

The Florida Bar Board of Governors
May 12, 2023
Naples, Florida

1. Invocation and Pledge of Allegiance

Board member John Agnew delivered the invocation and board member Laird Lile led the Pledge of Allegiance.

2. Roll Call

Gary S. Lesser, President
F. Scott Westheimer, President-elect
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
Victor Smith, 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
Jesse Butler, 12th Circuit
John Schifino, 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
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
Iris A. Elijah, YLD President
Anisha Patel, YLD President-elect
Joseph "Jody" D. Hudgins, Public Member
Linda Goldstein, Public Member

Members Absent

Jeremy C. Branning, 1st Circuit
Amy S. Farrior, 13th Circuit
Clifford C. Higby, 14th Circuit

3. 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
Tracie Harley, Controller, Finance & Accounting
Jonathan Grabb, Ethics Counsel
Patricia A. Savitz, Staff Counsel
Jennifer Krell Davis, Director, Communications
Rita Am, Assistant to the President
Kristen Wilson, Assistant to the Executive Director

4. Remarks, Florida Senate President Kathleen Passidomo

Lawmakers completed an “historic” session and adjourned sine die on schedule. The \$117 billion proposed FY 2023-24 budget fully funds court system priorities. The Legislature considers The Florida Bar a partner.

5. Remarks, Twentieth Judicial Circuit Chief Judge Michael T. McHugh

Hosting the Board of Governors is “another step toward normalcy” in Hurricane Ian recovery. Chief Justice Carlos Muñoz is committed to reform and the Judicial Management Council welcomes suggestions.

6. Guests and Liaisons

President Gary Lesser recognized the following guests and liaisons:

Valeria I. Obi, Virgil Hawkins Florida Chapter, NBA

Craig Shoup, Voluntary Bar Association Representative

Giselle Gutierrez, Cuban American Bar Association

Carlos Martinez, Government Lawyer Representative

Donna Eng, Florida Association for Women Lawyers

Matthew Linde, Elder Law Section

Edward Larsen, Collier County Bar Association

The Honorable Thomas R. Corbin, Lee County Bar Association

Jason Blank, Florida Association of Criminal Defense Lawyers

Jason Korn, Professional Ethics Committee

7. Minutes Approval

The board approved the minutes from the March 3, 2023, board meeting and the March 3, 2023, grievance minutes. That approval included the following actions taken by the Executive Committee:

- At a March 1, 2023, meeting the Executive Committee voted 11-0 not to prohibit legislative positions of the Alternative Dispute Resolution Section, the Trial Lawyers Section, and the Business Law Section; and 10-1 not to prohibit a Business Law Section position regarding the Florida Revised Uniform Limited Liability Company Act (Chapter 605).
- At a March 30, 2023, meeting the Executive Committee considered a request from the Florida Bankers Association for The Florida Bar’s position on the Florida Bankers Association motion for rehearing on a Bar rules petition: *In re: Amendments to Rules Regulating The Florida Bar—Miscellaneous*, Case No. SC22-1292 regarding amendments to 5-1.1 (g)(5)(B), that eligible institutions must tie interest rates on IOTA

accounts to a percentage of the Wall Street Journal Prime Rate. The Executive Committee voted 13-0 to oppose a motion for rehearing.

- At an April 30, 2023, meeting the Executive Committee voted 11-0 to deny a request by the Elder Law Section to send a letter to Gov. Ron DeSantis supporting CS/CS/Senate Bill 770.

8. Consent Calendar

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

- Approval of a Trial Lawyers Section request for a \$50,000 Law Related Education grant for assistance with expenses for the January 2023 Teachers' Law Symposium.
- UPL Circuit Nominations – Committee 3, **Curtis E. McClung**, public member; Committee 5, **Mona R. Payne**, attorney member; Committee 9B, **Mark R. Lippman**, attorney member; Committee 10, **Christopher B. Roy**, attorney member, **Bradley Wilson**, attorney member; Committee 11B, **Kevin Cowan**, public member, **Daniel Ezra Davis**, attorney member; Committee 12, **Sean Powers**, attorney member; Committee 13A, **Colleen Darken**, attorney member.
- Unlicensed Practice of Law Standing Committee Nominations – **Virginia Marie Buchanan**, **Sherri Lynn Johnson**, and **Susan Papagikos**, attorney members; **Kristin L. Kadaj**, **Rebecca S. Wilt**, **Rian Meadows**, **Vincent Cuomo**, and **Dr. Steven Maxwell**, public members.

