

The Florida Bar Board of Governors  
May 20, 2016  
Eau Hotel  
Manalapan, FL

**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  
Sam Nicholas Masters, 7th Circuit  
Carl B. Schwait, 8th Circuit  
Mary Ann Morgan, 9th Circuit  
Paul Louis SanGiovanni, 9th Circuit  
Wayne L. Helsby, 9th Circuit  
C. Richard Nail, 10th 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  
David C. Prather, 15th 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

Laird A. Lile, 20th Circuit  
Marcy L. Shaw, 20th 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

**Members Absent**

Sandra Fascell Diamond, 6th Circuit  
Diana Santa Maria, 17th Circuit  
Anthony Holloway, Public Member

**2. Staff in Attendance**

John F. Harkness, Jr., Executive Director  
John Berry, Director, Legal Division  
Adria Quintela, Director, Lawyer Regulation  
Patrick "Booter" Imhof, General Counsel  
Lori Holcomb, Division Director, Ethics and Consumer Protection  
Elizabeth Clark Tarbert, Ethics Counsel  
Kathy Bible, Disciplinary Procedure Counsel  
Terry Hill, Director, Programs Division  
Francine Walker, Director, Public Information and Bar Services  
Rosalyn A. Scott, Assistant to the President  
Gary Blankenship, Senior Editor, 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 Lawyer Representative  
Dave Aronberg, Incoming Government Lawyer Representative

**4. Pledge of Allegiance and Invocation**

Board member Ron Ponzoli led the board in the Pledge of Allegiance and board member David Prather delivered the invocation.

**5. Introduction of Incoming 2016-18 Board Members**

Board member Bill Davis introduced incoming Second Circuit board member Melissa Van Sickle. Board member Andy Sasso introduced incoming Sixth Circuit board member Joshua Chilson. Board member David Prather introduced incoming 15<sup>th</sup> Circuit board member Adam T. Rabin. Board member Skip Campbell introduced incoming 17<sup>th</sup> Circuit board member Jay Kim. Board member Lanse Scriven introduced new public board member Sharon Middleton. Young Lawyers Division President Gordon Glover introduced incoming YLD President-elect Zack

Zuroweste. President-elect Bill Schifino announced that 15<sup>th</sup> Circuit State Attorney Dave Aronberg, a former state senator, would serve as the government lawyer representative next year.

## **6. Minutes Approval**

The board unanimously approved the minutes from its March 11, 2016, meeting in New Orleans. That approval included ratifying Executive Committee and executive actions taken since that meeting, including:

- At an April 20, 2016, meeting, the Executive Committee heard the request from the Elder Law Section to file an amicus brief in *Goodwin v. Department of Children and Families (DCF)*, Case No. 1012-4430. The section planned to file a joint brief with the national Academy of Elder Law Attorneys, Inc., and the Academy of Florida Elder Law Attorneys. The committee voted 8-0 that the issue was beyond the scope of permissible legislative or ideological activity for The Florida Bar, that the issue fell within the subject matter interest of the section, and the issue does not carry the potential of deep philosophical or emotional division among a substantial segment of the Bar membership. The committee further voted 8-0 to allow the section to file for leave to appear and the amicus brief, further waiving any technical violation of Standing Board Policy 8.10(a) associated with the matter and authorizing the executive director and/or general counsel's office to monitor the filing of the amicus brief as necessary.
- On March 4, 2016, President Abadin and President-elect Schifino considered the executive branch lobbyist contracts submitted by the Family Law Section. President Abadin and President-elect Schifino likened the request to a request for an emergency legislative position and there was insufficient time to submit it to the Board of Governors or convene the Executive Committee. The president and president-elect determined the request constituted an emergency and approved the section's request to contractually engage the two Executive Branch lobbying firms.
- On April 26, 2016, the Executive Committee met to consider the recommendations from the Supreme Court, First District Court of Appeal, Second DCA, Third DCA, Fourth DCA, and Fifth DCA judicial nominating commission screening committees, which had reviewed applicants for the state's 26 JNCs. The committee also reviewed applicants for 2015 appointment to the First DCA, the Fourth DCA, the First Circuit, and the Sixth Circuit where the Governor's Office had rejected the previous slate of Bar nominees. The committee discussed adding additional nominees and alternatives for some JNCs. The committee then approved the final list below for submission to the Board of Governors:

