

Florida Bar Board of Governors
July 27, 2018
Diplomat Hotel
Hollywood, Florida

1. Roll Call

Michelle Renee Suskauer, President
John M. Stewart, President-Elect
Jeremy C. Branning, 1st Circuit
Melissa VanSickle, 2nd Circuit
Bruce W. Robinson, 3rd Circuit
Michael Fox Orr, 4th Circuit
Michael G. Tanner, 4th Circuit
Renée E. Thompson, 5th Circuit
Joshua T. Chilson, 6th Circuit
Sandra Fascell Diamond, 6th Circuit
Stephanie M. Marchman, 8th Circuit
Thomas P. Wert, 9th Circuit
Wayne L. Helsby, 9th Circuit
C. Richard Nail, 10th Circuit
Roland Sanchez-Medina, Jr., 11th Circuit
Dori Foster-Morales, 11th Circuit
Jordan A. Dresnick, 11th Circuit
Deborah B. Baker-Egozi, 11th Circuit
Jeffrey Rynor, 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
Paige A. Greenlee, 13th Circuit
Michael P. Dickey, 14th Circuit
R. Sia Baker-Barnes, 15th Circuit
Ronald P. Ponzoli, Jr., 15th Circuit
Robin I. Bresky, 15th Circuit
Wayne LaRue Smith, 16th Circuit
Jay Kim, 17th Circuit
Diana Santa Maria, 17th Circuit
Lorna E. Brown-Burton, 17th Circuit
Hilary Creary, 17th Circuit
James G. Vickaryous, 18th Circuit
Gregory S. Weiss, 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
Christian P. George, Young Lawyers Division President
Santo DiGangi, Young Lawyers Division President-Elect
Lawrence W. Tyree, Public Member
Sharon B. Middleton, Public Member

Members Absent

Lawrence E. Sellers, Jr., 2nd Circuit
Sam Nicholas Masters, 7th Circuit
Julia L. Frey, 9th Circuit
Gary S. Lesser, 15th Circuit
Adam G. Rabinowitz, 17th Circuit
Marcy Lynn Shaw, 20th Circuit

2. Staff in Attendance

Joshua Doyle, Executive Director
Patrick L. (Booter) Imhof, General Counsel
John Berry, Director, Legal Division
Lori Holcomb, Division Director, Ethics and Consumer Protection
Terry Hill, Director, Program Division
Francine Walker, Director, Public Information and Bar Services
Adria Quintela, Staff Counsel, Lawyer Regulation
Kathy Bible, Disciplinary Procedure Committee Counsel
Elizabeth Clark Tarbert, Ethics Counsel
Navin Ramnath, Assistant Bar Counsel
Roselyn A. Scott, Assistant to the President
Gary Blankenship, Senior Editor, Florida Bar News

3. Guests

Jenny Richardson, Florida Association for Women Lawyers
LaShawnda Jackson, Virgil Hawkins Florida Chapter, National Bar Association
Judge Joey Williams, Florida Conference of County Court Judges
Judge Scott Bernstein, Florida Conference of Circuit Court Judges
David Aronberg, Government Lawyer Representative
Andrew Sasso, Board Parliamentarian

4. Invocation and Pledge of Allegiance

Board member Deborah Baker-Egozi delivered the invocation and board member Lorna Brown Burton led the board in the Pledge of Allegiance.

5. Welcome by 17th Circuit Chief Judge Jack Tuter, Jr.

Judge Tuter welcomed the board to Broward County and thanked the board for the work it does supporting the courts and the legal system. He briefly recounted bail reform efforts and the

therapeutic and specialty courts operated in the circuit and described the circuit's pending use of magistrates to settle professionalism disputes.

6. Recognition of New Board Members

New board members Jeremy Branning, Michael Orr, Tom Wert, Jordan Dresnick, Jeffrey Rynor, Paige Greenlee, Mike Dickey, Sia Baker-Barnes, Hilary Creary, Jim Vickaryous, Greg Weiss and Santo DiGangi were introduced to the board.

7. Swearing in of New and Returning Board Members

President Suskauer administered the oath of office to board members who were unable to attend and be sworn in the Annual Convention.

8. Minutes Approval

The board approved the minutes from its May 18, 2018, meeting in Key West. The approval included ratifying Executive Committee action taken at its June 4, 2018, meeting. The committee endorsed 8-0 fast-track, out-of-cycle amendments proposed by the Juvenile Rules Committee to address recently passed legislation, Chapters 2018-108, 2018-45 and 2018-103, Laws of Florida.

