

The Florida Bar Board of Governors
May 28, 2010, 8:30 a.m.
Westin Key West Resort & Marina
Key West, FL

1. Roll Call

Jesse H. Diner, President
Mayanne Downs, President-elect
Stephen H. Echsner, First Circuit
Lawrence E. Sellers, Jr., 2nd Circuit
Dominic M. Caparello, 2nd Circuit
Clay A. Schnitker, 3rd Circuit
S. Grier Wells, 4th Circuit
John J. Schickel, 4th Circuit
Andrew B. Sasso, 6th Circuit
Murray B. Silverstein, 6th Circuit
Charles Chobee Ebbets, 7th Circuit
Carl B. Schwait, 8th Circuit
Mary Ann Morgan, 9th Circuit
Daniel L. DeCubellis, 9th Circuit
Scott M. McMillen, 9th Circuit
Robert M. Brush, 10th Circuit
Ramon A. Abadin, 11th Circuit
David Rothman, 11th Circuit
Michael J. Higer, 11th Circuit
Juliet Roulhac, 11th Circuit
Dori Foster-Morales, 11th Circuit
L. Norman Vaughan-Birch, 12th Circuit
Lansing C. Scriven, 13th Circuit
Gwynne Alice Young, 13th Circuit
Clifford W. Sanborn, 14th Circuit
David C. Prather, 15th Circuit
Gregory Coleman, 15th Circuit
Scott G. Hawkins, 15th Circuit
Lisa S. Small, 15th Circuit
Edwin A. Scales, 16th Circuit
Walter G. Campbell, 17th Circuit
Nancy W. Gregoire, 17th Circuit
Eugene K. Pettis, 17th Circuit
Jay Cohen, 17th Circuit
Timothy A. Bailey, 17th Circuit
Clifton A. McClelland, Jr., 18th Circuit
John M. Stewart, 19th Circuit
Laird Lile, 20th Circuit

Scott W. Weinstein, 20th Circuit
Richard Arthur Tanner, Out of State
Ian M. Comisky, Out of State
Eric L. Meeks, Out of State
Brian D. Burgoon, Out of State
Roger J. Haughey II, Young Lawyers Division President
Renée Thompson, Young Lawyers Division President-elect
Arnell Bryant-Willis, Public Member
Alvin V. Alsobrook, Public Member

Members Absent:

Denise A. Lyn, 5th Circuit
Ervin A. Gonzalez, 11th Circuit
Dennis G. Kainen, 11th Circuit
John H. Hickey, 11th Circuit
William J. Schifino, Jr., 13th Circuit

New Board Members Present:

William Davis, 2nd Circuit
Sandy Upchurch, 7th Circuit
Leslie Lott, 11th Circuit
Michael Hooker, 13th Circuit
Jay Manuel, 14th Circuit
Michelle Suskauer, 15th Circuit
Sean Desmond, YLD president-elect

2. Guests

Tasha Dickinson, Florida Association for Women Lawyers
Manuel A. Garcia-Linares, Cuban American Bar Association
Kenneth D. Pratt, Virgil Hawkins Florida Chapter, National Bar Association

3. Staff in Attendance

John F. Harkness, Jr., Executive Director
John Berry, Director, Legal Division
Ken Marvin, Director, Lawyer Regulation
Allen Martin, Director, Finance and Accounting
Lori Holcomb, Unlicensed Practice of Law Counsel
Elizabeth Tarbert, Ethics and Advertising Counsel
Mary Ellen Bateman, Division Director, Ethics and Advertising, UPL, and Special Projects
Francine Walker, Director, Public Information
Dawna Bicknell, Director, Legal Education and Specialization
Roselyn A. Scott, Assistant to the President
Gary Blankenship, Senior Editor, Florida Bar *News*

4. Invocation and Pledge of Allegiance

Board member Edwin Scales delivered the invocation and led the board in the Pledge of Allegiance.

5. Appearance by State Rep. Ron Saunders

Rep. Ron Saunders, a Bar member, talked about the budget challenges the court system will face in the Legislature next year, which is facing a potential \$6 billion revenue shortfall that could be further aggravated if the Gulf of Mexico oil spill hurts the state's economy.

6. Appearance by Tax Section Vice Chair Guy Whitesman

Whitesman summarized the section's activities for the previous year, which include a variety of CLE courses and legislative activities. He said the section held a basic tax course in conjunction with the Young Lawyers Division and last fall conducted two advanced seminars on litigating tax cases and dealing with the IRS.

