

Florida Bar Board of Governors  
December 3, 2021  
Amelia Island  
(And via telephone)

**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  
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  
J. Carter Andersen, 13th Circuit  
Paige A. Greenlee, 13th 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  
Gregory S. Weiss, 19th 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**

Amy S. Farrior, 13th Circuit  
Clifford C. Higby, 14th Circuit  
James G. Vickaryous, 18th Circuit  
Laird A. Lile, 20th Circuit

**2. Staff in Attendance**

Joshua Doyle, Executive Director  
Elizabeth Clark Tarbert, Director, Lawyer Regulation 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  
Jonathan Grabb, 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 Michael Orr delivered the invocation and board member Braxton Gillam led the Pledge of Allegiance.

### **4. Admonishment**

President Michael Tanner delivered a public admonishment in Discipline Case No. 202010145.

### **5. Remarks, Hon. Mark Mahon, Chief Judge, Fourth Judicial Circuit**

Judge Mahon welcomed the board to the Fourth Circuit. The Bar deserves praise for its response to the COVID-19 pandemic.

### **6. Guests**

President Michael Tanner recognized the following guests:  
The Hon. Robert Morris, Chief Judge, Second District Court of Appeal  
The Hon. Mark Mahon, Chief Judge, Fourth Judicial Circuit  
Scott G. Hawkins, former Florida Bar President (2011)  
Andy Sasso, Parliamentarian  
Michael T. Davis, Virgil Hawkins Florida Chapter, NBA  
Karen Ladis, Legal Aid Representative  
Miriam Soler Ramos, Cuban American Bar Association  
Jenny Scavino Sieg, Florida Association for Women Lawyers  
Allan Wulbern, Jacksonville Bankruptcy Bar Association  
Christene Ertl, St. Augustine American Inn of Court  
Jessica Skapetis, Clay County Bar Association  
Rachel Rall, Catholic Lawyers Guild, Diocese of St. Augustine  
Ashley Myers, Florida Family Law American Inn of Court  
Courtney Walters, Jacksonville Beaches Bar Association  
Jineane McMinn, Jacksonville Justice Association  
Obinna Anum, D.W. Perkins Bar Association  
Craig Shoup, Jacksonville Bar Association

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

None.

## **8. Minutes Approval**

The board approved the minutes from the October 1, 2021 Grievance Committee meeting, the amended minutes from its October 1, 2021 meeting, and the minutes from its October 26, 2021 and November 8, 2021 meetings. That included ratifying the following actions taken by the Executive Committee:

- On October 26, 2021, the Executive Committee voted to approve five legislative position requests from the Business Law Section:
  - Service of Process 1 – Supports change to Ch. 48 and other statutory provisions addressing service of process 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.
  - Service of process 2 – Supports the Real Property, Probate and Trust Law Section position to create FS 49.072, establishing a process to serve unknown parties in possession of real property.
  - Supports the legislative proposals by the Florida Office of Financial Regulation for the amendment of Ch. 517, the Florida Securities and Investor Protection Act, as presented to the section by the Office of Financial Regulation.
  - Supports legislation to amend FS 713.78 to clarify that (1) storage liens on motor vehicles and vessels can be foreclosed only under the procedures set out in FS 713.78 and 559.917; (2) the same procedures for a lender or owner of a vehicle or vessel to request an inspection related to a towing and storage lien is the same as set out in FS 713.585 for a repair lien are also applicable to towing and storage liens for vehicles and vessels under FS 713.78; and (3) the same procedures for posting a bond regarding repairs on vehicles and vessels in FS 713.585 and 559.917 are also applicable to towing and storage liens for vehicles and vessels under FS 713.78.