9. Consent Agenda Approval

After Legislation Committee Chair Michael Tanner removed item 5(d)(i)(1), proposed legislative positions for the International Law Section which he said would be presented at a future meeting, the board approved the consent agenda. The approval included:

- Naming Gregory Scot D'Incelli as an attorney member to UPL Committee 11B, Morella Aguado as an attorney member to UPL Committee 11D, Leonard Evans Clark as an attorney member to UPL Committee 13B, Nathan Flah as a public member to UPL Committee 15B, Danielle Liguori O'Halloran and John McQueen Miller III as attorney members to UPL Committee 20, Ashley Nona Sybesma, Brett Tyler Smith, Donald Eugene Yates, and Dustin Scott Hunter as attorney members and Barry Gibson and Dr. Ryan J. Barnett as public members to UPL Committee 16, and Edward Mayo Harvey, Jr., as an attorney member to UPL Committee 17A.

- Naming Richard B. (Dick) Collins as an attorney member to the Unlicensed Practice of Law Standing Committee.

- Approving an amendment to BLSE Policy 2.14 Applicant Review Process for Certification or Recertification: Within subdivision (h)(1), specifies the Board of Legal Specialization and Education will review a denial recommendation only if received at least 20 days before the meeting.

- Approving an amendment to BLSE Policy 2.15 Revocation: Adds interim administrative suspension and other sanctions to the current revocation policy.

- Agreeing not to oppose the Real Property, Probate and Trust Law Section from advocating the following legislative positions:

- Supporting proposed amendment to Section 733.610, Florida Statutes, by expanding the categories of entities and persons related to the personal representative for purposes of determining whether the personal representative, or someone sufficiently related to the personal representative for conflict purposes, holds a substantial beneficial or ownership interest that could create a conflict of interest when engaging in a sale, encumbrance, or other transaction.

- Supporting enactment of new Section 689.151 to the Florida Statutes to: (1) permit an owner of personal property to create a tenancy by the entireties by a direct transfer to the owner and the owner's spouse, or a joint tenancy with right of survivorship by a direct transfer to the owner and another person or persons, without requiring an intermediate transfer through a strawman, (2) permit joint tenants to hold unequal shares or interests in personal property in a joint tenancy with right of survivorship while retaining the right of survivorship, (3) and facilitate proving the existence of tenancies by the entireties and joint tenancies with right of survivorship in personal property by codifying and clarifying existing common law evidentiary presumptions.

- Approving the legislative consulting contract between The Florida Bar and Metz, Husband & Daughton, P.A.

- Approving the legislative consulting contract between The Florida Bar and Matt Bryan, Jeff Harley, Jim A. Naff, David Daniel, Andrea B. Reilly, Thomas Griffin, and Lisa Hurley.

- Approving the legislative consulting contract between The Florida Bar and Pamela Burch Fort.

- Approving the legislative consulting contract between the Business Law Section, The Florida Bar, and Metz, Husband & Daughton, P.A.

- Approving the legislative consulting contract between the Family Law Section, The Florida Bar, and Nelson Diaz and Edgar Castro of Southern Strategy Group of Miami, LLC.

- Approving the legislative consulting contract between the Trial Lawyers Section, The Florida Bar, and Messer, Caparello, P.A.

- Approving the appointment of Board of Governors member Edward "Duffy" Myrtetus to the Employee Retirement Committee for a vacancy in a term than ends June 30, 2020.

10. Citizens Advisory Committee Report

Chair Larry Tyree introduced members of the committee who were at the meeting – Louis Kalivoda, Herb Polson, Patience Burns, Holly Tyrell, Karen Cespedes, Petula Burks, Maggie Davis, and Mary Ann Morgan. Members Sylvia Fernandez Carra-Hahn and Vincent Cuomo attended the committee meeting on July 26 but were unable to attend the board meeting. He said the committee heard from President Suskauer on her plans for the year and was asked by the president to catalogue all opportunities offered by The Florida Bar and legal/justice organizations to get citizens involved in the legal/justice system at the state or local level. Tyree said the committee hopes to have a report ready by May 2019. The committee also had a presentation from Florida Bar Foundation President Juliette Lippman on the purpose and operations of the Foundation.

11. Budget Committee Report

Committee Chair Renée Thompson presented three budget amendments, including two rollovers from the 2017-18 budget year. One rollover was \$500,000 for roof and security system improvements at the Bar headquarters and the other was \$315,000 for phone and computer-related improvements. In addition, the committee recommended \$63,000 for the Criminal Justice Summit at the Fall meeting, with \$25,000 coming from a reallocation of existing funds and \$38,000 from the new program reserve. The board unanimously approved all of the budget amendments.

