

Florida Bar Board of Governors  
October 16, 2015  
One Ocean Resort  
Atlantic Beach, Florida

**1. Roll Call**

Ramon A. Abadin, President  
William J. Schifino, Jr., President-elect  
Stephen H. Echsner, 1<sup>st</sup> Circuit  
Lawrence E. Sellers, Jr., 2<sup>nd</sup> Circuit  
William H. Davis, 2<sup>nd</sup> Circuit  
Bruce W. Robinson, 3<sup>rd</sup> Circuit  
Fred D. Franklin, Jr., 4<sup>th</sup> Circuit  
Michael G. Tanner, 4<sup>th</sup> Circuit  
Renée Elise Thompson, 5<sup>th</sup> Circuit  
Andrew B. Sasso, 6<sup>th</sup> Circuit  
Sam Nicholas Masters, 7<sup>th</sup> Circuit  
Carl B. Schwait, 8<sup>th</sup> Circuit  
Mary Ann Morgan, 9<sup>th</sup> Circuit  
Paul Louis SanGiovanni, 9<sup>th</sup> Circuit  
Wayne L. Helsby, 9<sup>th</sup> Circuit  
C. Richard Nail, 10<sup>th</sup> Circuit  
Roland Sanchez-Medina, Jr., 11<sup>th</sup> Circuit  
Dori Foster-Morales, 11<sup>th</sup> Circuit  
Leslie J. Lott, 11<sup>th</sup> Circuit  
Michael J. Higer, 11<sup>th</sup> Circuit  
Dennis G. Kainen, 11<sup>th</sup> Circuit  
Steven W. Davis, 11<sup>th</sup> Circuit  
John H. (Jack) Hickey, 11<sup>th</sup> Circuit  
F. Scott Westheimer, 12<sup>th</sup> Circuit  
Thomas Roe Bopp, 13<sup>th</sup> Circuit  
Lansing C. Scriven, 13<sup>th</sup> Circuit  
Margaret Diane Mathews, 13<sup>th</sup> Circuit  
Michael S. Hooker, 13<sup>th</sup> Circuit  
John W. Manuel, 14<sup>th</sup> Circuit  
David C. Prather, 15<sup>th</sup> Circuit  
Ronald Peter Ponzoli, Jr., 15<sup>th</sup> Circuit  
Michelle R. Suskauer, 15<sup>th</sup> Circuit  
Gary Shepard Lesser, 15<sup>th</sup> Circuit  
Walter G. Campbell, Jr., 17<sup>th</sup> Circuit  
Diana Santa Maria, 17<sup>th</sup> Circuit  
Jay Cohen, 17<sup>th</sup> Circuit  
Adam Glenn Rabinowitz, 17<sup>th</sup> Circuit  
O. John Alpizar, 18<sup>th</sup> Circuit  
John M. Stewart, 19<sup>th</sup> 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

Sandra Fascell Diamond, 6<sup>th</sup> Circuit  
Lorna E. Brown-Burton, 17<sup>th</sup> Circuit  
Laird A. Lile, 20<sup>th</sup> Circuit  
Marcy L. Shaw, 20<sup>th</sup> Circuit

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

John F. Harkness, Jr., Executive Director  
John Berry, Director, Legal Division  
Adria Quintela, Director, Lawyer Regulation  
Sheila Tuma, Chief Counsel, Tampa Branch  
Paul Hill, General Counsel  
Lori Holcomb, Director, Ethics and Advertising, UPL, and Special Projects  
Elizabeth Clark Tarbert, Ethics 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, 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 Lawyer Representative

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

Board member Michael Tanner delivered the invocation and board member Fred Franklin led the board in the Pledge of Allegiance.

