

Florida Bar Board of Governors
March 5, 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
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
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

All board members were present.

2. Staff in Attendance

Joshua Doyle, Executive Director
Allison Sackett, Director, Legal Division
Gypsy Bailey, General Counsel and Director, Division of Ethics & Consumer Protection
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 Scott, Assistant to the President
Leslie Reithmiller, Assistant to the President
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 Amy Farrior delivered the invocation and board member Ian Comisky led the Pledge of Allegiance.

5. Guests

President Dori Foster-Morales recognized the following guests:

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 minutes from its regular January 29, 2021, meeting and from its February 23, 2021, interim meeting. That included ratifying the following actions taken by the Executive Committee:

- On January 28, 2021, the committee voted 12-0 to allow the Business Law Section and the Standing Committee on Pro Bono Legal Services to submit comments on rule amendments pending at the Supreme Court regarding Rule 5-1.1(g).
- On February 9, 2021, the committee voted 11-0 to approve the legislative consulting contract between the Tax Section and Stephen Shiver of the Advocacy Group at Cardenas Partners.
- On February 9, 2021, the committee voted 9-0 to allow the Standing Committee on Pro Bono Legal Services to revise its comments on the rule amendment pending at the Supreme Court regarding Rule 5-1.1(g)

7. Consent Calendar

After removing item 5b(i) (advertising appeal 21-01470), the board approved the consent agenda, including the following items:

- Appointing Rebecca S. Graham as an attorney member and Greg Crist as a public member to UPL Committee 6A; Sammy Epelbaum as an attorney member to UPL Committee 11B; Dorothy G. Negrin as an attorney members to UPL Committee 11D; and Brian Haywood as a public member

and Brendalyn V A Edwards as an attorney member to UPL Committee 17A.

- Approve three new services as part of the Member Benefits Program: Ally Bank Digital Mortgage Originations, which will offer new and refinanced home mortgages; Axel Go, an online file sharing program using blockchain, with encrypted cloud storage; and LawMatics Client Intake and Marketing Automation CRM, an intake software that offers automated marketing for maintaining customer relationships.
- Approving a partial Bar dues refund for one Bar member objecting to Bar legislative positions for the 2020-2022 biennium.
- Approving a \$6,500 allocation from the Bar's \$50,000 budget for Law Related Education programs in the FY 2020-2021 to help the Trial Lawyers Section convert the 2021 Teachers Law Symposium to an online event.

8. Budget Committee Report

Chair Melissa VanSickle and Chair-elect Jeremy Branning presented.

Items on Final Action: Standing Board Policy 3.13. The proposed amendment would create a new standing board policy setting forth requirements for awarding grants, including requirements for the annual budget process, grant program descriptions, factors for approval of grants, and reducing or eliminating grant allocations if funding falls below approved reserve levels. The board voted 41-0 to approve.

Chair-elect Jeremy Branning presented, for tentative approval, the proposed FY 2021-2022 budget for TFB General Operations, which projects \$41.4 million in revenues, \$44.1 million in expenditures, a \$2.6 million operating loss, and a projected ending undesignated fund balance of \$27.5 million. The proposal reflects \$778,000 in spending reductions from the version reviewed by the Budget Committee January 25-27. Executive Director Joshua Doyle reported that the spending reductions were achieved by eliminating five long-term vacant positions and maximizing technology to redesign once paper and labor-intensive processes to a digital platform. The board voted 44-0 to give tentative approval and post the proposed budget for member review and objection in an April issue of the *Bar News*. The board will consider the final proposed budget in May. A final budget recommendation will be forwarded to the Supreme Court no later than June 1.

9. Communications Committee Report

Chair Steven Davis presented.

The committee received an update on work by Sachs Media Group and a report that the Bar's Facebook posts generated 1.9 million impressions – a 127% increase from the last reporting period – and more than 64,000 social interactions, a 63%

increase. Follower growth on Facebook has now exceeded 30,000 and Twitter followers have grown to more than 20,000. While waiting for the post-pandemic full return to Bar offices, the Communications staff is working on podcast proposals, policies, and best practices. A screening subcommittee reviewed 19 nominees for four openings on the Citizens Advisory Committee. The recommendations will be forwarded to President-elect Michael Tanner for his consideration in making the appointments for three-year terms commencing in July 2021. Received a report that the Voluntary Bar Liaison Committee continues to host successful programs and appreciates the support of The Florida Bar. Received a report on YLD activities from President Adam White.

10. Board Review Committee on Professional Ethics Report

Chair Michael Fox Orr presented.