9. Communications Committee Report

Chair Joshua Chilson presented.

The mentoring initiative “Counsel to Counsel” is ready to launch. The consumer advocacy initiative, “Life’s Legal Moments,” is nearing completion. Substantial improvements to the Member Portal and member profiles are nearly complete.

10. Budget Committee Report

Chair Melissa VanSickle presented.

Items on Final Action: The proposed FY 2023-24 budgets were advertised and generated no member objections that require adjustment:

- General Fund: Revenues \$43.6 million, Expenses \$45.3 million, Operating Loss \$1.7 million. Projected Ending Undesignated Fund Balance \$32 million.

- Certification Fund: Revenues \$1.4 million, Expenses \$1.4 million, Fund Income of \$2,700. Projected Ending Fund Balance \$2 million.
 - Client Security Fund: Revenues \$2.23 million, Expenses \$3 million, Fund Reduction \$828,000. Projected Ending Fund Balance \$581,000.
 - Litigation Fund: Revenues \$471,000, Expenses \$350,000, Fund Increase \$121,000. Projected Ending Fund Balance \$2.9 million.
 - Fixed Assets Fund: Revenue \$794,000, Project Expenses \$549,000 before capitalization, Fund Increase \$495,000. Projected Ending Balance \$8.3 million.
 - Sections: Revenues \$8.4 million, Expenses \$8.7 million, Fund Reduction \$363,000. Projected Ending Fund Balances \$10.6 million.
- The board voted, without objection, to grant voice approval. The budget will be submitted to the Supreme Court prior to June 1.

11. Appellate Court Rules Committee Report

Committee member Keith Upson presented.

Items on Final Action: Proposed amendments to Rules of Appellate Procedure 9.020 and 9.400. The board voted 40 to recommend acceptance, 0 to reject, and 0 to amend.

12. Criminal Procedure Rules Committee Report

Vice-Chair Jason Blank presented.

Items on Final Action: Proposed amendments to Rule of Criminal Procedure 3.116 (Use of Communication Technology). After discussion, the board voted 34 to recommend acceptance, 10 to reject, and 0 to amend.

13. Rules of General Practice and Judicial Administration Report

The Honorable Stephen R. Jewett, chair, presented.

Items on Final Action: Proposed amendments to Rules of General Practice and Judicial Administration 2.205, 2.516, 2.535, 2.354, 2.511, 2.514, 2.515, 2.516, 2.520, and 2.525; and from a Florida Supreme Court Referral of the Workgroup on Improved Resolution of Civil Cases proposal, proposed amendments to 2.215, 2.250, 2.550, new rule 2.546, proposed new forms 2.904, 2.905, and 2.906. The board voted 43 to accept, 0 to reject and 0 to amend.

Proposed amendments to Rule 2.535 (Court Reporting). The board voted 36 to recommend acceptance, 9 to reject, and 0 to amend.

14. Rules Committee Report

Vice Chair Philip Bonamo presented.

Items on Final Action: A proposed rewrite of Chapter 8 (Lawyer Referral Rule), and proposed amendments to Rule 1-3.7, Rule 20-3.1, Standing Board Policy 1.20, Standing Board Policy 9.30, and Standing Board Policy 9.50. The board voted without objection to approve.

Board member J. Carter Andersen proposed an amendment to the amendment that would delete Standing Board Policy 1.20 (b) Invocations, “each board meeting will be opened with an invocation.” The proposed amendment to the amendment would delete the deletion and allow the subdivision to remain. After discussion, the board voted to 33-9 to approve the proposed amendment to the amendment. The board then approved the amended amendments on a voice vote.

