

Florida Bar Board of Governors  
December 4, 2020  
By Videoconference

**1. Roll Call**

Dori Foster-Morales, President  
Michael G. Tanner, President-Elect  
Jeremy C. Branning, 1st Circuit  
Lawrence E. Sellers, Jr., 2nd Circuit  
Melissa VanSickle, 2nd Circuit  
Kris B. Robinson, 3rd Circuit  
Michael Fox Orr, 4th Circuit  
W. Braxton Gillam, IV, 4th Circuit  
Renée E. Thompson, 5th Circuit  
Joshua T. Chilson, 6th Circuit  
Sandra Fascell Diamond, 6th Circuit  
Philip J. Bonamo, 7th Circuit  
Stephanie M. Marchman, 8th Circuit  
Thomas P. Wert, 9th Circuit  
Julia L. Frey, 9th Circuit  
Tad A. Yates, 9th Circuit  
C. Richard Nail, 10th Circuit  
Roland Sanchez-Medina, Jr., 11th Circuit  
Nikki L. Simon, 11th Circuit  
Jordan A. Dresnick, 11th Circuit  
Jorge L. Piedra, 11th Circuit  
Jeffrey Rynor, 11th Circuit  
Steven W. Davis, 11th Circuit  
Alice Sum, 11th Circuit  
F. Scott Westheimer, 12th Circuit  
Kenneth G. Turkel, 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  
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  
Eric L. Meeks, Out of State  
Brian D. Burgoon, Out of State  
Adam White, YLD President  
Todd L. Baker, YLD President-Elect  
Joseph “Jody” D. Hudgins, Public Member  
Linda Goldstein, Public Member

**Members Absent**

Adam G. Rabinowitz, 17th Circuit

**2. Staff in Attendance**

Joshua Doyle, Executive Director  
Allison Sackett, Director, Legal Division  
Gypsy Bailey, General Counsel  
Terry Hill, Director, Program Division  
Cynthia Jackson, CFO & Director, Administrative Division  
Rick Courtemanche, Deputy General Counsel  
Elizabeth Clark Tarbert, Ethics Counsel  
Patricia A. Savitz, Staff Counsel  
Francine Walker, Director, Public Information and Bar Services  
Mike Garcia, Director, Research, Planning and Evaluation  
Mikalla Davis, Attorney Liaison, Rules  
Rosalyn A. Scott, Assistant to the President  
Leslie Reithmiller, Program Administrator  
Jim Ash, Senior Editor, Florida Bar News

### **3. Executive Session**

Board members went into executive session to discuss disciplinary and other matters.

### **4. Invocation and Pledge of Allegiance**

Board member Renée Thompson delivered the invocation and board member Michael Orr led the Pledge of Allegiance.

### **5. Guests**

President Dori Foster-Morales recognized the following guests:

Andrew Blaise Sasso, Parliamentarian.

A. Dax Bello, Cuban American Bar Association.

Kimberly E. Hosley, Florida Association for Women Lawyers.

Kevin Nash, Virgil Hawkins Florida Chapter, NBA.

Karen Ladis, Legal Aid Representative.

Vivian Cortes Hodz, Voluntary Bar Representative

Altanese P. Phenelus, Government Lawyer Representative.

### **6. Minutes Approval**

The board approved the minutes from its October 23 Regular Meeting:

- That included ratifying action taken by the Executive Committee on November 13 when it voted 12-0 to approve Teresa Byrd Morgan of White Springs, M. Blair Payne of Wellborn, and David A. Phelps of Perry as nominees for the Third Circuit Judicial Nominating Commission. The three names will be forwarded to the Governor's Office.

### **7. Consent Calendar**

The board approved the consent agenda for the meeting, including:

- Appointing Victor De La Flor as an attorney member and Francine Leibman as a public member to UPL Committee 11D; appointing Deborah Beylus as public member to UPL Committee 15B; and appointing Melissa Gina Green as an attorney member and Gina St. George as a public member to UPL Committee 17C.
- Approving an amendment to Bar Rule 3-2.1 Generally: Reorders and re-letters subdivisions so that the definitions are in alphabetical order.
- Approving an amendment to Florida Standards for Imposing Lawyer Sanctions 32 Aggravation: Adds new subdivision (b)(12) failure to complete a practice and professionalism enhancement program required as part of diversion to the list of aggravating factors.