### **Supreme Court**

Raoul G. Cantero, Miami

Amy S. Farrior, Tampa

Israel U. Reyes, Coral Gables

### **First DCA – 2016 Seat**

Braxton W. Gillam, IV, Jacksonville

Gary K. Hunter, Jr., Tallahassee

Kathy J. Maus, Tallahassee

### **First DCA – 2015 Rejected Seat**

Christine D. Graves, Tallahassee

Ellsworth W. Hoppe, Gainesville

Robert F. Spohrer, Jacksonville

### **First Circuit – 2016 Seat**

Russell G. Edgar, Pensacola

Shelley G. Reynolds, Pensacola Beach

Bobby L. Whitney, Jr., Ft. Walton

### **First Circuit – 2015 Rejected Seat**

Louis A. Maygarden, III, Pensacola

Michael T. McLoed, Pensacola

Joseph Passeretti, Pensacola

### **Second Circuit**

Robert N. Clarke, Jr., Tallahassee

Kenneth D. Pratt, Tallahassee

Elizabeth M. Ricci, Tallahassee

Third Circuit

Oscar M. Howard, III, Perry  
Elizabeth A. Rosado, Live Oak  
Ernest A. Sellers, Live Oak

Fourth Circuit

Clyde W. Davis, Fernandina Beach  
Courtney Grimm, Green Cove Springs  
Robert M. Harris, Jacksonville

Eighth Circuit

Leonard E. Ireland, Jr., Gainesville  
Peggy-Anne O'Connor, Gainesville  
Brent G. Siegel, Gainesville

Fourteenth Circuit

Laurie M. Hughes, Panama City  
William A. Lewis, Panama City  
Colin L. McMichen, Panama City

Second DCA

Thomas H. Dart, Sarasota  
Beth M. Coleman, St. Petersburg  
Natalie P. Thomas, Tampa  
Beth M. Coleman, St. Petersburg (Alternate)

Sixth Circuit – 2016 Seat

Debora A. Diaz, Tarpon Springs  
Robert H. Dillinger, St. Petersburg  
Hugh C. Umsted, New Port Richey

Sixth Circuit – 2015 Rejected Seat

Brandon D. Bellew, Clearwater  
Kara E. Hardin, Zephyrhills  
Lindsay Moore, Trinity

Tenth Circuit

Mark A. Sessums, Lakeland  
Richard E. Straughn, Winter Haven  
Jonathan Trohn, Lakeland

Twelfth Circuit

Robert Eschenfelder, Lakewood Ranch  
Kathi B. Halvorsen, Sarasota  
Bonnie Lee A. Polk, Sarasota

Thirteenth Circuit

Alexander Cabalerro, Tampa  
Christine L. Derr, Tampa  
Kevin D. Johnson, Tampa  
Christine L. Derr, Tampa (Alternate)

Twenty-first Circuit

Sonia M. Diaz, Naples  
Kelley G. Price, Naples  
Jamie B. Schwinghamer, Estero

Third DCA

Elliott B. Kula, Surfside  
Lisa Lehner, Miami  
Effie D. Silva, Miami

Eleventh Circuit

Walter J. Harvey, Miami Shores  
Victoria Platzer, Coral Gables  
Sabrina Vora-Puglisi, Miami

Sixteenth Circuit

Kevin M. Hoyles, Key West  
Miguel F. Mirabal, Ram Rod Key  
Robert Blake Shillinger, Jr., Key West

Fourth DCA – 2016 Seat

Debra A. Jenks, West Palm Beach  
Todd S. Payne, Plantation  
Tania Williams, Palm Bch Gardens

Fourth DCA – 2015 Rejected Seat

Susan H. April, Hollywood  
Paul Buschmann, Ft. Lauderdale  
Eric Lee, Delray Beach

Fifteenth Circuit

Anna P. Christiansen, Lake Worth  
Gregor J. Schwinghamer, Jr., W. Palm Beach

Roberto M. Vargas, Jupiter

Seventeenth Circuit

Sherril M. Colombo, Hollywood  
Christina A. McKinnon, Pembroke Pines  
Robert C.L. Vaughan, Ft. Lauderdale

Nineteenth Circuit

Russell J. Ferraro, Jr., Stuart  
Bradley W. Rossway, Vero Beach  
Louis B. Vocelle, Jr., Vero Beach

Fifth DCA

Amber N. Davis, Winter Park  
Katherine H. Miller, Daytona Beach  
Michael C. Sasso, Oviedo

Fifth Circuit

Timothy S. Babiarz, Ocala  
Shanta N. Matthews, Ocala  
Janet R. Varnell, Summerfield

Seventh Circuit

Aaron Delgado, Daytona Beach  
Erum S. Kistemaker, Daytona Beach  
Horace Smith, Jr., Ormond Beach

### Ninth Circuit

Mary Ann Etzler, Orlando  
Joshua Grosshans, Winter Garden  
Thomas P. Wert, Orlando  
Lisa Guerrero, Orlando (Alternate)

### Eighteenth Circuit

O.H. Eaton, Jr., Sanford  
Mark A. Nation, Winter Springs  
Andrew B. Pickett, Melbourne

