

The Florida Bar Board of Governors
December 1, 2023
Destin, 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
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
Jorge L. Piedra, 11th Circuit
Jeffrey Rynor, 11th Circuit
Alice Sum, 11th Circuit
Sabrina Vora-Puglisi, 11th 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
Michael J. Gelfand, 15th Circuit
Wayne LaRue Smith, 16th Circuit
Jay Kim, 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
E. Duffy Myrtetus, Out of State

Donald A. Workman, 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

Members Absent

Joshua T. Chilson, 6th Circuit
Jordan A. Dresnick, 11th Circuit
Judge Leslie B. Rothenberg, 11th Circuit
Jesse R. Butler, 12th Circuit
Robin I. Bresky, 15th Circuit
Brian H. Koch, 17th Circuit
Laird A. Lile, 20th Circuit
Eric L. Meeks, Out of State

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 Clifford Higby delivered the invocation and board member Jeremy Branning led the Pledge of Allegiance.

4. Point of Personal Privilege

President Scott Westheimer asked for a moment of silence to commemorate the deaths of U.S. Supreme Court Justice Sandra Day O'Connor, former Bar President James Fox Miller, former board member Sammy Cacciatore, Jr., and Roland Sanchez-Medina, Sr.

5. Remarks, Florida Supreme Court Chief Justice Carlos Muñoz

The Supreme Court is reviewing the Judicial Circuit Assessment Committee report. Salary enhancements for trial and district court of appeal judges are a priority. Justices will enhance the Supreme Court visitor experience.

6. Remarks, First Circuit Court Chief Judge John Miller

The First Judicial Circuit recovered from a major cyberattack and restored nearly all compromised data. Florida lawyers should invest in cybersecurity, staff training, offsite backup systems, and incident response plans.

7. Liaisons and Guests

President Scott Westheimer introduced the following guests:

Connie Bookman, Pathways for Change, Pensacola
Sara Louise Villa Oberliesen, Okaloosa Bar Association
Amelia Beard, Walton County Bar Association
Lori Ward, Walton County Bar Association
Chris Butler, Bay County Bar Association
Daniel Rosenheim, Walton County Bar Association
Christine Kelly, Escambia-Santa Rosa Bar Association

8. Minutes Approval

The board approved the minutes from the September 5, 2023, meeting, the September 8, 2023, meeting, and the grievance minutes from the September 8, 2023, meeting.

That approval included the following actions taken by the Executive Committee:

- At an October 25, 2023, meeting the Executive Committee voted 12-0 to take no action regarding a Criminal Law Section request to file comments in "*In Re: Judicial Circuit Assessment Committee*," Case No. AOSC 23-35. The committee voted 12-0 to take no action regarding a Trial Lawyers Section request to file comments in "*In Re: Judicial Circuit Assessment Committee*," Case No. AOSC 23-35. The committee voted 12-0 to approve a Tax Law Section request to renew a legislative advising agreement.
- At an October 9, 2023, Executive Committee meeting the committee voted 8-0 to take no action on six legislative position requests that included three from the Business Law Section and three from the Real Property, Probate & Trust Law Section.
- At an October 4, 2023, meeting the Executive Committee voted 11-0 to authorize a settlement offer of up to \$375,000.
- At an October 2, 2023, meeting the Executive Committee voted 12-0 to approve settlement authority in the case regarding the Bar's lease in Tampa and a budget amendment to add this case to the Bar's litigation fund.
- At a September 13, 2023, meeting the Executive Committee voted 12-0 to deny a CLE Committee request to file a comment in SC2023-0884 concerning "*In Re: Code for Resolving Professionalism Referrals and Amendments to Rule Regulating The Florida Bar 6-10.3.*"

9. Consent Calendar

After agreeing to withdraw Item 6(a), the board approved the consent agenda, which included the following items:

- A Family Law Section legislative position request that supports amendments to current legislation that increases security for general magistrates, child support

hearing officers and their administrative assistants, including but not limited to expanded confidentiality and criminalization of threats or harassment.

