

Florida Bar Board of Governors  
July 23, 2021  
Miami Beach, Florida  
(And via videoconference)

**1. Roll Call**

Michael G. Tanner, President  
Gary S. Lesser, 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  
Gordon J. Glover, 5th Circuit  
Joshua T. Chilson, 6th Circuit  
Sandra Fascell Diamond, 6th Circuit  
Julia L. Frey, 9th Circuit  
Tad A. Yates, 9th Circuit  
C. Richard Nail, 10th Circuit  
Roland Sanchez-Medina, Jr., 11th Circuit  
Jordan A. Dresnick, 11th Circuit  
Jeffrey Rynor, 11th Circuit  
Judge Leslie B. Rothenberg, 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  
Michael J. Gelfand, 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  
E. Duffy Myrtetus, Out of State  
Donald A. Workman, Out of State  
Eric L. Meeks, Out of State  
Brian D. Burgoon, Out of State  
Todd L. Baker, YLD President  
Iris A. Elijah, YLD President-elect  
Joseph "Jody" D. Hudgins, Public Member  
Linda Goldstein, Public Member

**Members Absent**

Philip J. Bonamo, 7th Circuit  
Stephanie M. Marchman, 8th Circuit  
Thomas P. Wert, 9th Circuit  
Nikki L. Simon, 11th Circuit  
Jorge L. Piedra, 11th Circuit  
Alice Sum, 11th Circuit  
Laird A. Lile, 20th Circuit  
John D. Agnew, 20th Circuit

**2. Staff in Attendance**

Joshua Doyle, Executive Director  
Allison Sackett, Director, Legal Division  
Gypsy Bailey, General Counsel & 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  
Jennifer Krell Davis, Director of Communications

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. Invocation and Pledge of Allegiance**

Board member Jeffrey Rynor delivered the invocation and board member Judge Leslie Rothenberg led the Pledge of Allegiance.

### **4. Guests**

President Michael Tanner recognized the following guests:

Florida Supreme Court Justice John D. Couriel

Miami-Dade County Mayor Daniella Levine Cava

Andy Sasso, Parliamentarian

Michael Davis, Virgil Hawkins Florida Chapter, NBA

Miriam Soler Ramos, Cuban American Bar Association

Jenny Scavino Sieg, Florida Association for Women Lawyers

Karen Ladis, Legal Aid Representative

Rachel Curtis, Florida Association of Criminal Defense Lawyers

Deborah Gander, Miami ABOTA

Sabrina Puglisi, Miami Dade Bar Association

Eleventh Judicial Circuit Judge Jason Emilios Dimitris, Peter T. Fay Inn of Court

Joshua Hertz, Miami Lakes Bar Association

Nakia Ruffin, Gwen S. Cherry Black Women Lawyers Association

Augusto Perera, South Miami-Kendall Bar Association

Steven Spann, Florida First Family Law Inn of Court

Hugo Alvarez, Coral Gables Bar Association

Nicholas A. Shannin, Chair-elect, Council of Sections

### **5. Remarks, Miami-Dade County Mayor Daniella Levine Cava**

Engineering and legal task forces will determine the cause of the June 24 Champlain Towers South condominium collapse in Surfside that killed 98 residents. The Board of Governors promotes trust in the legal profession.

## **6. Remarks, Florida Supreme Court Justice John D. Couriel**

Before administering the oath of office to several board members, Justice Couriel said society looks to lawyers for the exercise of good judgment.

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

Executive Director Joshua Doyle reported that Legal Division Director Allison Sackett, after 14 years of dedicated service, will leave The Florida Bar on September 1, 2021, to become State Courts Administrator.

## **8. Remarks, Former President Michael Higer (2017)**

Former President Higer asked board members to remember the efficiency of remote court proceedings.

## **9. Non-Roll Call Grievance Agenda Items**

Item 6 (L).

