

The Florida Bar Board of Governors
October 6, 2017
Gaylord Palms Resort
Kissimmee, 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
Fred D. Franklin, Jr., 4th Circuit
Michael G. Tanner, 4th Circuit
Renée E. Thompson, 5th Circuit
Joshua T. Chilson, 6th Circuit
Sam Nicholas Masters, 7th 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
Adam T. Rabin, 15th 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
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

Eric L. Meeks, 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

Bruce W. Robinson, 3rd Circuit
Sandra Fascell Diamond, 6th Circuit
Stephanie M. Marchman, 8th Circuit
C. Richard Nail, 10th Circuit
Lorna E. Brown-Burton, 17th Circuit
Marcy Lynn Shaw, 20th Circuit

2. Staff in Attendance

John F. Harkness, Jr., Executive Director
Joshua E. Doyle, Executive Director Designate
John Berry, Director, Legal Division
Adria Quintela, Director, Lawyer Regulation
Elizabeth Clark Tarbert, Ethics Counsel
Rosalyn A. Scott, Assistant to the President
Patricia Savitz, Assistant Bar Counsel, Orlando
Carrie Lee, Assistant Bar Counsel, Orlando
Laura Gyrb, Assistant Bar Counsel, Orlando
Karen Bankowitz, Assistant Bar Counsel, Orlando
Gary Blankenship, Senior Editor, Florida Bar News

3. Guests

Jorge Piedra, President-elect, Cuban American Bar Association
Jenny Shoaf Richardson, President-elect, 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 Duffy Myrtetus delivered the invocation and board member Brian Burgoon led the board in the Pledge of Allegiance.

5. Welcome by Former Bar President Mayanne Downs

Former President Downs welcomed the board to the Orlando/Kissimmee area.

6. Appearance by Anthony Suarez and Marie Masson of the Puerto Rican Bar Association of Florida

Suarez reported on the association's efforts to relocate law students in Puerto Rico to Florida and U.S. law schools while their home campuses recover from Hurricane Maria. He said seven

Florida law schools and 11 others around the country had volunteered to accept the students and some are providing tuition vouchers. The association is collecting donations to pay for transportation, housing, clothing, books, and other needs of the students. Masson thanked the Bar's Communications Committee for its help in getting the association's message out to interested parties.

7. Young Lawyers Division Report

YLD President Zack Zuroweste reported the YLD is working with its Law Student Division to assist the incoming law students from Puerto Rico, including finding mentors. He also said the division continues to solicit volunteers for the disaster 1-800 legal hotline it runs in conjunction with the ABAYLD under a contract with FEMA. The number of callers is outstripping the number of volunteer lawyers, and the number of calls is expected to increase. He said each member of the YLD Board of Governors committed to emailing 10 other lawyers asking them to volunteer, and he asked the board to make the same pledge. President Higer praised the idea and suggested members might want to email another 20 lawyers each asking for their help. Zuroweste said there is help for volunteer lawyers and most callers have easily answered basic questions. On other matters, the YLD is continuing to offer its technology seminar free to local bars. It is also aiming at a January launch of its legal accelerator which will offer virtual mentoring. Zuroweste said the YLD has collected more than 200 videos for the project and is filming more. The division is working to highlight the efforts of lawyers to help Floridians in the wake of Hurricane Irma.

8. President's Report

President Higer reported that board members Lorna Brown-Burton, Laird Lile, and Duffy Myrtetus are serving on a committee to set up a charitable trust where lawyers can make donations to help hurricane victims. He also provided the board with a written report on recent activities and events including widespread efforts to help both lawyers and Floridians recover from Hurricane Irma, the creation of a special committee to work with the Rules of Judicial Administration Committee on the parental leave rule pending at the Supreme Court, and noted that almost all board members have signed up to participate in the joint ABA/Florida Bar Free Legal Answers online pro bono program.