- Agreeing not to oppose the Public Interest Law Section taking the following legislative position: Supporting legislation limiting and/or restricting the Baker Acts of minor children.
- Approving, on the recommendation of the Audit Committee, the annual audits for The Florida Bar and subsidiaries for the fiscal years ending June 30, 2019, and June 30, 2020.

### **8. Budget Committee Report**

Chair Melissa VanSickle presented.

Items on Final Action: A \$3,600 budget amendment to expand Florida Lawyers Help Line eligibility to Florida Registered Paralegal Program members. The board voted without objection to approve.

Unaudited financial statements show slight declines in revenues and a decline in expenditures, largely due to pandemic-related issues, including the suspension of late-fee collections and the cancellation of Bar activities. No board action was required.

### **9. Investment Committee Report**

Vice-chair Jeffrey Rynor presented for informational purposes only.

As of November 30, 2020, The Long-Term Fund reached a new high of \$57.9 million and the Short-Term Fund reached a new high of \$21.2 million. The fiscal year-to-date performance of the LT portfolio is 4.44% and the 12-month performance is 7%. No board action was required.

### **10. Program Evaluation Committee Report**

Chair Brian Burgoon presented.

Items on Final Action: Proposed amendments to Chapter 6, Legalization and Special Education Programs, Rule 6-5.2(b) through Rule 6-31.3(g), a lengthy series of amendments. The board voted without objection to approve.

Proposed amendments to Public Interest Section Bylaws, (excluding Article 1, Sections 2 and 3). The board voted without objection to approve.

Items on First Reading: Proposed amendments to BLSE Policy 5.09 CLER Components Approval Guidelines (Mental Health and Wellness). No board action was required.

The committee is reviewing a proposal to create a Human Trafficking Committee and a proposal to convene all Fall Meetings virtually. A review is underway of the International Litigation and Arbitration Certification Program. No board action was required.

## **11. Communications Committee Report**

Chair Steven Davis presented.

Items on Final Action: A proposal to implement a Sachs Media Group plan to expand advertising on Floridabar.org. The proposal would incur a one-time cost of \$35,000 to implement and could potentially generate \$280,000 annually in non-fee revenue. Existing advertising policies would remain unchanged and care would be taken to preserve the Bar's professional image. Pages containing attorney discipline, ethics, rules of procedure, and individual member profiles would remain advertising free. The board voted without objection to approve.

President Dori Foster-Morales made 16 presentations to legal groups, produced four "On the Docket with Dori" webcasts, and participated in four webinars since the October board meeting. Digital engagement continues to increase. Bar social media sites recorded 1.9 million impressions and 19,000 interactions between October 1, 2020 and November 12, 2020. The latest News and Journal all-member email was opened by 55,794 readers, a 31.6% open rate. A public education campaign for judicial elections distributed more than 50,000 printed voter guides, including 7,500 Spanish-language editions, and posted more than 300,000 pages of online content. No board action was required.

## **12. Rules Committee Report**

Vice-chair Hilary Creary presented.

Items on Final Action: Proposed amendments to Rule 4-5.8 Procedures for Lawyers Leaving Law Firms and Dissolution of Law Firms. The board voted without objection to approve.

Proposed amendments to Bylaw 2-8.1 Establishment and Appointment of Committees; Bylaw 2-9.4 Ethics; and Rule 15-2.1 Membership and Terms. The board voted without objection to approve.

Proposal to create Bylaw 2-11.1 Writing and Signatures. The board voted without objection to approve.

Items on First Reading: Proposed amendments to Standing Board Policy 1.40 Policy for Appointments and Procedures for Elections and Nominations by the Board of Governors. No board action was required.

Proposed amendments to Standing Board Policy 2.22 (Recount). No board action was required.

## **13. Board Review Committee on Professional Ethics Report**

Chair Michael Orr presented.