Items for Final Action: **Advertising Appeal 21-01470, (removed from consent calendar for full board discussion)**. The Board Review Committee on Professional Ethics voted 11-0 to recommend that the Board of Governors affirm the Standing Committee on Advertising decision that the statements in the billboard advertisement in file 21-0147 “Don’t Pay 30-40% visit www.SettleforFree.com Pay 0% Attorney’s Fees” are misleading under Rule 4-713(a), because they omit the material information that: the representation is limited in scope; the client matter must meet specific parameters to be accepted by the advertising law firm; prospective clients who do not meet the parameters are referred to another law firm that charges fees and divides fees with the advertising law firm; accepted clients pay no fee only if the case settles within 90 days, after which the advertising law firm refers the cases to another law firm that charges fees and divides fees with the advertising firm; and the advertising law firm charges an hourly fee plus costs to those clients whose cases do not settle within 90 days who obtain recovery in the case represented by a law firm that does not divide fees with the advertising law firm. The committee found that the disclaimer “Claims that don’t settle within the 90-day negotiation period may be referred to co-counsel for litigation. Firm may earn referral fees,” appearing in small print at the bottom of a billboard did not cure the misleading nature of the billboard because it was confusing and in fine print. The committee also voted to recommend that the Board of Governors advise the filer that the advertisement would be permissible if the billboard was revised to state “Pay 0% Attorney’s Fees if Settled Within 90 Days Restrictions Apply and Not All Cases Eligible” with the disclaimers prominently displayed in the same size type. The chair noted that the review is limited to the billboard and does not address the filer’s business practices. The board voted 44-0 to approve the recommendation.

Review of Advertising Committee Decision in 21-01152. The Board Review Committee on Professional Ethics voted 8-4 to recommend that the Board of Governors reverse the Standing Committee on Advertising decision and instead find that the website in file 21-01152 does not comply with Rule 4-7.21(c), because the website URL “500Bankruptcy.com” as used on the website is being used impermissibly as a trade name, because the actual firm name appears solely in small type in a paragraph of disclaimers at the bottom of the page. The Board of Governors voted 41-4 to approve the recommendation.

Items on First Reading: Proposed amendment to Rule 4-7.13 Deceptive and Inherently Misleading Advertisements. The proposed amendment would divide subdivision (b)(6) into (b)(6) and (b)(7), and make disclaimers that an event is a dramatization and that an actor is being used required only when necessary to avoid misleading a reasonable viewer, and makes the specific wording of the disclaimer discretionary. No board action was required.

Proposed amendment to Rule 4-7.14 Potentially Misleading Advertisements. The amendment would, within subdivision (a)(4)(b), omit the requirements that lawyers certified by entities accredited by the American Bar Association, but not The Florida Bar, contain a disclaimer that the lawyer is “Not Certified as a Specialist by The Florida Bar”. (The rule already requires that the certifying organization name be included in the advertisement.) No board action was required.

Proposed amendment to Rule 4-7.16 Presumptively Valid Content. The proposed amendment would, within subdivisions (a)(1), add social media contact information, including social media icons or logos. (As in a URL to a lawyer’s website, this information is common and presumptively non-misleading such that the lawyers should not have to file an advertisement merely because social media icons and links are included.) No board action was required.

Proposed amendment to Rule 4-7.19 Evaluation of Advertisements. The amendment would, within subdivision (a), change the location of filing from the Bar’s headquarters address in Tallahassee to “in the manner specified by The Florida Bar as posted on its website.” The change would allow the Bar to require members filing advertisements for review to file electronically. No board action was required.

Chair Michael Orr reported that the committee is continuing to review amendments to Rule 4-7.18 on direct written solicitations.

11. Rules Committee Report

Chair Gregory Wiess presented.

Items on Final Action: Proposed amendments to Standing Board Policy 1.40. The proposed amendment, within subdivision (c)(4), deletes Commission on Professionalism and adds Florida Lawyers Assistance, Inc. Board of Directors,

Florida Legal Assistance, Inc. Board of Directors, Florida Realtor – Attorney Joint Committee, Florida Rural Legal Services Board of Directors, Florida Supreme Court Judicial Ethics Advisory Committee, and Statewide Nominating Commission for Judges of Compensation Claims. Within subdivision (d), deletes Commission for Professionalism. Adds new subdivision (e) addressing determination of residency in board appointments and replacement of appointees who become ineligible if they relocate to a residence outside the required area. The board voted 43-0 to approve.