9. Appearance by Florida Board of Bar Examiners Chair Scott Richardson and Vice Chair Lisa Walters

Richardson reported that the time for background checks for new Bar applicants has been reduced to three or four months and that the FBBE continues to encourage law students to apply for their character and fitness reviews early in their law school careers. He said about 48 percent of the first-year students applied for the review this year, down slightly from 52 percent last year. Richardson reported applications to join the Bar were down 10 percent this year. The FBBE administered the Bar exam to more than 3,200 people in July and 71.3 percent passed, a slight increase from the previous year. Seventy-four percent of the character and fitness reviews had been completed when the exam results were released. Walters told the board she intended to carry on the open communications established in recent years between the Bar and the examiners board.

10. Special Committee on Trust Accounting Solutions Report

Parliamentarian Andy Sasso reported that FISTM and TMI Trust Company are ready to begin a pilot for the proposed trust accounting program for Bar members. He said FISTM will oversee the program and provide the necessary software while TMI will act as the trust agent for the funds. He said lawyers would be able to deposit funds via wire transfer, ACH, or by lockbox drop. Funds will be issued by wire transfer, ACH, or TMI can print checks and sent them to the lawyer or to clients. Because of the pooling of the funds, Sasso said the companies expect to substantially boost the interest paid on the funds, which will benefit The Florida Bar Foundation. Board member Brian Burgoon asked why lawyers would not have the ability to print checks themselves as had been promised earlier. Sasso said that remained a goal but for the pilot TMI would do the printing and sending of checks.

11. Minutes Approval

The board unanimously approved the minutes from its July 21 meeting at the Turnberry Isle Resort. That approval including ratifying actions taken by the Executive Committee at an August 31, 2017, meeting. The committee voted 12-0 to allow the Rules of Judicial Administration to file a proposed amendment to Fla. R. Jud. Admin 2.420(d)(1)(B)(ix) in response to the Legislature passing SB 886. The committee also voted 12-0 to approve a budget amendment, recommended 8-0 by the Budget Committee, to allocate extra money from a reserve fund for the Bar's "Protect Florida Democracy – Our Constitution, Our Rights, Our Courts" project related to the Constitution Revision Commission.

12. Consent Agenda Approval

The board unanimously approved the consent agenda as presented, including:

- Appointing Kristin L Tormey as a public member to UPL Committee A, Melissa Anne Foss as an attorney member to UPL Committee 13B, A. J. Belt as a public member to UPL Committee 17C, Thomas H. Yardley as an attorney member to UPL Committee 18A, and Chene Marie Thompson as an attorney member to UPL Committee 20.

- Appointing Gilbert J. Alba as an attorney member to the Standing Committee on UPL.
- Giving final approval to an amendment to Bylaw 2-3.11, Quorum: Changes authorize electronic meetings.

- Giving final approval to an amendment to 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 the date set by the Board of Governors.

- Giving final approval to an amendment to Bylaw 2-9.6 Rules of Order: 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.

- Giving final approval to amending Rule 3-7.15, Amendments: The rule is eliminated as duplicative of revised Rule 1-12.1 and Standing Board Policy 1.60.

- Giving final approval to an amendment to Rule 6-27.3. Minimum Standards (Education Law): Within subdivision (c)(2), increases the maximum allowed substantial involvement points from 28 to 32 points. Within subdivision (c)(2)(D), adds language to include complaints performed as lead attorney filed with state or federal government agencies as substantial involvement activities. Within subdivision (c)(3), increases the maximum allowed substantial involvement points from 21 to 30 points. Within subdivision (c)(3)(C), adds language to clarify that applicants may submit multiples of all types of activities within the subdivision. Within

subdivision (c)(4), increases the maximum allowed substantial involvement points from 20 to 30. Within subdivision (c)(4)(A), adds language to include additional practical experience actions worth 2 points each.

- Approving an amendment to 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.

- Approving an amendment to 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.

- Approving an amendment to Rule 20-8.6, Disposition of Complaints: Within subdivision (g), adds “letter of advice.”