### **Advertising Appeal 20-03966**

The Board Review Committee on Professional Ethics voted 6-1 to recommend that the Board of Governors affirm the Standing Committee on Advertising decision

that a postcard advertisement in file 20-03966, that is being mass mailed to persons in a geographic area that has been affected by a severe storm, does not comply with the following rules:

- Rule 4-7.18(b)(2)(E) which requires that the first sentence of any direct mail advertisement “prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family member” be “If you have already retained a lawyer for this matter please disregard this letter”[the postcard does not contain the required sentence] and
- Rule 4-7.18(b)(2)(H), which requires that any direct mail advertisement “prompted by a specific occurrence involving or affecting the intended recipient of the communication or a family members must disclose how the lawyer obtained the information prompting the communication” [the postcard does not contain the required information].

The Board of Governors voted 31-10, with board member Larry Sellers abstaining, to approve the recommendation.

The Board Review Committee on Professional Ethics voted 6-1 to recommend that the Board of Governors reverse the Standing Committee on Advertising decision that the postcard advertisement in file 20-03966 does not comply with Rule 4.7.18(b)(2)(I), which states that any direct mail advertising “seeking employment by a specific prospective client in a specific matter must not reveal...on the outside of a self-mailing brochure or pamphlet, the nature of the client’s legal problem” and find that the postcard does not disclose the nature of the prospective client’s legal problem because the filer does not know the recipient has actually suffered storm damage, just that there is a likelihood that some of the recipients have storm damage and that based on the wording of the postcard anyone viewing it would not definitely know the recipient has actually suffered storm damage. The decision was based on the differing wording of this rule provision from the other 2 rules and also based on the Florida Supreme Court case *The Florida Bar v. Gold*, which stated “while it is possible that someone seeing the outside of Gold’s brochure might guess that the recipient was being targeted by a law firm, there is nothing that would lead inescapably to the conclusion that the recipient had indeed been charged with a particular offense.” The Board of Governors voted 35-1, with board member Larry Sellers abstaining, to approve the recommendation.

The Board Review Committee on Professional Ethics voted 7-0 to recommend that the Board of Governors find that the statement “Your insurance company has 90 days to pay or deny your claim, and they’ll do everything they can to delay the process” is misleading and therefore violates Rule 4-7.13(a). The Board of Governors voted, with board member Larry Sellers abstaining, to approve the recommendation on voice vote without objection.

The Board Review Committee on Professional Ethics voted 7-0 to review the direct mail rules in question to determine if any changes would be appropriate. No Board of Governors action was required.

**Policy on Advertising Appeals (Hard Stop on Late Appeals)**

The Board Review Committee on Professional Ethics voted 9-0 to recommend that the Board of Governors adopt a policy that untimely requests for the Board of Governors review of advertising filings will be rejected unless the filer can demonstrate to staff that the filing was made impossible by extenuating circumstances such as a failure of the Bar’s portal during the relevant time period. The Board of Governors voted 36-0 to approve the recommendation.

**Professional Ethics Committee Request to Issue Formal Advisory Opinion on Responding to Negative Online Reviews by Non-Clients**

The Board Review Committee on Professional Ethics voted 8-0 to recommend that the Board of Governors request that the Professional Ethics Committee adopt a formal advisory ethics opinion on the ethical obligations of a lawyer in responding to negative online posts by a person other than a client under Procedure for Ruling on Questions of Ethics (2)(b)(2) because the question “is likely to be of widespread interest or unusual importance to a significant number of Florida Bar members” at the committee’s request. The Board of Governors voted 37-0 to approve the recommendation.

**14. Legislation Committee Report**

Chair Julia Frey presented.

Items on Final Action: Authorization of The Florida Bar legislative positions for the 2020-2022 biennium. The board voted without objection to approve.

Authorization of the Board of Legal Specialization and Education legislative positions for the 2020-2022 biennium. The board voted without objection to approve.

Authorization of the Legal Needs of Children Committee legislative positions for the 2020-2022 biennium. The board voted with objection to reject authorization.

Legislative advocate Jim Daughton reported that legislative committees will not meet in December. House committee appointments are expected soon. Board members are urged to complete and return Key Contacts forms.

**15. Remarks, FLMIC Chair Ray Ferrero, Jr.**

The Florida Lawyers Mutual Insurance Company is contributing \$100,000 to an existing \$300,000 endowment that supports professionalism in the legal profession.

## **16. Criminal Procedure Rules Committee Report**

The Honorable Angela C. Dempsey, Chair, presented.