#### **5. Minutes Approval**

The board approved the minutes from its July 24, 2015, meeting. The approval included ratifying the following Executive Committee actions taken since the last meeting, including:

- On August 11, 2015, the Executive Committee voted 9-0 to approve a contract with Schwartz Media Strategies PR Marketing Firm to run from August 1, 2015, to June 30, 2016. The firm will provide services for media relations, message development, media training, creation of media and press materials, crisis communications and issues management, event publicity, community relations and ongoing marketing counsel. The committee also voted 9- 0 to appoint Whitney Untiedt to fill an unexpired term on the Florida Legal Services, Inc., Board of Directors. She replaces Edrick E. Barnes, who has been elected to board treasurer.

- On September 4, 2015, the Executive Committee voted 10-0 to approve appointing nine people from 38 applicants to serve on the inaugural Juvenile Law Certification Committee. They are Robert Mason of Jacksonville, Meshon T. Rawls of Gainesville, and Deborah Schroth of Jacksonville for the North region; Gerard Glynn of Orlando, Robin Rosenberg of Tampa, and Laura Vaughan-Bosco of Sanford for the Middle region; and Tamara Gray of Miami Gardens, Maria Schneider of Ft. Lauderdale, and Whitney Untiedt of Miami for the Southern region.

- On September 29, 2015, the Executive Committee voted 8-0 to approve a 2016 consulting contract for executive branch representation between the Bar and Chris Kise, who also held that position for 2015.

- On October 6, 2015, the Executive Committee voted 13-0 to add JCL Holdings/Dot Law LLC to the Bar's Member Benefits program. The company has exclusive rights in Florida and California and nonexclusive rights in other states to sell .law Internet domain names.

## **6. Consent Agenda Approval**

The board approved the consent agenda, including the following items:

- Appointing C.C. Abbott as an attorney member to Unlicensed Practice of Law Committee 13A.

- Giving final approval to 38 revisions to certification rules and Board of Legal Specialization and Education policies on certification titles and standards.

- On the recommendation of the Legislation Committee, agreeing not to oppose the following section legislative positions:

- From the Business Law Section, support passage of legislation updating and modernizing F.S. §865.09 and support passage of legislation clarifying, updating and modernizing F.S. §56.29 and related provisions within Chapter 56 of the Florida Statutes.

- From the Real Property, Probate and Trust Law Section:

- Support proposed legislation that would amend F.S. §§736.0412(4) and 736.0105(2)(k), so that all irrevocable trusts are treated the same with regard to whether nonjudicial modification is available during the first 90 years after the trust is created – more specifically, all irrevocable trusts will be restricted to judicial modification during the first 90 years after creation, unless the trust expressly permits nonjudicial modification within the first 90 years.

- Support legislation to permit the electronic filing of certified copies of documents and permit the self-authentication of documents other than by obtaining a certified copy, including an amendment of F.S. §90.902.

- Support a clarification and simplification of the statute of repose applicable to mortgage liens and restoration of subrogation rights for property tax advances through changes to F.S. § 95.281.

- Support proposed legislation confirming that Florida law governs the validity and effect of the disposition of Florida real property, whether owned by a resident or a nonresident, including a change to F.S. § 731.106(2).

- Support legislation to (i) clarify when trust assets may be used to pay a trustee's legal fees and (ii) provide further guidance to practitioners and courts as to the procedure to be employed when a trustee seeks to use trust assets to pay the trustee's legal fees when defending a breach of trust claim, including amendment to F.S. §§ 736.0802(10), 736.0816(20) and 736.1007(1).

- Support legislation to delete the requirement that out-of-state plaintiffs file a \$100 cost bond as set out in F.S. §57.011 and which would clarify and codify existing law by providing that a condition precedent to filing a petition or complaint to collect a debt is not created by F.S. §559.715.

- Support proposed amendments to F.S. Chapter 736, which provide much needed clarification and guidance regarding the applicability of constitutional devise restrictions and exemption from creditors' claims provisions, as well as the timing and method of passage of title to homestead real property, when that homestead real property is devised through a revocable trust at the time of a settlor's death, including amendment to F.S. § 736.0103, amendment to F.S. § 736.0201, the creation of F.S. § 736.0508, and the creation of F.S. § 736.08115.

