

The Florida Bar Board of Governors
July 21, 2017
Turnberry Isle Resort
Miami, Florida

1. Roll Call

Michael J. Higer, President
Michelle Renee Suskauer, President-elect
Stephen H. Echsner, 1st Circuit
Lawrence E. Sellers, Jr., 2nd Circuit
Melissa VanSickle, 2nd Circuit
Bruce W. Robinson, 3rd Circuit
Fred D. Franklin, Jr., 4th Circuit
Michael G. Tanner, 4th Circuit
Renée E. Thompson, 5th Circuit
Sandra Fascell Diamond, 6th Circuit
Sam Nicholas Masters, 7th Circuit
Stephanie M. Marchman, 8th Circuit
Mary Ann Morgan, 9th Circuit
Julia L. Frey, 9th Circuit
Wayne L. Helsby, 9th Circuit
Roland Sanchez-Medina, Jr., 11th Circuit
Dori Foster-Morales, 11th Circuit
Leslie J. Lott, 11th Circuit
Deborah B. Baker-Egozi, 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
Amy S. Farrior, 13th Circuit
Margaret Diane Mathews, 13th Circuit
Michael S. Hooker, 13th Circuit
John W. (Jay) Manuel, 14th Circuit
Ronald P. Ponzoli, Jr., 15th Circuit
Robin I. Bresky, 15th Circuit
Gary S. Lesser, 15th Circuit
Wayne LaRue Smith, 16th Circuit
Jay Kim, 17th Circuit
Diana Santa Maria, 17th Circuit
Lorna E. Brown-Burton, 17th Circuit
Jay Cohen, 17th Circuit
Adam G. Rabinowitz, 17th Circuit
O. John Alpizar, 18th Circuit
John M. Stewart, 19th Circuit
Laird A. Lile, 20th Circuit

E. Duffy Myrtetus, Out of State
Ian M. Comisky, Out of State
Brian D. Burgoon, Out of State
Zackary T. Zuroweste, YLD President
Christian P. George, YLD President-elect
Lawrence W. Tyree, Public Member
Sharon B. Middleton, Public Member

Members Absent

Joshua T. Chilson, 6th Circuit
C. Richard Nail, 10th Circuit
Adam T. Rabin, 15th Circuit
Marcy Lynn Shaw, 20th Circuit
Eric L. Meeks, Out of State

2. Staff in Attendance

John F. Harkness, Jr., Executive Director
Joshua E. Doyle, Executive Director Designate
Patrick (Booter) Imhof, General Counsel
John Berry, Director, Legal Division
Cynthia Jackson, Director of Administration
Lori Holcomb, Division Director, Ethics and Consumer Protection
Adria Quintela, Director, Lawyer Regulation
Elizabeth Clark Tarbert, Ethics Counsel
Terry Hill, Director, Programs Division
Kathy Bible, Disciplinary Procedure Counsel
Francine Walker, Director, Public Information and Bar Services
Rosalyn A. Scott, Assistant to the President
Gary Blankenship, Senior Editor, Florida Bar News

3. Guests in Attendance

Jorge Piedra, President-elect, Cuban American Bar Association
Jennifer Sullivan, President, Florida Association for Women Lawyers
Ashlee Pouncy, President, Virgil Hawkins Florida Chapter, National Bar Association
David Aronberg, Government Lawyer Representative
Andrew Sasso, Board Parliamentarian

4. Invocation and Pledge of Allegiance

Board member Leslie Lott delivered the invocation and board member Deborah Baker-Egozi led the board in the Pledge of Allegiance.

5. Welcome by 11th Circuit Chief Judge Bertila Soto

Judge Soto welcomed the board to Miami. She talked about problems statewide with maintenance of courthouses and the low priority facility maintenance has in many counties.

6. Introduction of Citizens Advisory Committee Members

Committee members Paul Martinez, Sylvia Fernandez Carra-Hahn, Louis Kalivoda, William (Bill) Law, Ruth Roman Lynch, Maggie McGowan Davis, Steven Maxwell, Kristin Ann Norse, Herbert E. Polson, and Lorene Wilson introduced themselves to the board. Not present were members Ash Benzo, Petula Burks and Jan Jung. Board member Lorna Brown-Burton chairs the committee and board member Deborah Baker-Egozi also serves on the committee.

