

The Florida Bar Board of Governors
September 20, 2019
The Henderson
Destin, Florida

1. Roll Call

John M. Stewart, President
Dori Foster-Morales, President-Elect
Jeremy C. Branning, 1st Circuit
Lawrence E. Sellers, Jr., 2nd Circuit
Bruce W. Robinson, 3rd Circuit
Michael Fox Orr, 4th Circuit
Michael G. Tanner, 4th Circuit
Renée E. Thompson, 5th Circuit
Sandra Fascell Diamond, 6th Circuit
Sam Nicholas Masters, 7th Circuit
Stephanie M. Marchman, 8th Circuit
Thomas P. Wert, 9th Circuit
Julia L. Frey, 9th Circuit
Wayne L. Helsby, 9th Circuit
C. Richard Nail, 10th Circuit
Roland Sanchez-Medina, Jr., 11th Circuit
Jordan A. Dresnick, 11th Circuit
Jorge L. Piedra, 11th Circuit
Jeffrey Rynor, 11th Circuit
Steven W. Davis, 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
J. Carter Andersen, 13th Circuit
Paige A. Greenlee, 13th Circuit
Clifford C. Higby, 14th Circuit
Robin I. Bresky, 15th Circuit
Wayne LaRue Smith, 16th Circuit
Jay Kim, 17th Circuit
Lorna E. Brown-Burton, 17th Circuit
John D. Agnew, 20th Circuit

E. Duffy Myrtetus, Out of State
Ian M. Comisky, Out of State
Eric L. Meeks, Out of State
Santo DiGangi, YLD President
Adam White, YLD President-Elect
Joseph “Jody” D. Hudgins, Public Member
Sharon B. Middleton, Public Member

Members Absent

Melissa Van Sickle, 2nd Circuit
Joshua T. Chilson, 6th Circuit
Nikki L. Simon, 11th Circuit
Amy S. Farrior, 13th Circuit
R. Sia Baker-Barnes, 15th Circuit
Ronald P. Ponzoli, Jr., 15th Circuit
Gary S. Lesser, 15th Circuit
Diana Santa Maria, 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
Brian D. Burgoon, Out of State

2. Staff in Attendance

Joshua Doyle, Executive Director
Gypsy C. Bailey, General Counsel
Allison Sackett, Director, Legal Division
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
Patricia A. Savitz, Staff Counsel
Rosalyn A. Scott, Assistant to the President
Jim Ash, Senior Editor, Florida Bar News

3. Invocation and Pledge of Allegiance

Board member Jeremy C. Branning delivered the invocation and board member Clifford C. Higby led the Pledge of Allegiance.

4. Welcome

The Honorable Christopher N. Patterson, Chief Judge of the Fourteenth Judicial Circuit, the Honorable John L. Miller, Chief Judge of the First Judicial Circuit, and J.D. Peacock, II, Okaloosa County Clerk of Circuit Court and Comptroller, welcomed board members to the Emerald Coast.

5. Guests

Frances Guasch de la Guardia, Cuban American Bar Association
Kyleen Ann Hinkle, Florida Association for Women Lawyers
Grasford W. Smith, Virgil Hawkins Florida Chapter, National Bar Association
David Aronberg, Government Lawyer Representative
The Honorable Angela Cowden, Florida Conference of Circuit Court Judges
Andy Sasso, Parliamentarian
Lori Ellen Ward, Walton County Bar Association

6. Remarks, Former President Alan C. Bookman (2005)

Former President Bookman thanked the board for making meetings accessible to attorneys throughout the state.

7. Announcements

President Stewart reported that the board agenda and meeting format are being redesigned to improve efficiency. A board survey showed members evenly divided over presenting committee reports orally or submitting them in writing.

8. Minutes Approval

The Board approved the minutes of its July 19, 2019 meeting. That action included ratifying the following action taken by the Executive Committee:

- On July 31, 2019, the Executive Committee voted 12-0 to approve a request by the Real Property, Probate and Trust Law Section for a position (comment) solicited by the Florida Supreme Court Committee on Alternative Dispute Resolution Rules and Policy. The proposed rule change is on proposed amendments the Florida Rules of Civil Procedure and the Florida Family Law Rules of Civil Procedure. The amendments provide that when parties cannot agree upon a mediator, they may request, or the court on its own motion may appoint, a Florida Supreme Court certified elder mediation training program.