7. Appearance by Monroe County Judge Wayne Miller

Judge Miller welcomed the board to Key West and asked for help in next year's legislative session in preventing any attempt to undercut judicial pensions. Miller said pensions are key to attracting a qualified diverse judiciary.

8. Appearance by Trial Lawyers Section Chair Robert E. Mansbach, Jr.

Mansbach said the section held a variety of CLE courses to train trial lawyers and also worked with other sections to support judicial funding in the Legislature. The section has traditionally been made up of plaintiff and defense personal injury attorneys but is now attracting more commercial litigators. He also announced that the section will have in the coming months the first annual Glenn Burton Trial Lawyers Summit, to honor Burton who died last June just before becoming the section chair.

9. Approval of Minutes – Agenda Item 4

The board approved the regular and grievance minutes from its March 26 meeting in New York City. That vote also approved the following actions:

- The four emergency legislative action items approved by President Jesse Diner, President-Elect Mayanne Downs, and Legislation Committee Chair Larry Sellers on March 31, 2010. That included allowing the Business Law Section to hire the law firm of Metz Husband & Daughton to assist in its legislative effort. It also included not prohibiting the following section positions: 1) The Business Law Section joining the Real Property, Probate and Trust Law Section's position opposing "any amendment to existing Florida law governing real property foreclosures unless those amendments carefully preserve and protect the property rights and due process rights of the holders of interest in or affecting Florida real property;" 2) The Criminal Law Section opposing the "privatization of Florida's Public defender function consistent with its resolution opposing the proposed transfer of the Miami-Dade Public Defender caseload and funding to a no-bid contractor, dated March 21, 2010;" and 3) The Real Property, Probate and Trust Law Section opposing "abolishment of causes of action for architect, engineer, surveyor or mapper professional negligence and other professional breaches of duty."

- One action and three appointments made by the Executive Committee at an April 14, 2010, meeting. That included recommending adoption of an out-of-cycle amendment to *Fla.R.Juv.P.* 8.255. The amendment to subdivision (b), Presence of Child, requires the court to inquire and determine the reason for a child's absence from a hearing and to then determine if it is the child's best interest to continue the hearing to allow the child to be present or to proceed without the child. The existing subdivision (b) provides that the child has the right to be present, but does not provide a procedure for the court to follow if the child is not at the hearing. The committee approved the appointment of Elona Jouban as a public member on UPL Circuit Committee 1"A", and Katie Lee Dearing as an attorney member and Angie Jarrett as a public member on the UPL Circuit 4 committee.

- The Executive Committee's approval on April 19, 2010, of an amicus request from the Family Law Section to file a brief in with the Supreme Court in *Kaa v. Kaa*, Case No. SC09-967. The case deals with property distribution matters in a dissolution of marriage.

- Emergency legislative action on April 28, 2010, approved by President Jesse Diner, President-Elect Mayanne Downs, and Legislation Committee Chair Larry Sellers not to prohibit the Elder Law Section from taking the following position before the Center for Medicaid and State Operations: "Supports the position of the National Academy of Elder Law Attorneys (NAELA) in permitting the purchase of annuities without a resulting penalty for an uncompensated transfer of resources or as a countable resource in accordance with Rule 65A-1.712 FAC. NAELA's position is consistent with the rules promulgated by Florida in adopting the Deficit Reduction Act of 2005 (ORA)."

- The Executive Committee approval on April 7, 2010, on the request of the Civil, Family, and Small Claims rules committees to file comments with the Supreme Court regarding privacy and court records stemming from case No. SC08-1443.

- The Executive Committee ratification of the six nominees for each of the 26 judicial nominating commission recommended by the six screening committees reviewing JNC applicants. Also approved was the committee's assent to having a Florida Bar Swim Meet, with the net proceeds going to The Florida Bar Foundation.

