

## The Florida Bar Board of Governors

July 28, 2023

Sarasota, Florida

**1. Roll Call**

F. Scott Westheimer, President  
Roland Sanchez-Medina, Jr., President-elect  
Jeremy C. Branning, 1st Circuit  
David W. Grimes, 2nd Circuit  
Melissa N. 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  
Diego "Woody" Rodriguez, 9th Circuit  
Tad A. Yates, 9th Circuit  
Victor R. Smith, 10th Circuit  
Karl N. Klein, 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  
Sabrina Vora-Puglisi, 11th Circuit  
Jesse R. Butler, 12th Circuit  
John A. Schifino, 13th Circuit  
Amy Stuart Farrior, 13th Circuit  
J. Carter Andersen, 13th Circuit  
Paige A. Greenlee, 13th Circuit  
Clifford C. Higby, 14th Circuit  
R. Sia Baker-Barnes, 15th Circuit  
Manuel "Manny" Farach, 15th Circuit  
Robin I. Bresky, 15th Circuit  
Michael J. Gelfand, 15th Circuit  
Wayne LaRue Smith, 16th Circuit  
Jay Kim, 17th Circuit  
Brian H. Koch, 17th Circuit  
Lorna E. Brown-Burton, 17th Circuit  
Hilary A. Creary, 17th Circuit  
Adam G. Rabinowitz, 17th Circuit  
James G. Vickaryous, 18th Circuit  
Gregory S. Weiss, 19th Circuit  
Laird A. Lile, 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  
Anisha Patel, YLD President  
Ashlea Edwards, YLD President-elect  
Linda Goldstein, Public Member  
Melanie Shore, Public Member

## **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  
Jonathan Grabb, Ethics Counsel  
Patricia A. Savitz, Staff Counsel  
Jennifer Krell Davis, Director of Communications  
Rita Am, Assistant to the President  
Jim Ash, Senior Editor, *Bar News*

## **3. Invocation and Pledge of Allegiance**

Board member Carter Andersen delivered the invocation and board member Jesse Butler led the Pledge of Allegiance.

## **4. Remarks, Twelfth Judicial Circuit Chief Judge Diana Moreland**

President Scott Westheimer's call to improve the discipline system reflects the board's awesome responsibility to protect the public.

## **5. Introduction of New Board Members**

President Scott Westheimer introduced David Grimes; Diego "Woody" Rodriguez; Karl Klein; Manuel "Manny" Farach; Brian Koch; Melanie Shore; and Ashlea Edwards.

## **6. Liaisons and Guests**

President Scott Westheimer welcomed the following liaisons and guests:  
John Agnew, Liaison to the Board of Governors  
Javier A. Ley-Soto, Cuban American Bar Association  
Roger Johnson, Virgil Hawkins Florida Chapter, NBA  
Thomasina Moore, Florida Association for Women Lawyers  
Elizabeth McCausland, Liaison to the Board of Governors  
Robert Becerra, Council of Sections  
Jeff Harvey, Community Legal Services of Mid Florida  
Aaron Crittenden, President, Manatee County Bar Association  
Neil Lyons, President, Sarasota County Bar Association  
Caroleen Brej, President, Sarasota County Bar Association YLD  
Holly Lipps, Executive Director, Sarasota County Bar Association  
Graceann Frederico, Executive Director, Manatee County Bar Association  
Natasha Selvaraj, President-elect, Sarasota County Bar Association YLD  
Stephanie Sandaire, President, Manatee Chapter, FAWL  
Regina Kardash, President-elect, Sarasota Chapter, FAWL  
Patrick Barnes, President, Manatee County Bar Association YLD

**7. Citizens Advisory Committee Report**

Communications Director Jennifer Krell Davis introduced the following committee members: Tashara Cooper, Orlando; Kimberly Jackson, St. Petersburg; Orlando Rolón, Orlando; Ron Cunningham, Gainesville; Jeffrey Danziger, Orlando; Candy Olson, Tampa.

**8. Non-Roll Call Grievance Agenda Items:**

6(d)

**9. Non-Roll Call Advertising Appeal Agenda Items:**

6(a)

**10. Minutes Approval**

The board approved the minutes from the May 12, 2023, regular board meeting; the May 12, 2023, grievance minutes; and the minutes from a June 14, 2023, virtual board meeting. That approval included the following actions taken by the Executive Committee.

- The president announced during the open May 12, 2023, board meeting that one matter needed discussion in an executive session. Board members Melissa VanSickle and Bill Schifino excused themselves from the executive session.
- At a May 24, 2023, meeting, after review and consideration, the committee voted 10-0-0 to recommend acceptance of additional amendments to Florida Rule of Civil Procedure 1.820 (Hearing Procedure for Non-Binding Arbitration), Form 1.923(a) (Eviction Summons/Residential), and Form 1.947(b) (Answer – Residential Eviction), to address comments received based on the Supreme Court's publication of the committee's proposal and to recommend acceptance of additional amendments to proposed new Rule 9.148.

