

Florida Bar Board of  
Governors January 21, 2022  
Tallahassee  
(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  
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  
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  
Alice Sum, 11th Circuit  
F. Scott Westheimer, 12th 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  
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**

Kris B. Robinson, 3rd Circuit  
Philip J. Bonamo, 7th Circuit  
C. Richard Nail, 10th Circuit  
Judge Leslie B. Rothenberg (Ret.), 11th Circuit  
Kenneth G. Turkel, 13th Circuit  
Diana Santa Maria, 17th 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 Melissa VanSickle delivered the invocation and led the Pledge of Allegiance.

### **4. Remarks, Hon. Jonathan Sjostrom, Chief Judge, Second Judicial Circuit**

Judge Sjostrom welcomed the board to the Second Judicial Circuit. Florida jurors deserve recognition for their willingness to serve during the COVID-19 pandemic.

### **5. Guests**

President Michael Tanner recognized the following guests:

Supreme Court Chief Justice Charles Canady

Supreme Court Justice Ricky Polston

Supreme Court Justice Jorge Labarga

Supreme Court Justice Alan Lawson

Supreme Court Justice John Couriel

Supreme Court Justice Jamie Grosshans

The Hon. Jonathan Sjostrom, Chief Judge, Second Judicial Circuit

Donny MacKenzie, Florida Bar Foundation

Andy Sasso, Parliamentarian

Michael T. Davis, Virgil Hawkins Florida Chapter, NBA

Karen Ladis, Legal Aid Representative

Jenny Scavino Sieg, Florida Association for Women Lawyers

Miriam Soler Ramos, Cuban American Bar Association

Megan Silver, Florida Government Bar Association

Lo Bielby, Tallahassee Bar Association

### **6. Remarks, Donny MacKenzie, Executive Director, Florida Bar Foundation**

The “One Promise” video campaign, produced by the Zachary Group of Tallahassee, will soon be displayed statewide. Financial contributions from a dozen entities, including Bar sections and voluntary bar associations, covered hard production costs. The “2022 Florida Pro Bono Florida Law School Challenge” begins January 31.

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

Item 6(a).

## **8. Minutes Approval**

The board approved the Regular Minutes from December 2, 2021, and December 3, 2021, and the Grievance Minutes from December 2, 2021.

## **9. Consent Calendar**

After announcing the removal of Item 6(m), the board voted to approve the consent agenda, including the following items:

- The following appointees to UPL Circuit Committees: Committee 8, **Lorelie P. Brannan**, attorney member; Committee 20, **Kelly A. Scagliotti**, public member; Committee 17(A), **Jeanne E. Potthoff**, public member.
- A Legislation Committee proposed Section Legislative Position Request from the Criminal Law Section that would state: “The Criminal Law Section of The Florida Bar advocates for and encourages the Florida Legislature to increase funding for the needs of the criminal justice court system in the State of Florida. We urge increased funding be apportioned for, among other things, the State Attorneys offices, Public Defenders offices, Offices of Civil and Criminal Regional Counsel, Judiciary, and the Justice Administrative Commission. Having these offices more fully funded ensures a more effective, efficient, and just criminal court system in our State.”
- Program Evaluation Committee proposed amendments to Continuing Legal Education Policy 2.02 Speaker Diversity. The proposed amendments would change “shall” to “will strive” to select qualified speakers that reflect the diversity of the legal community and adds “consistent with the strategic plan of The Florida Bar.”
- The appointment of **Mark Davis** to the Legal Services of North Florida Board of Directors for a term that commences upon board approval and to expire December 31, 2024.
- Acceptance of The Florida Bar and Subsidiaries Audited Financial Statements for FY 2020-2021.

## **10. Citizens Advisory Committee Report**

Chair Thomas Wert presented.

The following committee members were recognized: Michael Davis, Orlando Rolón, Karen Cespedes, Lawrence Gordon, Melanie Shore, Wilhelmina Tribble,

Nancy Vaughn, Vice Chair Hong Potomski, Kevin Gay, Allen Jackson, Thomas Kontinos, David Mica, James Sewel. The “How to Hire a Lawyer” project is nearly complete. The committee will review the language of The Florida Bar’s public-facing website for clarity.

### **11. Civil Procedure Rules Committee Report**

Civil Procedure Rules Committee Chair Jason Stearns presented.

Pursuant to Florida Rule of General Practice and Judicial Administration 2.140(b), the committee proposed amendments to Rule 1.440 (Setting Action for Trial) and Rule 1.500 (Defaults and Final Judgements Thereon). The board voted 34-0 to recommend approval.

### **12. Criminal Procedure Rules Committee Report**

Criminal Procedure Rules Committee Chair Alan Apte presented.