- At the recommendation of the Legislation Committee, approving the legislative consulting contract between the Workers' Compensation Section and Fausto Gomez.

## **7. Public Reprimand**

President Abadin administered one public reprimand.

## **8. Program Evaluation Committee Report**

Chair Michael Higer presented 24 recommendations from a subcommittee chaired by board member Michelle Suskauer on the Bar's Annual Convention. The board unanimously approved the recommendations.

Higer presented 13 rule amendments on first reading, relating to member-in-good-standing status:

- Rule 1-3.2 Membership Classifications, (MIGS eligible/ineligible): Adds new subdivision (a)(2), adds that inactive members are members in good standing solely for the purpose of obtaining a certificate of good standing, but no other purpose. Within subdivision (c), changes "membership in good standing" to "active" membership "eligible to practice law" regarding reinstatement. Non-substantive edits are made to conform to the Supreme Court style guide.

- Rule 1-3.7 Reinstatement to Membership. (MIGS eligible/ineligible): Within subdivision (g), adds "active" before and "to become eligible to practice law in Florida" after "membership in good standing" regarding reinstatement. Non-substantive edits are made to conform to the Supreme Court style guide.

- Rule 6-10.7 Confidentiality, (MIGS eligible/ineligible): Replaces "suspended from" with "not eligible to practice law" addressing failure to meet continuing legal education requirements.

- Rule 8-2.2 Contents of Application, (MIGS eligible/ineligible): Within subdivision (c)(3), adds "and eligible to practice law in Florida" to describe members in good standing.

- Rule 9-1.3 Definitions, (MIGS eligible/ineligible): Within subdivisions (f) and (g), adds "eligible to practice law in Florida" to describe members in good standing.

- Rule 11-1.7 Supervision, (MIGS eligible/ineligible): Within subdivision (a), adds "eligible to practice law in Florida" to describe members in good standing.

- Rule 11-1.10 Certification of Members of Out-of-State Bars, (MIGS eligible/ineligible): Within subdivision (a)(4), adds "eligible to practice law in that jurisdiction" to describe members in good standing.

- Rule 13-1.2 Definitions, (MIGS eligible/ineligible): Within subdivision (a)(2), add "eligible to practice law in that jurisdiction" and within subdivision (c) add "eligible to practice law in Florida" to describe members in good standing.

- Rule 18-1.2 Definitions, (MIGS eligible/ineligible): Within subdivision (c), add "eligible to practice law in Florida" to describe members in good standing.

- Florida Bar Procedures for Issuing Advisory Opinions Relating to Lawyer Advertising or Solicitation, (MIGS eligible/ineligible): Within procedures 3(c), 4(c) and 6(d), add "in good standing" to describe members regarding comments filed on formal advisory opinions.

- Florida Bar Procedures for Ruling on Questions of Ethics (MIGS eligible/ineligible): Within procedures 3(d), 4(c) and 6(d), add "in good standing" to describe members regarding comments filed on formal advisory opinions.

Higer presented amendments to Standing Board Policies which were recommended by a subcommittee chaired by board member Brian Burgoon. Board member Bill Davis proposed an amendment that all business meetings of the Board of Governors must be held in Florida unless the Board of Governors votes otherwise. He said the SBPs theoretically would allow a Bar president to schedule all six annual business meetings in another state. The board rejected the amendment on a voice vote and then approved the revisions, authorizing Bar staff to make minor editorial and style changes. Higer said the proposed amendments will return to the board at its December meeting as an information item. He said the committee is continuing its review of the certification program and will have a report in December. He said the PEC has set up two new subcommittees to look at the Bar's Lawyer Referral Service and its Lawyers Helping Lawyers program. He also said the subcommittee looking at the procedural rules process is continuing its work and should have a report in December or January.

## **9. Budget Committee Report**

Chair Dori Foster-Morales reported that income for the 2015-16 fiscal year is below projections from Bar investments, but above projections from fees. She said the Bar is working on implementing new accounting procedures adopted last year to help sections and getting related software. She also said the committee has begun work on the Bar's 2016-17 budget.