Items on Final Action: Pursuant to Florida Rule of Judicial Administration 2.140(b), proposed amendments to Florida Rule of Criminal Procedure 3.670 (Rendition of Judgement). The board voted 29-17 to recommend rejection. Rule 3.691 (Post-trial Release). The board voted 46-0 to recommend acceptance. Rule 3.996 (Application for Sentence Review Hearing). The board voted 46-0 to recommend acceptance.

## **17. Family Law Rules Committee Report**

Chair Cory Brandfon presented.

Items on Final Action: Pursuant to Florida Rule of Judicial Administration 2.140(b), proposed amendments to Florida Family Law Rule of Procedure 12.100 (Pleadings and Motions.) The board voted 41-0 to recommend acceptance. Rule 12.105 (Simplified Dissolution of Marriage). The board voted 43-0 to recommend acceptance.

Rule 12.490 (General Magistrates). The board voted 42-0 to recommend acceptance.

Rule 12.491 (Child Support Enforcement), Forms 12.902(e)(Guidelines Worksheet), 12.911(a)(Subpoena for Hearing or Trial)(Issued by Clerk)), 12.911(b)(Subpoena for Hearing or Trial (Issued by Attorney)), 12.911(c)(Subpoena Duces Tecum for Hearing or Trial (Issued by Clerk)), 12.911(d)(Subpoena Duces Tecum for Hearing or Trial (Issued by Attorney)), 12.911(e))(Subpoena for Deposition (Issued by Clerk)), 12.920(a)(Motion for Referral to General Magistrates), 12.920(b)(Order of Referral to General Magistrate), and 12.920(c)(Notice of Hearing Before General Magistrate). The board voted 46-0 to recommend acceptance.

## **18. Civil Procedure Rules Committee Report**

Board member Michael Orr presented.

Pursuant to Florida Rule of Judicial Administration 2.140(b), proposed amendments to Florida Rule of Civil Procedure Appendix II Statewide Uniform Guidelines for Taxation of Costs in Civil Actions. The board voted 46-0 to recommend acceptance.



## **19. Special Appointments**

Chair Jeremy Branning presented.

**Florida Judicial Qualifications Commission**, (1 lawyer to serve a six-year term, commencing January 1, 2021). Incumbent: Eugene K. Pettis, Fort Lauderdale. Applicants: Adelman, Jeffrey Alan, Coral Springs; Alavi, Tania Zahara, Ocala; Alexander, Mark Gorman, Jacksonville; Arora, Harsh, Fort Lauderdale; Birk, Cecilia Fannon, Jacksonville; Bradley, Mikel, Gainesville; Cantero, Raoul G. III, Miami; DelPercio, Collins Spencer, Sunrise; \*Higer, Michael J., Miami; Hoehn, Audrie Harris, Gainesville; Isaacson, Kenneth J., Sarasota; King, Bradley Eugene, Ocala; Klein, John Nicholas, IV, Altamonte Springs; Lomnitzer, Lorri, Boca Raton; Lundy, Matthew L., Coral Springs; Massey, Michael, Gainesville; McRae, E. Ashley, Tampa; Morris, G. Clay, Orlando; Negroni, José A., Plantation; Pallegar, Ajay, Sarasota; Sanchez, Albert A., Jr., Sarasota; Shiner, David Irving, Boca Raton; Solonenko, Andrey, Pembroke Pines; Stanski, Michael, Jacksonville; Swindle, Michael Barry, Winter Park, Wechsler, Peter Lawrence, Pinecrest; Winstead, Lori Ann, Bartow. (\*Recommended by committee.) The board voted without objection to approve **Michael J. Higer** of Miami.