## **10. Minutes Approval**

The board approved minutes from its May 21, 2021 meeting. That included ratifying the following actions taken by the Executive Committee:

- On July 9, 2021, the committee met via videoconference and voted unanimously to approve the following motions: (1) That the Board of Governors not file a comment to Florida Supreme Court Case 21-248. (2) To approve the Executive Director contract.
- On July 13, 2021, the committee met and voted unanimously via email ballot to forward to the Supreme Court the following three candidates, as recommended by The Florida Bar/Florida Board of Bar Examiners Joint Committee for New Member Search, for the mid-cycle vacancy: C. Michael Cornely, Palm City; Rodney A. Edwards, Palm Bay; and Victoria J. Wilson, Miami.

## **11. Consent Calendar**

After removing item 5b(ii), (advertising appeals 21-03020, 21-03021, 21-03022, and 21-03023), the board approved the consent agenda, including the following items:

- Appointing Miriam Acosta-Castriz as an attorney member to UPL Committee 15A; Kristen Guerrise as a public member to UPL Committee 17A; and Walter Reynoso as an attorney member to UPL Committee 11A.

- Appointing the Honorable Phyllis D. Kotey of Fort Lauderdale as an attorney member, and Fran Y. Zelner, FRP, to the Florida Registered Paralegal District Committee.
- Approving the Board Review Committee on Professional Ethics Advertising recommendation in Advertising Appeal 21-01470.
- Approving the Member Benefits Committee recommendation to add Coaxis Hiring Solutions and Hire an Esquire to the Member Benefits Program.
- Agreeing not to oppose the Business Law Section from taking the following legislative positions:
  - Support amendments to Chapters 55, 56, and 319 to clarify the effect of a certificate of title on a judgment lien and establish procedures for enforcement of a judgment lien against a motor vehicle, mobile home, or vessel.
  - Support legislation to amend Fla. Stat. §§ 679.4081 to clarify that certain “overrides” of restrictions on transferability do not apply to an ownership interest in a general partnership, limited partnership, or limited liability company.
  - Support changes to Chapter 48, F.S. and Chapter 15, F.S. to: (1) simplify the methods of service of process on business entities to eliminate redundancies and inconsistencies, (2) clarify the statutory scheme to avoid confusion, (3) better elucidate the methods for effectuating service of process in foreign countries, and (4) modernize the methods and procedures for service of process on business entities, while ensuring compliance with fundamental notions of due process.
- Agreeing not to oppose the Real Property, Probate and Trust Law Section from taking the following legislative positions:
  - Proposal to expand the applicability of §697.07 (Assignment of Rents) and §702.10 (Order to Make Payments During Foreclosure) to third parties who acquire properties subject to a mortgage.
  - Support legislation amending Section 718.113 and Section 718.115 to clarify and enhance the ability of condominium associations and condominium unit owners to use hurricane shutters and other types of hurricane protection to protect condominium property, association property, and the personal property of unit owners, and

to reduce insurance costs for condominium associations and unit owners.

- Approving the Legislative Advising Services Agreement between The Florida Bar and Smith, Bryan & Myers, Inc.
- Approving the Legislative Advising Services Agreement between The Florida Bar and Pamela Burch Fort.
- Approving the State Government Policy Research, Monitoring, and Strategic Advice Agreement between The Florida Bar and Metz, Husband & Daughton, P.A.
- Approving the Legislative Advising Services Agreement between the Business Law Section and Metz, Husband & Daughton, P.A.
- Approving the Legislative Advising Services Agreement between the Family Law Section and Smith, Bryan & Myers.
- Approving the Legislative Advising Services Agreement between the Trial Lawyers Section and Messer, Caparello, P.A.

## **12. Citizens Advisory Committee Report**

Committee Vice Chair Hong Potomski presented.

The committee is working on a guide to assist the public in hiring an attorney.

President Michael Tanner recognized the following committee members:

Vice-Chair Hong Potomski, Pensacola; David Mica, Tallahassee; Kevin Gay, Jacksonville; Nancy Vaughn, Tampa; Lawrence Gordon, Haverhill; Orlando Rolón, Orlando; Thomas Kontinos, Fort Myers; Karen Cespedes, Miami.

## **13. Legislation Committee Report**

Chair Sandra Diamond presented.