15. Investment Committee Report

Chair Jeffrey Rynor presented.

As of March 1, 2023, the Long-Term Fund contained \$65.2 million, and the Short-Term Fund contained \$11.2 million.

16. Audit Committee Report

Committee member Edward “Duffy” Myrtetus presented.

The Florida Bar Retiree Health Plan audit revealed no adverse matters. The committee is working on a banking metrics best-practices guide. The committee is updating a cybersecurity review. Collaboration between Bar staff and the new auditors has been “very positive.”

17. Executive Session

The board went into executive session to discuss confidential matters.

18. Legislation Committee Report

Chair Braxton Gillam presented.

Legislative advocate Aimee Diaz-Lyon reported that the Legislature’s proposed \$117 billion FY 2023-24 budget fully funds a Supreme Court request for \$21 million for critical due process resources – court reporters, interpreters, case managers, and trial court staff attorneys. The Legislature approved 365 bills, a 25% increase over the previous year.

19. Board Review Committee on Professional Ethics Report

Chair Michael Orr presented.

Chair Michael Orr first reported that the Board Review Committee on Professional Ethics removed Item 5di (regarding consideration of Advertising Files 23-00771 and 23-0072) from the consent calendar and continued consideration of those items until the Board's next meeting on July 28, 2023. Further, the committee requested consideration of the other advertisements referenced in the filer's appeal letter to assure that the Board's opinion is consistent with those provided to other law firms whose advertisements contain similar statements.

Additionally, it was reported that the board's agenda materials include draft language for what is anticipated to become proposed Advisory Opinion 23-1 regarding a Florida lawyer's passive investment in an alternative business structure in another state. The committee continued consideration of this item to its meeting on July 28, 2023, so that the Professional Ethics Committee could provide further input following its meeting on June 23, 2023.

Finally, it was reported that the committee referred proposed rule amendments to the Rules Committee for further consideration. The proposed amendments revise Rules 4-3.4 and 4-4.4 of the Rules Regulating The Florida Bar to prohibit a lawyer from threatening or presenting administrative charges solely to obtain an advantage in a matter and to prohibit a lawyer from threatening negative social media reviews that the lawyer knows or reasonably should know are false.

20. Program Evaluation Committee Report

Chair Sia Baker-Barnes presented.

Items on Final Action: Proposed amendments to Rule 6-4.2, BLSE Policy 2.13, Out of State Division bylaws and Administrative Law Section bylaws. The board voted without objection to approve.

Evaluation of Florida Bar Board of Governors Liaison Reporting. The board voted without objection to approve the recommendations.

Evaluation of The Florida Bar Merit Retention Program. The board voted without objection to approve the recommendations.

Request for a new Florida Bar Standing Committee on Mentoring New Lawyers. The board voted without objection to approve.

Request for a new Florida Bar Standing Committee on Cybersecurity and Privacy Law. The board voted without objection to approve.

Request for a new Special Committee on Artificial Intelligence Tools & Resources. The board voted without objection to approve.

A proposed addition of Nota Lite trust accounting software to The Florida Bar Member Benefit Program. The board voted without objection to approve.

Chair Sia Baker-Barnes reported that a subcommittee voted to reject proposed amendments to Rule 6-12 (Basic Skills Requirement). However, the subcommittee made recommendations. A Young Lawyers Division proposed member survey has been forwarded to the Supreme Court for review.

21. Family Law Rules Committee Report

Liaison Jeffrey Rynor presented.

Items on Final Action: Proposed amendments to Form 12.902(c) Financial Affidavit Long Form. The board voted 42 to accept, 0 to reject, and 0 to amend.

Proposed amendments to Rule 12.740 Family Mediation. The board voted 42 to recommend acceptance, 0 to reject, and 0 to amend.

22. Executive Committee Nominations

President Gary Lesser presented.

Board member Stephanie Marchman nominated board member Tad Yates.

Board member Jorge Piedra nominated board member Duffy Myrtetus.

Board member Gregory Weiss nominated board member Braxton Gilliam.