- Supports (1) legislation to update and clarify FS 55.205, Effect of Judgment Lien, to explicitly cross-reference FS 319.27; (2) supports amendments to Ch. 55, 56 and 319 to (i) clarify the effect of a certificate of title on a judgment lien, and (ii) establish procedures for enforcement of a judgment lien against a motor vehicle, mobile home, or vessel; (3) support legislation to expand the scope of the judgment lien on personal property to reach accounts and payment intangibles as defined in Ch. 679, only of a judgment debtor that is located in the state; and (4) support legislation that makes clear that the above judgment lien can be enforced only through judicial process and not through self-help or replevin without the express consent of the judgment debtor in a post-default record.
- Three legislative position requests from the Real Property, Probate and Trust Law Section:
  - Supports proposed amendments to FS 201.02(4) (Tax on deeds and other instruments relating to real property or interests in real property) to create express statutory authority for existing FAC Rule 12B-4.013(28) by adding a sentence to FS 201.02(4) to apply the general principles expressed in FS 201.02(1) to transfers of real property interests to or from trustees of written trusts under Ch. 689. Consistent with decades of practice by the department and taxpayers alike, this general principle requires that there be a transfer of beneficial ownership and consideration for the transfer for the documentary stamp tax to apply to the transfer.
  - Supports proposed amendments to section FS 733.705(5) (Payment of and objection to claims) to codify existing case law such that the requirement to bring an independent action is satisfied if, within 30 days of the filing of an objection to the claim: a motion to substitute the fiduciary is filed in the pending action; an order substituting the fiduciary is entered in the pending action; such other procedure as may exist is initiated to substitute the fiduciary in the pending action; or the timely filing of an arbitration is made when the decedent has entered into an agreement during lifetime which provides for mandatory arbitration relating to the claim, or arbitration is required by the decedent's will or trust.

- Supports proposal to create FS 49.072, establishing a process to serve unknown parties in possession of real property.
- One legislative position request from the Tax Section:
  - Supports legislation amending FS 736.050(3) to provide that, for purposes of such section, assets in an irrevocable trust in which the original settlor's spouse is a beneficiary, such as a Spousal Lifetime Access Trust, shall, upon the death of said spouse, be deemed to have been contributed by the settlor's spouse and not by the settlor.
- Four judicial conference legislative advising agreements between (1) The Florida Bar/Florida Conference of DCA Judges/Paul M. Hawkes; (2) The Florida Bar/Conference of County Court Judges/Paul M. Hawkes; (3) The Florida Bar/Florida Conference of Circuit Judges/The Advocacy Group Stephen Shiver; and (4) The Florida Bar/Florida Conference of Circuit Judges/Dean Mead – Pete Dunbar.
- A Workers Compensation Section legislative advisor, Converge Government Affairs.
- At a November 3, 2021 meeting, the Executive Committee voted 6-5 not to fund a breakfast, lunch, and reception at the February 2022 ABA Mid-Year Meeting.

## **9. Consent Calendar**

After announcing the removal of Item 5(1)(b), the board voted to approve the consent agenda, including the following items:

- Advertising appeals 21-02851, 21-02852, and 21-02853: Affirmed the Standing Committee on Advertising decision that the testimonials of a client who identifies himself as a law enforcement officer violates Rule 4-7.15(b).
- Advertising appeals 20-00596, and 21-03092 through 21-03096: Affirmed the Standing Committee on Advertising decision that the television advertisements in files 20-00596, 21-03094, 21-03095, 21-03096 do not comply with a requirement in Rule 4-7.13(b)(6) that the disclosure "ACTOR. NOT ACTUAL JUDGE" appear in addition to the disclosure "DRAMATIZATION. NOT ACTUAL EVENT" when an actor portraying a judge is shown onscreen. The television advertisement in files 21-03092 and 21-03093 contain statements that can reasonably be interpreted as a prediction or guarantee of success, as prohibited by Rule 4-7.13(b)(1). The television advertisements in 21-03093 contains a statement that characterizes a lawyer's or law firm's skills,

experience, reputation, or record, and is prohibited by Rule 4-7.13(b)(3) unless the characterization is objectively verifiable. The onscreen depiction of people winning the lottery with confetti falling in television advertisement file 21-030905 can reasonably be interpreted as a prediction of guarantee of success and is prohibited by Rule 4-7.13(b)(1).

