

The Florida Bar Board of Governors
October 1, 2021
Asheville, North Carolina
(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
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
Judge Leslie B. Rothenberg (Ret.), 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
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
Laird A. Lile, 20th Circuit
John D. Agnew, 20th 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

All members were present.

2. Staff in Attendance

Joshua Doyle, Executive Director
Elizabeth Clark Tarbert, Ethics Counsel, Interim Director, Legal Division
Gypsy Bailey, General Counsel & Director, Division of Ethics & Consumer Protection
Terry Hill, Director, Programs Division
Cynthia Jackson, CFO & Director, Administrative Division
Rick Courtemanche, Deputy General 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 Brian Burgoon delivered the invocation and board member Donald Workman led the Pledge of Allegiance.

4. Guests

President Michael Tanner recognized the following guests:
Florida Supreme Court Justice Alan Lawson
Chief Justice Kirk G. Saunooke, Cherokee Supreme Court, ECBI
Robert Saunooke, Member, Florida Bar, Out-of-State Division
Adam Ouellette, Member, Florida Bar, Out-of-State Division
Nicholas Shannin, Chair, Council of Sections
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

5. Remarks, Chief Justice Kirk G. Saunooke, Cherokee Supreme Court EBCI

Chief Justice Saunooke described the jurisdictional framework for the tribal court that serves the Eastern Band of Cherokee Indians.

6. Remarks, Florida Supreme Court Justice Alan Lawson

Justice Lawson thanked board members for their service and recited “The Three Questions” by Leo Tolstoy.

7. Non-Roll Call Grievance Agenda Items

Item 6(a).

8. Minutes Approval

The Board approved the minutes from its July 23, 2021 and September 8, 2021 meetings. That included ratifying the following actions taken by the Executive Committee:

- On August 4, 2021, the Executive Committee met via videoconference and voted without objection to approve a request by the Criminal Law Section to submit a letter to Chief Justice Charles Canady requesting utilization of virtual court proceedings for non-essential criminal court hearings.
- On August 10, the Executive Committee met via videoconference and voted 13-0-0 via email ballot to recommend acceptance of a Probate Rules Committee proposal to amend Florida Probate Rules. The amendments addressed legislation that became effective July 1, 2021.
- On August 17, 2021, the Executive Committee met via videoconference and voted 12-0 to approve an Elder Law Section legislative advising agreement with Waypoint Strategies (Brian Jogerst/Greg Black). The section will pay 80% (\$72,000) of the \$90,000 annual agreement. A sister organization, the Academy of Florida Elder Law Attorneys, will pay 20% (\$18,000).
- On August 23, 2021, the Executive Committee met via videoconference and voted 12-0-0 via email ballot to recommend acceptance of Juvenile Court Rules Committee proposed amendments to Form 8.933 (Waiver of Counsel) and Form 8.095 (Procedure When Child Believed to be Incompetent or Insane). The committee voted 12-0-0 via email ballot to recommend acceptance of Criminal Procedure Rules Committee proposed amendments to Rule 3.030 (Service and Filing of Pleadings, Papers, and Documents).
- On September 17, 2021, the Executive Committee met via videoconference and voted without objection to file comments, prepared on behalf of The Florida Bar by the COVID-19 Pandemic Recovery Task Force, to proposed amendments to Florida Rules of General Practice and Judicial Administration 2.530 (Communications Equipment) contained in SC21-990. The committee voted 14-0-0 to recommend acceptance of Rules of Judicial Administration Committee proposed edits to Rule of General Practice and Judicial Administration 2.530 (Communications Equipment) published by the Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19. The committee voted 14-0-0 to recommend acceptance of Civil Procedure Rules Committee proposed amendments to edits of Rule 1.310 (Depositions Upon Oral Examination), Rule 1.430

(Demand for Jury Trial Waiver), and Rule 1.730 (Completion of Mediation) published by the Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19.

9. Consent Calendar

The board approved the consent agenda, including the following items:

- Appointing Pamela P. Craven as a public member to UPL Committee 10.
- Appointing Christian Nuñez Katchuk as an attorney member to the Florida Registered Paralegal District Committee for a term that expires in 2024.

