

The Florida Bar Board of Governors
October 4, 2013
InterContinental Hotel
Chicago, IL

1. Roll Call

Eugene K. Pettis, President
Gregory W. Coleman, President-elect
Stephen H. Echsner, 1st Circuit
William H. Davis, 2nd Circuit
Clay A. Schnitker, 3rd Circuit
S. Grier Wells, 4th Circuit
Michael G. Tanner, 4th Circuit
Renée Elise Thompson, 5th Circuit
Andrew B. Sasso, 6th Circuit
Sandra C. Upchurch, 7th Circuit
Mary Ann Morgan, 9th Circuit
C. Richard Nail, 10th Circuit
Ramon A. Abadin, 11th Circuit
Dori Foster-Morales, 11th Circuit
Dennis G. Kainen, 11th Circuit
Steven W. Davis, 11th Circuit
F. Scott Westheimer, 12th Circuit
William J. Schifino, Jr., 13th Circuit
Margaret Diane Mathews, 13th Circuit
Michael S. Hooker, 13th Circuit
John W. Manuel, 14th Circuit
David C. Prather, 15th Circuit
Ronald Peter Ponzoli, Jr., 15th Circuit
Michelle R. Suskauer, 15th Circuit
Gary Shepard Lesser, 15th Circuit
Edwin A. Scales, III, 16th Circuit
Diana Santa Maria, 17th Circuit
Lorna E. Brown-Burton, 17th Circuit
Jay Cohen, 17th Circuit
Adam Glenn Rabinowitz, 17th Circuit
O. John Alpizar, 18th Circuit
Ian M. Comisky, Out of State
Brian D. Burgoon, Out of State
Melanie S. Griffin, YLD President
Michael F. Orr, YLD President-elect
Winston W. Gardner, Jr., Public Member
Anthony Holloway, Public Member

Members Absent

Lawrence E. Sellers, Jr., 2nd Circuit

Sandra Fascell Diamond, 6th Circuit
Carl B. Schwait, 8th Circuit
Paul Louis SanGiovanni, 9th Circuit
Scott R. McMillen, 9th Circuit
Leslie J. Lott, 11th Circuit
Michael J. Higer, 11th Circuit
John H. (Jack) Hickey, 11th Circuit
Lansing C. Scriven, 13th Circuit
Walter G. Campbell, Jr., 17th Circuit
John M. Stewart, 19th Circuit
Laird A. Lile, 20th Circuit
Marcy L. Shaw, 20th Circuit
Richard A. Tanner, Out of State
Eric L. Meeks, Out of State

2. Staff in Attendance

John F. Harkness, Jr., Executive Director
John Berry, Director, Legal Division
Ken Marvin, Director, Lawyer Regulation
Rosalyn A. Scott, Assistant to the President
Gary Blankenship, Senior Editor, Florida Bar News

3. Guests

Brittany Maxey, President, Florida Association for Women Lawyers
Diana Bock, Government Lawyer Section

4. Invocation and Pledge of Allegiance

Board member Ian Comisky delivered the invocation and led the board in the Pledge of Allegiance.

5. Welcome by Col. Eugene Scott

Col. Scott, a U.S. Army veteran and publisher of the largest African American newspaper in Chicago, welcomed the board to Chicago, and talked about the importance of education for the nation's young people.

6. Appearance by Donald Workman, Out of State Division President

Workman reported on the out-of-state CLE program the previous day, which included ethics and a discussion about the Fourth Amendment and the ability of the government to collect information from electronic devices.

7. Approval of Minutes

The board approved the minutes from its July 26, 2013, meeting.

The approval of the minutes also included the following actions of the Executive Committee, taken since the board's July 26 meeting:

- The Executive Committee on August 8 voted 10-0 to allow the Family Law Section to file an amicus brief with the Fifth District Court of Appeal in *In re: D.P.P.*, case no. 5D13-1766.

The case involves a same-sex couple where the birth mother and adoptive mother had both supported the adoption by the adoptive mother but then the birth mother sought to negate the adoption and the adoptive mother's rights after the couple split up.

- The Executive Committee on August 9 voted 12-0 to approve the nomination of Tiffany M. Faddis of Orlando, Warren W. Lindsey of Winter Park, and Cynthia G. Schmidt of Orlando for a vacancy on the Ninth Circuit Judicial Nominating Commission. The vacancy was created by the resignation of Kevin Weiss.

