

Florida Bar Board of Governors
January 29, 2021
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
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
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
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
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

Kris B. Robinson, 3rd Circuit
C. Richard Nail, 10th 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
Leslie Reithmiller, Assistant to the President
Jim Ash, Senior Editor, Florida Bar News

3. Non-Roll Call Grievance Agenda Items

The following items were announced: 6b, 6e, 6f, 6g, and 6h.

4. Invocation and Pledge of Allegiance

Board member Melissa VanSickle delivered the invocation and board member Lawrence Sellers led the Pledge of Allegiance.

5. Guests

President Dori Foster-Morales recognized the following guests:

Florida Supreme Court Chief Justice Charles Canady

Florida Supreme Court Justice Ricky Polston

Florida Supreme Court Justice Jorge Labarga

Florida Supreme Court Justice Alan Lawson

Florida Supreme Court Justice Carlos G. Muñiz

Florida Supreme Court Justice John D. Couriel

Florida Supreme Court Justice Jamie R. Grosshans

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 November 16, 2020 meeting, December 4, 2020 meeting, and grievance minutes from a December 4, 2020 meeting. That included ratifying action taken by the Executive Committee on:

- December 15, 2020: The Executive Committee, meeting by videoconference, voted 6-4 to issue a strong recommendation that sections, divisions and committees should not hold in-person meetings through February of 2021. The Executive Committee voted without objection not to take a position on the IOTA Task Force proposed amendment to Rule 5-1.1(g), as there is insufficient time to examine the issues. Instead, a form letter outlining the board's decision not to comment will be sent to all concerned parties.
- December 17, 2020: The Executive Committee voted 12-0 via email to accept the Juvenile Court Rules Committee proposed amendment to Rule 8.345 Post-Disposition Relief. The proposed amendment corrects a grammatical error within the rule amendments adopted by the Supreme Court on September 10, 2020.
- January 8, 2021: The Executive Committee voted 12-0 via email to approve a Pro Bono Legal Services Committee request to retain counsel, at no cost,

to represent the committee's opposition to the IOTA Task Force proposed amendment to Rule 5-1.1(g).

7. Consent Calendar

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

- Appointing Kathryn Marie Brown and Jason Andrew Cobb as attorney members to UPL Circuit Committee 1B, and Carey D. Carmichael, Jr. as an attorney member to UPL Circuit Committee 3, and Leslea G. Ellis as a public member to UPL Circuit Committee 20.
- Agreeing not to oppose the Elder Law Section taking the following legislative position: Support proposed legislation that amends the current position for official publication Chapter 825.1035, (civil injunctions against exploitation of vulnerable adults) to broaden those who have standing to bring an injunction petition to include an agent under a durable power of attorney and provides judges with the ability to extend the initial temporary injunction period for good cause.
- Agreeing not to oppose the Real Property, Probate and Trust Law Section from taking the following legislative position: Supports proposed legislation protecting Florida residents from unintentionally assigning, pledging or waiving rights to assets that are otherwise exempt from legal process under Chapter 222 of Florida Statutes by implementing clearly defined requirements for waiving the protection of such exemptions.

6. Citizens Advisory Committee Report

Chair Paige Greenlee presented.

The committee is developing tips for hiring an attorney that will be promoted on the Bar website and social media. The committee has completed a multi-year project to promote opportunities for non-lawyers to participate in the legal and justice systems.

7. Communications Committee Report

Chair Steven Davis presented.

Board members, former board members, past presidents, and section chairs are urged to submit nominations to a Communications Committee subcommittee for four openings on the Citizens Advisory Committee. Sachs Media is promoting the Pro Bono Award recipients to media outlets. President Dori Foster-Morales produced health and wellness columns for the *Daily Business Review*. The Law Related Education Committee is rebranding the Just Adulting Legal Survival

Guide. Web traffic for the *Journal* and *News* increased 21 percent and 35 percent respectively in 2020. Combined, they generated 2.5 million annual impressions.

8. Budget Committee Report

Chair Melissa VanSickle presented.

Items on Final Action: A \$12,000 fiscal impact for a Board Technology Committee proposal to hire Law Tech Partners to conduct a three-month beta test of a non-emergency IT help line for possible addition to the Member Benefit Program. The board voted without objection to approve.

A \$7,000-\$8,000 fiscal impact for the expected cost related to the implementation of proposed Standing Board Policy 2.22 Election Recount. The board voted without objection to approve.

Item for First Reading: Revised Proposed Standing Board Policy 3.13 Grants (new policy for administering grants.) The proposed policy was updated to address comments received just prior to the December 4 board meeting when the policy had originally been scheduled for final approval. No board action was required. Chair-elect Jeremy Branning reported that a budget workshop conducted via Zoom over a three-day period where various teams reviewed and discussed 102 requests and 836 pages of supporting materials with various TFB staff. The FY 2021-2022 proposed budget will be presented to the board in March, published for objections in April, and presented to the board for final approval in May. After which, the budget will be submitted for Supreme Court approval in June. No board action was required.