Board member Lorna Brown-Burton nominated board member Hilary Creary.

The board voted to appoint board members Gilliam, Myrtetus and Yates.

23. Special Appointments

President Gary Lesser presented.

- ABA House of Delegates: Two attorneys to serve two-year terms commencing August 2023 at the conclusion of the ABA Annual Meeting. The board voted to nominate **Andrew J. Markus**, Miami, and **Michelle R. Suskauer**, West Palm Beach.
- Florida Board of Bar Examiners: Nine attorneys for three vacancies to serve five-year terms commencing November 1, 2023. The board voted to nominate **Kevin C. Allen-Nash**, Daytona Beach; **Manuel "Alex" Arteaga-Gomez**, Coral Gables; **Rosalyn Destinie Baker Sutton**, West Palm Beach; **Dax A. Bello**, Miami; **Cole Y. Carlson**,

St. Peterburg; **Gary M. Miller**, Miami; **Stephen Ostrow**, Miami; **John J. O'Sullivan**, Miami; and **Rene J. Wilkins**, Fort Pierce.

- Florida Bar Foundation Board of Directors: Two attorneys to fill vacancies commencing immediately. The board voted to nominate **Mary Katherine Fackler**, Jacksonville, and **Laura Boeckman**, Jacksonville.
- Florida Lawyers Assistance, Inc. Board of Directors: Four attorneys to serve three-year terms commencing July 1, 2023. The board voted to nominate **Joshua A. Beard**, Jacksonville, **Catherine A. Cullen**, West Palm Beach, **Christopher Finley**, Delray Beach, and **Michael A. Sneeringer**, Naples.
- Florida Legal Services, Inc., Board of Directors: One attorney to serve a three-year term commencing July 1, 2023. The board voted to nominate **Shayla N. Waldon**, Miami.
- Judicial Nominating Commissions: The board voted without objection to appoint the slate of candidates approved by the Executive Committee on May 2, 2023.

24. Technology Committee Report

Chair Gordon Glover Presented.

The committee focused this year on cybersecurity and privacy. It sponsored three free webinars that were attended by more than 3,000 Florida Bar members. The committee coordinated a cybersecurity themed edition of *The Florida Bar Journal*. The President's Showcase at the Annual Convention will feature a half-day seminar on cybersecurity and privacy. The Communications Committee just approved Technology Committee recommended improvements to The Florida Bar Member Portal and lawyer directory. The Technology Committee will continue to oversee promotion and expansion of the Tech Helpline.

25. Young Lawyers Division President's Report

President Iris Elijah presented.

The Health and Wellness Olympics attracted 290 participants and judges. YLD is planning a "Know Your Worth" webinar. A May 25 Practicing with Professionalism seminar will feature Supreme Court Justice John Couriel. A YLD webinar on June 13 will cover civil litigation reforms. The final YLD meeting this year is June 1-4 in Miami.

26. President-Elect's Report

President-elect Scott Westheimer presented.

Items on Final Action: Approval of the 2023-24 Standing Committee Leadership Appointments and 2023-24 Board Committee and Liaison Appointments. The board voted without objection to approve.

The Board of Governors will meet July 26-29 in Sarasota; September 6-10 in Austin, Texas; and November 29-December 2 in Destin. In 2024, the board will meet January 17-20 in Tallahassee; March 13-16 in Coconut Grove; and May 8-11 in Key West.

27. Executive Director's Report

Executive Director Joshua Doyle reported that the Attorney/Consumer Assistance Program handled 12,000 calls during the current fiscal year. The Ethics and Advertising Hotline handled 17,000 calls. The Florida Bar reviewed 4,000 legal advertisements. The LegalFuel website had more than 768,000 views and 41,000 hours of its CLE videos were viewed.

28. President's Report

President Gary Lesser thanked colleagues and Bar staff for a successful and eventful year.

29. Time and Place of Next Meeting

There being no further business before the board, President Gary Lesser adjourned the meeting. The next board meeting is July 26-28, 2023, at the Ritz Carlton, Sarasota.

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