

The Florida Bar Board of Governors
January 26, 2018
DoubleTree Hotel
Tallahassee, 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
Renée E. Thompson, 5th Circuit
Joshua T. Chilson, 6th Circuit
Sandra Fascell Diamond, 6th Circuit
Sam Nicholas Masters, 7th Circuit
Stephanie M. Marchman, 8th Circuit
Mary Ann Morgan, 9th Circuit
Wayne L. Helsby, 9th Circuit
Roland Sanchez-Medina, Jr., 11th Circuit
Dori Foster-Morales, 11th Circuit
Leslie J. Lott, 11th Circuit
Dennis G. Kainen, 11th Circuit
Steven W. Davis, 11th Circuit
F. Scott Westheimer, 12th Circuit
Thomas Roe Bopp, 13th Circuit
Amy S. Farrior, 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
Lorna E. Brown-Burton, 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

Fred D. Franklin, Jr., 4th Circuit
Michael Tanner, 4th Circuit
Julia L. Frey, 9th Circuit
C. Richard Nail, 10th Circuit
Deborah B. Baker Egozi, 11th Circuit
John H. (Jack) Hickey, 11th Circuit
Margaret Diane Mathews, 13th Circuit
Jay Cohen, 17th Circuit
Marcy Lynn Shaw, 20th Circuit

2. Staff in Attendance

Joshua Doyle, Executive Director
Patrick M. (Booter) Imhoff, General Counsel
John Berry, Director, Legal Division
Lori Holcomb, Division Director, Ethics and Consumer Protection
Terry Hill, Director of Program Division
Cynthia Jackson, Director of Administration
Francine Walker, Director, Public Information and Bar Services
Adria Quintela, Director, Lawyer Regulation
Mike Garcia, Director of Planning
Kathy Bible, Disciplinary Procedure Committee Counsel
Elizabeth Clark Tarbert, Ethics Counsel
Rosalyn A. Scott, Assistant to the President
Allison Sackett, Assistant Bar Counsel
James Fisher, Assistant Bar Counsel
Rebecca Bandy, Director of Henry Latimer Center for Professionalism
Gary Blankenship, Senior Editor, Florida Bar News
Jim Ash, Senior Editor, Florida Bar News

3. Guests

David Aronberg, Government Lawyer Representative
Andrew Sasso, Board Parliamentarian
LaShawnda Jackson, President-elect, Virgil Hawkins Florida Chapter, National Bar Association
Jennifer Sullivan, President, Florida Association for Women Lawyers

4. Invocation and Pledge of Allegiance

Board member Melissa VanSickle delivered the invocation.
Board member Larry Sellers led the Pledge of Allegiance.

5. Approval of Minutes

The board approved the minutes from its December 8, 2017 meeting. That approval included ratifying the following actions taken by the Executive Committee since that meeting:

- At a December 14, 2017, meeting, the Executive Committee voted 11-0 for the Bar to provide representation, with a review after 60 days, for an inventory attorney who was duly appointed to close out the practice of a disbarred attorney and then was sued for tortious interference by the disbarred attorney. The action applies only to this case and any future similar instances will be considered case by case.
- At a December 19, 2017, meeting, the Executive Committee voted 12-0 via email to approve advancing the trust accounting solution pilot project to be run by FSI™ and TMI Trust Company, Inc., and overseen by the Bar's Special Committee on Trust Accounting Solutions.
- At a January 22, 2018, meeting, the Executive Committee voted 10-0 via email to oppose Proposal 81 pending at the Constitution Revision Commission which would add the judicial branch to the list of public agencies which must provide notice to the public and an opportunity to attend all meetings where official actions are taken or public business of that body is discussed and transacted. The Special Committee on the 2017 Constitution Revision opposed the proposal 12-0 and the Legislation Committee opposed it 9-0.

6. Approval of Consent Agenda

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

- Ratifying the following appointments to UPL committees: Suzy Heinbockel as a public member to UPL Committee 5, Daniela M. Berisiartu as an attorney member to UPL Committee 11D, Lisa Ann Martin as an attorney member to UPL Committee 13A, Susan E. Lee as a public member to UPL Committee 13B, Charlotte Redmond Wright as a public member to UPL Committee 15A, and Eric A. Hernandez as an attorney member to UPL Committee 11B.
- The board agreed not to oppose the following legislative position proposed by the Real Property, Probate & Trust Law Section: Supports proposed amendment to Chapter 732, Florida Statutes, to provide much needed clarification and guidance regarding the waiver of constitutional homestead protections for surviving spouses. The statute would provide language which, when used within a deed, would create a presumption that the spouse signing the deed waived the constitutional restrictions on the devise of homestead. This would supplement existing procedures in section 732.702, Fla. Stat., which provide for the waiver of spousal rights by written agreement.
- The board received the following three nominees for Legal Services of North Florida Board of Directors: Wendy Loquasto, Tallahassee Women Lawyers; E. Philip Smith, Gadsden County Bar Association; David Grimes, Florida Government Bar Association.