10. Consent Agenda – Agenda Item 5

After removing items 5(b)(i) and 5(b)(ii), both advertising appeals, the board approved the consent agenda. That included approving Carsandra Denyce Buie and James Ferril Turner, Jr., as new attorney members, and Shelley Finn, Dia Kuykendall, Francine Leibman, Samantha L. Leone, Margaret J. Perry, and Daniel John Schevis as new public members for the Standing Committee on the Unlicensed Practice of Law. Nancy Munjiovi Blount was reappointed as an attorney member and Barry M. Crown, Anthony Heary, and Jill Press were reappointed as public members to the committee. Ety Foodman was removed as a public member. Also approved were the appointments of Joel Steward as an attorney member to Circuit UPL Committee 11"D", and Susan Ellen Greenberg and Davie Corey Kotler as attorney members and Edwin Armstrong Price Voss as a public member to Circuit UPL Committee 15"B".

11. Appearance by Monroe County Bar Association President Cara Higgins

Higgins welcomed the board to Key West.

12. Executive Session

The board went into executive session to discuss confidential disciplinary and Clients' Security Fund matters.

13. Board of Legal Education and Specialization Report

BLSE Chair Buck Vocelle summarized recent activities of the BLSE including a review of policies to ensure consistency. The certification program currently offers certification in 23 areas, including most recently adoption and education law which will have their first certification exams in 2011. The BLSE is considering a proposal to offer certification in children's welfare law. Vocelle said the BLSE considered the merger of business litigation and anti-trust law certification areas, but added that it is unlikely to happen. He also noted the proposed new rule to allow lawyers who are certified when they become judges to become certified judicial fellows.

14. Presentation of Scrapbooks for former Bar President Jay White

President Diner presented scrapbooks to immediate past President Jay White commemorating his year as Bar President.

15. Budget Committee Report – Agenda Item 14

Chair Jake Schickel recommended and the board approved a transfer of \$207,111 to claims paid for the Clients' Security Fund with \$87,357 coming from the fund balance and the remainder from operating accounts.

16. Investment Committee Report – Agenda Item 15

Committee Chair Ian Comisky reported the committee recommended, and the board approved, putting the Bar's short term investments in a commercial money market account. The committee also recommended and the board approved shifting to the "international platform" for Bar long-term investments, which will add an international small cap equity fund, an emerging market fixed income fund, a high-yield fixed income fund, a "fund of fund" for managed futures, and a hedge "fund of funds" to the Bar's portfolio. Comisky said the committee will recommend in July setting the exact targets in the Bar's portfolio for those investments.

17. Disciplinary Procedure Committee Report – Agenda Item 11

Chair Andy Sasso presented three rule and two Standing Board Policy amendments on second reading, all of which were approved by the board:

- Rule 3-5.2, Emergency Suspensions and Interim Probation: Within subdivisions (a) and (b), clarifies that the petition for emergency suspension or interim probation constitutes a formal complaint and allows the respondent a specific amount of time to file an answer to the bar's petition; adds new subdivision (f), Appointment of Referee, to clarify when a referee is appointed; redesignates and adds titles and language to subsequent subdivisions to clarify the process for handling emergency suspensions and interim probations. Passed unanimously.

- Rule 3-7.6, Procedures Before a Referee: Amends subdivision (h)(8), to add that if a referee is disqualified from a case, the chief judge of the circuit in which the original

referee resided shall appoint a successor referee from that same circuit. Passed unanimously.

- Rule 5-1.2, Trust Accounting Records and Procedure – Signing Trust Account Checks: Within new subdivision (d), provides that lawyers shall not sign blank trust account checks or use a signature stamp as a signature; further provides that non-lawyers are not permitted to sign trust account checks; redesignates subsequent subdivision entries as necessary; within new subdivision (e) sets forth requirements for documenting wire transfers of trust account funds; within subdivisions (a) and (f), changes the word "attorney" to "lawyer" to maintain consistency. Passed after discussion on voice vote with dissents.

- SBP 15.55, Deferral of Disciplinary Investigation During Civil or Criminal Proceedings: Amends subdivisions (b) and (c) such that Bar investigations are not closed at staff level during the pendency of a civil or criminal prosecution of a respondent, but rather are deferred until the civil or criminal prosecution of respondent is completed. Eliminates subdivision (b)(3) requiring the complainant to maintain a copy of the file because the Bar investigation file remains open during the pendency of the civil or criminal case(s) against respondent. Passed unanimously.

- SBP 15.92, Policy on Public Reprimands: Throughout the policy, refines and defines the circumstances under which a respondent shall be required to appear for an in-person public reprimand; also requires that all public reprimands be published in the Southern Reporter and requires that the president of The Florida Bar administer all in-person public reprimands before the Board of Governors. Passed after discussion 24-14.