9. Audit Committee Report

Chair Jeremy Branning presented.

In an executive session with committee members, auditors reported finding “nothing concerning, abnormal, or otherwise unusual.” Auditors complimented the Bar’s responsiveness to requests. No board action was required.

10. Investment Committee Report

Chair Ian Comisky presented.

The Long-Term Fund contained \$60 million on December 31, 2020, a 17.35 percent increase from December 31, 2019. The Long-Term and the Short-Term Funds are outperforming established benchmarks.

11. Program Evaluation Committee Report

Chair Brian Burgoon presented.

Items on Final Action: Proposed amendment to Board of Legal Specialization and Education Policy 5.09 CLER Components Approval Guidelines. The Young

Lawyers Division proposed changing the word “illness” to “mental health and wellness,” a more acceptable term. The board voted without objection to approve. Proposed amendments to Trial Lawyers Section Bylaws. Within Article I, Section 2, deletes existing section purposes (b)-(f) and adds new purposes in (b)-(1). The board voted without objection to approve.

A joint Program Evaluation Committee/Budget Committee proposal to convert the Fall Meeting to an all-virtual format. The proposal would save \$62,000 in annual Bar expenditures, not counting time and travel saved by Bar members. Bar member surveys indicate strong support. Cancelling reservations for 2021 and 2022 will incur a slight financial penalty. The board voted without objection to approve.

Pursuant to Rule 11-1.2(f), a request by the Sarasota County Bar Association to set a new indigency standard to permit Cenacle Legal Services, Inc. to engage certified legal interns. The board voted without objection to approve.

12. Board Technology Committee Report

Chair Jay Kim presented.

Items on Final Action: A proposal for Law Tech Partners to conduct a three-month, \$12,000 beta test of a non-emergency IT Help Line to determine member interest for possible addition to the Member Benefit Program. The Help Line will be promoted to solo and small-firm practitioners who need help with routine tech support, excluding emergencies, hardware issues, and malware and ransomware attacks. The board voted without objection to approve.

13. Criminal Procedure Rules Committee Report

The Hon. Angela C. Dempsey, Chair, presented.

Items on Final Action: Pursuant to Rule of Judicial Administration 2.140 (b), proposed amendment to Rule 3.800 that would add a subsection (d) Reduction and Modification Upon Stipulation. The item was removed from the board’s December 4 agenda to allow further committee consideration. Following presentations from Criminal Procedure Rules Committee vice chair Jude Faccidomo, for the majority, and 13th Judicial Circuit Judge Michelle Cisco, a committee member, for the minority, the board voted 24 to accept, 22 to reject, and 2 to amend. The proposed amendment will be forwarded to the Supreme Court for final consideration.

14. Disciplinary Procedure Committee Report

Chair Ronald Ponzoli presented.

Items on Final Action: Proposed amendments to Rule 14-1.2 Jurisdiction; Rule 14-4.1 Arbitration Proceedings; Rule 14-5.2 Effect of Agreement to Arbitrate and Failure to Comply; Fee Arbitration Procedural Rule I Preamble; and Fee

Arbitration Procedural Rule IV Hearings. The amendments add the word “costs,” or “or costs” to clarify that in every instance where the determination of a fee is being considered, the rule also permits the determination of costs. The board voted without objection to approve.

Proposed amendment adding new Fee Arbitration Procedural Rule IX Intervention. Adds a new procedural rule that would permit a lawyer or law firms claiming an interest in fee arbitration to assert a right by intervention in the fee arbitration. The board voted without objection to approve.

Proposed amendment to Florida Standards for Imposing Lawyer Sanctions 3.2 Aggravation. Adds a new subdivision (b)(12), failure to complete a practice and professionalism enhancement program required as part of diversions to the list of aggravating factors. The board voted without objection to approve.

Items on First Reading: Proposed amendments to Rule 3-6.1 Generally; Rule 3-7.1 Confidentiality; Rule 4-8.6 Authorized Business Entities; Rule 3-7.4 Grievance Committee Procedures; Rule 3-7.7 Procedures Before Supreme Court of Florida Disciplinary Revocation; Rule 5-1.1 Trust Accounts; Standard Imposing Sanctions 3.4 Factors Which Are Neither Aggravating Nor Mitigating; and Standing Board Policy 15.55 Deferral of Disciplinary Investigation During Civil, Criminal and Administrative Proceedings. No board action was required.

15. Legislation Committee Report

Chair Julia Frey presented.

Items on Final Action: Proposed amendment to Standing Board Policy 9.20 Action by Board. Changes “legislative position” to “board legislative or political activity.” Within 9.20(d)(4) clarifies that any comments already received must be attached to the request, but the request may be made before comments are received. The board voted without objection to approve.

Legislative advocate Jim Daughton reported that several more interim committee weeks precede the March 2 session. About two-thirds of Florida legislators have served less than six years. Bar officers and court administrators are briefing legislative leaders, via videoconference, on judicial branch priorities.

