

The Florida Bar Board of Governors
July 19, 2019
The Ocean Reef Club
Key Largo, Florida

1. Roll Call

John M. Stewart, President
Dori Foster-Morales, President-Elect
Jeremy C. Branning, 1st Circuit
Lawrence E. Sellers, Jr., 2nd Circuit
Melissa Van Sickle, 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
Sam Nicholas Masters, 7th Circuit
Stephanie M. Marchman, 8th Circuit
Thomas P. Wert, 9th Circuit
Wayne L. Helsby, 9th Circuit
Roland Sanchez-Medina, Jr., 11th Circuit
Jorge L. Piedra, 11th Circuit
Nikki L. Simon, 11th Circuit
Jordan A. Dresnick, 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
J. Carter Andersen, 13th Circuit
Paige A. Greenlee, 13th Circuit
Clifford C. Higby, 14th Circuit
R. Sia Baker-Barnes, 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
Hilary Creary, 17th Circuit
Adam G. Rabinowitz, 17th Circuit
James G. Vickaryous, 18th Circuit
Gregory S. Weiss, 19th Circuit
Laird A. Lile, 20th Circuit
John D. Agnew, 20th Circuit
E. Duffy Myrtetus, Out of State
Ian M. Comisky, Out of State
Brian D. Burgoon, Out of State
Santo DiGangi, YLD President
Adam White, YLD President-Elect
Joseph “Jody” D. Hudgins, Public Member

Members Absent

Julia L. Frey, 9th Circuit
C. Richard Nail, 10th Circuit
Eric L. Meeks, Out of State
Sharon B. Middleton, Public Member

2. Staff in Attendance

Joshua Doyle, Executive Director
Gypsy C. Bailey, General Counsel
Allison Sackett, Director, Legal Division & Interim Staff Counsel
Terry Hill, Director, Program Division
Rick Courtemanche, Deputy General Counsel
Francine Walker, Director, Public Information and Bar Services
Cynthia Jackson, CFO & Director, Administrative Division
Lori Holcomb, Division Director, Ethics and Consumer Protection
Elizabeth Clark Tarbert, Ethics Counsel
Rosalyn A. Scott, Assistant to the President
Jim Ash, Senior Editor, Florida Bar News

3. Invocation and Pledge of Allegiance

Board member Wayne L. Smith delivered the invocation and board member James G. Vickaryous lead the Pledge of Allegiance.

4. Guests

The Honorable Sharon Hamilton, Munroe County Judge
Kevin Madok, Clerk of the Circuit Court & Comptroller, Monroe County
Kyleen Hinkle, Florida Association for Women Lawyers
Grasford Smith, Virgil Hawkins Florida Chapter, NBA
David Aronberg, Government Lawyer Representative
The Honorable Angela J. Cowden, Florida Conference of Circuit Court Judges
The Honorable Joseph Williams, Conference of County Court Judges of Florida
Dominic “Donny” MacKenzie, Florida Bar Foundation
Andy Sasso, Parliamentarian

5. Swearing in of New and Returning Board Members

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

6. Minutes Approval

The Board approved the minutes of its May 24, 2019 meeting. That approval included ratifying the following action taken by the Executive Committee: On May 23, 2019, the committee voted 11-0 to select Roger H. Lutz to replace Jesse R. Butler, who withdrew from consideration, on the Bar’s slate of nominees for the 12th Circuit Judicial Nominating Commission.

7. Consent Agenda

The board approved the consent agenda, after item 5bi (Advertising Appeals 19-01549 and 19-01550) was removed. The approval included:

- Final approval of Rule 6-29.2 Definitions (Standards for Juvenile Law – Trial Definition): Adds clarifying language to subdivision (b) regarding what constitutes exceptions to the rule for consolidated cases in initial certification.
- Final approval of Rule 4-1.10 Imputation of Conflicts of Interest; General Rule: Within the third paragraph of the comment under “Definition of firm,” changes a rule reference from 4-1.11(c)(1) to 4-1.11(d).
- Final approval of Trial Lawyer Section Bylaw amendments: Within Article I, Section 2, adds subdivision (c) allowing law students to become affiliate members and renumbers subsequent subdivision. Within Article II, Section 2, adds consistent language to permit any interested law student to become an affiliate member of the section.
- Final approval of Tax Section Bylaw amendments: Within Article II, Section 1, adds subdivision (c) allowing law students to become affiliate members and renumbers subsequent subdivision. Within Article II, Section 2, adds

consistent language to permit any interested law student to become an affiliate member of the section.