### **7. Consent Agenda Approval**

Board member Carl Schwait, chair of the Board Review Committee on Professional Ethics, announced that item 5(b)(i), advertising appeals 16-01183 and 16-01184, had been withdrawn from the agenda and would be presented during the BRCPE's regular report. With that change, the consent agenda was unanimously approved. That approval included:

- Making the following appointments to circuit unlicensed practice of law committees – Loula D. Gainnet as an attorney member to committee 6B, Gary H. Weber as a public member of committee 9A, Eileen Forrester as an attorney member to committee 9B, Allison Jade Leonard and Joseph Martin Dobkin as attorney members to committee 11C, Jacob Michael Zakarin and Christopher Scott Salavar as attorney members to committee 15B, Melissa Zelniker-Presser and Hampton C. Peterson as attorney members and Marcie D. Bour as a public member to committee 17A, and Linda Frances Harrison and Sloan A. Carr as attorney members and Patricia Bergman and Karen Gottlieb as public members to committee 17C.

- Appointing Jose L. Estrada, Rupasri Sikdar Lloyd, Susanne McCabe, Linje E. Rivers, and Brendan A. Sweeney as attorney members and Joseph C. Simmons and Samuel H. Applebaum as public members of the Standing Committee on UPL. Reappointed to that committee were attorney members Dwayne Lamont Dickerson and Andre Tylor Young and public members Jerry R. Hall, Donald Matsuura, Rosanna M. Schachtele, and Gary Van de Laan.

- Passing on second reading Rule 5-1.2 Trust Accounting Records and Procedures (Signatories & Audit): Within subdivision (c), changes references from lawyers who sign trust account checks to "signatories." Within subdivision (g)(1), changes a reference to rule 5-1.2(c)(5) to "this rule." Adds new subdivision (g)(2), "report of trust account violations or errors to staff counsel under this rule" as a ground for auditing a lawyer's trust account and renames other subdivisions accordingly.

- Passing on second reading Rule 6-4.2 Definitions: This amendment adds the definitions that were previously in the civil trial certification policies.

- Passing on second reading Rule 6-4.3 Minimum Standards: This amendment better defines a trial and what constitutes other considerations for trials.

- Passing on second reading Rule 6-4.4 Recertification: This amendment better defines a trial and adds waiver of compliance for the following: substantial involvement; trial education and peer review criteria for an applicant who is an officer of the judicial system; trial criteria for an applicant who has been continuously certified as a civil trial lawyer for 14 years or more; substantial involvement for an applicant serving as mediator, referee, master or magistrate and is actively involved in civil trial law; and trial and substantial involvement criteria for an applicant not able to meet requirements due to health reasons.

- Passing on second reading Rule 8-5.1 Generally: Amendments delete references to the Lawyer Referral Service Committee, which no longer exists.

- Passing on second reading SBP 1.30 Meetings of Executive Committee: Within subdivision (b), removes the requirement that Bar members attending an Executive Committee conference call do so at the office of an Executive Committee member.

- Passing on second reading SBP 9.20 Action by Board: Within subdivision (a)(3)(B), deletes the requirement of a requestor providing enough copies for each board member.
- Reappointing LaShawn Donyale Riggins, Sara Elizabeth Macks, Joyce Christine Fuller, Kristin Maria Ahr, and Barbara Warren Loli as attorney members and Linda M. Woolard as a Florida registered paralegal member to the Florida Registered Paralegal District Committee.

### **8. Family Law Rules Committee Report**

Incoming Chair Robert Merlin presented proposed new Family Law Rule of Procedure 12.745 and proposed new Rule Regulating The Florida Bar 4-1.19. Merlin explained that earlier this year the Legislature passed and the governor signed a bill creating a collaborative law process in Florida Statutes. The law provided it would not become effective until 30 days after the Supreme Court approved procedural and conduct rules necessary to implement the law. After discussion, the board voted 43-0 to recommend the Supreme Court approve new Family Law Rule of Procedure 12.745. The board also voted that the new Bar Rule 4-1.19 should go through regular board rule review procedures before coming to the board for a vote.

### **9. Trial Lawyers Section Report**

Section Chair Courtney Grimm noted that Florida International University won the section's annual Chester Bedell Mock Trial Competition and the section for the fourth year in a row conducted its law school for high and middle school teachers. That program has received high praise and the section intends to continue presenting it throughout the state to promote civics education and teach the importance of the law and the legal system, she said. The section had its annual trial advocacy seminar the previous week at the University of Florida, which included four barristers from London and four legal aid attorneys were enabled to attend because of scholarships from the section.

### **10. Investment Committee Report**

Chair Ian Comisky reported the market continues to be a challenging environment, with the Bar's investments up overall by 0.7 percent. He reported the Investment Committee with its outside investment advisor is conducting a comprehensive review of the Bar's investment policy in light of the changing economic environment around the world. Comisky said he would report further on that review at the board's July meeting.