12. Member Benefits Committee Report

Thompson, liaison to the Member Benefits Committee, presented three new proposed programs, all of which were approved by the board:

- Law Office Support Services, Inc., which provides virtual paralegal and legal assistance services to law firms for a monthly subscription fee.
- Tali, which allows talking to an Amazon Alexa or Google Assistant enabled digital device to do time tracking and time keeping services for a law office.
- Digital Age Marketing Group which helps law firms with online marketing, social media, web design, search engine optimization, and video production.

13. Investment Committee Report

Chair Ian Comisky presented a plaque honoring the service of long-time Bar investment advisor James Bagwell of Morgan Stanley, who is retiring. He advised the Bar on investments for more than 28 years. Comisky reported the Bar's long-term portfolio had \$52.9 million, while its short-term portfolio had \$9.6 million. Comisky said the committee was not recommending any changes in the portfolios but was recommending slight amendments to the underlying investment policies. He noted all funds in the portfolios are compared against benchmarks and some of the benchmark names have changed. The amendments reflect those changes and the board unanimously approved the committee's recommendation.

14. Audit Committee Report

Chair Duffy Myrtetus reported the consolidated audit for the Bar's 2017-18 fiscal year has begun and the committee completed audits of the Bar's health and retirement plans. The committee also prepared a report on the fiduciary responsibility for the Bar's pension and deferred compensation programs and completed a review of the effectiveness of the Bar's financial controls. The committee is moving into the second phase of its information technology review. Currently there are 15 separate information technology projects have been completed, 16 are underway, and six are on hold, Myrtetus reported.

15. Florida Bar Foundation Report

Foundation President Juliette Lippman introduced new Executive Director Donnie McKenzie. She said the Foundation has 12 full-time staffers and she and McKenzie summarized the Foundations "strategic reset" necessitated by continuing low interest rates suppressing IOTA income. The reset has three parts: promoting cooperation and collaboration among the foundation, legal aid agencies, the business community, the Bar, and others interested in providing legal services to Floridians of limited means; acting as a watchdog on the health and functioning of the overall legal aid delivery system; and being an agent of change using technology and other tools to find innovative ways of delivering legal services. Lippman recounted Foundation activities to innovate new ways of providing services including a pro bono system where cases are posted from local communities and lawyers can find cases that match their interests and available time.

16. Special Committee on Trust Accounting Solutions Report

Parliamentarian Andy Sasso reported that the Bar has signed a contract with TMI trust services to launch a pilot of the Bar's free trust accounting program. TMI and FISTM will operate the pilot program which will eventually include around 20 law firms ranging from sole practitioners to

large firms and run for about six months. The program also will boost substantially IOTA income for the Foundation. Sasso estimated if 10 percent of Bar members with trust accounts use the program, Foundation IOTA income will get an \$8 million boost.

17. Civil Procedure Rules Committee Report

Committee Chair Miguel Chamorro and committee member Alan Landerman presented the committee's regular cycle rule changes, which included amendments to proposed settlement rules and several other minor and technical amendments. The board recommended approval of the amendments 41-0.

18. Young Lawyers Division Report

YLD President Christian George said the division will focus in the coming year on getting results from ongoing programs. He said the YLD is setting up a website to promote communication between the YLD board and affiliate members and he praised YLD board members for their hard work. YLD Board of Governors members, in attendance at the meeting, introduced themselves.

19. President's Report

President Suskauer reported she had spoken at the Florida Conference of County Court Judges, the section leaders and voluntary bar leaders conferences and sent out her first presidential video message, and plans follow-up messages every month. Each video message will be linked with a free CLE and the first one will be done by the Young Lawyers Division on social media. She reported Governor Rick Scott rejected four slates of nominees for judicial nominating commission appointments, and the Bar would be advertising those vacancies and screening committees would be appointed to review the applications. Suskauer talked about the Criminal Justice Summit she is working on planned for October 16-17 in Tampa at the start of the Bar's Fall Meeting.