## **10. Investment Committee Report**

Chair Ian Comisky said the Bar investments were down less than 1 percent for the year, while the broader market was down almost 5 percent and had been down by as much as 8 percent in the third quarter. He reported that the Bar's investment in a SkyBridge Capital hedge fund had exceeded its portfolio parameters and that the Investment Committee unanimously recommended reallocating \$250,000. The board unanimously approved that recommendation.

## **11. Audit Committee Report**

Chair Eric Meeks reported that the Bar's transfer to a new auditing firm was going well.

## **12. Disciplinary Review Committee Report**

Sheila Tuma, chief counsel of the Bar's Tampa office, reported that the referee in a high profile case recommended that the three lawyers charged in that matter be permanently disbarred, and that the Bar concurred with that recommendation.

### **13. Health Law Section Report**

Chair Charmaine Chiu reported that the section, with around 1,600 members continues to offer a variety of timely and high quality CLE programs, including one at the Annual Convention on the U.S. Supreme Court challenge to the Affordable Care Act, which was decided minutes before the seminar began. She said the section does a monthly CLE webcast, has a bi-monthly online seminar on health law updates, and produces a quarterly newsletter for members. She said about 10 percent of the membership is active with the section's Facebook presence. The section has also begun a mentoring program for members with less than five years' experience.

### **14. Admission by Motion/Reciprocity Discussion**

President Abadin recounted the history of the Vision 2016 effort and the opposition to a preliminary recommendation from a subcommittee on admission by motion and reciprocity, and received a prolonged ovation from the board. He invited motions. Board member Jay Cohen, administrator for Vision 2016, noted the opposition to the admission by motion issue and that Vision 2016 was created to tackle difficult issues. He added those involved on all sides were pursuing the best interests of the Bar. Cohen moved to reject admission by motion with or without reciprocity. Board member Michael Higer seconded the motion. Board member Jack Hickey then moved to include in the motion the rejection of a rule allowing out of state lawyers to set up offices in Florida to serve their clients after a natural disaster in their home state (known as the Katrina rule) and allowing those waiting to take the bar exam to practice under supervision. However, Cohen declined to accept that amendment. The board approved Cohen's motion unanimously. Board member Bill Davis moved that the board follow its procedures when considering future recommendations from special commissions and submit them for review to the appropriate board committees. The board approved that unanimously. Hickey then separately moved to reject the Katrina rule, practice pending admission, and any further consideration of admission by motion and reciprocity. The board, after discussion, voted to table that motion. Hickey then moved to reject practice pending admission and any further consideration of admission by motion and reciprocity. Board member Rick Nail said it was important not to muddy the board's action on admission by motion and reciprocity and moved to table that motion. The board voted to table the motion.

### **15. Real Property, Probate and Trust Law Section Report**

Section Chair Michael Gelfand said the Bar should undertake a marketing study on how information is offered, including via CLE seminars. He said CLE is being marketed and offered the same way as when he joined the Bar and those methods should be updated. He said lawyers, by virtue of their position and skills, are obligated to lead in their communities.

### **16. Legislation Committee Report**

Chair Michael Tanner noted that proposed constitutional amendments have been filed in the state House and Senate to impose two-term term limits on district court of appeal judges and Supreme Court justices. He said the committee is studying that issue and would have a report at the board's December meeting. Tanner announced the Bar would reinstitute holding a legislative reception, with one scheduled for January 27 in Tallahassee. He said the committee was considering the retention of an additional legislative consultant who would work with the Young Lawyers Division on legislation on student loan forgiveness for government and legal aid attorneys. He said that contract would be submitted to the Executive Committee when ready for

review. Bar Legislative Consultant Jim Daughton summarized the Legislature's recent activities, including special sessions on reapportionment and problems with budgets for county clerks of courts, which is impacting the functioning of the courts.

### **17. Constitution Revision Commission Special Committee Report**

President-elect Bill Schifino reported the committee is setting the groundwork for the Bar's participation in the 2017-18 CRC and that the committee has a website with relevant information. He said the Bar is working with several other organizations on education efforts.