### **11. Audit Committee Report**

Chair Erik Meeks reported the committee approved the annual retiree health plan audit, approved the report on procedures for the employee pension plan, and the report on agreed upon procedures for the employee deferred compensation plan. The auditor compiled a regulatory checklist for the Bar and the committee worked on start-up activities with the Bar's new auditing firm and on implementation of a new accounting system.

### **12. Budget Committee Report**

Chair Dori Foster-Morales said the committee looked at the proposed new House Counsel Rules for their fiscal impact and approved them. She said those changes will have a positive fiscal impact for the Bar. She presented two minor amendments for the 2015-16 Bar budget. She noted the board had earlier rejected paying for a luncheon for the Media Law Conference, but said the Media Law Committee had found a sponsor to pay the \$3,700 cost. The second amendment was

for \$10,700 for convention related IT expenses. The board approved both amendments unanimously. Foster-Morales reported that no member objections had been received to the Bar's proposed 2016-17 budget, so it was deemed final and would be forwarded to the Supreme Court.

### **13. Rules Committee Report**

Chair Margaret Mathews presented for second reading Rule 4-1.8 Conflict of Interest; Prohibited and Other Transactions: 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. The board approved the amendment without dissent.

Mathews presented an amendment to Rule 11-1.3 Requirements and Limitations (Level 2 background investigation): Maintains requirement that a law student register with the Florida Board of Bar Examiners as a certified legal intern registrant, allows a law student to be certified as a legal intern after passing a Level 2 criminal background investigation, moves the language regarding the fee to a separate subsection, other subsections are renumbered. A similar amendment to Rule 11-1.9 Continuation of Practice Program After Law School Graduation was also presented. Mathews said the committee was requesting the board waive second reading and approve the amendment so it could be forwarded to the Supreme Court. The board had an extensive discussion, including hearing that the Florida Board of Bar Examiners opposed the amendment while 11 of the state's 12 law school deans supported it, as did the Young Lawyers Division. The board voted 36 to 8 to approve the rule and 35 to 9 to waive second reading.

Mathews presented 27 items on first reading to the board:

- Rule 1-3.2 Membership Classifications (Emeritus): Within subdivisions (c)(4) and (c)(8), provides an exception for inactive members who are certified as emeritus lawyers under chapter 12 of The Rules Regulating The Florida Bar.
- Rule 1-7.5 Retired, Resigned, Inactive, Delinquent Members (Emeritus): Adds an exception for inactive or retired lawyers who are certified as emeritus lawyers under chapter 12 of the Rules Regulating The Florida Bar.
- Rule 12-1.1 Purpose: The changes conform the rule to the Supreme Court of Florida style guide and make this terminology consistent throughout chapter 12 and the Rules Regulating The Florida Bar.
- Rule 12-1.2 Definitions: Within subdivision (a), adds inactive lawyers, retired judges, and current or former full-time law professors to the pool of potential emeritus lawyers; requires that emeritus lawyers not be currently engaged in the practice of law, except for authorized house counsel certified by the Supreme Court of Florida under chapter 17; adds the following definitions: "inactive" in subdivision (d), and "active practice of law" in subdivision (e); rule is re-organized.
- Rule 12-1.3 Activities: In subdivision (a)(2), provides that emeritus lawyers may sign and file pleadings and removes the requirement that the supervising lawyer sign all documents filed with the court, but requires that the supervising lawyer's name and Bar number be included on any pleading or paper filed or served by an emeritus lawyer. In subdivision (a)(3), increases the scope of activities that can be performed by emeritus lawyers to include participating in legal clinics sponsored by the lawyer's legal aid organization and giving advice and assistance to, and

drafting legal documents for, persons whose legal issues are not in litigation; adds commentary describing emeritus lawyers' appointment, activities, and limitations.

- Rule 12-1.4 Supervision and Limitations: Within subdivision (c), provides that emeritus lawyers may not receive compensation for the legal services they provide under the rule; which is moved from rule 12-1.2.

- Rule 12-1.5 Certification: In subdivision (b), removes the requirement that the certificate of discipline history from the jurisdiction where the emeritus lawyer is licensed to practice law certify that the emeritus lawyer has fulfilled the requirements of active bar membership.

- Rule 12-1.6 Withdrawal Of Certification, (inactive, retired judges, law professors added to emeritus): Amendments re-organize the rule, change "attorney" to lawyer, makes terminology consistent with other changes in this chapter, and conforms the rule to the Supreme Court of Florida style guide.

- Rule 12-1.7 Discipline: Amendments change "attorney" to lawyer, make terminology throughout the chapter consistent, and conform to the Supreme Court of Florida style guide.