- Member Benefits – Tracers, discounted, cloud-based, investigative, and data-research software; Alliance of YMCAs, YMCA discounted membership for Florida Bar Members.
- Legislation Committee proposed positions from the Animal Law Section:
  - Support legislation for the care of retired law enforcement dogs.
  - Support legislation creating a public records exemption for certain identifying information for individuals who adopt animals from local government shelters.
  - Support (1) increased funding to protect manatee habitat, (2) relisting manatees as endangered species, and (3) legislation and rule changes that offer additional protection to manatees and their habitat.
- Appointing the following lawyer nominees to the board of Legal Services of North Florida for a term commencing January 1, 2021 and expiring December 31, 2024: **Richard Benham, David Grimes, Magdalena Ozarowski, Phil Smith, Lorena Holley, and Nick Youtz.**
- The following appointees to UPL Circuit Committees: Committee 2, **Toni C. Bernstein**, attorney member; Committee 4, **Janis G. Eldridge**, public member; Committee 11(A), **Johnette L. Hardiman**, attorney member, **Nolan Andrew Bunker**, attorney member, **Orlando Loli**, public member, **Etty Foodman**, public member; Committee 11(C), **Sandra Miller-Batiste**, attorney member, **Alberto Miguel Manrara**, attorney member; and Committee 13(A), **Karen E. Cole**, public member.

## **10. Legislation Committee Report**

Chair Sandra Diamond presented.

Items on Final Action: The board voted 22-12 to approve a committee recommendation to reject an Animal Law Section legislative position supporting a statewide ban on the retail sale of cats and dogs.

Lawmakers completed six interim committee weeks ahead of the 60-day session that convenes January 11, 2022. Legislative advisor Jim Daughton reported that legislative leaders will likely consider a Supreme Court recommendation to add a sixth district court of appeal. Board members are urged to attend the Florida Bar's January 19 legislative reception at the Capitol. President Michael Tanner briefed legislative committee chairs on judicial branch priorities.

### **11. Joint Juvenile Court Rules and Criminal Procedure Rules Committee Report**

Juvenile Court Rules Committee Chair Candice Brower presented.

Items on final action: Pursuant to Florida Rules of General Practice and Judicial Administration 2.140 (e), a joint committee's proposed amendments to Rules 3.720 (Sentencing Hearing) and 8.115 (Disposition Hearing), in response to changes to Chapter 2021-172, Laws of Florida, and the Supreme Court's request for a joint committee report. The board voted 35-0 to recommend approval. Pursuant to Florida Rules of General Practice and Judicial Administration 2.140(e), a Juvenile Court Rules Committee proposed amendments to Rules 8.217 (Attorney ad Litem/Attorney for the Child), 8.305 (Shelter Petition, Hearing, and Order), 8.345 (Post-Disposition Relief), 8.415 (Judicial Review of Dependency Cases), Rule 8.540 (Motion to Reinstate Parental Rights), Form 8.937(A) (Order on Judicial Review for Child Age 16), and Form 8.973(B) (Order on Judicial Review for Child 17 or Older) in response to changes to Chapter 2021-169, Laws of Florida. The board voted 34-0 to recommend approval.

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

Immediate-past Chair Cory Brandfon presented.

Items on Final Action: Pursuant to Florida Rule of General Practice and Judicial Administration 2.140(b), proposed amendments to Rule 12.285 (Mandatory Disclosure), and new Form 12.902(l) (Affidavit of Income for Child Support), and new Form 12.902(k) (Notice of Joint Verified Waiver of Filings of Financial Affidavits). The proposed amendments would in certain circumstances allow divorcing parties to waive the filing of financial affidavits. The board voted 31-1 to recommend approval.