10. Out of State Division Report

President Lawrence Kunin presented.

There are more than 14,000 out-of-state Florida Bar members and approximately 600 registered division members. The division recruits primarily through an electronic newsletter. The section is updating the two ethics CLEs it offers without charge to division members. The division's next executive council meeting is January 12, 2022.

11. Family Law Rules Committee Report

Chair Ashley Taylor presented.

Pursuant to Florida Rule of General Practice and Judicial Administration 2.140(b), proposed amendments to Family Law Rules of Procedure 12.340 (Interrogatories to Parties), 12.350 (Production of Documents and Things and Entry on Land for Inspection and Other Purposes), 12.351 (Production of Documents and Things Without Deposition), and Form 12.930(b) (Standard Family Law Interrogatories for Modification Proceedings). The board voted 47 to recommend acceptance, 0 to recommend rejection and 0 to recommend amendment.

12. Civil Procedure Rules Committee Report

Chair Jason Stearns presented.

Pursuant to Florida Rule of General Practice and Judicial Administration 2.140(b), proposed amendments to Florida Rule of Civil Procedure 1.530 (Motions for New Trial and Rehearing; Amendments of Judgments; Remittitur; or Additur) and deletion of Rule 1.535 (Remittitur and Additur). The board voted 46 to

recommend acceptance, 0 to recommend rejection and 0 to recommend amendment.

13. Program Evaluation Committee Report

Chair Roland Sanchez-Medina presented.

Items on Final Action: Proposed amendments to Government Lawyers Section Bylaws: Within subdivision (1)(i) of Article VI adds that the Awards and Recognition Committee may award 1 scholarship annually to a student of an ABA-accredited law school with a demonstrated interest in government service in Florida and a stated need for financial assistance if provided for in the annual budget. The board voted without objection to approve.

A Program Evaluation Committee subcommittee will conduct a survey of board members regarding practice area diversity.

14. Legislation Committee Report

Chair Sandra Diamond presented.

Interim legislative committee weeks convened in September and five more interim committee weeks are scheduled. State revenue is projected to increase by more than \$2 billion in the next fiscal year. The Florida Court system legislative budget request includes \$10 million for a pandemic recovery program. Board members are urged to attend The Florida Bar Legislative Reception scheduled for Wednesday, January 19, from 5:00 p.m. to 7:30 p.m. on the 22nd Floor of the Capitol.

15. Disciplinary Procedure Committee Report

Chair Robin Bresky presented.

Items on Final Action: The committee recommends that the Board of Governors approve asking the Supreme Court for a six-month extension to an October 11, 2021, deadline to file proposed amendments to Florida Bar Rule 3-5.3 (Emergency Suspension and Interim Probation or Interim Placement on the Inactive List for Incapacity Not Related to Misconduct) that would provide for the temporary suspension of lawyers facing state or federal felony charges. The Criminal Law Section has agreed, by December 1, 2021, to develop a proposal. DPC Chair Bresky requested a motion to amend the DPC motion and request a four-month extension, which was made and seconded. The board voted, with objection, to request the four-month extension.

Items on First Reading: Proposed amendments to Florida Bar Rule 3-5.1 (Generally), Rule 3-5.3 (Diversion of Disciplinary Cases to Practice and Professionalism Enhancement Programs), Rule 3-7.4 (Grievance Committee Procedures), Rule 3-7.9 (Consent Judgment), and Standing Board Policy 16.23 (Dual Circuit UPL and Grievance Committee Membership). No board action was required.

16. Rules Committee Report

Vice Chair Amy Fariior presented.

Items on Final Action: Proposed amendments to Florida Bar Rule 4-5.5 (Unlicensed Practice of Law, Multijurisdictional Practice of Law). The proposed amendment would add a comment regarding out-of-state lawyers working remotely while physically located in Florida. The board voted without objection to recommend approval.

Items on First Reading: Proposed amendments to Rule 1-3.5 (Retirement), Rule 21-3.1 (Continuing Legal Education), Standing Board Policy 1.64 (Petitions to Amend Rules Regulating The Florida Bar), Standing Board Policy 1.80 (General Recusal Policy), Standing Board Policy 5.20 (Committee Structure, Membership and Terms), Standing Board Policy 8.10 (Amicus Curiae Filings), and Standing Board Policy 8.20 (Responses to Bar Rules Petitions). No board action was required.