7. Citizens Advisory Committee Report

Chair Brown-Burton reported that the committee received a report from the Judicial Nominating Commission Procedures Committee, and from Board Member Dori Foster-Morales on the work of the Special Committee on the Health and Wellness of Florida lawyers. CAC members are preparing letters to the editor to encourage Floridians to attend the upcoming public hearings of the Constitution Revision Commission.

8. Budget Committee Report

Chair Davis reported that the committee approved \$40,000 for live streaming of the General Assembly, Judicial Luncheon, and President's Showcase seminars, as well as contracting with Sachs Media for annual convention theme, concept, design, and graphics.

The committee approved a \$76,500 amendment for an IT consultant for transition of the Bar's computers to a Live Nation platform and other IT support for staff.

Upon a motion by the chair, both amendments were unanimously approved on a voice vote.

The chair reported that the committee approved a \$15,000 impact statement in regard to the fiscal effect of Rule 10-6.3, regarding a new professionalism credit for CLE.

Incoming chair Renée Thompson reported that the 2018-19 fiscal budget will be presented to the board at the March meeting.

9. Investment Committee Report

Chair Comisky reported that the short-term account generated a little more than 1 percent return, slightly above the benchmark. The Bar's investment portfolio returned 14.72 percent since July 1, outperforming the benchmark by a quarter of a percent. Investment advisors recommended divesting 2 percent from Oakmark International Fund and putting 1 percent in Tortoise MLP, and 1 percent in a cash certificate of deposit. The board approved the motion unanimously on a voice vote.

10. Audit Committee Report

Chair Myrtetus reported that the auditor complimented Bar staff for their cooperation and for having strong accounting systems.

11. Appellate Practice Section Report

Chair Norris reported that section membership has grown to 1,450 and a very strong budget enabled the section to donate \$50,000 over the past few years to the Florida Bar Foundation. The section is working with Elder Law, Trial Lawyers, and Criminal Law sections on CLE programs and other projects. A legislative committee drafted white papers for the Constitution Revision Commission regarding a CRC proposal that would open judicial deliberations to the public. Section members have attended the DCA judges conference. The annual appellate lawyers' retreat will be held this year in a reception room of the U.S. Supreme Court at the invitation of Justice Thomas.

12. Board Review Committee on Professional Ethics Report

Chair Hooker reported the following items:

- a. The BRCPE continued discussion of possibly adopting a proposed advisory opinion (which would be numbered 17-2) on the issue of how lawyer referral services may be paid.
- b. The BRCPE voted 4-3 to recommend that the Board of Governors reverse the decision of the Professional Ethics Committee and direct bar staff to issue an advisory ethics opinion in response to a request for an advisory ethics opinion request regarding whether a lawyer who handles personal injury matters on a contingency fee basis can purchase litigation cost insurance and charge the client for the amount of such insurance in the event there is a recovery, directing that the opinion conclude that the arrangement presents a close question because the circumstance described create potential conflicts of interest between the lawyer and the client throughout the

course of litigation, but that the arrangement is permissible only under the following circumstances: (1) the lawyer makes an objectively reasonable determination that the litigation cost protection insurance coverage serves the client's best interests; (2) the amount to be charged to the client is fair and reasonable and is communicated to the client, in writing, in a manner that the client can reasonably understand; (3) the lawyer fully explains to the client what litigation cost protection insurance is, why the lawyer believes a litigation cost protection policy will serve the client's best interests, that the lawyer will be the sole beneficiary under the insurance policy, and that the client will be liable for the insurance premium expense and all other costs and expenses in the event of a recovery; (4) the lawyer fully explains to the client that other lawyers may advance the client's costs without charging the client the cost of the litigation cost protection policy; (5) the lawyer provides the client with the opportunity to review the litigation cost protection policy; (6) the client is advised, in writing, of the desirability of seeking, and is given the opportunity to seek, independent counsel; (7) the lawyer obtains the client's informed consent in writing at the beginning of the representation; and (8) the lawyer does not allow the terms or availability of coverage under the insurance policy to adversely affect their independent professional judgment, the client-lawyer relationship, or the client's best interests; the opinion must also state that it merely addresses the ethics issues involved and does not endorse the concept of the insurance policy. The board approved the motion 23-17.