Pursuant to Florida Rule of General Practice and Judicial Administration 2.140(b), the committee proposed amendments to Rule 3.720 (Sentencing Hearing). The amendments were made at the request of the Supreme Court to amend 3.720 in accordance with the Court’s recent decision in State v. J.A.R., 318 So. 3d 1256 (Fla. 2021). The board voted 37-0 to recommend approval.

### **13. Juvenile Court Rules Committee Report**

Juvenile Court Rules Committee Chair Candice Brower presented.

Pursuant to Florida Rule of General Practice and Judicial Administration 2.140(b), the committee proposed amendments to Rule 8.060 (Discovery), 8.104 (Testimony by Closed Circuit Television), Rule 8.245 (Discovery), and Rule 8.255 (General Provisions for Hearings). The board voted 38-1 to recommend approval.

### **14. Disciplinary Procedure Committee Report**

Chair Robin Bresky presented.

Items on Final Action: Pursuant to a request from the Supreme Court, the committee proposed amendments to 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 (b) allowing an emergency suspension where a lawyer has been charged with a felony in state or federal court. Creates an exception for emergency suspension due to felony charges from

provisions on motions to dissolve and appointment of referee. Other provisions are reorganized. The board voted, with objection, to recommend approval. The committee proposed amendments to 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) [new (q)(1)], adds public reprimand and censure in foreign jurisdiction so that bar members publicly reprimanded or censured 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. Adds new subdivision (f) requiring Florida Bar members to notify the Bar when the members enter any pre-trial diversion program for any charge. Subsequent subdivisions are re-lettered. The board voted 21-17 to recommend rejection of the proposed amendments to subsection (f). The board voted with objection to recommend rejection of proposed amendments to subsection (l)(1) [new (q)(1)]. The committee proposed amendments to Rule 3-7.6 (Procedures Before a Referee). Within subdivision (f), adds new subdivision (3) prohibiting the use of civil mediation in bar disciplinary proceedings. Within subdivision (h)(5), adds new subdivision (C) that states that referees must sign subpoenas. The committee proposed amendments to Rule 3-7.10 (Reinstatement and Readmission Procedures). Within subdivision (f), adds that the referee may not refer the petition to civil or grievance mediation. The board voted without objection to recommend approval.

### **15. Investment Committee Report**

Chair Jeffrey Rynor presented.

The total long-term portfolio balance is \$72.2 million, with a one-year performance of 14.77%. The short-term portfolio balance is \$20.2 million and its fiscal year to date performance is down less than .5%.

### **16. Technology Committee Report**

Chair Paige Greenlee presented.

The Florida Bar IT Help Line is expected to launch February 1. The committee is studying upgrades to the member portal. Education efforts regarding the lawyer referral service are ongoing. The committee is reviewing potential updates to The Florida Bar Recommended Best Practices for Remote Court Proceedings.

President Michael Tanner said the best practices guide is generating positive feedback from Bar members.

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

Co-Chairs Sia Baker Barnes and Jay Kim presented.

A review of the potential for an online platform for the resolution of small-value civil claims is progressing. The task force interviewed platform provider Matterhorn, the e-portal program manager, and court clerks offering online mediation. Pro-se litigants in Florida initiate more than 300,000 cases, indicating a strong demand. The Florida Bar member survey includes platform-related questions. The task force will have a demonstration for the board at the March meeting. The task force continues to monitor pandemic conditions. The Judicial Management Council has forwarded a Workgroup on the Improved Resolution of Civil Cases report to the Supreme Court. The Supreme Court will establish a comment period. The task force will monitor three newly established Supreme Court workgroups on Trial Court Technology Strategies, Judicial Practices in the Trial Courts, and Sanctions for Vexatious and Sham Litigation.

### **18. Executive Session**

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

### **19. Legislation Committee Report**

Chair Sandra Diamond Presented.

The committee recommended approval of a Trial Lawyers Section legislative position request in support of SB 634 in the 2022 legislative session. The proposed position would state: "Supports proposed legislation addressing a court's ability to take judicial notice of internet mapping and imaging." The board voted without objection to approve. The Florida Bar Legislative Reception was a success. Legislative advocate Jim Daughton reported that the House Judiciary Committee approved a measure that would implement the Supreme Court's recommendation to create a Sixth District Court of Appeal. Any legislative decision regarding pay raises for trial court judges and the pandemic recovery plan will be made late in the session. Lawmakers are debating the apportionment of an approximately \$7 billion surplus in mostly non-recurring funding.

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

Chair Roland Sanchez-Medina presented.

Items on First Reading: Board of Legal Specialization and Education proposed amendments to Rule 6-28.2 Definitions (Adoption Law). In subdivisions (e) and (f)(3), adds related adoption proceedings to the definitions and substantial involvement.

The committee has six reviews pending.

## **21. Young Lawyers Division President Report**

President Todd Baker presented.