Sasso presented one item on first reading: Rule 3-7.4 Grievance Committee Procedures: Deletes subdivision (p) to eliminate redundancies, incorporates all information regarding filing of formal complaints into subdivision (l).

18. Report of the Business Law Section

Chair Louis T.M. Conti reported in the past year the section has worked to improve its relations with the Florida Institute of Certified Public Accountants and implemented a successful diversity project. Conti said the section is active with business court judges around the state and plans to list them on its website.

19. Report of the Appellate Practice Section

Chair Dorothy Easley is working to improve its relations with the Supreme Court and the district courts of appeal, noting that former Justice Raoul Cantero will be the next section chair. The section is active in electronic filing, court funding, and streamlining the rule-making process, she said, and has an active pro bono program, including creating a "template" to help DCAs screen pro bono appeals.

20. Report of the Elder Law Section

Chair Babette B. Bach reported that the section is working to change its name to the Elder and Disability Law Section, which could attract 1,500 attorneys who practice Social Security law to the section. The section has created a joint committee with the Health Law Section to study the implementation of the new federal Health Reform Act and has upgraded its quarterly magazine. She added the section has become more active

in the Legislature and works with state agencies on issues affecting the elderly, including Medicaid matters.

21. President-Elect's Report – Agenda Item 7

At the recommendation of President-Elect Mayanne Downs, the board approved the list of officers for the standing committees of The Florida Bar for 2010-11. The board also elected board members Jake Schickel, Gwynne Young, and Ray Abadin to the Bar's Executive Committee for 2010-11.

22. Board Review Committee on Professional Ethics Report – Agenda Items 5b and 20

5b(i) ADVERTISING APPEALS 10-00852 and 10-00853

The Board Review Committee on Professional Ethics voted 5-2 to recommend that the Board of Governors reverse the Standing Committee on Advertising decision in files 10-00852 and 10-00853, finding that the sentence "If you have already retained a lawyer for this matter, please disregard this letter" appears as the first sentence in a targeted direct mail as required by Rule 4-7.4(b)(2)(F) when it appears at the top of the right flap of a self-mailing tri-fold brochure. The Board Review Committee on Professional Ethics also voted to refer Rule 4-7.4(b)(2)(F) to the Rules Committee for review, because the rule was written to address letters as opposed to self-mailing brochures. The Board of Governors voted 23-14 to approve the recommendation of the Board Review Committee on Professional Ethics. Board of Governors member R.J. Haughey, II did not participate in the discussion and vote on this item.

5b(ii) ADVERTISING APPEAL 10-01478

The Board Review Committee on Professional Ethics voted 4-3 to recommend that the Board of Governors reverse the Standing Committee on Advertising in file 10-01478, finding that the statement, "**It's achieving a higher purpose. It's making companies, making entities do the right thing where they haven't done it before,**" does not promise results the lawyer can achieve under Rule 4-7.2(c)(1)(G) because the statement is a general statement of the purpose of filing a lawsuit as opposed to a promise of a result the lawyer will achieve. The Board of Governors voted 23-14 to approve the recommendation of the Board Review Committee on Professional Ethics.

The Board Review Committee on Professional Ethics voted 7-0 to affirm the Standing Committee on Advertising decision that the statement, "**We've had cases where policies had been changed and the family has been paid money, but they're happier about the policy change that's been made then they are about the money,**" refers to past successes or results in violation of Rule 4-7.2(c)(1)(F). The Board of Governors voted to approve the recommendation of the Board Review Committee on Professional Ethics on voice vote.

20a. ETHICS APPEAL - PROPOSED ADVISORY OPINION 09-1

The Board Review Committee on Professional Ethics reported to the Board of Governors that it voted 6-0 to defer action on Proposed Advisory Opinion 09-1 until the Board of

Governors July 2010 meeting and directed staff to draft revisions to the opinion and receive drafts from others.

20b. AMENDMENTS TO RULE 4-3.4(b)

The Board Review Committee on Professional Ethics voted 7-0 to recommend that the Board of Governors adopt amendments to Rule 4-3.4(b) that would permit reasonable compensation to reimburse a witness for preparing for, attending, or testifying at proceedings. The amendments will next be referred to the Rules Committee. The Board of Governors voted to approve the recommendation of the Board Review Committee on Professional Ethics on voice vote.