17. Executive Session

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

18. COVID-19 Pandemic Recovery Task Force Report

Co-Chairs Sia Baker-Barnes and Jay Kim presented.

Items on Final Action: Co-Chair Jay Kim proposed a revision to a task force recommendation to the Supreme Court regarding a potential statewide managed mediation program for evictions. Upon a motion by board member Michael Gelfand, the board voted without objection to add a provision that the managed mediation session occur at or before the time of the final possession hearing so as not to unduly burden the court and the parties with multiple hearings. The board voted without objection to forward the amended recommendation to the Supreme Court.

Co-Chair Sia Baker-Barnes reported that the task force is monitoring rules committees for the latest developments, regularly updating the COVID-19 Pandemic Information and Resources Webpage and studying the potential for an automated platform for the resolution of civil disputes worth less than \$1,000. Co-Chair Sia Baker Barnes and board member Michael Orr served on the District Court of Appeal Workload and Jurisdiction Assessment Committee. That panel's final report includes a majority recommendation to reassign some circuits to different district courts of appeal and add one or more district courts of appeal. No board action was required.

19. Communications Committee Report

Chair Amy Fariior presented.

Board members are urged to review Communications Committee materials that were developed to facilitate the convening of virtual town halls. No board action was required.

20. Citizens Advisory Committee Report

Chair Thomas Wert presented.

The committee is developing educational materials that would assist members of the public with hiring a lawyer. The committee is developing content for the "For the Public" landing page of the Florida Bar website. The committee met with board member Jody Hudgins to discuss the impact of changes to the IOTA rule.

21. Budget Committee Report

Chair Jeremy Branning presented.

The Florida Bar ended the fiscal year with operating income approximately \$1.1 million higher than expenses. Investment earnings rose \$9.3 million, increasing The Florida Bar general fund balance by \$10.4 million. The client security fund ended the year with just under \$4 million in reserves, the certification fund increased its balance to \$1.8 million, the litigation fund has \$2.8 million in reserves. All sections ended the fiscal year with positive operations for a combined increase of \$4.2 million and an ending fund balance of \$12.8 million. The committee approved a slate of recommendations regarding the Young Lawyers Division financial operations. The committee received positive feedback from division leadership and those comments are being incorporated into a final report for submission to the board in December.

22. Audit Committee Report

Chair Duffy Myrtetus presented.

The vetting process continues for selecting a new auditor. The field of candidates will be narrowed to five and the committee should make a final recommendation to the board in January.

23. Investment Committee Report

Chair Jeffrey Rynor presented.

The Long-Term and Sort-Term funds combined contain \$98 million, up from \$53.9 million in 2010.

24. Board Technology Committee Report

Chair Paige Greenlee presented.

The committee has created three subcommittees and continues to work on the development of lawyer-friendly features to the Zoom platform. A subcommittee is reviewing a proposal to bring the previously tested Florida Bar Tech Support Helpline back to the Bar membership. A subcommittee is working on recommended enhancements to the Florida Bar member portal. A subcommittee is working on creating better communication and awareness resources to educate local bar associations who have lawyer referral services on the option to have The Florida Bar host their LRS program on The Florida Bar Lawyer Referral Service platform.

25. President-Elect's Report

President-elect Gary Lesser reported that the Special Committee for the Review of Professionalism in Florida expects to present recommendations to the board in December. Subcommittees are working on a Florida Bar produced video for law schools, uniform procedures for local professionalism panels, a Florida Bar CLE, and a proposed comment to Rules Regulating The Florida Bar.

26. Executive Director's Report

Executive Director Joshua Doyle gave an update on Bar staffing.

27. Time and Place of Next Meeting

There being no further business before the board, President Michael Tanner adjourned the meeting at 11:40 a.m. The board will convene virtually October 26,

2021, to review a Special Committee to Improve the Delivery of Legal Services report. The next regular board meeting convenes December 3, 2021, on Amelia Island.

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