- Rule 17-1.2 Definitions: Adds authority to allow individuals authorized to practice law in a foreign county to be certified by the Supreme Court of Florida to act as Authorized House Counsel when working for a business organization located in Florida.

- Rule 17-1.3 Activities: Deletes example of language that may be used in disclosure of status as an Authorized Counsel.

- Rule 17-1.4 Registration: Amends application requirements to allow certification of lawyers authorized to practice law in a foreign country.

- Rule 17-1.5 Termination or Withdrawal of Registration: Adds action taken by a foreign jurisdiction regarding an authorized house counsel's authorization to practice law as a basis for termination of the authorized house counsel certification.

- Rule 17-1.6 Discipline: Amendments change "registration" to "certification" and conform rule to Supreme Court of Florida style guide.

- Rule 17-1.7 Immunity from Prosecution: Deletes the rule in its entirety.

- SBP 1.20 Board Meetings: Within subdivision (a), adds that the board may meet or vote by conference call or electronic means.

- SBP 1.30 Meetings of Executive Committee: Within subdivision (b), adds that the board's executive committee may meet or vote by conference call or electronic means.

- SBP 1.40 Policy for Appointments and Procedure for Elections and Nominations by the Board of Governors: Within subdivision (c)(3) replaces "no one applies" with "an insufficient pool of qualified applicants applies." Within subdivision (d), adds that a board screening committee may assist in selecting other nominations or appointments.

- SBP 1.60 Board Action on Proposed Rule or Policy Amendments: Within the title of subdivision (b), removes "and/or Section."

- SBP 4.30 Dues for Faculty Affiliate Members of The Florida Bar: Adds "division" to allow faculty affiliate members to join the bar's divisions.

- SBP 5.20 Committee Structure, Membership and Terms: Within subdivision (c), deletes the requirement that at least one committee member must serve two consecutive years.

- SBP 5.54 Section Disbursement Policies (Sub (e)(5)(I) - Speaker companion expenses): Within subdivision (e)(5)(I) changes "associate" to "companion."

- SBP 6.21 Bar Division, Section, and Committee Programs (c) (adding divisions): Within subdivision (c), adds bar divisions regarding educational service programs.

- SBP 10.20 Program Evaluation Committee: Within subdivision (b), omits board action based on recommendations from specific committees from the title and policy.
- SBP 10.50 Strategic Planning: Combines subdivisions (a) and (b) regarding the annual workshop and update of the strategic plan. Subsequent provisions are re-numbered.
- Florida Bar Procedures For Issuing Advisory Opinions Relating To Lawyer Advertising Or Solicitation: Within procedure 4(e) changes "file" to "agenda." Within procedure 5(d), changes "file" to "agenda item."
- Florida Bar Procedures For Ruling On Questions Of Ethics: Within procedures 5(d) and 6(f), changes "file" to "agenda item."

#### **14. Legislation Committee Report**

Chair Michael Tanner reported that all Bar, section, and committee legislative positions for the 2014-16 biennium will, in accordance with Bar policies, be retired at the board's July meeting. He said sections, which use their own voluntary funds for legislative activities, may request an immediate reauthorization of some of those positions while he anticipated the committee would take more time reviewing Bar legislative positions before bringing some to the board later in the year. He announced that General Counsel and Legislative Counsel Paul Hill was retiring and has been replaced by Patrick "Booster" Imhof, who is a former Bar staff counsel and has held several legislative staff positions. Bar Chief Outside Legislative Counsel Jim Daughton said there could be 60 new members of the Legislature after the November elections and said it would be essential for board members to help educate those new lawmakers on issues critical to the justice system.

#### **15. Constitution Revision Commission Committee Report**

Committee member Michael Tanner said the Bar is continuing to plan for the upcoming CRC process, including with President-elect Bill Schifino discussing the commission with members of the Supreme Court. He said the process will gear up in 2017 when members of the commission are appointed by the House speaker, Senate president, governor, and Supreme Court chief justice.

#### **16. Civil Procedure Rules Committee Report**

Chair Judge Jacqueline Hogan Scola presented out-of-cycle amendments to Form 1.983 which provides guidance to protect sensitive information on juror questionnaires. The board voted 41-0 to recommend approval of the amendments.

#### **17. Vision 2016 Legal Education Subgroup Report**

Subgroup chair Debra Moss Curtis presented the final report with recommendations to ease the transition from law school to practicing lawyer. Those recommendations included covering fewer subjects on the bar exam and having more clinical and practical experience in law school, although she said there was no "magic bullet" that would apply to all of the state's law schools because of the unique features of those law schools. The report recommended that a law school representative sit as a non-voting member of the Board of Governors and also addressed ABA accreditation rules, faculty governance, better technology training for law school graduates, teaching non-legal skills required such as trust accounting, client relations, and office management, and looking at ways of reducing the cost of law school.