- On September 6, 2019, the Executive Committee voted 11-0 to approve an amendment to the Rules of Judicial Administration, Rule 2.420 (Public Access to and Protection of Judicial Branch Records) to accommodate a legislative amendment. Rule 2.420(d)(1)(B)(i) would simply include a reference to the statute within a current subdivision. The subdivision would include the following underlined reference: (i) Chapter 39 records relating to dependency matters, termination of parental rights, guardians ad litem, child abuse, neglect, and abandonment. §§ 39.0132(3), 39.0132(4)(a), 39.202, Fla. Stat.
- On September 6, 2019, the Executive Committee voted 11-0 to approve a comment and proposed rule amendment by the Rules of Judicial Administration Committee to new Rule 2.420(d)(1)(B)(xxiii). The suggested amendment would state, in double-underline and strikethrough: (~~xxxiii~~) Records that contain Information that can be used to identify a petitioner or respondent in a petition for injunction against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking, and any affidavits, notices of hearing, and temporary injunction until the respondent has been personally served with a copy of the petition for injunction, affidavits, notice of hearing, and temporary injunction. §§119.0714(1)(k)3., Fla Stat.

9. Consent Agenda

The board voted unanimously to approve the consent agenda, after items 5bi and 5bii were removed.

- Agreed not to oppose the Real Property, Probate and Trust Law Section taking the following legislative positions:
 - 1) Support changes to Fla. Stat. 222.21(2)(c) to clarify that an ex-spouse's interest in an IRA which is received in a transfer incident to divorce is exempt from the claims of the transferee ex-spouse's creditors.
 - 2) Support proposed legislation to improve the notice of administration to the surviving spouse to include notice that an extension of the deadline for taking an elective share may be requested prior to the expiration of the deadline for making the election, including changes to F.S. 733.212(2)(e).
 - 3) Support amending Section 733.212, F.S., which governs the contents of a notice of administration, to require additional language to provide adequate notice that a party may be

waiving their right to contest a trust if they fail to timely contest the will.

- 4) Supports a repeal of 83.561, F.S.: (i) eliminate inconsistencies between it and the more protective federal Protecting Tenants at Foreclosure Act; and, (ii) clarify the rights and obligations of tenants and purchasers of property upon foreclosure sale.
- Agreed not to oppose the Health Law Section taking the following legislative position:
 - 1) The Florida Patient Brokering Act, Section 817.505, Florida Statutes, as amended by HB 369 effective July 1, 2019, should be revised to provide clarity as to its application to commonly accepted business arrangements in the health care industry without adversely impacting the intent of HB 369 to strengthen the law. The amendment should address two parts of the statute. The first is to clarify subsection (3)(a) of the statute, which is an exception to the statute's prohibition for arrangements that are "expressly authorized" under the federal anti-kickback law. The second is to clarify the "aiding and abetting" language in the statute as it relates to an attorney's good-faith advice to a client regarding compliance with the statute.
 - Approved the following Section Legislative Advisor Agreements:
Elder Law Section: Brian Jogerst. Real Property, Probate and Trust Law Section: Dean Mead. Workers Compensation Section: Fausto Gomez.
 - Approved the following Florida Bar/Judicial Conference Advisor Agreements: Florida Conference of Circuit Court Judges: Pete Dunbar. Florida Conference of Circuit Court Judges: Stephen Shiver. Conference of County Court Judges of Florida: Paul Hawkes. Florida Conference of District Court of Appeal Judges: Paul Hawkes.
 - Member Benefits Committee recommendations: Time Miner Plus App, a retroactive time capture platform for professionals who bill by the hour, (non-exclusive.) Jacksonville Jaguar discounted single-game and season tickets. (non-exclusive.)
 - UPL Circuit Committee Member Nominations: Committee 1B: **Pat Glover**, public member; **Dana C. Matthews, II**, attorney. Committee 6A: **Raymond C. Carr**, attorney. Committee 6B: **Lindsay F. Moore**, attorney. Committee 7A: **Sara E. Altes**, attorney. Committee 13A:

- Christian Nunez Katchuk**, attorney. Committee 15B: **David H. Schulson**, attorney. Committee 20: **Elizabeth C. Bentley**, attorney.
- UPL Standing Committee Member Nominations: **Eva Bartczak**, public member.

10. Special Committee on Technologies Affecting the Practice of Law Report

President John Stewart, acting as former committee chair, presented a proposed amendment to Florida Bar Rules, “Chapter 23 Registered Online Service Provider Program.” The voluntary program is designed to protect consumers who obtain legal services online. The board voted unanimously to recommend approval.

11. Investment Committee Report

Bar financial advisor Chris Bridges reported that the \$52 million long-term fund is closely monitored and managed in accordance with the approved investment policy to ensure investment strategies are meeting benchmarks. The portfolio is adequately balanced to maximize returns and minimize risk.