- A Family Law Section legislative position request that opposes legislation that permits a parent to make non-emergency unilateral changes to court-ordered timesharing exchange locations unless the parenting plan provides for sole parental responsibility or ultimate decision-making authority to the parent wishing to change the location, or there is a finding of domestic violence or child abuse by or against the other parent.
- A Real Property, Probate & Trust Law Section legislative position request that supports legislation that provides for the continued rights of a ward to receive visitors and communicate with others when such contact would not be potentially harmful to the ward. A Real Property, Probate & Trust Law Section legislative position request that opposes legislation that would: a. allow for jury trials in proceedings initiated under Chapter 744, b. allow for trials in proceedings related to contesting the validity of wills or revocable trusts prior to the death of the testator/settlor, except as otherwise provided by law, c. require the re-evaluation of wards without the filing of a suggestion of capacity or exercise of the court's discretion, d. require a guardianship proceeding to be transferred to a new judge after the establishment of a guardianship without a substantive basis, or, e. provide for a blanket requirement that any and all family members of the ward related by blood, marriage, or adoption, have access to guardianship inventories, accountings, or other financial information of the ward.
- An Animal Law Section legislative position request that supports legislation on humane cosmetics testing. An Animal Law Section legislative position request that supports legislation that requires adoption of dogs and cats when they are no longer used for research. An Animal Law Section legislative position request that supports legislation to create a statewide animal abuse registry.
- A Trial Lawyers Section legislative position request that opposes that portion of SB 248 that seeks to include requirements of a probable cause finding by an administrative agency as a condition of recovery of damages. The provision would apply to disciplinary proceedings set forth in section 456.073(4) against a health care practitioner licensed by the Florida Department of Health and would amend section 768.21 to state that absent a finding of probable cause no such damages could be recovered. The Trial Lawyers Section believes this is a denial of access to the courts by the citizens of the State of Florida.
- A legislative advising agreement between the Animal Law Section and Ralph DeMeo, Macie Codina, and Diana Ferguson.
- A judicial conference legislative advising agreement between The Florida Bar and Megan Fay of Capital City Consulting.
- A judicial conference legislative advising agreement between The Florida Bar and Peter M. Dunbar of Jones Walker.
- A judicial conference legislative advising agreement between The Florida Bar and Stephen W. Shiver, Jr., of the Advocacy Group at Cardenas Partners.
- Disciplinary Procedure Committee proposed amendments to Rule 3-5.2 (Emergency Suspension; Interim Probation; Interim Placement on the Inactive

List for Incapacity Not Related to Misconduct), Rule 3-7.13 (Incapacity Not Related to Misconduct), and Rule 3-xxx (Frozen Trust Accounts).

- Program Evaluation Committee proposed amendments to Rule 6-12.1 (Basic Skills Course Requirement), Rule 6-12.5 (Noncompliance and Sanctions), Rule 6-12.6 (Reinstatement), Rule 6-12.7 (Confidentiality), and Rule 6-12.8 (Disciplinary Action).
- UPL Circuit Committee Nominations – Committee 8, **April Green**, public member; Committee 2, **Neil St. John Rambana**, attorney member; Committee 6-B, **Ryan Doddridge**, attorney member; Committee 17-C, **Tremaine L. Hemans**, attorney member, and **Rose M. Mannisto**, public member.
- Florida Bar Foundation petition to amend articles of incorporation.
- Appointment of two Legal Services of North Florida board members, for terms commencing January 1, 2024: **Curt Bender** and **Stephanie Tillery**.

10. Executive Director's Report

Lawyer Regulation Division Director Elizabeth Tarbert presented.