## **18. Board Review Committee on Professional Ethics Report**

Chair Carl Schwait reported on Advertising Appeals 16-01183 and 16-01184 which were removed from the consent agenda. The BRCPE voted 7-2 to recommend that the Board of Governors affirm the decision of the Standing Committee on Advertising in Advertising Appeals 16-01183 and 16-01184, determining that the two television advertisements are misleading, in violation of Rule 4-7.13(b)(8) because they contain testimonials that the filer indicates were actual client experiences, but which were portrayed by paid actors, despite the on-screen disclaimers “dramatization” and “paid actor.” Rule 4-7.13(b)(8) requires that testimonials must be the personal experience of the person giving the testimonial, must be given by someone qualified to evaluate the lawyer, and must not have been paid. The Board of Governors approved the BRCPE recommendation on voice vote with objections.

Schwait gave an informational report on proposed amendments to Rule 4-7.22 (Lawyer Referral Services) and 4-7.23 (Lawyer Directories). The board is scheduled to vote on those amendments at its July meeting.

Schwait presented on second reading amendment to Rule 4-7.14(a)(4) - Advertising of Specialization and Expertise. The BRCPE approved amendments to Rule 4-7.14(a)(4) by vote of 6-1 on March 10, 2016 which would permit a lawyer to claim expertise or specialization in an area of practice if the lawyer can objectively verify qualifications substantially similar to those requirements for board certification under Florida’s certification plan and requires a disclaimer that the lawyer is not board certified if the lawyer is not certified and the area of claimed expertise or specialization is an area of certification or falls within an area of certification under the Florida certification plan. Board of Governor member Ian Comisky proposed an amendment to add to the commentary that the reasonably comparable standards required to be met to use the terms “specialist” or “expert” by lawyers who are not board certified do not include examination or peer review, which was accepted by Schwait as a friendly amendment. The Board of Governors approved the BRCPE recommendation with friendly amendment on voice vote with one objection.

Schwait announced that advertising inquiry 35636, concerning application of Rules 4-7.22 and 4-7.23 to the Avvo Advisor function of the Avvo website was deferred by the BRCPE as proposed amendments to Rules 4-7.22 and 4-7.23 are under consideration by the Board of Governors.

Schwait reported that the BRCPE voted 5-4 to defer consideration of the Professional Ethics Committee request for the board to direct the PEC to adopt a formal advisory opinion on a lawyer lobbying the legislature when the lawyer’s partner is a legislator (Ethics Inquiry 35426). The delay, until the December 2016 meeting, will allow the proponent of the request to attend the BRCPE meeting.

Schwait presented on first reading proposed amendments to Rules 4-7.12, 4-7.13, 4-7.16, and 4-7.17 (Lawyer Referral Services/Qualifying Providers). He reported the BRCPE voted 9-0 to recommend that the Board of Governors adopt amendments to Rules 4-7.12, 4-7.13, 4-7.16 and 4-7.17 to add the term “qualifying provider” to make terminology consistent with proposed amendments to Rules 4-7.22 and 4-7.23 regarding lawyer referral services.

## **19. Program Evaluation Committee Report**

Chair Michael Higer presented the following rule amendments on second reading, which were unanimously approved by the board:

- Rule 6-28.2 Definitions: The proposed amendments reflect the definitions from the adoption law certification policies that will be removed from the policies with the approval of

this amendment. This includes the following definitions: adoption placements; contested adoption proceedings; adoption appeal; and substantial involvement (also moved from 6-28.3).

- Rule 6-28.3 Minimum: Within subdivision (a), reduces the substantial involvement requirement from 50 percent to 40 percent. Adds definitions pertaining to the practice of adoption law and clarifies the minimum standards that are in the current Adoption Law Certification Committee Standards.

- Rule 6-28.4 Recertification: Reduces adoption placements for recertification from 50 to 30 and reduces the required CLE hours from 75 to 50 and adds requirements for substantial involvement that currently are in the Adoption Law Certification Committee policies.

- Rule 6-31.1 Standards for Board Certification in International Litigation and Arbitration: Adopts new subchapter 6-31.1, establishing a new area of certification in international litigation and arbitration.

- Rule 6-31.2 Definitions: Adopts new subchapter 6-31.2, setting forth definitions for a new area of certification in international litigation and arbitration.

- Rule 6-31.3 Minimum Standards: Adopts new subchapter 6-31.3, setting forth minimum standards for a new area of certification in international litigation and arbitration.

- Rule 6-31.4 Recertification: New subchapter 6-31.4, setting forth recertification standards for a new area of certification in international litigation and arbitration.