12. Budget Committee Report

Chair Steven Davis moved a \$20,000 budget amendment that would increase the \$30,000 allotted to The Florida Bar’s Lawyer Referral Service to \$50,000. The amendment would provide funds to allow Legal.IO., in coordination with The Florida Bar and the local bar referral services who are interested, to expand the functionality of the system by enabling lawyers in areas covered by a local referral service to opt-in to The Florida Bar’s referral program. The board voted unanimously to recommend approval.

13. Legislation Committee Report

Chair Lawrence Sellers reported that the committee approved position requests from the Real Property, Probate and Trust Law Section and the Health Law Section. The committee renewed legislative advisor contracts with the Elder Law Section, the Real Property, Probate and Trust Law Section, the Worker’s Compensation Section, the Florida Conference of District Court of Appeal Judges, the Florida Conference of Circuit Court Judges and the Conference of County Court Judges of Florida. Section advisor contracts provide for coordination with The Florida Bar’s objectives. Legislative advisor Jim Daughton reported that the state courts’ annual legislative budget request includes judicial salary increases. The Florida Association for Women Lawyers and the Conference of County Court Judges of Florida will sponsor The Florida Bar’s annual legislative reception on January 29 in Tallahassee.

14. Traffic Court Rules Committee Out-of-Cycle Report

Final Action -- Florida Rules of Traffic Court 6.040

Liaison Jorge Piedra reported that the committee voted 15-2, with one abstention, to recommend approval of proposed out-of-cycle amendments to the Florida Rules of Traffic Court 6.040. Board members were asked to note proposed changes to the definitions of “cancellation,” “disqualification,” “revocation” and “suspension.” The board voted 32-0 to recommend approval.

15. Board Review Committee on Professional Ethics Report

Chair Thomas Bopp presented the committee report. Items 5bi and 5bii were removed from the consent calendar.

5bi Advertising Appeals 19-03233 through 19-03238

The Board Review Committee on Professional Ethics voted 6-2 to recommend that the Board of Governors reverse the Standing Committee on Advertising decision in files 19-03233 through 19-03238, determining that the use of the vanity telephone number, 1-800-411-PAIN, in the billboards in north and southwest Florida in files 19-03233 through 19-03238 is not misleading under Rule 4-7.13(a) although the advertisements are on behalf of private law firm Kanner & Pinaluga, P.A., the vanity telephone number, 1-800-411-PAIN, was used for more than 20 years by the now-defunct lawyer referral service 1-800-411-PAIN, and the provider/lawyer referral service Path in southeast and central Florida. The board voted unanimously to approve.

5bii Advertising Appeal 19-03380

The Board Review Committee on Professional Ethics voted 6-3 to recommend that the Board of Governors affirm the Standing Committee on Advertising decision that the statement “Ambulances Chase Us” on a billboard for a private law firm that practices personal injury is deceptive or misleading under Rule 4-7.13(a) because it is both unethical and illegal for ambulance drivers to solicit cases for lawyers and because it is factually and legally inaccurate. A motion to defer the issue failed. The Board of Governors voted 18-14 to approve the Board Review Committee on Professional Ethics recommendation.

Request for Ethics Opinion on Guardian Ad Litem Program

The Board Review Committee on Professional Ethics voted 9-1 on July 18, 2019, that a request that the Board of Governors issue an advisory ethics opinion on whether various aspects of the Guardian Ad Litem Program model violate the Rules of Professional Conduct 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) as the application of the Rules of Professional Conduct to the

particular set of facts was not “likely to be of widespread interest or unusual importance to a significant number of Florida Bar members” and recommended that the Board of Governors decline to issue an advisory ethics opinion on this issue. The board voted unanimously to recommend approval.

First Reading -- Rule 4-5.8 Procedures for Lawyers Leaving Law Firms and Dissolution of Law Firms

Chair Thomas Bopp presented on first reading that proposed amendments to commentary to Rule 4-5.8 were approved by the committee and more appropriately address file ownership and disposition when a lawyer leaves a law firm, alerting lawyers that file ownership is a question of law and may be determined by the employment, partnership, or ownership agreement between the lawyer and the firm. It also alerts lawyers and firms that disposition of client files should be discussed when there is a change in firm composition. Amendments will be on the Board of Governors agenda for December for final action.

16. Disciplinary Procedure Committee Report

First Reading -- Rule 3-6.1 Incapacitated Lawyers

Committee member Bruce Robinson presented proposed amendments that within subdivisions (a) and (b), adds lawyers on the inactive list due to incapacity to members subject to the rule. No board action was required.

Final Action -- Rule 1-3.6 Delinquent Members

Committee member Bruce Robinson moved final action on proposed amendments that would add a new subdivision (g) that failure to file a trust account certificate causes a bar member to be deemed delinquent to clarify that members become delinquent when they fail to complete an annual trust account certificate as required by Chapter 5 of the Rules Regulating The Florida Bar. The board voted unanimously to recommend approval.