### **18. Public Interest Law Section Report**

Immediate past Chair Laura Boeckman said the section hopes some of its members will become certified in the new Juvenile Law certification area. She said the section works hard to provide benefits for its members, including beginning a webinar series focusing on legal updates. Boeckman said the section has a good relationship with the Real Property, Probate and Trust Law Section on items of mutual interest. The section has committees that address needs of the homeless, civil rights, nonprofit organization, consumers' rights, disability rights, immigration, children's rights, and parents' rights. The section also has an active legislation program.

### **19. Communications Committee Report**

Chair Renée Thompson noted that several board members have been contacted by reporters and she requested they let the Bar know when that happens as the Bar's Public Information Office can help with Bar positions and information about various issues. She said that 24 reporters attended the Bar's annual Reporters' Workshop the previous week. She said the number of followers the Bar gets on its various social media platforms – Facebook, Twitter, LinkedIn, and YouTube – continues to increase.

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

On Rule 4-1.5 (lien resolution, agenda item 20a), Chair Carl Schwait reported that the committee reviewed further proposed amendments addressing fees for lien resolution services in personal injury cases after a motion for partial stay was granted in *In Re Amendments to Rules Regulating The Florida Bar - 4-1.5 Fees and Costs for Legal Services*, case no. SC14-2112. The court ordered the Bar to file any substitute amendments on or before January 15, 2016. New amendments provide definitions of extraordinary versus ordinary lien resolution services; require a disclosure at the outset of representation if the personal injury lawyer will not provide extraordinary lien resolution services; define the fee that could be charged for extraordinary lien resolution services; and require court approval of the extraordinary lien resolution fee if it together with the personal injury fee exceeded the contingent fee schedule. Schwait said the BRCPE voted 9-0 to direct staff to draft additional amendments to address two issues: that the original personal injury lawyer could either provide the ordinary lien services or could provide them through another lawyer, as long as no additional fee is charged; and that a court reviewing the fees for extraordinary lien resolution services looking at all relevant circumstances could adjust the fees of the original personal injury lawyer.

On the appeal of Proposed Advisory Opinion 14-1 (agenda item 20b), Schwait reported that the BRCPE voted 6-3 to recommend that the Board of Governors affirm the opinion as written by the Professional Ethics Committee, which concludes that the inquirer may advise that a client change privacy settings on the client's social media pages so that they are not publicly

accessible. Provided that there is no violation of the rules or substantive law pertaining to the preservation and/or spoliation of evidence, the inquirer also may advise that a client remove information relevant to the foreseeable proceeding from social media pages as long as the social media information or data is preserved. The Board of Governors approved the recommendation on voice vote with some objections.

On proposed amendments to Rule 4-7.18(a) (agenda item 20c), Schwait said the BRCPE voted 9-0 to recommend that the Board of Governors approve amendments that delete 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 video conferencing. The chair reported the amendments will be on a future Board of Governors agenda for final action.

On modifying or withdrawing Florida Advisory Advertising Opinion A-00-1 (agenda item 20d), Schwait said the BRCPE voted 9-0 to recommend that the Board of Governors approve amendments to modify the opinion to conclude 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 revised opinion will be published in the *Bar News* for comment.

On antitrust issues (agenda item 20e), Schwait reported that the BRCPE met in executive session and directed staff to make certain changes in the ethics and advertising programs.

On proposed amendments to Rule 4-7.22 on lawyer referral services (agenda item 20f) Schwait said that in response to a court order in case no. SC 14-2126 the BRCPE is working on changes to lawyer referral service regulations. The court rejected Bar proposed amendments to that rule and instead directed the Bar to propose a rule on or before May 24, 2016, 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.

On a court order in *Searcy v The Florida Bar* (agenda item 20g), Schwait said the BRCPE voted 9-0 to direct staff to draft amendments for its consideration addressing the order that U.S.