Higer presented final evaluations conducted by the committee on several Bar programs, including the certification exam review process, the certification program including all current 24 areas of certification, the Board of Legal Specialization and Education and the Certification Plan Appeal Committee, The Florida Bar rule approval process, and the Lawyers Advising Lawyers project. The board voted unanimously to accept all of the evaluation reports. Higer reported that the committee recommended creating the new Standing Committee on Governmental and Public Policy Advocacy and the board unanimously approved that action. Higer reported that the committee is continuing its evaluation of the Bar's statewide Lawyer Referral Service.

## **20. Elections Committee Report**

President-elect Schifino and Elections Committee Chair Miles McGrane reported on changes made to the voluntary pledge agreement for Bar presidential candidates since the board first discussed the issue at its March 11, 2016, meeting. Schifino said the changes included moving the date for active campaigning from December 15 to June 1 of the year before the balloting – which would allow candidates to campaign at the Bar's Annual Convention – and allowing lawyers from small firms to accept contributions from lawyers who are friends. The latter, he said, would equalize resources for small firm lawyers since large firm lawyers can accept contributions from their firm members. Any lawyer may also accept contributions from family members. The board extensively discussed the voluntary pledge and the effect of the board's endorsement of the document. No action was taken and Schifino said the discussion would be continued at a future board meeting. McGrane said the agreement would not be applicable in the upcoming election cycle.

## **21. Executive Session**

The board went into executive session to discuss confidential issues.

## **22. Family Law Section Report**

Chair Maria Gonzalez reported the section had revamped its website and had a successful year working on legislative issues in Tallahassee, including making several positive changes in an adoption bill that passed the Legislature and was signed by the governor. She reported the section worked with the Legislature on a bill changing the way alimony is determined but wound up lobbying the governor to veto the bill – which he did – after it was amended to include a premise that 50-50 time sharing of children by divorcing parents was the state's policy, rather than the best interest of the child. In light of same-sex marriage, the section is working on gender neutral language for state statutes, rules, and forms. Gonzalez said the section updated Bar pamphlets on divorce and parenting after divorce and created a new pamphlet on domestic violence. The section assisted the Family Law Rules Committee on drafting stand-alone family law rules, she said, and continues to promote diversity including through scholarships at CLE programs. The section Executive Council also voted unanimously to make a \$75,000 donation to The Florida Bar Foundation. Gonzalez said the section assisted legal aid programs throughout the state and also conducted guardian ad litem training.

## **23. Disciplinary Procedure Committee Report**

Chair Ron Ponzoli presented two items for final action, both of which were unanimously approved by the board:

- 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 Trust Accounts (commentary on third party interests): Adds commentary to Rule 5-1.1 to include examples of situations where a lawyer must protect and acknowledge a third party's interest in trust account funds. These examples come from opinions of the Supreme Court of Florida, cited in the comment.

Ponzoli reported that a vote on proposed amendments to Rule 5-1.1 to allow insured credit unions to accept IOTA trust accounts has been postponed to the board's July 29 meeting following objections from the Florida Bankers Association. He said credit union officials have responded to those objections and the committee will have a full discussion at its July meeting.

## **24. Florida Courts Technology Commission and Florida Court Clerks & Comptrollers Report**

Board member Laird Lile, who also serves on the Florida Courts Technology Commission, introduced Lee County Clerk of Court Linda Doggett and Melvin Cox, IT director for the Florida Court Clerks & Comptrollers. Lile said the FCCC was working on a unified statewide system for access to electronic court records. Doggett said the new access program will be based on the state's existing comprehensive case information system (CCIS). Rather than have to visit each county court clerk's website to gain access to that county's court records, the new system will have one statewide access point, similar to the statewide e-filing portal, except this will be for retrieving records. In addition, there will be a uniform process for viewing and retrieving records so users will not have to learn a new procedure for each county. The system is being installed county by county and requires extensive testing and verification for each county, and should be completed by the end of the year. Cox presented a demonstration of the system and showed how lawyers will be able to find any case in Florida, civil or criminal, affecting a client or potential

client and filings related to those cases. He said the system will follow the security matrix approved by the Supreme Court for protecting confidential information in court filings.

### **25. Executive Committee Election**

President-elect Schifino announced his appointments from the board to the Executive Committee are Sandra Diamond and Carl Schwait. He presided over the board electing its three representatives to the committee: Scott Westheimer, Wayne Helsby, and Steve Davis.