- Final approval of Tax Section Bylaw amendments: Within Article I, Section 2, adds subdivision (f) to foster members' service to the general public. Within Article III, Section 2, revises subdivision (c) to maintain current election procedure deadlines consistent with revisions to subdivision (b). Within Article III, Section 3, revises subdivision (c) to cross-reference existing responsibility of Section Secretary. Within Article III, Section 3, revises subdivision (h) to expand responsibilities of director(s) of marketing and membership committee. Within Article III, Section 3, revises subdivision (j) to expand responsibilities of director(s) of legislation and regulations committee. Within Article VI, Section 2, revises subdivision (a)(2) to rename Meetings Committee to Washington, D.C. Trip Planning Committee. Within Article VI, Section 2, revises subdivision (b)(2) to expand Washington, D.C. Trip Planning Committee responsibilities. Within Article VI, Section 2, deletes subdivision (c). Within Article VI, Section 4, deletes subdivision (a)(1)(A)-(B). Within Article VI, Section 4, revises subdivision (b) to conform responsibilities of Federal Tax Division. Within Article VI, adds new Section (5) to create International Tax Division. Within Article VI, Section 8, adds new subdivision (a) to create meeting committee. Within Article VI, Section 9, expands responsibilities of marketing and membership committee. Within Article VI, Section 11, expands responsibilities of legislation and regulations committee. Within Article IX, Section 7, provides for updated effective date upon Board of Governors' approval.
- Agreeing not to oppose the Real Property, Probate and Trust Law Section taking the following Legislative positions:
 - Support proposed legislation to create Section 95.2311, which would establish a method of correcting obvious typographical errors in legal descriptions contained in real property deeds.
 - Support a clarification that the one-year statute of limitations on a mortgage foreclosure deficiency action begins on issuance of the certificate title.
- Agreeing not to oppose the Animal Law Section taking the following legislative positions:
 - Support legislation that bans the sale, trade, and purchase of shark fins.
- Agreeing not to oppose the Business Law Section taking the following legislative position:

Support the Honoring American Veterans in Extreme Need Act of 2019 (the “HAVEN” Act) S.679 and HR 2938 – or any similar subsequent legislation.

- Approve the legislative consulting contract between the Business Law Section and Metz, Husband & Daughton, P.A.
- Approving the legislative consulting contract between the Family Law Section and Smith, Bryan and Myers, Inc.
- Approving an amendment to the Bar’s employee deferred compensation plan to allow the inclusion of a Roth contribution investment tool.

8. Remarks, Former President Michael J. Higer

Former President Michael J. Higer noted the 50th anniversary of Apollo 11 and praised board members for accepting a mission to protect the public.

9. Citizens Advisory Committee Report

Chair Mary Ann Morgan introduced committee members to the board and reported that the committee had been briefed on the Bar grievance process, The Florida Bar Foundation, the Florida Supreme Court Commission on Access to Civil Justice, and legislative activity.

10. Media Consultant Report

Sachs Media Group CEO Ron Sachs delivered a Power Point presentation on crisis communication plans.

11. Budget Committee Report

Chair Steven W. Davis moved the following three rollover budget amendments:

1. Roll \$191,000 of unspent capital improvement funds into the FY 19-20 Fixed Asset Fund budget of \$482,000 for a new fixed asset budget allocation of \$673,000. This will be used for facility projects that were delayed until FY 19-20 after the completion of roof repairs.
2. Roll \$135,000 of unspent budget in the Executive Director’s consultant line item and \$500,000 Raise & Fringe Pool over into the current year. The consultant line item will be used to continue consulting services related to a compensation study and board streamlining review. The raise & fringe funds will be held in contingency for immediate needs identified as a result of the compensation study. The amended FY 19-20 budget allowances for ED Consultants will be \$235,000 and the Raise & Fringe Pool budget will be \$1,091,322.
3. Roll \$40,000 of unspent OSCA Project funds from prior year into the current year budget of \$30,000 for a new FY 19-20 total of \$70,000 to allow for

additional consulting services for the Business Law Section to determine the need for statewide business courts. The board voted unanimously to recommend approval.

With \$27 million in reserves and despite the budgeted \$2.5 million operating loss, the Bar's financial position remains "very, very strong." The current fee structure is projected to support operations and continue to provide recommended reserves until 2023. A \$2.5 million litigation reserve fund has been created. Digitizing the Bar News and Journal has saved \$700,000 to date. The five-year IT transition project is on schedule and under budget.

12. Rules Committee Report

Chair Amy S. Farrior reported that at a June summit, the Bar discussed with the Supreme Court ideas to streamline the procedural rule-making process and ways to make it more collegial. Among many suggestions made, Bar leaders and rules committee chairs proposed reducing the three-year cycle to two years.