### **13. Special Committee for the Review of Professionalism in Florida Report**

Co-Chairs Gary Lesser and Elizabeth Hunter and Bar liaison Alan Pascal presented. The committee expects to present final recommendations for enhancing the definition, education, and enforcement of professionalism to the board in March. The committee has met regularly since the summer and is considering such things as Bar-produced videos and CLE, a new professionalism webpage, and proposed administrative orders for the Supreme Court.

### **14. Workgroup on Improved Resolution of Civil Cases Report**

Workgroup Chair, the Hon. Robert Morris, Chief Judge of the Second District Court of Appeal, and workgroup member Scott G. Hawkins, presented. The workgroup has completed a report that the Judicial Management Council will forward to the Supreme Court. The workgroup is recommending the adoption of a differentiated case management system that would change the way Florida resolves civil cases. Transition to the system will be challenging. Board members are urged to notify constituents and begin preparing responses to an anticipated public comment period.

### **15. Disciplinary Procedure Committee Report**

Chair Robin Bresky presented.

Item 11a(iii), proposed amendments to Rule 3-5.3, (Grievance Committee Procedures), was removed pending further review.

Items on Final Action: Proposed amendments to Rule 1-3.7 (Reinstatement to Membership); Rule 3-5.1 (Generally); Rule 3-7.9 (Consent Judgment); Rule 3-7.10 (Reinstatement and Readmission Procedures); Standing Board Policy 15.75 (Review of Closed Inquiries and Disciplinary Complaints); and Standing Board Policy 16.23 (Dual Circuit UPL and Grievance Committee Membership). The board voted without objection to approve.

Items on First Reading: Proposed amendments to Rule 3-7.6 (Procedures Before a Referee), Rule 3-7.10 (Reinstatement and Readmission Procedures), and Rule 3-5.2 (Emergency Suspension and Interim Probation or Interim Placement on the Inactive List for Incapacity Not Related to Misconduct, (Felony Charge)).

## **16. Audit Committee Report**

Chair Duffy Myrtetus presented.

All tax and regulatory requirements are current. The latest audit will be presented for board approval in January. The committee selected Mauldin & Jenkins to be the new auditor. An engagement contract will be presented to the board in January.

## **17. Special Appointments**

President Michael Tanner presented.

The Florida Realtor-Attorney Joint Committee. Six lawyers, one from each appellate district, and an at-large member, to serve two-year terms commencing January 1, 2022. The board voted without objection to approve the following slate recommended by the Real Property, Probate and Trust Law Section: **Lori E. Ward**, Destin, 1<sup>st</sup> Appellate District; **Julie A. Horstkamp**, Venice, 2<sup>nd</sup> Appellate District; **Gregory S. Oropeza**, Key West, 3<sup>rd</sup> Appellate District; **Scott A. Marcus**, Fort Lauderdale, 4<sup>th</sup> Appellate District; **Raymond L. Schumann**, Daytona Beach, 5<sup>th</sup> Appellate District; and **Denise H. Rowan**, Panama City, at large.

Eleventh Circuit Judicial Conference. One lawyer from the Northern District to serve a four-year term commencing January 1, 2022. The board voted without objection to appoint **Stephen H. Echsner**, Pensacola.

Florida Rural Legal Services, Inc. Board of Directors. One lawyer to serve a three-year term commencing January 1, 2022. The board voted without objection to appoint **Ashley N. Minton**, Fort Pierce.

## **18. Budget Committee Report**

Chair Jeremy Branning presented.

Items on Final Action: Proposed budget amendment to fund the Technology Support Helpline for six months through June 30, 2022. The board voted without objection to approve.

The Bar's financial position remains strong and within all limits and controls. A YLD financial and budget review is ongoing.

## **19. Rules Committee Report**

Chair Hilary Creary presented.