13. President's Report

President Higer reported that a new committee, chaired by board member Lorna Brown-Burton, will review policies and procedures for an executive director search, while there is no urgency. The committee consists of President-elect Suskauer, board members Brian Burgoon, Steve Davis, Lawrence Tyree, and Stephanie Marchman and former Bar President Eugene Pettis. The committee has held one telephone conference meeting.

14. Bar Foundation President's Report

Bar Foundation President Jewel White discussed the foundation's strategic reset, a campaign to raise the foundation's profile in the legal community, a \$23 million Bank of America revenue windfall and the relaunching of a summer fellowship program. President White reported that Foundation Executive Director Bruce Blackwell is retiring at the end of September and a search committee, headed by foundation President-elect Juliette Lippman, is looking for a replacement. In brief remarks, Blackwell called his service, "the joy of my life," and reminded board members that 20 percent of Floridians live in poverty, including more than 1 million children, and legal aid is urgently needed.

15. Communications Committee Report

Chair Westheimer referred to the Schwartz Media Strategies mid-year report and its results showing 61 earned media pieces and seven op-ed pieces reached more than 65 million people in the past six months. Stories included President Higer's investiture, Hurricane Irma relief services provided by The Florida Bar, and the legal community's push for health and wellness. The Pro Bono Awards generated 15 newspaper articles. The YLD's new Legal Accelerator will be a focus of promotion as a new member benefit. A health and wellness section is being developed for the Bar website. Florida Lawyers Mutual Insurance Company, (FLMIC), has agreed to sponsor a full season of the FloridaBarNewsTV. A new subcommittee will review the digitalization of the Bar *News* and *Journal* and will study advertising rates.

16. Special Committee on Trust Accounting Report

Parliamentarian Sasso reported that the Bar and TMI have reached a draft of a contract that will be reviewed by an outside counsel from a Jacksonville firm. First markup of the draft was delivered this week to contracting parties and TMI representatives have been introduced to Bar staff.

17. Program Evaluation Committee Report

Chair Thompson declared all evaluations on track. The Florida Lawyers Assistance evaluation has been completed and a set of recommendations will be presented at the March meeting, as will evaluations on The Practice Resource Institute and Diversity Inclusion Committee. The Florida Registered Paralegal Committee, a PEC implementation subcommittee with new programs, and the Florida Bar Media Awards evaluations should be before the board for the May meeting. Chair Thompson presented two items on second reading, both of which were adopted unanimously by the board:

- Bylaws Administrative Law Section: Within Article I, Section 2(b), adds promoting and encouraging professionalism among members of the section to its purposes. Within Article IV, Section 1, adds past chairs of the section to the executive council. Within Article IV, Section 2, deletes “voting council” from the first sentence. Within Article VI, Section 1, adds subsections (h) and (i), which create the Young Lawyers Committee and Technology Committee as standing committees of the section.

- Rule 6-10.3 Minimum Continuing Legal Education Standards: Within subdivision (b), adds a 1-hour requirement of professionalism credit, included in, not in addition to, the regular 33 credit hour requirement.

Chair Thompson presented on first reading bylaws amendments for the Workers’ Compensation Section: Within Article II, Section 1, removes honorary membership for judges of compensation claims. Within Article II, Section 3, adds a provision for reinstatement to membership for lapsed members. Within Article III, Section 2, adds qualification of claimant and defense to the composition of the executive council. Within Article III, Section 3, adds authority of the chair to appoint additional committees to standing committees with agreement of the council. Within Article III, Section 4 (d), adds that voting can take place by electronic means. Within Article III, Section 5 (d), adds that voting can take place by electronic means. Within Article V, Section 2 (b), adds provision for emeritus status.

18. Young Lawyers Division President’s Report

President Zuroweste reported the Legal Accelerator is up and running and fully operational and urged board members to promote the site and contribute content. A YLD affiliate outreach conference in St. Petersburg scored a 97 percent “outstanding” response in a survey of those attending. President Zuroweste said the YLD hosted a deans’ summit at the Bar’s winter meeting. Santo DiGangi, a major contributor to the Legal Accelerator, was elected president-designate at the affiliate outreach conference.

19. Leadership Academy Committee Report

Chair McNeill introduced the William Reece Smith, Jr. Leadership Academy, the fifth such academy sponsored by The Florida Bar. President Higer praised the class for its broad-based gender, ethnic, and geographic representation.