### **26. Special Appointments**

Board member Wayne Helsby, who headed the board's judicial nominating commission screening process, presented the list of JNC nominations as listed above in the Minutes Approval section with one change. He reported that Amy M Farrior, who had been nominated for the Supreme Court JNC, had been nominated to the Second District Court of Appeal JNC, and consequently Kathy Maus has been moved from the slate of First DCA JNC nominees to the Supreme Court JNC slate. With that change, the board unanimously approved the slate of JNC nominees for submission to the governor. Helsby said board members would be emailed for a vote on a replacement for Maus on the First DCA JNC in the week following the meeting. For the ABA House of Delegates, Executive Director John F. Harkness, Jr., reported that outgoing President Ramón Abadin and President-elect Designate Michael Higer were automatic members and that Mark David Nichols would be the under-36 delegate. The board elected Pedro Martin Allende to a two-year term in the House of Delegates, and Gordon Glover to serve the remainder of a two-year term commencing at the end of the ABA Annual Meeting in August and ending after the August 2017 ABA Annual Meeting. The board elected Garrick N. Fox, Barnaby L. Min, and Thomas J. Schulte as attorney members, and R. Fairlie Brinkley and Dr. Penelope P. Ziegler as non-lawyer members for three-year terms on the Florida Lawyers Assistance, Inc., Board of Directors. The board nominated to the Supreme Court, which will make the final two appointments, Brandice D. Dickson, Chet Kaufman, Kurt E. Lee, Tom E. Lewis, Jane A. Rose, and Alan F. Wagener for five-year terms on the Florida Board of Bar Examiners. The board elected Rafael Martinez for a two-year term on the Florida Medical Malpractice Joint Underwriting Association Board of Governors.

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

President-elect Schifino presented the list of his appointments of Bar committee chairs and chairs-elect for the coming year and the board unanimously approved the appointments.

### **28. Communications Committee Report**

Chair Renée Thompson recounted the committee's activities for the previous year, which included bringing in a public relations firm to help the Bar build its media outreach. Bar leaders continued to meet with editorial boards on topics ranging from access to courts, the legal system, and gender bias in the profession. Those conversations also took place in other forums, including social media discussions. The committee helped set up the first technology blog for the Bar, which will start in the coming year. The committee set up a Flipboard app magazine for board members to share articles and information. The committee worked on civic education plans with other interested groups on the upcoming Constitution Revision Commission and assisted with communications related to the Supreme Court's Access to Civil Justice Commission. The committee helped promote the January Bar Journal special issue on technology, and the

#JustAdulting Legal Survival Guide App (formerly the Legal Guide for New Adults). The legal survival guide app garnered the 2016 NABE LexisNexis Community & Educational Outreach Award. The Bar expanded its engagement on social media in the past year considerably, adding new platforms and increasing Facebook followers from around 6,000 to more than 13,000 and on Twitter from 3,400 to nearly 6,670. The Bar is recognized as a leader among state bars in using social media, she said.

## **29. Member Benefits Committee Report**

Board member Paul SanGiovanni, on behalf of the committee, presented a recommendation that CosmoLex a provider of cloud-based software for law office practice management, be added to the Bar's Member Benefits program. The board unanimously approved the recommendation, subject to the final contract negotiation with the company.

## **30. Young Lawyers Division Report**

YLD President Gordon Glover noted the division was active in social media, worked on the Bar's Lawyer Referral Service related issues, sponsored pro bono projects, and held its annual Affiliates Outreach Conference. The division had an active legislative program but was unsuccessful with one goal of getting school loan repayment assistance for public lawyers. The division conducted 22 Practicing with Professionalism seminars and several other CLE courses, including one the week before the board meeting on the upcoming Constitution Revision Commission process. The YLD's law school mentoring program attracted more than 350 lawyers and 530 law students and the division did town hall meetings with Law Student Division members, as well as the annual Raising the Bar project with the student division. The YLD conducted a diversity pipeline program with high school students with the Florida International University School of Law, which won first place in an ABA competition. The division has expanded its website to include a section to guide young lawyers starting their own law firm. Glover said the division has established a commission to address the issues found by its survey on women in the profession.

## **31. Executive Director's Report**

Executive Director John F. Harkness, Jr., called board members' attention to a recent federal rule change that managerial employees who make less than \$47,000 a year must be paid overtime, a salary limit about double the previous standards. He said that will have impacts on the Bar and said it will likely affect many law firms and he advised board members to spread the word to Bar members to be aware of the new federal overtime rule, which goes into effect December 1 of this year.

## **32. Comments for the Good of the Order**

Board members finishing their terms on the board – Kristin Ann Norse, Skip Campbell, Bill Davis, David Prather, Andy Sasso, and Carlos Martinez talked about their board experiences and thanked fellow board members for their support and friendships. President Abadin talked about the challenges of the past year and said the Bar had to continue to be ready to face its challenges with robust debate and dialogue. He thanked board members for their support and friendship during his 13 years on the board, first as a representative of the Cuban American Bar Association and then as an elected member.

**33. Time and Place of Next Meeting**

There being no further business before the board. President Abadin adjourned the meeting at 3:57 p.m. The board next meets July 29, 2016, at the Eden Roc Hotel in Miami Beach.

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