The YLD Affiliate Outreach Conference is February 25-26 in Tampa. There is a February 3 deadline for making reservations in the YLD room block.

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

Executive Director Joshua Doyle introduced the following Bar staff: **Brandee Blake, Kayla Yunker, Francesca Ciaccio-Freeman, Danny McComb, and Mingdee Hou.** Programs Division Director Terry Hill introduced **Christine Bilbrey** and **Nikita Wilson.** Lawyer Regulation Division Director Elizabeth Tarbert introduced **Susan Austin** and **Diane Lee.** General Counsel and Division of Ethics & Consumer Protection Director Gypsy Bailey introduced **Pam Brown** and **Tameika Wright.** CFO & Administrative Division Director Cynthia Jackson introduced **Tracie Harley** and **Janita Dukes.** President Michael Tanner introduced **Leslie Reithmiller.**

## **23. Remarks, Florida Supreme Court Chief Justice Charles Canady**

The Florida Bar and the Supreme Court work collaboratively. Aggressive case management featured in an April Supreme Court order contributed to a 36% reduction in the backlog of circuit civil cases and a 26% reduction in county civil cases between July and December of 2021. Justices will carefully deliberate and seek input and comment from the board, the legal community, and the public, before taking any action on recommendations by the Special Committee to Improve the Delivery of Legal Services and the Workgroup on the Improved Resolution of Civil Cases.



## **24. Special Appointments**

President Michael Tanner presented.

Florida Bar Foundation Board of Directors: Two lawyers to serve three-year terms commencing July 1, 2022. The board approved **Min K. Cho** of Winter Park and **Robert Craig Waters** of Tallahassee.

## **25. Rules Committee Report**

Vice Chair Amy Fariior presented.

Items on Final Action: Rules Committee proposed amendments to Rule 1-3.5 (Retirement). Reorganizes rule into subdivisions and adds new subdivisions (b)(2) and (b)(3) that required retired lawyers to affirmatively state their retired status when they indicate Florida Bar membership and prohibit retired lawyers from holding themselves out as able to practice Florida law unless they are certified emeritus lawyers. The board voted without objection to recommend approval.

Rules Committee proposed amendments to Rule 4-1.6 (Confidentiality of Information). Removes “to another” in subdivision (b)(2) to make clear that the mandatory disclosure of confidential information to prevent death or substantial bodily harm includes the client. The board voted without objection to recommend approval.

Items on First Reading: Rules Committee proposed amendments to Rule 4-7.22 (Referrals, Directories and Pooled Advertising). Adds new subdivision (d)(12) which requires that lawyers cannot participate with a qualifying provider unless the qualifying provider has at least four lawyers form different law firms participating.

## **26. Budget Committee Report**

Budget Committee Chair Jeremy Branning presented.

The Budget Committee met January 19, 2022, and reviewed the fiscal impact statement report, and unaudited November 30, 2020, financial report. The Florida Bar’s General Fund revenue, with \$32.9 million, matches projections. The committee divided into four teams and reviewed 95 program requests and provided the CFO and Executive Director feedback and suggestions. The committee will present a final budget proposal to the board in March.

## **27. Audit Committee Report**

Budget Committee Chair Jeremy Branning presented.

The committee reviewed regulatory compliance and a required filings checklist with staff and confirmed all matters are current. A review of Audit Committee calendar items included a general review of policies of The Florida Bar with respect to legal compliance, conflicts of interest, and appropriate conduct of the management of The Florida Bar, members of the Board of Governors, leadership of various sections, committees, divisions, and other boards including related party transactions. An annual private review with the current auditor generated universally positive feedback, and the auditor responded favorably on the audit process, execution, and responsiveness by Bar staff. No issues or areas of concern were identified outside of the audit report. The general colloquy between the current auditor and committee members produced a few general considerations for the committee and staff to discuss prospectively. The overall audit was clean and all feedback on Bar staff was highly complementary. The committee is finalizing a contract with a new vendor. A final agreement, signed in advance, will be presented to the board in March.

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

Chair Wayne Smith presented.

### **Advertising Inquiry 41770**

The board voted without objection to reverse the Standing Committee on Advertising decision and determined that the inquirer's webinar and promotional materials are not subject to the advertising rules in Subchapter 4-7 of Rules Regulating The Florida Bar on the conditions that the inquirer: (1) Will not accept the representation of any webinar attendees who seek legal services. (2) Will not mention legal services or the inquirer's law firm in any way. (3) Won't accept any referral fees for webinar attendees who seek other lawyers.

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

President-elect Gary Lesser reported that the Special Committee for the Review of Professionalism in Florida will present a final report and recommendations to the board in March.

**30. President's Report**

President Michael Tanner thanked board members for traveling to Tallahassee, participating in extensive budget reviews, attending the Bar's legislative reception, and their service in general.

**31. 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 will convene virtually on March 25.

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