- The Executive Committee on August 9 voted 12-0 to approve the brief of the Real Property, Probate and Trust Law Section in *Stone v. Stone*, case no. 4D11-4541. The Fourth DCA had requested the section to address a case of first impression: "Whether residential property owned by an irrevocable Qualified Personal Residence Trust Agreement (QPRT) at the time of death of the Grantor is subject to Florida Constitutional and statutory homestead devise restrictions where the QPRT provisions provide that the assets of the QPRT will revert back to the Grantor's estate to pass by devise under the Grantor's will if the Grantor dies before the expiration of the QPRT term."

- The Executive Committee on August 27 vote 8-1 to find these applicants highly qualified to serve on the First DCA JNC and forward their names to the Governor: Sally B. Fox of Pensacola, Gary K. Hunter, Jr., of Tallahassee, and Herbert W.A. Thiele of Tallahassee. The committee voted 9-0 to nominate Rene Gorman to the Supreme Court as a public member on the Unlicensed Practice of Law Standing Committee.

- The Executive Committee on September 3 voted 11-0 to approved fast track rule amendments proposed by the Florida Rules of Judicial Administration Committee and the Florida Appellate Court Rules Committee to address recent changes to Florida Statutes. The committee also voted 11-0 to approve the request from the Florida Criminal Procedure Rules Committee to file out-of-cycle rule amendments to the Florida Rules of Criminal Procedure to address recent changes to Florida Statutes.

- The Executive Committee on September 10 voted 12-0 to allow the Family Law Section to hire Brett Doster of Front Line Strategies as a public relations consultant and Jon Costello of Rutledge Ecenia as an Executive Branch consultant. The two will assist the section in pursuing its position on alimony-related legislation.

- The Executive Committee on September 13 voted 10-0 to nominate to the Supreme Court Nancy McClain Alfonso of Zephyrhills, Kristina E. Feher of St. Petersburg, and Walter G. Latimer of Miami for a vacancy on the Florida Board of Bar Examiners. The vacancy was created by the resignation of Gregory West.

8. Consent Agenda Approval

The board unanimously approved the consent agenda. That included:

- Appointing Terri S. Rawasia as an attorney member of UPL Committee 10; Jeri Michelle Ostuw as an attorney member and Maril Jacobs as a public member to UPL Committee 13A; Michelle Ertel as a public member to UPL Committee 18A; and William Lee Martin III as an attorney member and Frances H. Novak as a public member to UPL Committee 1B.

- Not opposing the following legislative positions from the Real Property, Probate and Trust Law Section:

- Supports legislation to make the Trust Code's antilapse statute consistent with the Probate Code's antilapse statute regarding the treatment of devises to certain persons who do

not survive the settlor of a revocable trust or the testator of a testamentary trust, including amendments to F.S. § 736.1106.

- Supports legislation that authorizes families to form and operate licensed and unlicensed family trust companies and to authorize out of state licensed family trust companies to operate in Florida, including the creation of proposed F.S. Ch 659, Family Trust Companies.

- Supports legislation which provides that a waiver of the statutory exemption from creditors' claims afforded to certain death benefits payable to trusts must be clear and specific, including amendments to F.S. §§733.808(4) and 736.05053(1).

- Supports legislation that would (i) amend F.S. §736.0207 to clarify that in an action to contest the validity or revocation of all or part of a trust, the contestant has the burden of proof to establish grounds for invalidity, and (ii) amend F.S. §733.107(2) to clarify and confirm its applicability in all circumstances in which the presumption of undue influence is established, including trust contests as well as challenges to inter vivos gifts.

- Approving the legislative consulting contract between the Workers' Compensation Section and Fausto Gomez.

9. Investment Committee Report

Chair Ian Comisky reported that the committee is continuing its year-long review of Bar investment policies. He recounted changes already approved by the board, and recommended further policy changes which lay out the management of the Bar's funds and goals for the various fund sectors. The changes also merge the policies for the long-term and short-term investment funds. The policies set out how the Bar can change investment advisors and reviews the fees charged by fund managers. The board unanimously approved the revised investment policies. Beyond the policies, Comisky reported that the Bar's long-term fund increased \$1.8 million for the third quarter to \$39.9 million and that the Bar has earned 6 to 6.5 percent for the year. He reported on changes among investment funds, which were all within investment policy parameters.