20. Legislation Committee Report

Chair Mike Tanner presented the committee's recommendation to sunset, in accordance with Bar policies, all Bar, committee, section, and division legislative positions from the 2016-18 biennium and the board unanimously approved. He then presented requests from renewing for the 2018-20 biennium expired legislative positions from the Board of Legal Specialization and Education, the Code and Rules of Evidence Committee, the Legal Needs of Children Committee, the Military Affairs Committee, the Special Committee on Child and Parent Representation, the Administrative Law Section, Alternative Dispute Resolution Section, the Animal Law Section, the Appellate Practice Section, the Business Law Section, the City, County and Local Government Law Section, the Criminal Law Section, the Elder Law Section, the Entertainment, Arts and Sports Law Section, the Environmental and Land Use Law Section, the Family Law Section, the Government Lawyer Section, the Health Law Section, the International Law Section, the Public Interest Law Section, the Real Property, Probate and Trust Law Section, the Solo and Small Firm Section, the Tax Section, the Trial Lawyers Section, the Workers' Compensation Section, and the Out of State Division. The board first voted unanimously to find the committee positions within the purview of the Bar and then voted unanimously to roll over the requested committee, section, and division positions. Tanner said the committee will present recommendations on renewing expired Bar positions at upcoming board meetings. Legislative

Consultant Jim Daughton reported significant legislative activity won't occur until the Legislature reorganizes in November after elections, and then pre-session committee activity will be compressed into December, January, and February. Bar Outside Counsel Barry Richard reported on the recent U.S. Supreme Court decision in the *Janus* case.

21. Rules of Judicial Administration Committee Report

Chair Ed Sanchez and committee member Craig Leen presented the committee's report to the Supreme Court. The court had ordered the committee to file a report on granting continuances to lawyers expecting or adopting children with majority and minority positions, and getting the opinion of the Board of Governors. Sanchez reported that the committee in June had rejected a proposed rule that family leave continuances should be granted unless an opposing party objected in which case the burden would be on the moving attorneys to show the opposing party would not suffer significant harm. Continuances presumptively would be for 90 days. That recommendation became the committee's minority report with the majority recommending against the rule. The board voted 41-0 with one abstention to endorse the minority report.

22. Appearances by Past Bar Presidents

Former Presidents Steve Zack, James Fox Miller, Alan Dimond, Burton Young, and Edith Osman were recognized by the board, and each made brief comments. Osman, a state delegate to the ABA House of Delegates, also reported on current ABA activities.

23. Small Claims Rules Committee Report

Chair Maureen Walsh presented regular cycle rule amendments. She said the amendments attempt to remove legalese from the language, strive for consistency with civil procedure rules, and amend forms to be consistent with the way they are used in courtrooms by clerks. The board voted 38-0 to recommend approval of the amendments.

24. Probate Rules Committee Report

Co-Chair Cristina Papanikos presented regular and out-of-cycle rule amendments. The regular cycle amendments eliminate inconsistencies with the Rules of Judicial Administration and conform to recent legislative enactments, she said. The board recommended approval 38-0. The out of cycle amendments creates an injunction to prevent the exploitation of a vulnerable adult and governed by the rules of civil procedure and under the service method in the applicable statute. The board recommended approval 38-0.

25. Executive Session

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

26. Code and Rules of Evidence Committee Report

Chair Perry Adair presented a regular cycle amendment resulting from a statute which allows a family court to take notice of certain facts without prior notice to the parties if imminent danger to persons or property has been alleged. The board recommended approval 36-0.

27. Board Review Committee on Professional Ethics Report

Vice Chair Tom Bopp presented on first reading an amendment to Rule 4-7.14. The BRCPE voted 9-0 to approve amendments on June 12, 2018, which address how lawyers who are not

board certified and how law firms, which cannot be board certified, may refer to themselves as specialists, experts, or other variations of those terms. The proposed amendments to Rule 4-7.14 amend subdivision (a)(4) to omit parts of the rule that the Bar is enjoined from enforcing and add new subdivisions (a)(5), (a)(6) and commentary. The proposed amendments would allow a lawyer who is not board certified to use the terms "specialist" and "expert" if the lawyer can objectively verify the claims based on the lawyer's education, training, experience, and substantial involvement in the area of practice. The amendments would allow law firms to claim specialization or expertise if they can objectively verify the claim as to at least one lawyer in the firm based on the lawyer's education, training, experience, and substantial involvement in the area of practice, but would require a disclaimer that not all lawyers in the firm are specialists or experts if that is the case. New commentary is added explaining that lawyers are not required to be board certified to make claims of specialization and expertise, but do have to show education, training, experience, and substantial involvement in an area of practice to make such claims. The committee reviewed comments received at its July 26, 2018 meeting and recommended no changes in response to those comments. This item is for first reading and will be up for final action at the October Board meeting. No Board of Governors action was taken.

Bopp reported on Proposed Advisory Opinion 17-2 on lawyer referral service payments. The committee voted 8-0 to direct staff to draft a proposed advisory opinion regarding how a lawyer referral service or qualifying provider is paid, outlining applicable rules, their rationale, parameters for analysis, and setting forth examples of both complying and non-complying payments. No Board of Governors action was taken.