7. Consent Agenda Approval

The board approved its consent agenda for the meeting, including:

- Naming Aoife Mary Ritchie as an attorney member for UPL Grievance Committee 1A; Steven Alexander Culbreath as an attorney member for UPL Grievance Committee 6A; Ingrid Domingues-McConville as an attorney member for UPL Grievance Committee 17C; and Jean Mignolet as a public member for Grievance Committee 17C.

- Approving on second reading BLSE Policy 5.10, Individual Credit Approval Guidelines: The amendment in subsection (j) corrects the title, "The Florida Board of Bar Examiners" and adds the clarification that any lawyer may receive CLE credit for preparing and grading the Florida Bar exam, not just those on the Florida Board of Bar Examiners.

- Agreeing not to oppose the Administrative Law Section from taking the following two legislative positions: (1) Opposing term limits for administrative law judges and (2) opposing legislation that impairs the independence, fairness, impartiality – or impairs the appearance of independence, fairness or impartiality – of administrative law judges, hearing officers, or others performing quasi-judicial functions. As used herein, the term "independence" means freedom to make decisions based on the facts and applicable law without outside control or influence in the decision-making process.

- Agreeing not to oppose the Family Law Section taking the following three legislative positions: (1) Supporting the right of a biological parent to pursue and, when appropriate, establish his or her parental rights when the biological parent has demonstrated or evinced a settled purpose to assume parental responsibilities and when doing so would be in the best interest of the child; (2) supporting the concept that a child may legally have two mothers, two fathers or, when appropriate, more than two parents. The best interests of the child must be the foremost concern in determining such matters; and (3) Supporting legislation that includes general magistrates, child support hearing officers, administrative general magistrates, and administrative hearing officers within the Senior Management Service Class of the Florida Retirement System.

- Agreeing not to oppose the Public Interest Law Section taking the following legislative position: Supporting legislation to promote and enhance the quality and expertise of attorneys in juvenile cases.

- Approving Bar legislative consulting contracts with Metz, Husband & Daughton, P.A., Smith, Bryan & Myers, and Pamela Burch Fort.

- Approving the following section legislative consulting contracts:
 - The Business Law Section with Aimee Diaz Lyon of Metz, Husband & Daughton, P.A.
 - The Elder Law Section with Brian B. Jogerst of BH & Associates.
 - The Family Law Section with Nelson Diaz and Edgar Castro of Southern Strategy Group.

- The Public Interest Law Section with Alice Vickers.

- The Trial Lawyers Section with Bob Harris of Messer, Caparello, P.A.
- The Real Property, Probate and Trust Law Section with Pete Dunbar of Dean

Mead.

8. Minutes Approval

Board member Thomas Bopp noted an error in the May 26, 2017, minutes in Item 19 where advertising inquiry 36812 was wrongly given as 36813. With that correction, the minutes were approved. The approval included ratifying recent actions taken by the Executive Committee:

- On June 13, 2017, the Executive Committee voted 13-0 to approve the Rules of Judicial Administration Committee and the Court Interpreters Certification Board to file amendments to Rule 2.430 (Retention of Court Records), Rule 2.535 (Court Reporting), Rule 2.560 (Appointment of Spoken Language Court Interpreters for Non-English-Speaking and Limited-English-Proficient-Persons), and Rule 2.565 (Retention of Spoken Language Court Interpreters for Non-English-Speaking and Limited-English-Proficient Persons by Attorneys of Self-Represented Litigants). The amendments were in response to the Supreme Court opinion in *In re: Amendments to the Florida Rules of Judicial Administration*, SC15-1594, 206 So. 3d 1 (Fla. 2016).

- On April 17, 2017, the Executive Committee voted 10-0 to refund for the portion of annual membership fees used for Bar legislative to objectors to Bar legislative positions.

- On May 1, 2017, the Executive Committee voted 11-0 to allow the Family Law Section to file an amicus brief with the Supreme Court seeking clarification of four issues in *Hooker v. Hooker*.

- On July 6, 2017, the Executive Committee voted 8-0 allow the Real Property, Probate and Trust Law Section to file an amicus brief, which had been requested by the First District Court of Appeal, in *Rigby v. Bank of New York Mellon, et al.*, 1D16-0665.

- On June 29, 2017, the Executive Committee voted 13-0 to recommend approval of the Family Law Rules Committee's proposed amendments to Florida Family Law Rules of Procedure Form 12.901(a), Petition for Simplified Dissolution of Marriage.

9. Introduction of Young Lawyers Division Board of Governors Members

Members of the YLD Board of Governors, attending the board meeting before holding their own session, introduced themselves to the board.