10. Legislation Committee Report

Chair Jay Cohen noted section legislative positions handled by the board on the consent agenda. He reported that the Legislature has begun interim committee meetings for the 2014 Regular Session and bills are being filed for the session. Among issues of interest to the Bar are that with a prediction of a \$1 billion increase in state revenues Sen. Joe Negron, chair of the Senate Appropriations Committee, has expressed support for raising the salaries of judicial branch employees, a top goal of the Supreme Court and the Bar. He noted that a report from a Supreme Court subcommittee on court death penalty appeal procedural rules, stemming from the Timely Justice Act, will be submitted to the Legislature in December. Cohen also reported that Rep. Larry Metz, chair of the House Civil Justice Subcommittee, plans a workshop on the summary judgment rule with an interest in making the state process more like the federal process. A bill has been filed, he added, that would pay some of the student loans for lawyers in selected public jobs. At the request of President Pettis, Cohen said the committee is beginning work on the Bar's participation in the upcoming Constitution Revision Commission.

11. Program Evaluation Committee

Chair Ray Abadin presented the committee's recommendation that the name of the Citizens Forum be changed to the Citizen's Advisory Committee, which the board approved. Abadin

presented the recommendation that Bar Rule 1-4.3 be amended to add the chair of the Program Evaluation Committee as an automatic member of the Board of Governors' Executive Committee, and the board approved that in concept. The amendment now goes to the Budget and Rules committees. The committee is looking at the Lawyers Helping Lawyers program, including whether the name should be changed, Abadin said. He presented on first reading amendments to Chapter 18 of The Rules Regulating The Florida Bar, Military Legal Assistance Counsel Rule: Within subdivision (a)(4) of rule 18-1.2 and subdivision(c)(2) of rule 18-1.5, changes the requirement for completion of the Practicing with Professionalism Program to the time limits set forth in rule 6-12.3. Non-substantive edits in rules 18-1.1, 18-1.2, 18-1.3, 18-1.4 and 18-1.5 conform the rules to the Supreme Court style guide. Abadin presented the amendments to the following Board of Legal Specialization and Education policies to the board on first reading:

- BLSE Policy 1.01, Board of Legal Specialization and Education
- BLSE Policy 1.02, Administrative Procedure
- BLSE Policy 2.01, Administration
- BLSE Policy 2.02, Areas of Certification
- BLSE Policy 2.03, New Certification Area Request
- BLSE Policy 2.04, Fees
- BLSE Policy 2.05, Applications
- BLSE Policy 2.06, Applicant Classifications
- BLSE Policy 2.07, Application Filing Period and Dates of Certification and

Recertification

- BLSE Policy 2.08, Application Processing
- BLSE Policy 2.09, Professional Ethics and Competence
- BLSE Policy 2.10, Peer Review
- BLSE Policy 2.11, Approved Continuing Legal Education (CLE)
- BLSE Policy 2.12, Examination Preparation and Administration
- BLSE Policy 2.13, Grading, Review and Petition Process
- BLSE Policy 2.14, Applicant Review Process for Certification and Recertification
- BLSE Policy 2.15, Revocation
- BLSE Policy 2.16, Lapse of Certification
- BLSE Policy 4.01, Scope
- BLSE Policy 4.02, Appeals Committee of the Board of Governors
- BLSE Policy 4.03, Standard of Review
- BLSE Policy 4.04, Commencement of Proceedings
- BLSE Policy 4.05, Response
- BLSE Policy 4.06, Right of Reply and BLSE Policy 4.07, Evidence
- BLSE Policy 4.08, Computation of Time
- BLSE Policy 4.09, Consideration of Appeal
- BLSE Policy 4.10, Review by the Board of Governors
- BLSE Policy 4.11, Petition for Review to the Supreme Court of Florida
- BLSE Policy 5.01, Accreditation Standards
- BLSE Policy 5.02, Application Process
- BLSE Policy 5.03, Evaluation
- BLSE Policy 5.04, Notice of Evaluation
- BLSE Policy 5.05, Revenue and Expense Distribution