16. Remarks, Florida Supreme Court Chief Justice Charles Canady

The COVID-19 pandemic and “VOCs,” or variants of concern, continue to create a “very dynamic and uncertain environment.” The court is considering rule changes to promote the efficient use of remote technology.

17. Executive Session

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

18. Special Appointments

President Dori Foster-Morales presented.

The Florida Bar Foundation Board of Directors. (3 lawyers – 1 lawyer to serve a 3-year term, commencing July 1, 2021; 1 lawyer, service to commence immediately upon appointment, for a term ending June 2024; and 1 lawyer, service will commence immediately upon appointment, for a term ending June 2023.)

Incumbents: Hon. Suzanne Van Wyk, Tallahassee, *Maria C. Gonzalez, Miramar, and Murray B. Silverstein, Tampa. (*Eligible for reappointment.) Applicants: Ian M. Comisky, Philadelphia; Sara Courtney-Biagorri, Coral Gables; Maria C. Gonzalez, Miramar; Gregory Herman-Giddens, Naples; Javier A. Lopez, Coral Gables; Tyrone N. Watson, Altamonte Springs. The board voted to appoint **Ian Comisky, Sara Courtney-Biagorri, and Maria Gonzalez.**

19. Rules Committee Report

Vice-Chair Hilary Creary presented.

Items on Final Action: Proposed amendment to Standing Board Policy 2.22

Election Recount. Provides that if election results are within one-half of 1 percent of votes cast for that office, the Bar will pay for and conduct a recount. The board voted without objection to approve.

Items on First Reading: Proposed amendment to Standing Board Policy 1.40

Policy for Appointments and Procedure for Elections and Nominations by the Board of Governors. No board action was required.

20. Board Review Committee on Professional Ethics Report

Chair Michael Orr presented.

The committee approved amendments to several advertising rules that will be presented to the board on first reading at the March meeting. A subcommittee has been appointed to review Rule 4-7.18 Direct Contact With Prospective Clients. No board action was required.

21. Appellate Court Rules Committee Report

Chair Amy Farrior presented.

Items on Final Action: At the direction of the Supreme Court, the Committee intends to file a comment in response to the Court's proposed amendments to Florida Rules of Criminal Procedure 3.134 Time for Filing Formal Charges, and 3.191 Speedy Trial, and Florida Rule of Appellate Procedure 9.140 Appeal Proceedings in Criminal Cases. The board voted without objection to approve.

Proposed amendment to Florida Rule of Appellate Procedure 9.440(c) Attorneys, Scope of Representation. The amendment cures a discrepancy within the rule. The board voted 41-0 to recommend acceptance.

Proposed amendment to Florida Rule of Appellate Procedure 9.130 Proceedings to Review Nonfinal Orders and Specified Final Orders. The amendment would allow nonfinal appeals from orders denying motions to dismiss or for summary judgment under Section 768.295, Florida Statutes, which prohibits “Strategic Lawsuits Against Public Participation” or “SLAPP”. The board voted 40-0 to recommend acceptance.

Proposed amendment to Florida Rules of Appellate Procedure 9.141 Review Proceedings in Collateral or Postconviction Criminal Cases. The amendment would clarify the procedures and basis under which a criminal defendant may petition the Supreme Court for belated discretionary review. The board voted 41-0 to recommend acceptance.

22. Young Lawyers Division President’s Report

President Adam White presented.

The YLD’s Affiliate Outreach Conference will be virtual and feature the awarding of up to \$50,000 in grants. The #YLDIsMe campaign continues with video testimonials from lawyers representing underrepresented groups. The YLD’s Diversity and Inclusion Committee is preparing a parental leave guide with practical advice for law firms. The division is creating a quick-reference guide for attorneys on the use of social media.

23. President-elect’s Report

President-elect Michael Tanner presented.

The COVID-19 Pandemic Recovery Task Force constantly updates the COVID-19 Information and Resource webpage. Taskforce subcommittees continue their work studying future changes to the legal profession and post pandemic remote proceedings. A design-thinking exercise will be conducted jointly with the Strategic Planning Committee.

24. President’s Report

President Dori Foster-Morales presented.

A virtual candidate’s forum moderated by former Supreme Court Justice Peggy Quince and featuring a question-and-answer format with president-elect candidates Steven Davis and Gary Lesser is scheduled for February 22 from 12 p.m.-1 p.m. Supreme Court Justice Jorge Labarga, chair of Florida Commission on Access to Civil Justice, and former President John Stewart, chair of the Special Committee to Improve the Delivery of Legal Services, will discuss access to justice issues at the

February 23 interim board meeting. The March board meeting previously scheduled for Savannah will be conducted via videoconference instead. A May board meeting scheduled for Duck Key at the Hawk's Cay Resort will be accessible via videoconference. No determination has been made regarding the format of the Annual Meeting.

25. Time and Place of Next Meeting

There being no further business before the board, President Dori Foster-Morales adjourned the meeting at 1:28 p.m. The next interim-board meeting will convene February 23 via videoconference and the next regular board meeting will convene March 4-5 via videoconference.

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