10. Public Reprimand

President Higer administered one public reprimand.

11. Florida Free Legal Answers Report

Board member Jack Hickey reported that more than 500 lawyers have signed up for the program, which is a joint effort by the Bar and the ABA. The program allows qualifying low-income consumers to pose legal questions online to be answered by lawyers at their convenience. Hickey announced a competition between the Board of Governors and the YLD Board of Governors to see who can answer the most questions through the program.

12. Young Lawyers Division Report

YLD President Zack Zuroweste summarized a number of initiatives the YLD will be undertaking in the coming year. The division is rebranding its diversity program as an inclusion and equality

initiative that will focus on publicizing the success of law firms that incorporate diversity. The division also will be pushing its legal accelerator program, a mentoring website that will have hundreds and eventually thousands of short videos that answer questions faced by lawyers in their first two years of practice. A health and wellness initiative will also be pushed by the division to help lawyers find their optimal work-life balance. The YLD also is developing a technology “roadshow” which will be a free CLE seminar offered free to local and voluntary bar associations.

13. Legislation Committee Report

Legislation Committee Chair Gary Lesser recommended and the board approved ratifying the contracts between the Bar and its legislative consultants. (See item 7 above.) Lesser and President Higer talked about the importance of personal contacts between board members and state legislators, and Higer added it helps his meetings with lawmakers when board members already have relationships with legislators. Lesser noted that next year’s session will start in January instead of March and committee meetings will begin in September. He and Legislative Consultant Jim Daughton said they expect an amendment to impose term limits on Florida’s appellate judiciary will be reintroduced since it is a priority of House Speaker Richard Corcoran. Aimee Diaz-Lyon, another Bar legislative consultant, said the Bar’s legislative contact program is being expanded to include members of the YLD Board of Governors.

14. Florida Probate Rules Committee Report

Committee Vice Chair Cristina Papanikos presented two fast-track amendments. One affects incapacity matters, including filing of reports and the timing of the adjudicatory hearing, and the other sets new deadlines for filing annual guardianship reports. The board recommended approval of the amendments by a 42-0 vote.

15. Criminal Procedure Rules Committee Report.

Committee immediate past Chair Scott Fingerhut presented 32 amendments in the regular-cycle rule report and said most were grammatical and style corrections. Two substantive changes affected the procedure for indigents to close files and discovery rules affecting pretrial oral testimony. The board recommended approval of the amendments 43-0.

16. President-elect’s Report

President-elect Suskauer reported on the Special Committee on Gender Bias/Diversity, which she chairs, and said it will be working with a Committee on Diversity and Inclusion subcommittee created to carry out the special committee’s recommendations. The subcommittee hopes to produce an interim report on its progress by the end of the year.

17. Special Committee on the 2017 Constitution Revision Report

Chair Sandy Diamond said the steering committee of this special committee is holding weekly meetings, although the Constitution Revision Commission (CRC) is on hiatus for the summer but would pick up with a full schedule in the fall. The Bar has scheduled a September 7 press conference in Tallahassee to kick off its public education campaign “Protect Florida Democracy: Our Constitution Our Rights, Our Courts.” The Bar, at the request of the CRC staff and with the assistance of the Young Lawyers Division, is producing a series of webinars on the Florida Constitution to help commission members learn and prepare for their work. In addition, the Bar

is preparing a series of video clips with local community leaders sharing their thoughts on the importance of the CRC process to be posted on the Bar's public education website, ProtectFLDemocracy.org and via social media. The website also offers materials for Bar members who want to help in the education campaign, including shareable facts sheets and FAQs, sample op/eds and letters to the editor, and videos and social media posts to be shared. A speakers bureau of Florida Bar leaders is also being assembled to make presentations to civic and community organizations.

18. Investment Committee Report

Chair Ian Comisky for the fiscal year that ended June 30, 2017, the Bar earned \$5.531 million, or a return of 9.54 percent on its long-term investment portfolio, adding that's one of the better years for the fund. He said for the first two weeks of the new fiscal year, the fund has earned \$750,000 but cautioned that rate was unlikely to continue. He said the committee recommended taking \$1.5 million from its PowerShares large cap equity fund and \$982,000 from its Lord Abbett fixed-income fund and transferring the money to the Bar's short-term investment fund to ensure there is adequate liquidity for Bar operation in the coming year. The board approved those changes. Board member Laird Lile asked about the repayment of the Bar's \$6 million loan to The Florida Bar Foundation. Comisky replied that the Foundation has made all its interest payments and the first \$2 million principal repayment is due in January with every indication the Foundation will meet that schedule. Comisky also reported that committee is reviewing the management fees for its mutual fund investments.