- BLSE Policy 5.06, Member Submission for Course Evaluation
- BLSE Policy 5.07, CLE Format
- BLSE Policy 5.08, Credit Approval Guidelines
- BLSE Policy 5.09, CLER Components Approval Guidelines
- BLSE Policy 5.10, Individual Credit Approval Guidelines
- BLSE Policy 5.11, Accreditation Revocation
- BLSE Policy 5.12, Complimentary CLE
- BLSE Policy 6.01, Administration
- BLSE Policy 6.02, Reporting
- BLSE Policy 6.03, Carryover Prohibited
- BLSE Policy 6.04, Evidence of Compliance
- BLSE Policy 6.05, Notice of Delinquency and Appeal
- BLSE Policy 6.06, Reinstatement
- BLSE Policy 7.01, Administration
- BLSE Policy 7.02, Reporting and Compliance
- BLSE Policy 7.03, Deferment
- BLSE Policy 7.04, Foreign Attorneys or Repetition of BSCR
- BLSE Policy 7.05, Exemption
- BLSE Policy 7.06, Procedures on Noncompliance and Appeal
- BLSE Policy 7.07, Reinstatement

12. Vision 2016 Discussion

President Pettis, President-elect Coleman, and board members Abadin and Cohen updated the board on the start of the Vision 2016 commission, which is looking at the changes coming to the practice of law. Pettis said it is important for the Bar to exercise leadership amidst the changes. Their report looked at technology, bar admissions, legal education, and pro bono and how those are interrelated and how they will change in response to changing demands on the legal profession and how legal services are delivered. One item to be looked at is how the Bar can help members adapt to rapidly changing technology.

13. Rules Committee Report

Chair John Alpizar presented five items on first reading:

- Clients' Security Fund Regulation B 1: Changes bar to board.
- CSF Regulation C 2, Claims Ordinarily Denied: Deletes language dealing with investment advice. That language is revised and moved to new regulation C 7. Additional non-substantive edits conform to the Supreme Court style guide.
 - CSF Regulation C 7, Claims Ordinarily Denied: Adds new subdivision (7) and comment, clarifying when a claim based on an investment is reimbursable and adds comment language. Additional non-substantive edits conform to the Supreme Court style guide.
 - Rule 7-5.1 Access to Records: Adds new subdivision (f) allowing otherwise confidential information to be shared with authorities authorized to investigate alleged criminal activity. The language is similar to that used in the lawyer regulation rules.
 - Rule 4-1.5 Fees and Costs for Legal Services (Lien Resolution #2): Within Rule 4-1.5(f)(4), adds new subdivision (E) that the lawyer in a personal injury or wrongful death case charging a contingent fee must provide ordinary lien resolution as part of the lawyer's representation of the client under the fee contract, that the lawyer may not charge any additional

fee to the client for providing any lien resolution services if all fees for the personal injury matter plus lien resolution exceed the contingent fee schedule, that extraordinary services for subrogation and lien resolution may be referred to another only with the client's informed consent, that additional fees by the other lawyer must comply with all provisions of the fee rule, and that the lawyer providing the extraordinary subrogation and lien resolution services may not divide fees with the lawyer handling the personal injury or wrongful death claim. Within the comment, explains what lien resolution services are required as part of the original fee contract and what extraordinary services entail.

14. Executive Session

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

15. Communications Committee Report

Chair Michelle Suskauer said the committee will present, in accordance with the Strategic Plan goal of using innovative technology to communicate the Bar's message to Bar members and the public, a recommendation at the board's December meeting on hiring a Bar staffer to handle social media issues. She also said a subcommittee has been established to develop a policy on when in an ongoing discipline investigation information should be posted to a member's page on the Bar's website.

16. Disciplinary Procedure Committee Report

Chair Jay Manuel presented five items on first reading:

- Rule 3-7.1, Confidentiality: Within subdivision (a)(12) adds disciplinary revocation as a matter which is public record and further updates subdivision (a)(12) to refer to amended Rule 3-7.12 on disciplinary revocation and to conform to the Supreme Court's style guide.

- Rule 3-7.6 Procedures Before a Referee (Depositions and Discovery Production in Referee Cases – subdivisions (f) and (j): Amends subparts (f) and (j) of Rule 3-7.6 regarding procedures in bar cases to require that respondents may be required to appear for deposition and in person document production at the Bar's branch office that is geographically closest to the office where respondent primarily practices law. The amendment also contains non-substantive amendments to conform to the Supreme Court's style guide.

- Rule 3-7.10(f)(4) Reinstatement and Readmission Procedures: Within subdivision (b)(1) amendments require that filing and notice conform to appropriate court rules, deleting the requirement of a copy. Within subdivision (f)(4)(B) amendments require that all petitions for reinstatement which involve a respondent who is required to re-take the bar exam, include proof in the lawyer's petition for reinstatement that the lawyer has passed both the Florida portion of the Florida Bar examination and the MPRE section. Style changes are also included to conform to the Supreme Court of Florida's style guidelines.