20c. ETHICS INQUIRY 29387 REQUESTING ISSUANCE OF A PROPOSED ADVISORY OPINION ON COSTS IN CONTINGENT FEE CASES

The Board Review Committee on Professional Ethics voted 7-0 to recommend that the Board of Governors take no action on a request by a Florida Bar member for the Board of Governors to direct the Professional Ethics Committee to draft a proposed advisory opinion on the issue of the costs that a lawyer may charge a client in a personal injury case in which the lawyer is charging a contingent fee under Rule 4-1.5(f)(4)(D). The Board of Governors voted to approve the recommendation of the Board Review Committee on Professional Ethics on voice vote without objection.

23. Special Committee on Medical Lien Resolution Report – Agenda Item 26

Chair Jay Cohen presented the committee's recommendations on first reading, which include amending Bar Rule 4-1.5 and its comment. The amended rule would allow in some instances an attorney handling a personal injury case with a contingency fee to hire another attorney, with the client's consent, to negotiate medical liens with the second attorney being paid a portion of the savings. The comment addresses other ancillary matters which might arise from the case, such as financial planning, estate planning, guardianships, and the like, and how those would be handled.

24. Rules Committee Report – Agenda Item 12

Chair Ray Abadin presented seven rule and Standing Board Policy amendments to the board, which were unanimously approved:

- Rule 1-3.3, Official Bar Name and Address: Adds e-mail address, if the member has one, to the list of information a member must designate and submit to The Florida Bar; changes title from "Name and Address" to "Name and Contact Information"; rewords language and adds titles for subdivision designation for editorial grammar preference.

- Rule 1-12.1, Amendment to Rules; Authority; Notice; Procedures; Comments: Within subdivisions (d), (g), and (h), adds that publication of proposed amendments, submissions to the Court, and final action by the Court may be on the Bar's website or in the Bar *News*.

- Rule 4-7.6, Computer-Accessed Communications: Amendments to subdivision (b) and comment would provide for a section of a law firm website that would be considered information "at the request of a prospective client" and therefore exempt from the lawyer advertising requirements.

- Rule 20-4.1, Generally: Within subdivision (e), allows an Florida Registered Paralegal to file for an extension of time in which to pay the annual renewal fee – extends time to December 31.

- SBP 1.60, Board Action on Proposed Rule or Policy Amendments: Within subdivision (a), adds section bylaws to the list of items that requires amendments be approved by the board of governors; also within subdivision (a) adds fiscal and planning to the types of review that require notice of proposed amendments; within subdivisions (b) and (e), allows publication and notice of proposed amendments to be on The Florida Bar website or in the Bar News; within subdivision (d), redirects the sponsor as responsible for redrafting amendments that the Board of Governors substantively edits.

- SBP 1.64, Petitions to Amend Rules Regulating The Florida Bar: Changes filing of petitions to amend the Rules Regulating The Florida Bar from January on an annual basis to October on a biennial basis in even-numbered years and requires that proposed amendments be submitted to and approved by all appropriate committees and the board of governors no later than the June 30 immediately preceding the October filing date.

- SBP 5.40, Sections of The Florida Bar: Housekeeping – Conforms list of section titles due to a merge between the Practice Management and Development Section and the General Practice, Solo and Small Firm Section, reletters accordingly.

Chair Abadin presented one housekeeping item, affecting several rules, on first reading:

- Rule 4-1.6, Confidentiality of Information; Rule 4-1.10, Imputation of Conflicts of Interest; General Rule; Rule 4-1.11, Special Conflicts of Interest for Former and Current Government Officers and Employees; Rule 4-1.17, Sale of Law Practice: Within rule 4-1.6 commentary, changes reference from subdivision (b) to (c) of rule 4-1.9 regarding disclosure of confidential information of former clients; Within rule 4-1.10, subdivisions (b) and (c)(2) as well as commentary, adds a reference to new subdivision (c) of rule 4-1.9 regarding disclosure of confidential information of former clients; Within rule 4-1.11, subdivision (a)(1), adds reference to new subdivision (c) of rule 4-1.9 regarding disclosure of confidential information of former clients; Within 4-1.17 commentary, adds reference to new subdivision (c) of rule 4-1.9 regarding disclosure of confidential information of former clients.