Board members are encouraged to forward Key Contacts and attend the January 19, 2022 legislative reception in Tallahassee. Legislative advocate Jim Daughton reported that interim committee weeks convene in September, October, November, and December ahead of the January 11, 2022 legislative session. Court priorities will include funding the next round of the Pandemic Recovery Plan and salary increases for trial court judges.

**14. Criminal Procedure Rules Committee Report**

Committee Vice Chair Cynthia Cohen presented.

Items on Final Action: Pursuant to Florida Rule of General Practice and Judicial Administration 2.140 (e), proposed amendments to Rule 3.986 (Forms Related to Judgment and Sentence); Rule 3.693 (Petition to Seal or Expunge; Human Trafficking); Rule 3.9895 (Human Trafficking; Sworn Statement; Petition; and Order to Expunge or Seal Records) in response to legislative changes. The board voted 38 to recommend acceptance, 0 to recommend rejection and 0 to recommend amendment.

**15. Code and Rules of Evidence Committee Report**

Committee Chair Curry G. Pajcic presented.

Items on Final Action: Pursuant to Florida Rules of General Practice and Judicial Administration 2.140 (e), the committee recommends, to the extent that it is procedural, adopting Chapter 2021-172 Laws of Florida. The Legislature made several changes to the restitution statute, including the addition of a provision that requires that restitution “must be determined on a fair market value basis” unless an interested party shows that another basis is more appropriate. §775.089(7)(b). The existing statute provides that the trial court will resolve disputes about the proper amount or type of restitution by a preponderance of the evidence. §775.089(7)(c). The Legislature amended this provision as follows: The court may consider hearsay evidence for this purpose, provided it finds that the hearsay evidence has minimal indicia of reliability. The Legislature inserted this same fair market value and hearsay language into §985.473(2)(b) as well. The board voted 36 to recommend acceptance, 0 to recommend rejection and 0 to recommend amendment.

**16. Budget Committee Report**

Chair Jeremy Branning presented.

The budget committee conducted a routine review of fiscal impact statements and financial information for the period ending May 31, 2021. Initial estimates project an operating loss of approximately \$1 million instead of the budgeted operating loss of \$3.9 million, mostly attributable to a \$9 million gain in investments. It is possible that general undesignated reserves will be above the maximum level of security outlined in the reserve policy. Since this would be due solely to investment performance, the committee will monitor the situation for sustainability before recommending further action.

Items on Final Action: Budget rollover amendment of \$357,000 for three projects, including North Headquarters electrical switch gear replacement and building feed relocation, subterranean reseal project, and partial window replacement. Budget rollover amendment of \$52,500 for repair of North Headquarters boiler stack flue pipe. The board voted without objection to approve.

Agenda item 14 (c) was withdrawn from consideration for further review.

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

Co-Chair Sia Baker Barnes presented.

The task force met July 12, 2021 to discuss three goals: investigating an online platform for resolving civil cases worth less than \$1,000 for unrepresented citizens; to continue evaluating the ongoing pandemic as it relates to the operation of the courts; and keeping Bar members informed about the health emergency by regularly updating the COVID-19 Information and Resources webpage.

### **18. Program Evaluation Committee Report**

Chair Roland Sanchez-Medina presented.

Items on Final Action: Proposed amendment to Rule 6-8.4 Criminal Trial Recertification. Within subdivision (b) adds that the Criminal Law Certification Committee may consider for good cause involvement in protracted litigation as defined elsewhere in this subchapter. Proposed Amendment to Rule 6-13.4 Recertification (Appellate Practice). In subdivision (c), the requirement of 5 oral arguments is changed to 3 for the first recertification cycle and to 2 for subsequent recertification cycles. The board voted without objection to approve. Program Evaluation Committee Recommendations and Final Report for the Benchmarks Program. A PEC subcommittee recommended eight changes. The board voted without objection to approve.

### **19. Board Review Committee on Professional Ethics**

Chair Wayne Smith presented.

Item 5b(ii) was removed from the consent agenda.