**11. Consent Calendar**

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

- Approval of a legislative advising services agreement between The Florida Bar and Metz, Husband, & Daughton, P.A.
- Approval of a state government policy research, monitoring, and strategic advice agreement between The Florida Bar and Metz, Husband, & Daughton, P.A.
- Approval of a legislative advising services agreement between The Florida Bar and Pamela Burch Fort and the Commerce Group.
- Approval of a legislative advising services agreement between the Business Law Section and Metz, Husband, & Daughton, P.A.
- Approval of a legislative advising services agreement between the Criminal Law Section and Kato Law.
- Approval of a legislative advising services agreement between the Elder Law Section and BH & Associates, Inc.
- Approval of a legislative advising services agreement between the Family Law Section and Smith, Bryan and Myers, Inc.
- Approval of a legislative advising services agreement between the Trial Lawyers Section and Messer Caparello, P.A.
- Approval of a legislative advising services agreement between the Workers' Compensation Section and Converge Public Strategies.

- Approved a Member Benefits Committee recommendation that Member Benefits, Inc., the third-party administrator and broker for The Florida Bar Insurance and Retirement Program, add group excess personal liability options for personal and business coverage to the insurance options available to Florida Bar members.
- Approved a Member Benefits Committee recommendation that Prudent Financial Planning's student loan planning assistance be added to the Member Benefit Program.
- UPL Circuit Committee Nominations – Committee 7B, **Timothy M. Goan**, attorney member.
- Florida Registered Paralegal District Committee Nominations – **Janet Betancourt**, Tampa, **Lyndsey Siara**, Miami, and **Mikel Suzanne Bradley**, Tallahassee, attorney members; **Daniel F. Tordella**, Fort Lauderdale, FRP member.

### **12. President's Report**

All board members are welcome to attend Executive Committee meetings. Agendas will be circulated in advance. The Supreme Court recently issued SC2023-0884, "*In Re: Code for Resolving Professionalism Referrals and Amendments to Rule Regulating The Florida Bar 6-10.3*;" AOSC 2023-41, "*In Re Online Dispute Resolution in the Trial Courts; Piloting Online Court*;" and AOSC23-35, "*In Re: Judicial Circuit Assessment Committee*." Direct comments and suggestions to board members Braxton Gillam and Laird Lile, who serve on the Judicial Circuit Assessment Committee. The Executive Committee will meet next week to consider a response to a Supreme Court order regarding Chapter 23.

### **13. Legislation Committee Report**

Chair Sia Baker Barnes presented.

Items on Final Action: A Real Property, Probate & Trust Law Section legislative request supporting proposed legislation to update Florida's Uniform Principal and Income Act, which generally follows the new Uniform Fiduciary Income and Principal Act, to achieve greater consistency among state laws, but including modifications that reflect Florida public policy choices. The board voted without objection to take no action.

Legislative advocate Jim Daughton reported that interim committee meetings are scheduled for September, October, November, and December ahead of a regular session that begins in January. Senate President Kathleen Passidomo will focus on health-care reform. House Speaker Paul Renner has requested a review of the potential to consolidate Florida's 20 judicial circuits. Board member Laird Lile reported that the assessment committee is directed to review consolidation of circuits within each of Florida's six district court of appeal boundaries.

### **14. Executive Session**

The board went into executive session to discuss confidential matters.

### **15. Rule 5-1.1 Trust Accounts**

President Scott Westheimer presented.

Items on Final Action: A Florida Bankers Association request to amend subdivision (g)(5)(A) to add back account eligibility requirements and to subdivision (g)(5)(B) to peg the minimum interest rate on IOTA trust accounts to the Federal Funds target rate rather than the Wall Street Journal prime rate.

After presentations by Kenneth Pratt of the Florida Bankers Association; Bank of Tampa CEO Corey Neal; Florida Bar Foundation board member Joseph D. "Jody" Hudgins; and Florida Bar

Foundation Executive Director Dominic “Donny” MacKenzie, and discussion, the board voted, with objection, to negotiate with the Florida Bankers Association.

#### **16. Young Lawyers Division President’s Report**

The YLD will aid President Scott Westheimer’s effort to review and enhance the disciplinary system. The YLD is currently offering 17 basic skills courses representing 119 CLE credit hours and intends to record 13 new courses over the Bar year. A YLD technology road show is available to voluntary bar associations across the state. The next YLD Council of Affiliates meeting is August 16, 2023.

#### **17. Rules of General Practice and Judicial Administration Committee Report**

Committee member Jeffrey Goethe presented.