20. Disciplinary Procedures Committee Report

Chair Robinson moved for final action and the board approved an amendment to Rule 3-7.11, General Rules of Procedure (Disqualification): Within subdivision (h), amendments make the rule consistent with changes to the standing board policy on disqualification and Unlicensed Practice of Law rules on disqualification.

Chair Robinson presented on first reading and urged members to closely read Rule 3-5.5 Diversion Program for Disruptive Lawyers. This rule proposes to implement a method by which disruptive lawyers, where appropriate, may be diverted out of the discipline system and into an evaluation and treatment program designed specifically to address the root causes and behaviors of disruptive lawyers. The proposed rule sets forth eligibility for diversion, requirements for diversion approval, service on the respondent lawyer, effects of acceptance and rejection of diversion, respondent's rights and responsibilities in the diversion, payment of costs of evaluation and treatment, and effects of completion and noncompliance with the diversion program.

21. Special Appointments

The board unanimously appointed Maria Gonzalez of Ft. Lauderdale to a three-year term and reappointed the Honorable Suzanne Van Wyk of Tallahassee to The Florida Bar Foundation Board of Directors. The board appointed Charles Edward Reynolds II of Tampa to a four-year term on the Supreme Court's Judicial Ethics Advisory Committee.

22. Rules Committee Report

Vice Chair Ponzoli presented three items for final action:

- Bylaw 2-9.4 Ethics: Within subdivision (e), changes "party" to "person or entity" throughout and adds that lawyers may make ethics inquiries on their own behalf. The board approved the amendment unanimously
- Rule 4-1.19 Collaborative Law Process in Family Law: Within subdivisions (a) and (c) and the comment, deletes the word "prospective" and clarifies that the informed consent must occur before beginning the collaborative law process. Deletes subdivision (a)(3) as duplicative of subdivision (a)(1). The board approved the amendment unanimously.
- Chapter 21 Military Spouse Authorization to Engage in the Practice of Law in Florida (Part 2): Creates a new chapter 21 which would permit spouses of members of the U.S. armed forces to practice law in Florida without taking the bar exam while the spouse is stationed in Florida, requiring affiliation with a Florida Bar member. The new chapter sets forth the requirements for eligibility, application, certification by the Supreme Court, renewal, permissible activities while certified, continuing legal education, and termination of the eligibility to practice law by the military spouse, including termination after 5 years of certification. Vice Chair Ponzoli asked for two-thirds vote to waive publication and first reading. The motion passed 40-0.

23. Certification Plan Appeals Committee Report

Chair Foster-Morales moved four proposed rules changes on second reading and the board approved all four unanimously:

- Rule 6-23.2 Definitions Labor and Employment: Within subdivision (c), adds language defining a primary lawyer.
- Rule 6-23.3 Minimum Standards-Labor and Employment: Within subdivision (c), clarifies the experience requirements for certification, adds language regarding oral argument credits, and adds language regarding the types of proceedings that do not qualify as experience. Within subdivision (e), simplifies CLE requirements and removes explanation of CLE award procedures. Within subdivision (f), removes language giving applicants an opportunity to emphasize special knowledge in a specific subject area on the exam. Within subdivision (g), removes language regarding exam exemptions.
- Rule 6-23.4 Recertification Labor and Employment: Within subdivision (b), clarifies experience required for recertification, adds language regarding oral argument credit, and adds language regarding the types of proceedings that do not qualify as experience. Within subdivision (c), simplifies CLE requirements and removes explanation of CLE award procedures.
- BLSE Policy 2.08 Application Processing: Within subdivision (c), adds a provision to allow a pending initial application to remain pending past the 10-month abeyance period if the applicant is notified of a new ethics matter after the filing deadline, but before the application is approved or denied.

24. President-Elect's Report

President-Elect Suskauer reported that a subcommittee on gender inclusion met to discuss the creation of a gender bias and gender equality blue-ribbon presentation for law firms, which will be the focus of the committee's work in the coming year.

25. Special Committee on Mental Health & Wellness of Florida Lawyers Report

Chair Foster-Morales said Florida Supreme Court Justice C. Alan Lawson attended the last live meeting in Orlando in January. The committee hopes within the next five weeks to put out an RFI (Request For Information) for the creation of a call center for all Bar members. Bar member input on health and wellness issues will be solicited at a series of town hall meetings, the first scheduled for February 20th in Tallahassee. Other meetings are scheduled for March 2nd in St. Petersburg; March 16th in Gainesville and April 18th in West Palm Beach. A presidential showcase at the annual convention will feature TED-style speakers on the issue of health and wellness. Work continues on offering a mobile counseling app as a member benefit. The chair praised a new health and wellness presence on the Bar website.