#### **Advertising Appeal 21-01470**

Chair Wayne Smith reported that the Board of Governors affirmed the Standing Committee on Advertising decision on its consent calendar that the disclaimer "Restrictions Apply. Not all claims qualify" in the billboard in file 21-0470 that is



required to modify the statements “Don’t Pay 30-40% visit [www.SettleForFree.com](http://www.SettleForFree.com) Pay 0% Attorney’s Fees if settles within 90 days” because of numerous situations in which consumers do not pay 0% attorney’s fees, is not reasonably prominent because it appears in much smaller type at the bottom of the billboard.

### **Advertising Appeals 21-03020 through 21-03023**

The Board Review Committee on Professional Ethics voted 9-0 to recommend that the Board of Governors reverse the Standing Committee on Advertising decision and instead determined the University of Florida mascots Albert and Alberta Alligator are not considered “celebrities” under Rule 4-7.15(c), and that their use in the television advertisements in files 21-03020, 21-03021, 21-03022, and 21-03023 is permissible. The Board of Governors approved on voice vote with objection. Board member Brian Burgoon was recused from the discussion and vote.

Items on First Reading:

**Rule 4-1.6 Amendments.** Would add new subdivision (c)(7) to permit a lawyer to disclose information reasonably necessary to respond to specific allegations published via the internet by a former client (e.g. a negative online review) that the lawyer has engaged in criminal conduct punishable by law, add similar commentary addressing the issue, and were approved by the Board Review Committee on Professional Ethics 11-0 on May 20, 2021.

**Rule 4-7.12 Amendments; Rule 4-7.13 Amendments; Rule 4-7.14 Amendments, Rule 4-7.18 Amendments.** Within several subdivisions of the rules and in the comments to these rules, changes the requirement that information required by the advertising rules be “reasonably prominent” to “clear and conspicuous” as a term used by the Federal Trade Commission to describe disclaimers which already has a body of information on the definition and requirements. The amendments were approved by the Board Review Committee on Professional Ethics 11-0 on May 20, 2021.

**Rule 4-7.18 Additional Amendments.** Within subdivision (b)(2)(E), deletes the first sentence required for targeted direct mail “If you have already retained a lawyer for this matter, please disregard this letter” because it is more protective of lawyers than clients and therefore unnecessary. Makes current subdivisions (b)(2)(H) and (b)(2)(I) [proposed subdivisions (b)(2)(G) and (b)(2)(H) consistent using a “know or reasonably should know” standard for whether the direct advertisement is targeted (prompted by a specific event affecting the intended recipient) and adds commentary addressing the prohibition against disclosing the

nature of the prospective client's legal problem and indicating that the prohibition does not apply in circumstances where an occurrence has a widespread impact but the advertising lawyer does not specifically know that the recipient was impacted by the occurrence. These amendments will improve consistency in the advertising rules.

All amendments were approved by the Board Review Committee on Professional Ethics 11-0 on May 20, 2021. No board action was required.

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

Chair Robin Bresky presented.

Items on Final Action: Proposed amendments to Rule 3-6.1 Generally. Within subdivision (a), clarifies who is subject to the rule for lawyers who are suspended or disbarred and employed in some capacity by a law firm. The board voted without objection to recommend approval.

Proposed Amendments to Rule 3-7.16 Limitation on Time to Open an Investigation. Within subdivision (d), clarifies that the Bar will not take action on a complaint against a constitutional officer while that person remains in office. New commentary clarifies that the governor has the authority to remove constitutional officers. The board voted without objection to recommend approval.

Rule 3-5.2 Emergency Suspension and Interim Probation or Interim Placement on the Inactive List for Incapacity Not Related to Misconduct. Adds new subdivision (o) which requires that a respondent sever all employment and financial ties with any law firm on entry of an order of emergency suspension. The board voted without objection to postpone consideration pending consideration of Item 11b(ii) [pages 280-281 of background material]: Rule 3-5.2 Emergency Suspension by Institution of Felony Charge.