19. Budget Committee Report

Chair Steve Davis presented two rollover amendments from the 2016-17 budget to the 2017-18 budget for items that had been completed in the past budget year. Those were \$4,920 for a publication for the Bar's Henry Latimer Center for Professionalism and \$760,000 from the building reserve fund for security work. The board unanimously approved the rollovers. Davis presented amendment for the 2017-18 budget of \$10,700 to fund three new committees approved by the board: the Special Committee on Mental Health (\$3,500), the Special Committee on Child and Parent Representation (\$3,500), and the Special Committee on Mental Health and Wellness for Florida Lawyers (\$3,700). The funding, Davis said, will come from the Bar's \$100,000 reserve for new programs. Davis also reviewed Bar finances and noted after several years with budget surpluses the Bar is entering a period of expected budget deficits, exclusive of investment income. That trend, he said, was expected and may lead to a search for new revenues, including a possible raise in annual membership fees, by the 2021-22 fiscal year when the Bar's reserves for operations will be at the low end called for in board policies.

20. Audit Committee Report

Chair Duffy Myrtetus said the committee is reviewing the operations of the board and continuing its study of the Bar's technology security, including its upgrade of software for Bar operations and the increasing use of cloud resources.

22. Board Review Committee on Professional Ethics

Chair Michael Hooker reported the committee considered a request from a Bar member about joining a proposed for-profit lawyer referral service that intended to charge variable referral fees based on the type of case referred, which the inquiring lawyer also called a "pay-per-lead"

system. He said the committee recommended that the board direct it to prepare a formal ethics opinion on the general issue of how lawyer referral services may be paid, likely to be presented at the board's December or January meeting after getting input from Bar members. The board unanimously approved that recommendation.

23. Rules Committee Report

Vice Chair Ron Ponzoli presented two items for final approval by the board, both of which were passed unanimously:

- Rule 1-3.7 Reinstatement To Membership: Within subdivision (c), changes 10 hours to 11 hours for the number of continuing legal education hours required for each year or partial year of retirement or delinquency. Within subdivision (g)(2), changes 30-hour continuing legal education requirement to 33-hour continuing legal education requirement for reinstatement of inactive members who are required to complete continuing legal education requirements to be reinstated.

- Rule 4-1.10 Imputation of Conflicts of Interest; General Rule: Removes commentary regarding imputation of conflicts when a lawyer changes firms and changes commentary titles because the commentary appeared to contradict with subsection (a) of the rule.

Ponzoli presented six items on first reading:

- Bylaw 2-3.11 Quorum: Changes from quorum requirement to authorization for electronic meetings.

- Bylaw 2-9.2 Standing Board Policies: Adds that the board may adopt or amend rules of order and that adoption and amendment of Standing Board Policies and rules of order are effective on specific date set by the Board of Governors.

- Bylaw 2-9.6 Rules of Order: Within rule 2-9.6, adds to the requirement that the Bar follow Robert's Rules of Order an exception for special rules of order in the Standing Board Policies.

- Rule 20-6.1 Generally: The amendment increases continuing education requirement from 30 to 33 hours within a 3-year cycle and adds that 3 of the 33 hours must be in technology.

- Rule 20-8.3 Complaint Processing: Within subdivision (e), amendment adds the requirement for Florida Registered Paralegals to notify their supervising lawyer if a complaint has been filed against them.

- Rule 20-8.6 Disposition of Complaints: Within subdivision (g), the amendment adds "letter of advice."

24. Citizens Advisory Committee Report

Chair Lorna Brown-Burton said the committee reviewed Bar activities relating to attorney professionalism, access to justice and the Bar's legislative advocacy. She also said President Higer talked with the committee about the Bar's priorities for the coming year.

25. Program Evaluation Committee Report

Chair Renée Thompson presented four items for final approval, all unanimously approved by the board:

- Standing Board Policy 5.52 Section Officers and Executive Council Membership: Standing Board Policy 5.52, regarding election of section officers and executive council, is deleted in its entirety.

- Creating the Special Committee on Mental Health for one year.
- Creating the Special Committee on Child and Parent Representation for two years.
- Creating the Special Committee on Mental Health and Wellness for Lawyers for one year. Board member Dori Foster-Morales will chair the committee and said the committee will address unique challenges facing lawyers, including their high suicide rate and an incidence of depression 3.6 times the national average.