Items on Final Action: Proposed Amendments to Rule 2.140 (d)(6)(A) and (g)(1) to streamline the rule development process by eliminating a requirement that proposed amendments appear in the monthly print editions of the *Bar News* prior to filing with the Supreme Court. After discussion, the board voted 30 to accept and 1 to reject. Proposed amendments to Rule 2.140 (d)(6)(A), (e)(1)(c) and (f) removing the requirement that the Board of Governors vote on a court rules committee recommendation and instead that court rules committees provide notice to the Board of Governors earlier in the process. After discussion, the board voted 35 to accept and 4 to reject. Proposed Amendments to Rule 2.150, 2.425, 2.505, 2.560, and 2.565. The board voted 35 to accept and 0 to reject.

#### **18. Rules Committee Report**

Chair Philip Bonamo presented.

Items on Final Action: Proposed Amendments to Rule 11-1.9 (Continuation of Practice Program After Completion of Law School Program or Graduation). The board voted without objection to approve. Proposed amendments to Standing Board Policy 8.10 (Amicus Curiae Filings). The board voted without objection to approve. Proposed amendments to Standing Board Policy 8.20 (Responses to Bar Rules Petitions.) After discussion, the board voted with objection to approve. Items on First Reading: Proposed amendments to Rule 4-3.4; Rule 4-4.4; BLSE Policy 5.09; BLSE Policy 5.10; BLSE Policy 6.02; Rule 1-3.7; Rule 20-3.1; Rule 20-6.1; Rule 21-3.1; and Rule 6-12.4.

#### **19. Traffic Court Rules Committee Report**

Committee member David Haenel presented.

Items for Final Action: Proposed amendments to Rule 6.340 (Affidavit of Defense Admission and Waiver of Appearance), Rule 6.445 (Discovery Infractions Only), and Rule 6.455 (Amendments). The board voted 40 to accept and 0 to reject.

#### **20. Budget Committee Report**

Chair Michael Fox Orr presented.

The Florida Bar’s budget fee schedule will be amended to eliminate rush and late fees for voluntary bar associations applying for CLE credit. A subcommittee has been formed to evaluate general fees charged to voluntary bar associations for CLE credit.

Items on First Reading: Proposed amendments to Standing Board Policy 5.56. The proposed amendments would clarify that only non-mandatory revenue sources may be used to provide administrative support to sections. Chair Michael Fox Orr moved to waive the standing board policies and advance the item to final action. The board voted by a two-thirds majority, with objection, to waive first reading. The board then voted without objection to approve the proposed amendments to Standing Board Policy 5.56.

**21. Civil Procedure Rules Committee Report**

Liaison Michael Fox Orr presented.

Items on Final Action: Proposed amendments to Rule 1.061 and Form 1.983. The board voted 37 to accept and 0 to reject.

**22. Board Review Committee on Professional Ethics Report**

Chair Brian Burgoon presented. First, the chair reported that Item 20b (regarding consideration of Advertising Files 23-0071 and 23-00772) was withdrawn from review at the request of the filer.

Second, the committee reported its recommendation on Item 20c that the Board of Governors authorized the publication of Proposed Advisory Opinion 23-1 subject to minor typographical corrections. The proposed advisory opinion finds that a lawyer may passively invest in an alternative business structure in another state subject to specific restrictions. Further, the opinion cautions that it does not address the propriety of the investing Florida lawyer's firm receiving referrals from the alternative business structure. The board voted without objection to approve the publication of proposed advisory opinion 23-1.

Third, the board amended its March 28, 2014, policy regarding advertising filings in item 20d. Following a recommendation by the Board Review Committee on Professional Ethics, the Board of Governors voted without objection to approve the amended policy as follows:

The Board of Governors policy regarding review of lawyer advertisements is that any change of any kind to an advertisement renders the advertisement a new advertisement with a new filing fee of \$150 per timely filed advertisement and \$250 for untimely filed advertisement. The only exception is a revision to an existing advertisement that is solely to comply with a Bar opinion that the advertisement does not comply with the lawyer advertising rules, for which no additional fee will be charged. Any change includes, but is not limited to, any change to wording, illustrations, photographs, typographical marks, layout, or color scheme.

Effective August 21, 2023, in consideration of the Court's Opinion "*In Re: Amendments to the Rules Regulating The Florida Bar – Subchapter 4-7 Information about Legal Services*," Case No. SC2022-1294 (Fla. 2023), the Board of Governors amends this policy to create an additional exception for direct mail and email advertisements revised solely to remove the disclaimer "If you have already retained a lawyer for this matter, please disregard this letter." A direct mail or email advertisement revised solely to remove this disclaimer is not a new advertisement requiring a new filing fee.

**23. Disciplinary Procedure Committee Report**

Chair Tad Yates presented.