District Court for the Northern District of Florida Judge Robert L. Hinkle issued on September 30, 2015 in that case (case number 4:13cv664-RH/CAS). In that summary judgment ruling, Hinkle said the Bar's rules prohibiting attorneys from saying they have expertise or specialize unless they are board certified violates the First Amendment.

## **21 Disciplinary Procedure Committee Report**

Chair Ron Ponzoli reported the committee has voted to approve a rule amendment that will allow IOTA trust accounts to be kept at state and federally chartered credit unions. He also said the committee rejected any change to rules to clarify that a 91-day and longer suspension is a rehabilitative suspension requiring the affected lawyer to prove rehabilitation before the suspension is ended. Instead, Ponzoli said the Bar must do a better job educating members and the public about the extra burden imposed on lawyers receiving 91-day and longer suspensions as opposed to those receiving 90-day or less suspensions who are automatically reinstated.

## **22. Discussion on Lawyer Referral Services, Online Matching Services, and Legal Access**

Board members Carl Schwait, Renée Thompson, and John Stewart and Young Lawyers Division President Gordon Glover made an extensive presentation to the board that touched on lawyer referral services (both private and bar-operated), legal access, and private companies offering

legal forms and legal services via the Internet. The discussion included possibly updating the Bar's Lawyer Referral Service including by making it more accessible through the Internet, the Supreme Court's recent order to draw up rules prohibiting attorneys from joining for-profit referral services unless they are lawyer owned or operated, whether legal "matching" services offered by Avvo, LegalZoom, and RocketLawyer are referral services under Bar rules, and whether the Bar can partner with an online company to provide both referral services and better legal access for low and moderate-income residents. Board members viewed ads from online legal service providers, and discussed plans from the Civil Legal Justice Access Commission for a statewide portal to help Florida citizens find needed legal assistance, be it pro se forms or attorneys. The board heard that unmet legal services constitute an estimated \$45 billion market and private enterprise invested \$1 billion last year in various private companies targeting that market.

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

Committee member Kevin Cook presented the committee's three-year-cycle rule amendments and the board recommended they be approved 35-0.

### **24. Rules Committee Report**

Chair Margaret Mathews presented two items on final reading:

- Rule 1-12.1 Amendment to Rules; Authority; Notice; Procedures; Comments (Notice Requirements): Within subdivisions (g), and (h), changes the requirement of publication of the full text of proposed amendments from the *Bar News* to the Bar's website and adds that a summary of rules amendments to be filed with the Court will be published in the *Bar News*. Within subdivision (h), clarifies that a summary of the Court's final action on amendments will be published in the *Bar News*.

- Standing Board Policy 1.60, (Notice Requirements): Within subdivision (b) clarifies that a summary of rules amendments will be published. Within subdivision (e)(1), changes notice requirements for amendments to before second board reading and where practicable before first reading.

Both passed on voice vote with some dissent.

Mathews presented several items on first reading:

- Rule 10-2.1 Generally: Within subdivision (b) amends definition of paralegal to include lawyers authorized to engage in the practice of law in Florida; within subdivision (e) clarifies that Bar counsel includes UPL staff counsel.

- Rule 10-3.2 Duties of the Standing Committee: Adds new subsection (b)(7) authorizing the Standing Committee on Unlicensed Practice of Law to close cases with the acceptance of a cease and desist affidavit with restitution to the complainant.

- Rule 10-4.1 Generally: Adds subdivisions (e)(2) and (5) authorizing an unlicensed practice of law circuit committee to close a case based on a letter of advice and to accept a cease and desist affidavit with restitution. The subsequent subdivisions are renumbered.

- Rule 10-5.1 Complaint Processing: Within subdivision (c), removes the words "the appropriate" when referring to the circuit committee to which a case is referred. Other changes conform to the style guidelines.

- Rule 10-5.2 Disqualification of Attorney for Respondent Due to Conflict: Clarifies rule regarding disqualification of attorney for respondent due to conflict; conforms rule to style guidelines.