Thompson recommended adding the Florida Registered Paralegal Program and the Journal & News Department to this year's reviews to be conducted by the PEC, and the board unanimously approved that suggestion. The other ongoing PEC programs are a review of Florida Lawyers Assistance, Inc., the Bar's Practice Resource Institute, the Diversity and Inclusion Committee, and a review of past board-approved recommendations of the PEC for various Bar programs and activities. She also said the committee had approved a vendor for overhauling the Bar's Lawyer Referral Service online operations.

Thompson presented one item on first reading – Alternative Dispute Resolution Section Bylaws: Within Section 2.2(a), adds a definition to inactive member and excludes members who are inactive with The Florida Bar for disciplinary reasons. Within 4.4, adds one year to a term and adds one additional consecutive term, allowing three consecutive four-year terms. Section 4.5 added to create an emeritus status. Within 5.1(d), eliminates language that impedes on section recommendations.

26. Member Benefits Committee Report

Thompson, liaison to the committee, presented two new offerings for the Bar's Member Benefits Program. Zola Media will assist Bar members in creating website offering semi-custom and custom services as well as providing a platform for those websites. Cyber Security will help law firms with digital security and also offer insurance from digital attacks. The board unanimously approved adding both companies to the Member Benefits Program.

27. Technology Committee Report

Chair John Stewart reported that the committee is working with Legal.io on overhauling and upgrading the online services of the Bar's Lawyer Referral Service program. He emphasized the program would not affect the referral services offered by local bars although it would likely offer them an opportunity to join the Bar operation. He noted the Program Evaluation Committee had approved the approach and that the Technology Committee is negotiating terms with Legal.io, which will come to the board for final approval. He reported that the Standing Committee on Technology has produced a guide on cloud computing for the Bar's Practice Resource Institute website, and the committee is working on several guides on digital security, which remains the top priority of the board Technology Committee.

28. Civil Procedure Rules Committee Report

Vice Chair Miguel Chamorro presented out-of-cycle amendment to Rule 1.570 and Form 1.914 on supplementary proceedings to respond to legislative changes to F.S. §§ 56.29, 56.0101, and 56.60. The board recommended approval of the changes 38-0.

29. Juvenile Court Rules Committee Report

Former Chair Joel Silverstein presented regular-cycle rule amendments including changes to delinquency rules in response to recommendations from the Innocence Commission, immigration issues, and conforming the speedy trial rule with the rule used in adult court. The board recommended approval of the amendments 39-0.

30. Traffic Court Rules Committee Report

Committee member Carter Hillstrom presented regular-cycle amendments which included many grammar and minor amendments, changes to help self-represented parties, and a change to serving updated or revised citations. The board recommended approval 39-0.

31. Communications Committee Report

Chair Scott Westheimer reported the committee is rolling out a uniform look for the Bar's emails and other electronic communications with members, including templates for emails and a calendar to avoid sending too many emails to members on any given day. The committee is working with the Board Technology Committee to review the Practice Resource Institute's online presence with the goal of making it more user friendly and is continuing the work of a joint subcommittee with the Young Lawyers Division to coordinate and enhance all Bar communications and member services. A website subcommittee continues to focus on improving member experiences with the new Florida Bar website and the MyFloridaBar Members Portal. Another subcommittee is devoted to improving communications with voluntary bars and sections.

32. Special Committee on Trust Accounting Solutions Report

Chair Andy Sasso reported that FIS and TMI Trust Company are working with the Bar on a contract to test a free trust accounting program for Bar members that, if details are worked out, can begin this fall. The program will provide, if Bar members enter the correct information when making deposits or withdrawals from their trust accounts, automatic compliance with Bar trust accounting rules, he said, and also should boost IOTA income for The Florida Bar Foundation. Sasso said the committee is working on a Standing Board Policy amendment that Bar members who use the program will be presumed to comply with trust accounting rules.

33. President's Report

President Higer reported that the Elections Committee was continuing its work and would have a report for the board later in the year. He noted he was providing board members with a timed agenda, including the expected time each item will take, to help expedite board meetings and give a guidepost of how the meeting will proceed. He also added a Good & Welfare item to the agenda so members can bring up subjects they think need addressing.

34. Time and Place of Next Meeting

There being no further business. President Higer adjourned the meeting at 2:54 p.m. The next meeting is October 6 at the Colonnade Hotel in Boston, MA.

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