual report in the board backup materials and welcomed suggestions from board members.

#### **19. G. Kirk Haas Humanitarian Award Presentation**

Immediate past Bar President Greg Coleman presented the G. Kirk Haas Humanitarian Award to longtime Bar Chief Legislative Counsel Steve Metz, who was unable to attend last June's Annual Convention to accept it. The award recognized Metz's work, among other efforts, to build housing for the poor in Central America. Metz said he was inspired by viewing Bar leaders over the years in their efforts to help the less fortunate.

#### **20. Scrapbook Presentation**

President Abadin presented scrapbooks to immediate past Bar President Greg Coleman to commemorate his year leading the Bar.

#### **21. Rules Committee Report**

Chair Margaret Mathews said three rule amendments related to the certified legal intern program had been postponed because of a special committee appointed to study that issue and the bar exam. Young Lawyers Division President Gordon Glover said the special committee would consist of board members, members of the Florida Board of Bar Examiners, law school deans, Supreme Court

justices, and others. It will be charged with not only looking at the certified legal intern rules but also the number of subjects covered on the bar exam and the adoption by several other states of a uniform bar exam. He said the special committee could report to the board at its March or May meeting. Mathews presented one rule amendment on first reading – Rule 4-1.8, Conflict of Interest; Prohibited and Other Transactions (Real Property, Probate and Trust Law Section Proposal re personal representatives): Within subdivision (c), deletes "substantial" before gift regarding soliciting gifts from clients and drafting instruments giving gifts. Within the comment, adds commentary regarding preparing documents that appoint the lawyer or the lawyer's relative as a fiduciary, noting the potential personal conflict and information the lawyer should provide the client so the client may make an informed decision.

## **22. President's Report**

President Abadin presented a PowerPoint presentation on the challenges facing the profession from technology and a changing legal marketplace, including the provision of legal forms and services by nonlawyer companies. He said the board and profession will have to make several critical decisions on how to meet those challenges. Abadin said lawyers' high level of professionalism and ethics will be key factors in positioning the profession in the new marketplace. Key questions for the Bar, he said, are: Should it ignore companies offering competing legal services, seek to cooperate with them, or seek to compete with them? Later in the meeting, board members spent more than 90 minutes discussing the issues Abadin raised, including that small law firms serving the middle class and small businesses will face special challenges, the Bar should not undermine its core values in addressing needed changes, the necessity of involving the Bar's membership in the discussions, and the necessity of making hard decisions, including how to pay for helping the profession adapt and challenge nonlawyer providers.

## **23. Special Appointments**

The board reappointed Paige Greenlee of Tampa and Tad Yates of Orlando for three-year terms on The Florida Bar Foundation Board of Directors.

## **24. Disciplinary Procedure Committee Report**

Chair Ron Ponzoli presented three items on first reading:

- Rule 3-2.1(i), Definitions (Defining inquiry): Amends Rule 3-2.1 to add subpart (i) defining "inquiry" as used in chapter 3 regarding opening a bar discipline investigation after an inquiry is made. Subsequent subdivisions are renumbered.
- Rule 3-7.16, Limitation on Time to Bring Complaint (Defining inquiry): Subdivision (a) of the rule is re-organized, clarifies when inquiries are time-barred, and adds that written inquiries must be made to Lawyer Regulation in Bar headquarters in Tallahassee.
- Rule 5-1.1(G), Trust Accounts (credit unions): Within subdivision (g)(1), amendment adds credit unions to the list of approved institutions for attorney trust accounts.

Ponzoli said the committee looked at Rule 5-1.1 as it relates to attorney obligations to third parties for property held in trust. He said the committee members decided that no change to the rule is needed but that examples should be added to the comment to help guide lawyers. He also said the committee is looking at Rule 3-7.2(e) on when the definition of a prosecuted felony criminal matter should result in an automatic Bar suspension. He said the committee is considering a change in definition that would remove no contest pleas and findings that withhold adjudication of guilt from the definition of a finding of guilt that could change when some outcomes result in an automatic suspension.



## **25. Constitution Revision Committee Report**

Chair Sandy Diamond said little action will be taken on the upcoming Constitution Revision Commission until the current legislative session ends a budget is established for the CRC, and the governor, Senate president, and speaker of the House begin making their appointments to the CRC. She said the committee is continuing to lay the groundwork for the Bar's participation. She noted the Bar-financed citizens' guide for the CRC has been printed and widely distributed both in English and Spanish. She noted the Benchmarks public education program has added a course on the CRC to help inform the public about the upcoming CRC process, and that information has been posted on the Bar's website.

## **26. Public Member Screening Committee Report**

Chair Steve Davis reported that the deadline to apply for the upcoming vacancy to be a public member on the board was later that afternoon and so far 14 people had applied. He said interviews would be conducted February 26 and the committee will present its recommendations at the March meeting.

## **27. Young Lawyers Division Report**

YLD President Glover reported the division gave out \$50,000 in awards at its annual Affiliate Outreach Conference. In the legislature, the division is supporting legislation offering law school loan repayment assistance for government lawyers. That measure is advancing in the Senate but has stalled in the House, he said. The YLD is promoting its Take an Hour campaign for March to encourage experienced lawyers to get involved in mentoring. He reported on a recent survey of YLD members which showed young women lawyers reported encountering a high level of gender bias both in law offices and in court. As a result, the division is preparing a seminar on challenges women face in the profession.

## **28. Appearance by Chief Justice Jorge Labarga**

Chief Justice Labarga, who attended the meeting along with Justices Barbara Pariente, Charles Canady, Ricky Polston, and James Perry, said the court is following the proposed constitutional amendment to impose term limits on the appellate judiciary that is pending in the legislature. He also followed up on YLD President Glover's remarks about gender bias and asked for the court to be copied with the survey so it can consider how to address that issue. He reported that although statewide statistics show a decline in court filings, judges do not yet see a decline in workload in their courts. He speculated the filing drop might be offset by an increase in the complexity of cases.

## **29. Leadership Academy Committee Report**

Committee Chair Juliet Roulhac introduced members of the third Leadership Academy class to the board and recounted their recent activities. She noted the diversity of the 52-member group.

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

President-elect Schifino asked board members for recommendations in making upcoming Bar committee appointments, and encouraged Bar members to be active liaisons with Bar sections and committees.

## **31. Time and Place of Next Meeting**

There being no further business before the board, President Abadin adjourned the meeting at 1:56 p.m. the next board meeting is March 11 at the Ritz-Carlton in New Orleans.

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