**Florida Realtor-Attorney Joint Committee**, (5 lawyers – one from each state appellate district, to serve 2-year terms commencing January 1, 2021.) Incumbents, First Appellate District, Colleen C. Sachs, Pensacola; Second Appellate District, John N. Redding, Tampa; Fourth Appellate District, Stephen B. Bull, Palm Beach Gardens; Fifth Appellate District, Andrew M. Fisher, Orlando. Applicants: First Appellate District, Sachs, Colleen Coffield, Pensacola; Second Appellate District, Fischer, Tina M., St. Petersburg; \*Redding, John N., Tampa; Third Appellate District, \*Fleitas, Roberto F., III, Miami; Fourth Appellate District, \*Jaiven, Kristen King, Boca Raton; Siperstein Klein, Caryn P., West Palm Beach; Fifth Appellate District, \*Christiansen, Patrick T., Orlando; Fischer, Andrew Marc, Orlando; Khan, Nishad, Orlando; McGinnis, Katy, Orlando. (\*Recommended by the Real Property, Probate and Trust Law Section.) The board voted without objection to approve **John N. Redding**, Tampa; **Roberto F. Fleitas, III**, Miami; **Kristen King Jaiven**, Boca Raton; and **Patrick T. Christiansen**, Orlando.

**Florida Rural Legal Services, Inc., Board of Directors** (1 lawyer to serve a 3-year term, commencing January 1, 2021.) Incumbent: Johnson, Susanna M., Tampa. Applicants: \*Jules-Toussaint, Natchia, Fort Pierce; Nerette, Farah L., West Palm Beach. (\*Recommended by Florida Rural Legal Services.) The board voted without objection to appoint **Natchia Jules-Toussaint**, Fort Pierce.

**Eleventh Circuit Judicial Conference** (1 lawyer to serve a 4-year term commencing January 1, 2021.) Incumbent: Weiss, Gregory, S., Stuart. Applicants: Siperstein, Klein, West Palm Beach; Weiss, Gregory S., Stuart. The board voted without objection to approve **Gregory S. Weiss**, Stuart.

## **20. Disciplinary Procedure Committee Report**

Chair Ron Ponzoli presented.

Items on First Reading: Proposed amendments to Rules 14-1.2, 14-4.1, 14-5.2; Fee Arbitration Procedural Rules, Rule 1; Fee Arbitration Procedural Rules, Rule IV; Fee Arbitration Procedural Rules, Rule IX. No board action was required.

## **21. Young Lawyers Division President's Report**

The YLD's Affiliate Outreach Conference, featuring the awarding of nearly \$50,000 in grants, convenes virtually February 5-6, 2021. The #YLDIsME campaign continues to highlight successful attorneys from underrepresented groups. The division is assembling a parental leave guide. The division this year increased annual CLE program production from five to seven. The division and the Henry Latimer Center for Professionalism are producing programming to promote professionalism.

## **22. Special Committee on Judicial Referrals for Discipline Matters Report**

Co-Chair Michael Orr presented.

An initial meeting convened, and various concepts were discussed. The special committee will research the judicial referral procedures of other states.

## **23. Board Technology Committee Report**

Chair Jay Kim presented.

The Florida Bar Recommended Best Practices Guide for Remote Court Proceedings will be circulated to Bar committees, sections and divisions and others for comments that will be due January 20, 2021. A conference with Zoom executives has been scheduled to discuss adding lawyer-requested features to the videoconferencing platform. The Bar general counsel is reviewing an RFI for a proposed IT help line.

## **24. COVID-19 Pandemic Recovery Task Force Report**

Chair Michael Tanner presented.

The COVID-19 Information and Resources webpage has been updated with a link to an online resource for predicting an individual's eligibility for receiving COVID-19 vaccine. Monitoring subcommittees continue to populate the website with pertinent information. The Post-Pandemic Remote Proceedings Subcommittee is compiling a global list of court proceedings and preparing a member-survey to determine which court proceedings should be conducted remotely after the pandemic subsides. A Future Changes to the Legal Profession Subcommittee will engage a design-thinking facilitator.

## **25. Executive Director's Report**

Executive Director Joshua Doyle presented.

Meetings and Convention Director Kathy Tucker is retiring after 40 years of service. Assistant to the President Rosalyn Scott will retire in July 2021 after 44 years of service and Program Administrator Leslie Reithmiller will be her successor.

## **26. President's Report**

Board members are urged to continue helping Bar members meet the challenges of the COVID-19 pandemic. For the foreseeable future, all board meetings, including any convened in person, will be accessible via videoconference.

## **27. Time and Place of Next Meeting**

There being no further business before the board, President Dori Foster-Morales adjourned the meeting at 12:21 p.m. The next board meeting will convene January 29 via videoconference.

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