26. Legislation Committee Report

Chair Lesser moved a series of committee recommendations, which passed unanimously:

- That the board not prohibit the advocacy of the Business Law Section supporting Bankruptcy Venue Reform.
- That the board not prohibit the advocacy of the Family Law Section opposing a constitutional revision P-22 that has been proposed to Article 1, Section 23 of the Florida Constitution (Right of Privacy).
- That the board not prohibit the advocacy of the Family Law Section opposing the constitutional revision P-64 relating to grandparent's visitation rights that have been proposed to Article 1, Section 23 of the Florida Constitution (Right of Privacy).
- That the board not prohibit the advocacy of the Real Property Probate & Trust Law Section opposing proposed legislation that would allow banks or other financial institutions in

Florida to distribute funds from any account in the name of the decedent (with no pay-on-death or survivor designation) in the absence of an appropriate probate proceeding or other court proceeding, specifically including HB 1241/SB 892.

Chair Lesser moved the board consider a request from the Special Committee on Child and Parent Representation to support the Regional Counsel's request to fund a position within the Regional Counsel's Office, 1st DCA Region (RC1) in Tallahassee entitled "Legislative Affairs Coordinator." The issue involves use of Bar funds and requires two votes, first to determine it is within the Bar's scope of authority, and secondly, a vote to accept that the position be included. The motion passed on a unanimous voice vote for both issues.

Chair Lesser moved approval for a legislative consultant contract between the Tax Section and Steven Shiver covering February 1, 2018, to June 30th, 2018. The motion was approved unanimously. Chair Lesser drew the board's attention to "The Advisor, 2018," which features profiles of members of the Legislature.

Legislative consultant Jim Daughton reported that there are currently no bills seeking to impose term limits on appellate judges. Regarding appropriations, both the House and Senate have included the ability for agency heads to fund the payment of Bar dues and CLE for government attorneys in their respective appropriation bills. Daughton is also working on behalf of the Bar to get full funding for the state court system. Finally, Daughton and his firm continue to lobby against legislative bills that completely remove the Bar from vetting and recommending potential members of Judicial Nominating Commissions to the governor.

27. Introduction of Florida Supreme Court Chief Justice Jorge Labarga and Justices

President Higer introduced Chief Justice Labarga and members of the court. The Chief Justice delivered brief remarks praising the court's relationship with the Bar and praised the Bar's contributions to the court's Access to Civil Justice Commission.

28. Special Committee on the 2017 Constitution Revision Commission Report

Chair Diamond reported that The Florida Bar has taken formal positions on two proposals. The Bar supports P-28, regarding court funding, and opposes P-81, which would make all judicial deliberations subject to open government laws.

Chair Diamond introduced former Bar presidents and CRC Commissioners Bill Schifino and Hank Coxe. Both commissioners reported that Florida Bar white papers analyzing CRC proposals are popular with commissioners. Schifino estimated 50 to 55 proposals will be presented to the public in a series of town hall meetings and those will be condensed to no more than 10 for the November ballot. Commissioner Cox warned that some CRC commissioners may revive a civil rights restoration measure to foment voter confusion and defeat a citizen's restoration of rights initiative. (There are currently 37 proposals on the CRC calendar for consideration by the commission.)

29. Animal Law Section Report

Chair Morton reported that the Bar's newest section has a strong social media presence that includes more than 1,500 followers on its Facebook page. Animal Law Section membership is at 471 and Morton has set a near-term goal of increasing that to 1,000. Morton wants to maintain a record of at least one animal-themed article in every Florida Bar *Journal* edition. The section is working with the state Department of Children and Families and the Statewide Guardian Ad Litem Program on a project that involves the use of therapy animals. The section is proposing

legislative positions, including support for a CRC proposal to end greyhound racing in Florida. The section is working on a health and wellness presentation, “10 Ways Animals Can Reduce Your Stress and Improve Your Outlook.”

30. Executive Director’s Report

Executive Director Doyle asked division directors to introduce outstanding employees to the board: John Berry, Director of the Legal Division, introduced Arne Vanstrum and Sharett Cardenas; Lori Holcomb, director of the Ethics and Consumer Protection Division, introduced Jacquelyn Reshard and Briana Wilson; Terry Hill, director of the Programs Division, introduced Linda Cook and Beth Anne Trombetta; and Doyle, standing in for Administration Director Cynthia Jackson, introduced Francesca Ciaccio-Freeman and Debra Abt.

31. Executive Session

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

32. Time and Place of Next Meeting

There being no further business before the board, President Higer adjourned the meeting at 2:25 p.m. The next board meeting is March 23 at The Ritz-Carlton in Sarasota.

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