- Approving changes to Bylaws, Alternative Dispute Resolution Section: Within Article II, Section 2.2(a), adds a definition for inactive members that excludes Florida Bar members who are inactive for disciplinary reasons. Within Article IV, Section 4.4, adds 1 year to a term and adds 1 additional consecutive term, allowing 3 consecutive 4-year terms. Within Article IV, Section 4.5, adds an emeritus status. Within Article V, Section 5.1(d), deletes “All recommendations of the section must first be approved by the executive council and the Board of Governors of The Florida Bar.”

- Approving bylaws amendments for the Florida Legal Services, Inc., articles of incorporation to react to recent economic and other changes in the legal aid field.

13. Elections Committee Report

Committee member Leslie Lott presented the committee’s initial recommendation for guidelines for Bar elections. She said the Bar cannot enforce the guidelines, but can offer them as aspirational standards and candidates can point out if their opponents have agreed to follow the guidelines and then violated the standards. The guidelines call for conducting campaigns according to the highest standards, limiting mailing and electronic solicitations to members, limiting media advertising to the Bar *News* and the Bar’s website, and getting endorsements in writing. Board members asked several questions and President Higer said those will be addressed by the committee when it reports again at the board’s December meeting.

14. Budget Committee Report

Committee Chair Steve Davis presented three budget amendments. The first was to pass through a donation to the Bar for \$1,800 to the scholarship fund of the Leadership Academy. The board unanimously approved the amendment. The second was to approve a \$25,000 contract with FISTM from the Bar’s new program reserve to pay for the software for the proposed trust accounting program and which is necessary to begin the program’s pilot. Board member Brian Burgoon said he was concerned because lawyers would not be able to print their own checks, a feature that had been promised when board committees reviewed the plan. After discussion, board member Jay Cohen moved that the \$25,000 be paid only if FISTM could provide check printing capabilities for law offices in both the pilot and final program. That amendment passed on a voice vote and the board then approved the budget amendment with that condition. The third amendment was for \$39,000 for a contract with Legal.io to overhaul the Bar Lawyer Referral Services’ online presence with the goal of helping more people and making more referrals to participating lawyers. The board unanimously approved that amendment.

15. Investment Committee Report

Chair Ian Comisky said the surging stock market has led to strong investment earnings for the Bar, including \$2 million in the first 90 days of Fiscal Year 2017-18. Overall he said returns for the long-term portfolio has been 9 percent for the previous nine months and more than 10 percent for the previous year. After consulting with its investment advisor, Comisky said the Investment Committee recommended replacing the TSW Small Cap Value fund with the Delaware Small Cap Value Fund, and moving \$1.5 million from cash to a six-month treasury bill. The board unanimously approved those changes.

16. Audit Committee Report

Chair Duffy Myrtetus reported the committee is working on completing the annual audit and transitioning to new accounting and operating software at the Bar.

18. Florida Bar Foundation Report

Executive Director Bruce Blackwell recounted how interest rates have fallen on IOTA accounts to around 0.11 percent, or \$6 to \$6.5 million annually compared with an average before the recession of around \$42 million and a high of around \$75 million. That has forced the Foundation to revamp the way it does business. They are moving away from general award grants and instead are targeting specific areas that meet the goals of providing legal aid. The Foundation is seeking grants from other sources and getting awards from consumer-based class action suits. The Foundation has developed a system where lawyers can take pro bono cases listed on an internet database, and that is proving successful. Another approach is to provide legal aid in a manner that eases the burdens on the courts, including helping clients in ways that may not require the participation of a lawyer. The Foundation is making grants to help legal aid offices that were damaged by Hurricane Irma and to agencies that seek other resources in addition to Foundation funding. He presented outgoing Bar Executive Director John F. Harkness, Jr., with a plaque honoring his commitment to justice.

19. Legislation Committee Report

Chair Gary Lesser noted that President Higer and President-elect Suskauer recently met with the Republican leadership of the Legislature, presented Bar legislative priorities, and offered the Bar's resources to support the Constitution Revision Commission. Lesser said the annual session will begin in January, and the Bar, for the first time in several years, will be doing a legislative reception. He predicted a constitutional amendment to limit the terms for the appellate judiciary will be reintroduced and will pass the House, so the focus of the Bar's legislative activity on that subject will be in the Senate.