The Civil Procedure Rules Committee chair conducted training for division lawyers on civil discovery rules. Outside counsel provided training on summary judgment. Division lawyers observed Florida Lawyers Assistance, Inc. programs. The division is developing training for local professionalism panels. Based on an internal review, the division has improved the documenting of Bar case conflicts and extension requests. The division is developing a procedure for random review of case closures. The division worked with the Disciplinary Procedure Committee to improve communication with complainants and develop new standing board policies. The division adopted a policy regarding complaints against Bar staff. The division is considering electronic service of the initial, 15-day letter notifying members of a complaint.

11. Legislation Committee Report

Chair R. Sia Baker-Barnes presented.

Items on Final Action: Proposed amendments to Standing Board Policy 9.10 (Authority), Standing Board Policy 9.11 (Definitions), Standing Board Policy 9.20 (Action by Board), Standing Board Policy 9.50 (Technical Assistance and Legislative and Political Activities of Voluntary Florida Bar Groups), and Standing Board Policy 9.51 (Procedure for Retaining Voluntary Florida Bar Group or Legislative or Political Advisors). The board voted without objection to approve.

The Legislature will conduct two more interim committee weeks before session convenes January 9, 2024. Bar leaders are promoting branch priorities to House and Senate leaders. The governor releases a budget proposal next week.

12. Outside Counsel's Report

Attorney Kevin Cox presented.

The Florida Bar is appropriately focused on the core missions of regulating the practice of law and improving the delivery of legal services to the public. A subcommittee will report to the board in January after reviewing *Boudreaux v. Louisiana State Bar Association*.

13. Disciplinary Procedure Committee Report

Chair Tad Yates presented.

Items on Final Action: Proposed amendments to Rule 3-5.1 (Generally), Rule 3-5.3 (Diversion of Disciplinary Cases to Practice and Professionalism Enhancement Programs), Rule 3-7.11 (General Rule of Procedure), Rule 3-7.16 (Limitation on Time to Open Investigation) and Standing Board Policy 15.10 (Waiver of Disqualification). The board voted without objection to approve.

14. Special Committee on AI Tools & Resources Report

Co-Chair Gordon Glover presented.

The committee proposed new comments to Bar rules regarding a lawyer's duty to understand the risks and benefits associated with generative AI, and the responsibility to maintain confidentiality and consider safeguards when using generative AI. The committee submitted a request for Proposed Advisory Opinion 24-1 that addresses confidentiality, lawyer oversight, legal fees and costs, and lawyer advertising. The committee vetted possible certification and disclosure requirements for lawyers and pro-se litigants. The committee requested the Rules of General Practice and Judicial Administration Committee to review Rule 2.515. The committee asked the Code and Rules of Evidence Committee to consider integrating digital watermarking, blockchain verification and other innovative AI detection tools into the rules governing the admissibility of evidence. The committee is working with Bar staff to develop educational resources for Florida lawyers on the risks and benefits of generative AI.

15. President's Report

About 200 comments have been submitted in Supreme Court Case SC2022-1292 regarding proposed amendments to Rule 5-1.1. The Judicial Circuit Assessment Committee recommended not consolidating any of Florida's judicial circuits. About 300 law firms have implemented the free trust accounting solution Nota. Tickets are available for the January 18, 2023, Supreme Court Historical Society dinner.

16. Special Appointments

President Scott Westheimer presented.

The 2022 Supreme Court Judicial Nominating Commission: Board member Alice Sum moved to nominate William J. Schifino, Jr., Michelle Renee Suskauer, Daniel Elden Nordby, Thomasina Moore, and Richard Chambers Valuntas. The board went into executive session to discuss confidential matters. The board returned to public session and voted to reject the slate. Board member Alice Sum moved the nominations of William J. Schifino, Jr., Daniel Elden Nordby, Thomasina Moore, Richard Chambers Valutas, and Eric Allan Lee. The board voted to approve.

17. Technology Committee Meeting Report

Chair Alice Sum presented.

A subcommittee is developing a daylong, AI-themed presidential showcase for the Annual Convention. A second subcommittee is developing a webpage to highlight AI, technology, and ethics-related resources for Florida Bar members.