Items on First Reading: Proposed amendments to Standing Board Policy 1.41. The proposed amendment would, within subdivision (b) and (d), clarify that delegates may vote on their own judgment and their statements, votes, or positions are not positions of The Florida Bar unless the board had determined and instructed them otherwise. Within subdivision (c), clarifies that when the board takes a formal position on any political or ideological issues the ABA House of Delegates will be studying, the Bar must comply with standing board policies, rules, and procedures, and not when the board is merely studying or discussing an issue. No board action was required.

12. Legislation Committee Report

Chair Julia Frey presented.

The committee reviewed the proposed amendment to Standing Board Policy 1.41, and the legislative position objections, and referred Standing Board Policy 1.41 back to the Rules Committee for an amendment to reflect a change in the ABA age requirement.

Legislative advocate Jim Daughton reported that the governor, House speaker and Senate president identified COVID-19 related liability protections, anti-rioting legislation, and Everglades restoration as common priorities in the State-of-the-State Address and their respective opening-day remarks. The president and speaker are reexamining state spending priorities to accommodate a \$2.5 billion revenue shortfall. President Dori Foster-Morales will brief section legislative advocates on Bar priorities. No board action was required.

13. Disciplinary Procedures Committee Report

Chair Ronald Ponzoli presented.

Items on Final Action: Proposed amendments to Rule 3-7.1 Confidentiality. The proposed amendment would, within subdivision (a)(2), (3), and (5), clarify when disciplinary information becomes public. Within subdivision (a)(3), changes rule reference from “3-3.2(a)” to “3-3.2(b).” Within subdivision (a)(5), adds “and fee arbitration” in title and rule text. Within subdivision (j), changes “or might cause

embarrassment in any future disciplinary matter” to “not be admitted as evidence in disciplinary proceedings under these rules.” The board voted 42-0 to approve.

Proposed amendments to Rule 3-7.4 Grievance Committee Procedures. The proposed amendment would, within subdivision (e), change “board of governors” to “appropriate designated reviewer.” The board voted 41-0 to approve.

Proposed amendments to Rule 3-7.7 Procedures Before the Supreme Court of Florida. The proposed amendment would, within subdivision (h), remove disciplinary revocation from cases in which dismissal of other pending disciplinary cases may be dismissed. Adds that other pending disciplinary cases will be dismissed when disciplinary revocation is granted. The board voted 41-0 to approve.

Proposed amendments to Rule 5-1.1 Trust Accounts. The proposed amendments would, within (g)(1)(E) and (g)(5)(A), add business or consumer money market account or sub account, any business or consumer savings account or sub account without a maturity date. Within subdivision (g)(5)(B), adds that eligible institutions must provide a minimum interest rate for IOTA accounts and creates minimum interest rates tied to specific indexed rate points. The board voted 45-0 to approve.

Proposed Amendment to Florida Standards for Imposing Lawyer Sanctions 3.4 Factors Which are Neither Aggravating nor Mitigating. The proposed amendment would, within subdivision (d), change “resignation” to “retirement.” The board voted 42-0 to approve.

Proposed amendment to Standing Board Policy 15.55 Deferral of Disciplinary Investigation During Civil, Criminal and Administrative Proceedings. The proposed amendment would, within subdivision (a), change “board” to “bar.” The board voted 40-0 to approve.

Items on First Reading: Proposed amendments to Rule 1-3.7 Reinstatement to Membership. The proposed amendment would, within subdivision (f), add trust account compliance certification. No board action was required.

Proposed amendment to Rule 3-5.1 Generally. The proposed amendment would, within subdivision (d), remove references to publication in the Southern Reporter. No board action was required.

Proposed Amendment to Rule 3-6.1 Generally. The proposed amendment would, within subdivision (a), clarify who is subject to the rule. No board action was required.

Proposed amendment to Rule 4-6.8 Authorized Business Entities. The proposed amendment would, within subdivision (e), add emergency and other indefinite suspensions that last 91 days or longer. No board action was required.

Proposed amendment to Fee Arbitration Procedural Rule IV Hearings. The proposed amendment would, within subdivision (e), add attendance by electronic means. Within subdivision (e)(2), add method of administering the oath for persons

attending telephonically or electronically. Adds a comment that the oath will be consistent with the Florida Evidence Code. No board action was required.

14. Investment Committee Report

Vice Chair Jeffrey Rynor presented.

The Long-Term Fund contained \$62.1 million on March 3, 2021. The Short-Term Fund contained \$12.6 million.

Items on Final Action: On the recommendation of Chris Bridges, institutional consulting manager with Greystone Consulting, the committee has recommended GMO, a new manager be added to the Long-Term portfolio. Once approved, the committee intends to transition the holdings currently in the Tortoise MLP and Pipeline account to GMO to better guard against potential inflation. The board voted 43-0-1 to approve, with board member Alice Sum abstaining.