Items on First Reading: Rule 3-7.2 Procedures on Criminal or Professional Misconduct; Discipline on Determination or Judgment of Guilt of Criminal Misconduct; Discipline on Removal from Judicial Office. Within subdivision (l)(1), adds public reprimand and censure in a foreign jurisdiction would be required to file a copy of the order or judgment reprimanding or censuring the Bar member with The Florida Bar. No board action was required.

Rule 3-7.10 Reinstatement and Readmission Procedures. Adds new subdivision (f)(1)(O) that holding out as if eligible to practice is disqualifying conduct in reinstatement proceedings, making the suspended lawyer ineligible for reinstatement to practice law with subsequent subdivision renumbered accordingly. No board action was required.

**21. Rules Committee Report**

Chair Hilary Creary presented.

Items on Final Action: Bylaw 2-9.7 Insurance for Members of Board of Governors, Officers, Grievance Committee Members, UPL Committee Members, Clients' Security Fund Committee Members, and Employees. Adds former board members, officers, Grievance Committee members, Unlicensed Practice of Law Committee members, and Clients' Security Fund Committee members and former employees to those covered by insurance and indemnification for acts committed in their capacity doing Bar work. Standing Board Policy 3.20 Insurance for Board Members, Bar Officers, Grievance Committee Members, UPL Committee Members, Clients' Security Trust Fund Members, and Bar Staff. Adds former board members, officers, Grievance Committee members, Unlicensed Practice of Law Committee members, Clients' Security Trust Fund Committee members and former employees to those covered by insurance and indemnification for acts committed in their capacity doing bar work. The board voted without objection to approve.

Items on First Reading: Rule 4-5.5 Unlicensed Practice of Law; Multijurisdictional Practice of Law. Adds commentary addressing out-of-state lawyers working remotely while physically located in Florida. No board action was required.

**22. Audit Committee Report**

Chair Duffy Myrtetus presented.

The committee met July 22. A review determined that all regulatory tax and administrative filings for The Florida Bar and its affiliates are current. The committee has initiated a Request for Proposal process to identify a vendor for audit services in the 2021-2022 year. The RFP was issued July 19, 2021, with responses due August 13, and preliminary review of the responses commencing August 30. Interviews of finalists begins September 20. The committee will recommend a new vendor to the board in December. An IT security review is mostly complete and most systems are stabilized.

### **23. Executive Session**

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

### **24. Investment Committee Report**

Chair Jeffrey Rynor presented.

As of July 22, 2021, the Long-Term Fund contained \$68.8 million, and the Short-Term Fund contained \$19.8 million. The Florida Bar's finances are sound, and it enjoys "very competitive" fee rates.

### **25. Board Technology Committee Report**

Chair Paige Greenlee presented.

The committee met July 22, 2021 and reviewed results of the 90-day "beta test" of the Florida Bar Tech Support Helpline. Participants expressed overwhelming satisfaction. The committee voted to explore options with Law Tech Partners for adding the service to the Member Benefits Program. The committee continues to work with Zoom representatives to add features to its remote platform to better facilitate the practice of law. No board action was required.

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

President Todd Baker presented.

Board members are invited to attend YLD board meetings in their jurisdictions and to refer young lawyers for division membership. The division is promoting a statewide back-to-school backpack drive for underprivileged students. The "#YLDisMe" campaign will turn its focus to affiliate members. The division is planning statewide projects that will include honoring Pro Bono, Hispanic Heritage, and Black History months. No board action was required.

### **27. Communications Committee Report**

Chair Amy Farrior presented.

The Communications Committee met jointly with the Citizens Advisory Committee and Bar communications staff. The Supreme Court has completed an update of its branch-wide communications plan, which includes participation by The Florida Bar. No board action was required.

### **28. President-Elect's Report**

President-elect Gary Lesser reported that the Special Committee on Professionalism has been divided into Education, Standards, and Enforcement subcommittees that are beginning their respective reviews.

### **29. President's Report**

President Michael Tanner thanked board members and committee chairs for their service.

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

There being no further business before the board, President Michael Tanner adjourned the meeting at 2:01 p.m. The next board meeting will convene October 1, 2021 in Ashville, North Carolina.

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