On the request for an amendment to Rule 4-7.13, Bopp said that the BRCPE approved a draft for circulation to those who previously filed comments on June 4, 2018, which states that a lawyer may not state or imply that another lawyer or law firm is part of, associated, or affiliated with the advertising lawyer if that is not the case, and that a lawyer may not mislead a consumer searching for a particular lawyer or law firm to unknowingly contact a different lawyer or law firm. The committee extended the time to receive written comments on the new draft until August 31, 2018, and will take the matter up at its October 2018 meeting. No Board of Governors action was taken.

Bopp related that the committee deferred action due to a lack of time on Advertising Inquiries 38381, 38387, 37997, and 38435 on whether 411-Pain, Ask-Gary and LegalRFQ are qualifying providers under Rule 4-7.22. No Board of Governors action was taken.

28. Executive Session

The board returned to executive session to continue discussing confidential matters.

29. Disciplinary Procedure Committee Report

Chair Wayne Smith is considering rule changes that are not ready to bring to the board and is working on a standing board policy amendment to provide a "safe harbor" for attorneys using the Bar's new trust accounting software when it is available for use.

30. Technology Committee Report

Chair Brian Burgoon reported the committee is working on two issues. One is exploring providing a secure client portal for Bar members so they can securely exchange documents with clients. Attorneys have expressed an interest in such a service and Burgoon said the committee is exploring the extent of the demand since it would be an expense for the Bar to

provide the service. The second issue is exploring a special designation that would be awarded to firms that meet specified technical standards. Even if firms were unable to qualify for the designation, it would provide a checklist for items they could address to become technologically more proficient, Burgoon said.

31. Executive Director's Report

Executive Director Josh Doyle reported the Bar has completed its first ever employee survey, has improved communications between Bar programs, and that he has met with all senior Bar staff and traveled to all Bar offices. He said the Bar is getting a new case management system for its discipline process and will likely use space vacated by a tenant at the Bar headquarters annex to expand Bar offices.

32. President-elect's Report

President-elect John Stewart, along with Pieter Gunst, founder of Legal.IO, which is overhauling the Bar's Lawyer Referral Services online operation, updated the board on the online improvements. Stewart and Gunst showed slides of what the site will eventually look like. They said it will make it easier for consumers to relate their legal problems and find lawyers, easier for lawyers to track their referral cases and pay the Bar for referrals, and easier for the Bar to track cases and determine outcomes. The improvements could go live in the fall. Stewart emphasized the changes will not affect coverage in areas where local bar associations run their own referral programs, although the Bar's system can accommodate inclusion of those local programs if those bar associations wish. Currently, the Bar referral program annually makes 40,000 to 50,000 referrals and earns the Bar \$300,000 to \$400,000.

33. Program Evaluation Committee Report

Chair Wayne Helsby reported the committee has several reviews set for the coming year based on the automatic three-year review of new programs, recommendations from the president and president-elect, and the committee's ongoing work. The areas to be reviewed include: the Council of Sections, the Section Leadership Conference, the Standing Committee on Technology, Florida Lawyers Assistance, Inc., the Military Affairs Committee, various Florida Bar committee awards, pro hac vice fees, a proposed diversion program for disruptive and unruly lawyers, and Bar civic education programs including Benchmarks and the Justice Teaching initiative. Helsby presented two recommendations to the Board that the Florida Registered Paralegal Committee be split into two committees, with the Registered Florida Paralegal Committee dealing with eligibility and compliance issues and an enrichment committee working to create awareness of the program and its benefits, overseeing education, networking, and social events. The board approved both motions.

34. Communications Committee Report

Chair Scott Westheimer reviewed the rollout of LegalFuel, The Practice Resource Center of The Florida Bar. The upgrades include improved searchability of the LegalFuel website and a discussion board and the site continues to offer a live chat capability for Bar members to contact practice advisers. The site will also feature a free CLE by the "LegalFuel Speakers Series" presented by well-known and respected Florida lawyers speaking on relevant and useful topics well-known and respected Florida lawyers speaking on relevant and useful topics. Other committee projects, Westheimer said, including improving the member portal on the

Bar's website, improving communications with local bars and Bar sections, overseeing the increasing online presence of the Bar Journal and News, and looking at the Bar's consumer videos to ensure their continued relevance.

35. Time and Place of Next Meeting

There being no further business before the board, President Suskauer adjourned the meeting. The next board meeting is October 12 at the Ritz-Carlton in Amelia Island.

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