18. Executive Session

The board went into executive session to discuss confidential matters.

19. Probate Rules Committee Report

Board member Sandra Diamond presented.

Items on Final Action: Proposed Amendments to Rule 5.025 (Adversary Proceedings) and Rule 5.340 (Inventory). The board voted 35 to accept, 0 to reject.

20. Board Review Committee on Professional Ethics Report

Chair Brian Burgoon presented.

Items on Final Action: Proposed amendments to Rule 4-4.4(a) of the Rules Regulating The Florida Bar. If approved, the proposed amendments would add language to the rule that explicitly prohibits a lawyer from threatening false reviews or social media posts that impugn another person or entity. After discussion, the board voted to reject the proposed amendments.

Review of proposed Advisory Opinion 23.-1. If approved, Proposed Advisory Opinion 23-1 would permit a Florida lawyer to be a passive investor in an “alternative business structure” in another jurisdiction subject to specific restrictions, including that the “alternative business structure” did not engage in the practice of Florida law. After consideration of comments received regarding the proposed advisory opinion, the board voted to disapprove finalization and publication of the opinion. A motion was then made and seconded to withdraw Proposed Advisory Opinion 23-1. The motion to withdraw the proposed advisory opinion was approved.

Review of Ethics Inquiry 43517. Staff’s opinion, dated March 27, 2023, concluded that a nonlawyer is prohibited from using the title “Chief Executive Officer” pursuant to Rule 4-8.6(c) of the Rules Regulating The Florida Bar. The Professional Ethics Committee affirmed staff’s opinion on June 23, 2023, and the inquirer sought board review. The board voted to affirm staff’s opinion and the decision of the Professional Ethics Committee.

21. Florida Lawyers Assistance, Inc., Report

Executive Director Daniel J. McDermott presented.

FLA was created in 1986 as an independent non-profit organization stemming from a Florida Supreme Court determination that substance use disorders and mental health conditions are medically recognized and treatable. FLA contracts with more than 1,300 lawyers who agree to random drug screening, attend group meetings, and meet regularly with an FLA monitor. FLA sponsors 42,000 hours of support group involvement every year for judges, lawyers, and paralegals. FLA has contracted with 5,300 lawyers since 1986. Only nine lawyers who successfully completed a contract have been re-referred for behavioral issues.

22. Rules Committee Report

Chair Philip Bonamo presented.

Items on Final Action: Proposed amendments to Rule 1-3.2 (Membership Classifications), Rule 1-3.3 (Official Bar Name and Contact Information), and Bylaw 3-2.10 (Meetings). The board voted without objection to approve.

Proposed amendments to Rule 4-1.3 (Diligence), Rule 4-1.6 (Confidentiality of Information), Rule 4-5.1 (Responsibilities of Partners, Managers, and Supervisory Lawyers), and Rule 4-5.3 (Responsibilities Regarding Nonlawyer Assistants). The board voted without objection to approve.

Proposed Amendments to Chapter 4 Preamble, and Rule 4-1.3 (Diligence). After discussion, the board voted 24-9 to approve.

Items on First Reading: Proposed amendments to Rule 1-3.3 (Official Bar Name and Contact Information), Rule 1-3.6 (Delinquent Members), Rule 11-1.2 (Activities), Rule 11-1.3 (Requirements and Limitations), Standing Board Policy 1.41 (Delegates to American Bar Association House of Delegates), and Standing Board Policy 6.30 (Fees for CLE Courses).

23. Program Evaluation Committee Report

Chair Melissa VanSickle presented.

Items on Final Action: Proposed amendments to Rule 6-4.3 (Minimum Standards), Rule 6-4.4 (Recertification), Rule 6-10.2 (Administration), Rule 6-10.4 (Reporting Requirements), Rule 6-12.2 (Administration), Rule 6-12.4 (Deferment and Exemption). The board voted without objection to approve.