20. Special Committee on the 2017 Constitution Revision Report

Committee member Mike Tanner noted that chronologically the CRC is about halfway through its work and is finishing receiving citizen-proposed amendments. Commissioner-proposed amendments were due at the end of the month and Tanner said the Bar should know then whether there are any major proposals that will affect the justice system. He noted the Bar would be kicking off its public education CRC campaign on October 17 and that the Bar offered its services to the CRC. The CRC has already requested help in two ways: preparing videos on each article of the constitution, which are being posted on the CRC's website, and preparing white papers on specific issues. The CRC expects to winnow down the proposed amendments in the

next few months, conduct another round of public hearings on possible proposed amendments, and then submit its final amendments to the Secretary of State by May.

21. Communications Committee Report

Chair Scott Westheimer noted the website has posted information to help both lawyers and the public in the wake of Hurricane Irma. He said upgrades are being implemented for the member portal including a new registration process. Information for board meetings will also be easier to find and download, Westheimer said. The committee is working to allow Bar members to make customizations in the way they use the website. The Bar has renewed its contract for another year with LawTV for online broadcasts passed on Bar *News* articles. He said the Voluntary Bar Outreach Subcommittee, headed by board member Josh Chilson, is working on sample stories that can run in voluntary bar newsletters, including issues coming up at the BoG meetings. Westheimer provided the Bar's latest social media statistics, including that the Bar had 20,438 Facebook followers, 11,200 Twitter followers, and 63,867 views of its YouTube videos.

22. Program Evaluation Committee Report

Chair Renée Thompson said the committee is continuing with its reviews of five Bar programs, plus a review of how past committee recommendations have been implemented.

23. Disciplinary Procedure Committee Report

Committee member Ron Ponzoli presented one item on first reading, Standing Board Policy 15.7, Disciplinary Action on Trust Accounting: Adds a new standing board policy regarding disciplinary action for technical trust accounting violations when the lawyer participates in the Bar's FIS™ AddVantage trust accounting solution program.

Ponzoli reported the Bar has received a member petition to amend Bar rules to provide for automatic discipline if a state or federal appellate court finds a Bar member engaged in frivolous activity. He noted the rule would strip grievance committees from any discretion in such cases and said the full committee would be reviewing the petition and reporting back at the board's December meeting.

24. Criminal Procedure Rules Committee Report

Board member Dennis Kainen presented the committee's out-of-cycle report recommending an amendment to Rule 3.220 to conform with recent court rulings that only statements or reports from expert witnesses that a defendant intends to use at trial must be disclosed to prosecutors. The board recommended approval of the amendment 40-0.

25. Technology Committee Report

Chair John Stewart noted the board had approved the budget amendment for revamping the Bar Lawyer Referral Service's online presence and said that could be done three to six months after the contract is signed with Legal.io. The committee is reviewing the Bar's Practice Resource Institute to improve member knowledge about the service and improve its webpages on the Bar's website. The committee is looking into how bitcoin and other such "crypto currencies" could affect the practice of law, the use of artificial intelligence in providing legal services including unlicensed practice of law implications, and working on legal incubators including one in conjunction with Stetson University College of Law that could be operating by summer. Stewart

said the Standing Committee on Technology is preparing standards on security and privacy which will be published on the PRI webpages.

26. Executive Session

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

27. Special Committee on Mental Health Report

Chair Dori Foster-Morales reported that the committee had met twice with more meetings planned. The committee's goals are to solve the problems the stress of legal practice imposes on lawyers and train lawyers to deal with clients who have depression or other mental health problems.

28. President-Elect's Report

President-elect Suskauer submitted a written report with the schedule of board meetings for the 2018-19 Bar year. They are: July 25-29 in Hollywood, October 10-13 in Amelia Island, December 12-15 in Naples, February 6-8 in Tallahassee, March 27-31 in Washington, D.C., and May 22-15 in Palm Beach.

29. Time and Place of Next Meeting

There being no further business before the board, President Higer adjourned the meeting at 2:18 p.m. The board's next meeting is December 8 at the Ritz Carlton in Amelia Island.

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