- Rule 10-6.3 Recommendations and Disposition of Complaints: Within subdivision (a), adds letter of advice to recommendations and disposition. Within subdivision (b), clarifies the rule regarding Bar counsel disagreement with the actions of the circuit committee; other amendments to comply with style guidelines.

- 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.

- Rule 20-1.1 Purpose: Changes "member of The Florida Bar" to "employing or supervising lawyer."

- Rule 20-2.1 Generally: Within subdivisions (a),(c), and (e), changes Florida Bar members to employing or supervising lawyers and expands the definition of employing or supervising lawyer to include not only members of The Florida Bar, but also, authorized house counsel, foreign legal consultants, and military lawyers.

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

Executive Director John F. Harkness passed out a breakdown of the Bar's 101,000 members, which includes inactive and other non-practicing lawyers. The data showed 72,160 of the Bar's members are active, in-state members eligible to practice law.

## **26. Young Lawyers Division Report**

YLD President Gordon Glover reported the division has an expanding social media presence and has 425 lawyers and attorneys participating in its mentoring program, although the program still needs 75 attorneys. The YLD has completed its first nine regional Practicing with Professionalism programs and is working on an online version which could be running by spring, he said. The YLD won a national award from the ABA for its diversity efforts, Glover said, and recently had a webinar on growing a legal practice which had over 500 attendees. The division's Transition Committee is working on a website with tools to help young lawyers start firms, which will include information about handling basic landlord/tenant and estate and will matters and handling criminal cases from start to finish. The YLD is seeking volunteers for its new guardian advocate program, Glover said. The division is supporting allowing law students to serve as certified law interns while their fitness and character review is pending at the Florida Board of Bar Examiners, he said.

## **27. Code and Rules of Evidence Committee Report**

Committee members Wayne Hogan and David Jones presented three-year-cycle rule amendments to the board. The committee recommended by a 24-0-1 vote that the court not adopt as a rule a law requiring that when addressing standards of care in medical malpractice cases, the expert witness must be from the same medical specialty as the defendant. The committee recommended 24-1-0 that the court adopt into the evidence rules another bill on when an out-of-court statement by an elderly or disabled person is admissible in court. Hogan and Jones then presented a 2013 bill passed by the Legislature mandating that the *Daubert* standard be used when qualifying expert witnesses instead of the *Frye* standard set by the Florida Supreme Court. The committee voted 16-14 to recommend the court not adopt the *Daubert* standard in the

Florida Rules of Evidence. The two made an extensive presentation to the board, with board members asking several questions. After the presentations, the board voted to table its discussion and vote until its December 4 meeting.

### **28. Business Law Section Report**

Chair Glen Howard said the section, with around 6,000 members, has committees on bankruptcy, banking, corporations and partnerships, intellectual property, franchising, and other areas. It is very active in the Legislature, he said, and in recent sessions has successfully pushed for overhauling the LLC statute and addressing civil and criminal penalties for computer hacking. The section is working with the Real Property, Probate and Trust Law Section in responding to efforts to amend Bar Rule 4-4.2 on contacting represented government officials. The section has an active pro bono program, recently made a second \$50,000 contribution to The Florida Bar Foundation, and is supporting scholarships for law students showing an interest in business law.

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

Committee Vice Chair Duke Fagan presented the committee's recommendations for adding five new companies to the Bar's Member Benefits Program. The board unanimously approved adding the companies. They are:

- Ravel Law, which provides digital analytics of judicial decisions and writings.
- Lawcountability which provides cloud-based training programs on practice development.
- Citrix suite of products which allows lawyers to access computer files and meetings from anywhere
- NetDocuments/NetDocs which works with Microsoft Office products and allows law firms to manage email and documents.
- Entertainment Benefits Group offers discounts up to 60 percent to theme parks, Broadway and Las Vegas shows, and other entertainment and leisure venues.

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

There being no further business before the board, President Abadin adjourned the meeting at 2:27 p.m. The next board meeting is 8 a.m. December 4 at the Ritz-Carlton in Naples.

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