Items on Final Action: Rule 3-5.2 (Emergency Suspension and Interim Probation or Interim Placement on the Inactive List for Incapacity Not Related to Misconduct). The proposed revision would add a subdivision (f) Severance of Financial Ties to Law Firm, that would state: "The respondent must sever all employment with, and financial interests in, any authorized business entity in accordance with rule 4-8.6 immediately on entry of the order of emergency suspension by the Supreme Court." After discussion, the board voted without objection to refer the proposed revisions back to the committee for further consideration.

Items on First Reading: Proposed amendments to Rules 3-5.1; 3-7.11, 3-7.16, and Standing Board Policy 15.10.

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

Liaison Tad Yates presented.

Items on Final Action: Proposed amendments to Rule 3.210 (Incompetence to Proceed). The board voted 31 to accept and 0 to reject.

#### **25. Program Evaluation Committee Report**

Chair Melissa VanSickle presented.

Items on Final Action: Proposed amendments to City, County, & Local Government Law Section Bylaws. The board voted without objection to approve.

Items on First Reading: Proposed amendments to Standing Board Policy 6.22 (Basic Skills Course). Proposed revisions would address specific requirements of Chapter 6-12 and provide that a course on the Bar's discipline must be required, that specified Phase 2 compliant courses should be continuously offered, and that the Young Lawyers Division determines changes to the Basic Skills Course in consultation with Florida Bar leadership. The board voted without objection to approve an amendment to the proposed amendments that would remove paragraph (C). Board member Laird Lile proposed an amendment to make "probate" and "guardianship" separate course requirements. After discussion, the board voted, with objection, to reject the proposed amendment. The board then voted by a two-thirds majority, without objection, to waive the rules and take final action on the proposed amendments to Standing Board Policy 6.22, as amended. The board then voted, with objection, to approve the proposed amendments.

Items on First Reading, (continued): Proposed amendments to Rule 6-10.2; 6-10.3; 6-10.4; 6-12.1; 6-12.2; 6-13.3; 6-12.4; 6-12.5; 6-12.6; 6-12.7; 6-12.8; Board of Legal Specialization and Education Policies 2.14; 3.02; 6.02; 7.03; and 7.07.

Chair Melissa VanSickle reported that the committee has formed nine subcommittees and will conduct eight evaluations that include the Bar News, the Legal Needs of Children Committee, the Judicial Nominating Procedures Committee, Board Certification Area Examinations and Pass Rates, Potential Uniform Recertification Waiver Policy for Good Cause, Formula for Board Seat Apportionment, the Code and Rules of Evidence Committee, the Workers Compensation Rules Advisory Committee, and the Implementation Subcommittee.

#### **26. Communications Committee Report**

Chair Jay Kim presented.

In a joint meeting, the committee asked the Citizen's Advisory Committee to consider reviewing the Bar's core mission, the discipline system, and the education of the public and members about those issues. The committee is considering an education campaign about merit retention, a best-practices guide for committee liaisons, and the potential for raising revenue through more advertisements on the Bar's website.

#### **27. Investment Committee Report**

Chair Jeffrey Rynor presented.

Items on Final Action: Proposed Short-Term Fund investment manager change. The board voted, with board member Alice Sum abstaining, and without objection, to change the Short-Term Fund management from Federated NM, Blackrock Low Duration, and Vanguard ST Bond to a single manager, Sage Advisory.

As of June 30, 2022, the Long-Term fund contained \$66.3 million, and the Short-Term fund contained \$20.7 million. As of July 27, 2023, both funds combined contained approximately \$95

million. In 2019, the combined total was approximately \$61 million. The highest combined total was \$98 million in August 2021. “The long-term, and the short-term, are doing very, very well.”

**28. Revised Discrimination Policy**

Kevin Johnson, outside counsel, presented.

Florida Bar Personnel Policy 1.5 was recently amended to clarify its application to board, section, and division volunteers. It’s important to note that the policy applies to Bar staff. President Scott Westheimer said it will be widely circulated.

**29. Family Law Rules Committee Report**

Liaison Philip Bonamo presented.

Items on Final Action: Proposed amendments to Rule 12.400; 12.490, Form 12.901, Form 12.932, and Rule 12.470. The board voted 27 to accept and 0 to amend.

**30. Juvenile Court Rules Committee Report**

Liaison Victor Smith presented.

Items on Final Action: Proposed amendments to Rules 8.224, 8.225, 8.305, 8.330, 8.347, 8.505, 8.510, 8.25 and Forms 8.959, 8.979, and 8.982. The board voted 28 to accept and 0 to reject.

**31. President-elect’s Report**

The president-elect welcomes announcements that board members would like to share with their colleagues. Rita Am, assistant to the president, deserves praise for organizing a successful meeting.

**32. Time and Place of Next Meeting**

There being no further business before the board, President Scott Westheimer adjourned the meeting at 3:33 p.m. The next board meeting will be held September 8, 2023, at the Hotel Van Zandt in Austin, Texas.



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