- Rule 3-7.11(f) General Rules of Procedure – Deposition of Respondents: Amends subpart (f) of Rule 3-7.11 regarding procedures in bar cases to require that respondents appear for deposition and in person document production at the Bar's branch office that is geographically closest to the office where respondent primarily practices law.

- Rule 5-1.2 Trust Accounting Records: The proposed amendments to Rule 5-1.2 address maintenance of trust accounting records when a law firm is either dissolved or sold to an attorney or group of attorneys. These aspects of trust account record keeping had not previously been specifically addressed in the Rules Regulating The Florida Bar.

17. Civil Procedure Rules Committee Report

Board member Jay Cohen presented the out-of-cycle rule amendment to rule 1.470 on including instructions on contract and business cases in standard jury instructions. The board recommended approval of the amendment 34-0.

18. Leadership Academy Report

Board member Renée Thompson reported that the academy met September 26-27 during the Bar's Fall Meetings which was the third meeting for the academy. Among other activities, academy members got a report on Vision 2016 activities. Thompson said applications for the second academy class will become available online on December 1, in conjunction with the Bar's committee application process. Deadline for the applications is January 15. Pettis said tentative plans allow for up to 75 members of the second academy, up from around 60 for the first year.

19. Young Lawyers Division Report

YLD President Melanie Griffin said the division is focusing their year on communications and technology. Part of that effort donates \$1 dollar to The Florida Bar Foundation for every follower of the YLD's Facebook page. She said the Upchurch Watson White & Max law firm has contributed funding for the division's Mentoring with Masters program. The increased communications have greatly boosted attendance at the YLD's online seminars and the division also has seen a rise in attendance at its Basic Skills seminars. Griffin said the YLD is continuing with its law student mentoring program and is looking for volunteers to have a presence at all 12 law schools in the state.

20. Rules of Judicial Administration Committee Report

Board member Andy Sasso presented out-of-cycle rule amendment for rules 2.515 and 2.516. The change to Rule 2.515 adds a section that the attorney serving a document electronically certifies that the document is in compliance with Rule 2.515(a)(1)-(4). The board recommended approval of that change 32-1. The second amendment is to rule 2.516 and clarifies that service through the court system's Internet portal complies to the requirement for service via email, that the attorney is responsible for keeping a valid email address for the portal, service is complete when a document is electronically filed, and that if an attorney filing the document learns that a filed document was not served, then the attorney has the obligation to complete service electronically or by another means. The board recommended approval 34-1.

21. President's Report

President Pettis reported he has been looking at requests from authorized house counsel to serve on Bar standing committees. He noted about 800 authorized house counsels are registered with the Bar and that they can provide valuable input from a business perspective. He said he was examining the issue with the help of board member Bill Schifino.

22. President-elect's Report

President-elect Coleman asked board members to help him seek diverse applicants for the annual appointments to Bar committees. He also encouraged that for those interested in service who don't get involved in standing committees that they seek opportunities on local grievance

committees or in section work. In addition, Coleman announced the board meeting schedule and location for the 2014-15 Bar year.

23. Executive Director's Report

Executive Director John F. Harkness, Jr., noted articles in state and national media over lawyers' and law firms' use of LinkedIn and Twitter online social networking services and possible conflicts with Bar rules. He also said he had received an inquiry from a lawyer in the 19th Circuit about establishing a for-profit local bar association and requesting recognition from The Florida Bar.

24. Comments for the Good of the Order

Board member Andy Sasso said he had gotten several inquiries from lawyers about the new health care exchange offered as part of the Bar's Member Benefits Program through the new Affordable Care Act. Executive Director Harkness explained that the Bar had a history of trying to offer health care coverage through the Member Benefits program but the coverage was dropped after several years because of bad loss experiences. The Bar in its recent attempts to create a health insurance offering failed to attract any bids. He said the new program was developed by a Jacksonville agency using the new federal health law and that members will be getting additional emails about the program.

President Pettis noted that the Lesser, Lesser, Landy & Smith law firm, which includes board member Gary Lesser, received the Business of Character award from United Way of Martin County's CHARACTER COUNTS! program, in partnership with Florida Community Bank and the Business Development Board of Martin County. The award recognized the firm's high ethical standards and contributions to the community.

25. Time and Place of Next Meeting

There being no further business, President Pettis adjourned the meeting at 11:50 a.m. The next meeting is December 13 at the Ritz-Carlton in Ft. Lauderdale.

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