Final Action -- Rule 1-3.8 Right to Inventory (Pay Inventory Attorneys)

Committee member Bruce Robinson reported that the item was removed from the agenda pending further review. No board action was required.

17. Program Evaluation Committee Report

Chair Scott Westheimer reported that evaluations of the Condominium and Planned Development Law and Juvenile Law certification program areas have been completed and the programs are meeting their objectives.

First Reading --Rule 6-10.3 Minimum Continuing Legal Education Standards (Administrative Law Judge Exemption)

Chair Westheimer reported that proposed amendments to Rule 6-10.3 Minimum Continuing Legal Education Standards were removed from the agenda after the committee voted to deny. No board action was required.

Final Action -- Bylaws of the Alternative Dispute Resolution Section

Chair Westheimer moved final action on proposed amendments to Bylaws of the Alternative Dispute Resolution Section. The board voted unanimously to approve.

18. Rules Committee Report

Committee member Michael Orr presented the following items on first reading:

- Rule 1-12.1 Amendment to Rules; Authority; Notice; Procedures; Comments; Rule 1-3.10 Appearance by Non-Florida Lawyer in a Florida Court (Annual Renewal Fee); Rule 7-1.3 Administration (Closure When Claimant Dies); Rule 7-1.4 Definitions (Moving Unclean Hands); Rule 7-2.3 Payments (Death of Claimant Procedures); Rule 7-2.4 Prerequisites to Payment (Misconduct After Order Suspension); Rule 7-2.5 Claims Ordinarily Denied (Unclean Hands); Rule 10-2.2 Form Completion by a Nonlawyer (Supervision); Rule 10-6.3 Recommendations and Disposition of Complaints (Cease and Desist Closure); Rule 10-7.2 Proceedings for Indirect Criminal Contempt (Testimony for Restitution); Standing Board Policy 1.60 Board Action on Proposed Rule or Policy Amendments (Removing CSF Regs); Florida Bar Procedures for Ruling on Questions of Ethics (Adding OOS).

No board action was required.

- Final Action -- Rule 21-4.1 Activities and Requirements (Temporary Practice)

Committee member Michael Orr moved final action on proposed amendments to Rule 21-4.1, as requested by the Supreme Court. The board voted unanimously to recommend approval.

19. Technology Committee Report

Chair Renée Thompson reported that the committee viewed a demonstration of online trust accounting software by TrustBooks. The committee is following the work of the Florida Block Chain Taskforce. The Bar's Lawyer Referral System has logged 48,053 referrals since February.

20. Communications Committee Report

Chair Duffy Myrtetus reported that the committee is developing a Mandatory Bar Message Map. The committee is working with the Bar's media consultant to develop a new communications plan.

21. President's Report

President Stewart reported that a joint committee is studying the concept of accepting advertising on The Florida Bar webpage and the front page of the *Florida Bar News*. Another joint committee is studying the concept of Bar sponsorship of high-school mock trial competitions.

22. Special Appointments

- **Florida Legal Services, Inc., Board of Directors**, (1 lawyer to serve the remainder of a 3-year term, commencing immediately and ending June 30, 2022.) Applicants: **Jared N. Quartell**, North Palm Beach; **Michele Samaroo**, Miami Gardens, and **Jessica M. VanValkenburgh**, Stuart, (recommended by the FLS board of directors.) The board voted unanimously to nominate **Jessica M. VanValkenburgh**.

23. Young Lawyers Division Report

President Santo DiGangi reported that the next YLD board meeting is October 24-27 in Clearwater Beach. A Young Government Lawyers Summit is scheduled for November 1 in Orlando. The YLD activated an emergency legal assistance hotline for Hurricane Michael. Content development continues for the Stigma-Free YLD website.

24. Remarks, The Honorable Chris Sprowls, Florida House District 65

Representative Sprowls thanked Florida Bar colleagues for aiding development of a nationally recognized criminal justice data portal. The portal activates next summer. The Florida Bar is a key resource for improving the efficiency of the judiciary. Lawmakers will focus on workforce development next session.

25. Executive Session

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

26. Florida Board of Bar Examiners Report

Florida Board of Bar Examiners Chair Scott Baena asked for approval of proposed amendments to Florida Board of Bar Examiners Rules 1-22.2 and 1-22.3. The changes would decrease Board of Governors membership on a joint nominating committee from three to two. Nominations for lawyer members would be forwarded to the Supreme Court without a Board of Governors vote. The board voted unanimously to table consideration.

27. Time and Place of Next Meeting

There being no further business before the board, President Stewart adjourned the meeting at 12:12 p.m. CDT. The next Board meeting is December 6, 2019 at Disney's Contemporary Resort in Orlando.

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