15. Program Evaluation Committee Report

Chair Brian Burgoon presented.

The committee approved five of six recommendations to diversify the Board of Governors that have been made by a Program Evaluation Committee subcommittee chaired by board member Stephanie Marchman. A final proposal will be presented for board approval at the May meeting. President Dori Foster-Morales ordered the proposals to be distributed to board members prior to the May meeting.

16. Board Technology Committee Report

Chair Jay Kim presented.

A contract with Law Tech Partners to conduct a three-month beta test of a proposed non-emergency IT help line, as approved by the board at the January 29 meeting, has been completed and the test will commence March 15. The IT help line will be promoted to solo and small-firm lawyers. The committee has updated The Florida Bar Recommended Best Practices Guide for Remote Court Proceedings and it will be posted on the Bar's COVID-19 Information and Resources webpage as well as the LegalFuel webpage. No board action was required.

17. Special Committee on Judicial Referrals for Discipline Matters Report

Co-Chair Paige Greenlee presented.

The committee met several times and studied procedures in other states before reaching a consensus. Co-Chair Paige Greenlee thanked Co-chair Michael Orr, and board members Sia Baker-Barnes, Robin Bresky, Brian Burgoon, Ian Comisky, Jay Kim, Ronald Ponzoli, and Thomas Wert, and Bar staff.

Items on First Reading: Rule 3-7.18 Disposition of Inquiries or Complaints Referred to the Bar by Members of the Judiciary. The proposed amendment would establish procedures for handling discipline matters referred to the Bar by the judiciary. The proposed amendment will undergo fiscal, strategic, and procedural review before being presented for final action at the May board meeting.

18. Special Appointments

President Dori Foster-Morales presented.

Statewide Nominating Commission for Judges of Compensation Claims. (Two lawyers, one from the Second and Fourth Appellate Districts to serve four-year terms commencing July 2, 2021.) Applicants: Robert Hanaford, Naples, Second Appellate District; Steven E. Martin, Fort Myers, Second Appellate District; Andrew M. Bucher, Boca Raton, Fourth Appellate District; William H. Dane, Jr., Vero Beach, Fourth Appellate District; Jonathan Todd Levy, Lake Worth,* Fourth Appellate District; Howard Scheiner, Fort Lauderdale, Fourth Appellate District; Malcolm S. Steinberg, Hollywood, Fourth Appellate District. *Denotes incumbent eligible for reappointment. The board appointed **Steven E. Martin**, Fort Myers, and **Andrew M. Bucher**, Boca Raton.

19. Young Lawyers Division President's Report

President Adam White presented.

The Affiliate Outreach Conference was conducted virtually via the Remo platform, enabling organizers to reduce a four-hour grant presentation to 90 minutes. The division recently launched parental leave and social media guides. The #YLDIsMe campaign continues to release video testimonials of lawyers from underrepresented groups. The Moot Court Competition will be conducted virtually at the Annual Meeting. The YLD is launching an Olympic physical fitness and health and wellness competition.

20. President-elect's Report

The COVID-19 Pandemic Recovery Taskforce continues to regularly update the COVID-19 Information and Resources website. The Future Challenges to the Legal Profession Subcommittee conducted a design-thinking exercise on February 24, aided by team leaders Laird Lile, Paige Greenlee, Amy Farrior, Sia Baker-Barnes, Jay Kim and Stephanie Marchman. A written report will be forwarded to the Strategic Planning Committee in March. A subcommittee continues to study the most appropriate legal proceedings to conduct virtually after the pandemic subsides. Board members Sandy Diamond and Clifford Higby will serve as liaisons to the Special Committee on the Delivery of Legal Services. Board

members are urged to review Special Committee on the Delivery of Legal Services Committee material that will be made available through the member portal.

21. Executive Director's Report

Executive Director Joshua Doyle thanked President Dori Foster-Morales and President-elect Michael Tanner for their service during challenging times. Bar staff continues to work remotely while repairs are made to the headquarters building. Communications Director Francine Walker will retire at the end of the Bar year after 21 years of service. Deputy Communications Director Jennifer Krell Davis will serve as interim communications director while Francine Walker focuses on special projects.

22. President's Report

The board will convene in person on May 19 for the first time in more than a year. Outdoor activities are planned. Board members may participate via videoconference.

23. Time and Place of Next Meeting

There being no further business before the board, President Dori Foster-Morales adjourned the meeting at 12:00 p.m. The next interim board meeting will convene virtually at 1 p.m. on April 29. The next regular board meeting will convene May 19-21 at Hawks Cay Resort on Duck Key.

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