13. President's Report

President John M. Stewart urged board members to suggest innovative approaches to address unregulated legal services providers in a manner that promotes access to justice. President-elect Dori Foster-Morales suggested surveying Bar membership and seeking Citizens Advisory Committee input.

14. Legislation Committee Report

Chair Lawrence E. Sellers described prior committee action approved on consent agenda items. The committee was briefed by the Health Law Section. Board members are urged to submit Key Contacts forms. Legislative consultant Jim Daughton reported that state agencies are preparing Legislative Budget Requests and the courts are identifying spending priorities.

15. Investment Committee Report

A motion was made to rebalance the portfolio by selling some of three slightly overweight classes and shift it to fixed income. 1) Large Cap Equity-Vanguard Index fund (\$960,000), 2) Mid Cap Equity-Congress Fund (\$170,000) and 3) REIT – Tortoise Fund (\$250,000) and shift those funds to the 1 Year Treasury that is already scheduled to mature in December. The board voted to recommend approval.

16. Young Lawyers Division Report

President Santo DiGangi reported that the Young Government Lawyers Summit is scheduled for November 1 in Orlando. The Equality Committee is working on an accountability project. The former Law Student Division is being rebranded as Law School Affiliates. The Local Bar Affiliates Committee is updating its website. The Transition to Practice Committee is working with an ABA taskforce to address the student debt crisis and to promote financial literacy.

17. Florida Supreme Court Commission on Access to Civil Justice Report

Commission Executive Committee Chair Gregory W. Coleman noted that 4 million low-income Floridians and 9 million moderate-income Floridians lack access to justice. A 2015 Florida Bar Foundation report attributed \$600 million in economic impact to the work of legal aid associations. Florida Bar members donated \$5.8 million to legal aid organizations and 1.4 million hours in 2017-2018. The commission has created a comprehensive, searchable database of access products.

18. Executive Session

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

19. Advanced Florida Registered Paralegal Program Report

Liaison Wayne L. Smith reported that the Florida Supreme Court Commission on Access to Civil Justice is proposing to amend Chapter 20 to create an Advanced Florida Registered Paralegal designation as part of the Florida Registered Paralegal program. The commission is seeking board comment on the proposal. President-elect Dori Foster-Morales suggested asking the Family Law Section to review the proposal. President John M. Stewart directed the proposal to be circulated to all sections. No Board of Governors action was required.

20. Family Law Rules Committee Report

Incoming Chair Mary Lou Cuellar-Stilo, pursuant to Rules of Judicial Administration 2.140(b), submitted the Family Law Rules Committee 2020 Regular Cycle Report. No board action was required.

21. Appellate Court Rules Committee Report

Committee Chair Thomas D. Hall, pursuant to Florida Rule of Judicial Administration, 2.140(b), moved the Appellate Court Rules Committee 2020 Regular Cycle Report. The board voted unanimously to recommend approval. Pursuant to Florida Rule of Judicial Administration 2.140 (f), Chair Hall moved the joint Small Claims Rules Committee, Civil Procedure Rules Committee, and Appellate Rules Committees' out-of-cycle amendments, as requested by the Florida Supreme Court. The board voted 37-0 to recommend approval.

22. Florida Probate Rules Committee Report

Committee member Alexandra V. Rieman, pursuant to Florida Rule of Judicial Administration 2.140(f), moved the Florida Probate Rules Committees' out-of-cycle amendments, as requested by the Florida Supreme Court. The board voted 36-0 to recommend approval.

23. Rules of Judicial Administration Committee Report

Liaison Michael G. Tanner, pursuant to Florida Rule of Judicial Administration 2.140(b), presented for information only the Rules of Judicial Administration Committee 2020 Regular Cycle Report. Board members were asked to note proposed changes to Rule 2.330 Disqualification of Trial Judges. No Board of Governors action was required.

24. Board Review Committee on Professional Ethics Report

Chair Thomas R. Bopp gave the report of the Board Review Committee on Professional Ethics: Item 5bi was removed from consent.

Advertising Appeals 19-01549 and 19-01550

The Board Review Committee on Professional Ethics voted 10-1 to recommend that the Board of Governors reverse the Standing Committee on Advertising and find that the firm name, Shupe Dhawan, as used in the advertisements in files 19-01549 and 19-01550, is not misleading under Rules 4-7.21(b) and 1-3.3(b) when the lawyer owner's official bar name is Shupe-Abbas under the specific circumstances of this situation: the filer's official bar name is unique (there is currently no other lawyer with the last name Shupe or Shupe-Abbas), the lawyer continues to use her original official bar surname as part of her official bar name hyphenated with her married name, the firm has built a reputation using the original official bar surname, and the firm has existed in continuous line of succession with its name unchanged. The Board of Governors approved the recommendation on voice vote without objection.