Item 12a(i), proposed Amendments to Rule 1-3.5 (Retirement), was removed pending further review.

Items on Final Action: Proposed amendments to Rule 21-3.1 (Continuing Legal Education); and 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). The board voted without objection to approve.

Items on First Reading: Proposed amendments to Rule 4-1.6 (Confidentiality of Information.)

## **20. Program Evaluation Committee Report**

Chair Roland Sanchez-Medina presented.

Items on Final Action: Proposed amendments to Rule 6-12.4 (Deferment and Exemption); Rule 6-17.3 (Minimum Standards); Rule 6-17.4 (Recertification); and BLSE Policy 5.10 (Individual Credit Approval Guidelines). The board voted without objection to approve.

PEC subcommittee recommendations for The Florida Bar 50-year Member/Senior Counselor Luncheon and Overall Program. The board voted without objection to approve the recommendations.

Items on First Reading: Continuing Legal Education Policy 2.02 Speaker Diversity.

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

Chair Wayne Smith presented.

Item 20b, Advertising inquiry 41770, was removed pending further review.

Items on Final Action:

**Proposed amendments to Rule 4-1.6** would add new subdivision (c)(7) to permit a lawyer to disclose information reasonably necessary to respond to specific allegations publishable via the internet by a former client (e.g., a negative online review) that the lawyer has engaged in criminal conduct punishable by law and add similar commentary addressing the issue. The board voted without objection to approve.

**Proposed amendments to Rule 4-7.12, Rule 4-7.13, Rule 4-7.14, Rule 4-7.18:**

Within several subdivisions of the rules and the comments to these rules, changes the requirement that information required by the advertising rules be “reasonably prominent” to “clear and conspicuous,” a term used by the Federal Trade Commission to describe disclaimers which already has a body of

information on the definition and requirements. The board voted without objection to approve.

**Proposed additional amendments to Rule 4-7.18:** 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 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. The board voted without objection to approve.

**Report on Proposed Advisory Opinion 21-1:** The Board Review Committee on Professional Ethics voted without objection to recommend that the board take no action to modify or withdraw the proposed advisory opinion. The board took no action, and the opinion is now final.

**Consideration of Advertising appeals 22-00061 and 22-00062:** The Board Review Committee on Professional Ethics voted without objection to recommend that the board reverse the Standing Committee on Advertising decision and affirm staff’s opinion in files 22-00061 and 22-00062 that the phrase “Don’t worry Santa...Our army of trial lawyers will sleigh them” can reasonably be interpreted as a prediction or guarantee of success in violation of Rule 4-7.13(b)(1). The board voted without objection to approve.

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

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

The task force continues to study the potential for a fully automated platform for the resolution of small-value civil cases. Member survey questions are being prepared and the task force is soliciting feedback from pilot projects and platform providers.

The task force will monitor the Workgroup on Judicial Practices in the Trial Courts and the Workgroup on Trial Court Technology Practices that the Supreme Court

appointed November 9, 2021. The task force will continue to monitor the Workgroup on Improved Resolution of Civil Cases proposal and the Supreme Court's recommendation to create a sixth appellate district.

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

Chair Paige Greenlee presented.

The committee's proposed one-year contract and budget amendment related to the Technology Support Helpline has been approved by all relevant committees.

### **24. YLD President's Report**

YLD President-elect Iris Elijah presented.

The YLD has created a "Living Yearbook" that highlights various division and affiliate activities. The Affiliate Outreach Conference will be held February 23-25 in Tampa will feature more than 200 young lawyer affiliate sections.

### **25. President's Report**

President Michael Tanner reported that the JNC selection process will begin in February and board members are urged to recruit candidates to serve. A board survey is circulating.

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

There being no further business before the board, President Michael Tanner adjourned the meeting at 2:02 p.m. The next regular board meeting convenes January 21, 2022 at the DoubleTree in Tallahassee.

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