Proposed Amendments to BLSE Policy 2.13 (Grading, Review, and Petition Process), BLSE Policy 2.14 (Application Review Process for Certification or Recertification), BLSE Policy 3.02 (Accreditation Requirements and Standards), BLSE Policy 6.02 (Reporting), BLSE Policy 7.03 (Deferment), and BLSE Policy 7.07 (Reinstatement). The board voted without objection to approve.

Proposed amendments to CLE committee policies. The board voted without objection to approve.

Proposed amendments to Tax Law Section bylaws. The board voted without objection to approve.

Items on First Reading: Proposed amendments to Rule 6-3.5 (Standards for Certification), and Rule 6-3.6 (Recertification).

A subcommittee that was considering a uniform waiver for good cause has completed its work.

24. Rules of General Practice and Judicial Administration Committee Report

Board member Melissa VanSickle presented.

Items on Final Action: Proposed amendments to Rule 2.420. The board voted 26 to accept, 0 to reject, and 0 to amend.

25. Civil Procedure Rules Committee Report

Vice-Chair Amelia Beard presented.

Items on Final Action: Proposed amendments to Rule 1.080 (Service and Filing of Pleadings, Order, and Documents) and Rule 1.310 (Depositions Upon Oral Examination). The board voted 27 to accept, 0 to reject, and 0 to amend.

Proposed amendments to Form 1.925 (Complaint to Quiet Title). The board voted 26 to accept, 1 to reject, and 0 to amend.

26. Criminal Procedure Rules Committee Report

Board Liaison Tad Yates presented.

Items on Final Action: Proposed amendments to Rule 3.131 (Pretrial Release), Rule 3.132 (Pretrial Detention), Rule 3.210 (Incompetence to Proceed: Procedure for Raising the Issue), and Rule 3.802 (Review of Sentences for Juvenile Offenders). The board voted 27 to accept, 0 to reject, and 0 to amend.

27. Family Law Rules Committee Report

Board Liaison Philip Bonamo presented.

Items on Final Action: Proposed amendments to Form 12.900(h) and Form 12.928. The board voted 23 to accept, 0 to reject, and 0 to amend.

28. Juvenile Court Rules Committee Report

Board Liaison Victor Smith presented.

Items on Final Action: Proposed amendments to Rule 8.245 (Discovery).

The board voted 23 to accept, 0 to reject, and 0 to amend.

29. Traffic Court Rules Committee Report

Board Liaison Hilary Creary presented.

Items on Final Action: Proposed amendment to Rule 6.455 (Amendment).

The board voted 25 to accept, 0 to reject, and 0 to amend.

The board voted to table proposed amendments to Rule 6.630 (Civil Traffic Infraction Hearing Officer Program: Traffic Hearing Officers), pending further review.

30. Workers Compensation Rules Advisory Committee Report

Board Liaison Lorna Brown-Burton presented.

Items on Final Action: Proposed Amendments to Rules 60Q-6.102 (Definitions), Florida Administrative Code, Rules 60Q-6.114 (Discovery) Florida Administrative Code, and Rules 60Q-6.124 (Payment of Attorney's Fees and Costs Other Than Pursuant to Section 440.20(11), Florida Statutes), Florida Administrative Code.

The board voted 21 to accept, 0 to reject, and 0 to amend.

31. Budget Committee Report

Chair Michael Fox Orr presented.

The committee has voted to recommend amending certain CLE rate structures.

32. Investment Committee Report

Committee Chair Jeffrey Raynor presented.

The Long-Term Fund contains an excess of \$92 million.

33. Young Lawyers Division President's Report

The YLD expects to produce 21 basic skills courses CLEs by the end of the year, well ahead of previous production levels. A tour of Florida law schools continues.

34. President-Elect's Report

The board will meet next year in Miami, New Orleans, St. Augustine, Tallahassee, and Key West.

35. Time and Place of Next Meeting

There being no further business before the board, President Scott Westheimer adjourned the meeting. The next board meeting will be held January 19, 2024, at the AC Hotel Marriott in Tallahassee.

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