Ethics Inquiry 39346 – Request for Formal Advisory Ethics Opinion on Guardian Ad Litem Program

The Board Review Committee on Professional Ethics voted 9-1 to decline to issue an advisory opinion at the request of a member of the Special Committee on Child and Parent Representation on whether various aspects of the Guardian Ad Litem Program model violate the Rules of Professional Conduct, because the request did not meet the parameters for issuing a Board of Governors opinion under the Florida Bar Procedure for Ruling on Questions of Ethics 2(c)(2), “when the board of governors determines that the application of the Rules of Professional Conduct is likely to be of widespread interest or unusual importance to a significant number of Florida Bar members.

Amendments to Rule 4-5.8 Procedures for Lawyers Leaving Law Firms and Dissolution of Law Firms

The Board Review Committee on Professional Ethics voted 7-2 with 1 abstention to approve amendments to the commentary to Rule 4-5.8 addressing disposition of files when a lawyer leaves a law firm, which will be presented on first reading at the September Board of Governors meeting. No Board of Governors action was taken.

25. Disciplinary Procedure Committee Report

Chair Ronald P. Ponzoli moved proposed changes to Rule 3-6.1, Suspended and Disbarred Attorneys, as requested by the Florida Supreme Court. The proposed amendments appeared on first reading on the Board of Governors May 24 agenda. Board member Laird A. Lile moved a substitute amendment to subsection (c), “Notice of Employment Required”, inserting the words, “who will be” immediately after the word “individual” in the phrase, “employing any individual subject to this rule.” The board voted to approve the amendment. The board voted to approve the proposed rule as amended.

Proposed changes to Rule 1.38 Right to Inventory

Chair Ponzoli presented first reading of proposed amendments to Rule 1.38 Right to Inventory. No Board of Governors action was required.

Proposed changes to Alternative Dispute Resolution Bylaws

Chair Ponzoli presented first reading of proposed changes to Bylaws of the Alternative Resolution Dispute Section. No Board of Governors action was required.

26. Program Evaluation Committee Report

Chair F. Scott Westheimer moved proposed changes to Standing Board Policy 1.60 Omitting Section Bylaws and Standing Board Policy 5.52 regarding streamlining the process for amending section bylaws. The board voted to recommend approval.

27. Technology Committee Report

Chair Renée E. Thompson reported that the committee will focus on data security, blockchain applications in the legal industry and trust accounting solutions products. The committee is working with the Standing Committee on Technology to implement PEC-recommended standards.

28. Member Benefits Committee Report

Liaison Renée E. Thompson moved approval of TrustBooks as a new member benefit. TrustBooks is web-based software designed for law firms to more easily manage trust accounts while staying compliant with bar rules. Bar members will be eligible for 10% or 25% discounts depending on subscription type. The vendor will pay the Florida Bar 10% of revenue on all new, active subscriptions from Bar members when new users enter a promotional code. The board voted unanimously to recommend approval.

29. Special Committee on Technologies Affecting the Practice of Law

Immediate Past Chair John M. Stewart reported that final consideration of proposed amendment to Florida Bar Rules, “Chapter 23 Registered Online Service Provider Program,” will be delayed until the September meeting.

30. Communications Committee Report

Chair E. Duffy Myrtetus reported that the committee held a joint meeting with the Citizens Advisory Committee. The committee is developing a database to help facilitate greater citizen participation. The committee is developing a strategic communications plan. The committee was briefed by the YLD.

31. Executive Director’s Report

Executive Director Joshua Doyle reported that limited website development of social media services for small and mid-sized sections is a new source of non-fee revenue. Non-fee revenues surpassed the budgeted amount for the previous year. General Counsel Gypsy Bailey standardized Bar contracts, with input from board member E. “Duffy” Myrtetus. Site visits were conducted to branch offices. The

public records policy is under review and a redaction guide is being developed. A staff salary survey will include comparisons with other mandatory bars.

32. Judicial Nominating Commissions Report

President Stewart reported that the governor rejected the following Bar slates: Second DCA, Fifth DCA, Seventh Circuit, Ninth Circuit, Fifteenth Circuit, Sixteenth Circuit and Eighteenth Circuit.

33. Informational Items

President Stewart reported that following a rules and bylaws review, the Florida Board of Bar Examiners will propose eliminating Board of Governor's participation in the appointment of FBBE members. President Stewart will invite the FBBE Chair to a future BOG meeting to discuss.

34. Time and Place of Next Meeting

There being no further business before the board, President Stewart adjourned the meeting at 2:57 p.m. The next Board meeting is September 20, 2019, at The Henderson in Destin.

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