25. Request for Opinion on Lawyers' Discarded Computer Equipment

The board approved President-Elect Mayanne Downs suggestion to direct the Professional Ethics Committee to prepare an ethics opinion on the disposal of computers and related equipment that may contain electronic records of confidential client information. Downs said not only computers but equipment like printers and scanners now have hard drives that retain copies of documents that have been printed and scanned, and if those are improperly disposed of, then that information can be retrieved by third parties.

26. Legislation Committee Report – Agenda Item 21

Chair Larry Sellers recounted the recent legislative session, including that the courts maintained their funding, but authority for state agencies to pay the Bar membership fees for their lawyer employees was withheld. The Legislature also approved \$2 million for

the Civil Legal Assistance Act and approved a civics education requirement for public schools.

27. Clients' Security Fund Procedures Committee Report – Agenda Item 27

Chair Greg Coleman presented several rule and policy amendments, which were approved by the board. The board waived second reading of these items:

- Rule 7-1.1, Generally: Deletes “by a member of The Florida Bar” and changes “the” to “a” before “member of The Florida Bar.” Adds “as provided elsewhere in these rules.”
- Rule 7-1.4, Definitions: Within subdivision (f), expands reimbursable loss to include theft by another lawyer in the law firm and thefts by nonlawyer employees; additionally, adds comment language explaining changes.
- Rule 7-2.3, Payments: Within subdivision (a), codifies current practice that final action of board is not subject to appeal; adds new comment to specify what sums are reimbursable.
- Rule 7-2.4, Prerequisites to Payment: Within subdivision (a), allows for payment of claim if theft is by a nonlawyer employee even if the attorney remains in good standing. [NOTE: suggest we add – Within comment, explains that the status of the attorney, in and of itself, will not act as a bar to payment of claims where the theft is by a nonlawyer employee of the lawyer or law firm.]
- Regulations of the Clients' Security Fund: a.1.A. raises amount from \$500 to \$1,000 on claims staff can investigate, gives staff authority to close, as opposed to recommend denial, claims clearly not covered by the rule, when no discipline has been imposed and when the attorney remains in good standing; new a.1.C. added to clarify that claims against members in good standing will be held pending final action in discipline matter and to clarify how claims for fees paid to a suspended or disbarred attorney will be processed; a.2.A. adds comment language to give examples of events that may toll the 2 year limitation period and adds 4 year statute of repose; a.2.B. adds comment language to give examples of factors to consider when determining whether claimant exhausted remedies; new a.2.D. codifies current policy that discipline at the time of death is not a prerequisite to a claim; a.3.E. deletes redundant language – similar language appears in a.1.A; renumbered a.3.E. clarifies when the difference between recover and the claim amount may be paid; renumbered a.3.F. clarifies what factors may be considered when determining whether the attorney provided useful services; b.1. raises cap on attorney's fee claims from \$2,500 to \$5,000; new b.5 codifies existing policy regarding payment when there is an outstanding claimed lien. 3.B. adds "except as provided elsewhere in these rules" to beginning of section.

The board also, on Coleman's recommendation, approved the committee's report, which also contained the recommended rule and policy amendments.

The board on Coleman's recommendation approved a budget amendment to use \$280,000 of the \$500,000 Clients' Security Fund reserve transferred to the 2009-10 budget for administrative expenses.

28. Special Appointments – Agenda Item 24

For the ABA House of Delegates, the board named Jose F. Diaz of Miami to the seat for an under-35 attorney and Theodore W. Small, Jr., of Deland was voted to a two-year term. Herman J. Russomanno was chosen to fill an unexpired one-year term created by the resignation of Hank Coxe, and Frank Angones was named to an unexpired one-year term replacing Edith Osman who has been elected to the ABA Board of Governors. President Jesse Diner will fill a two-year term for the past president and incoming President-Elect Designate Scott Hawkins will fill a two-year term for the president-elect.

The board nominated nine lawyers to the Supreme Court for three vacancies on the Florida Board of Bar Examiners. Those nominated were: Donna E. Blanton of Tallahassee, Michael Cavendish of Jacksonville, Roshani M. Gunewardene of Altamonte Springs, Richard B. Hadlow of Tampa, Gregory A. Hearing of Tampa, Diane Marger Moore of Tallahassee, Kenneth D. Pratt of Tallahassee, David Weiss of Plantation, and Gregory Kent West of Jacksonville.

The board nominated six lawyers to the governor for two vacancies on each of the 26 judicial nominating commissions. The Bar will readvertise for the 16th Circuit because only five applicants were left after other appointments were made. Those nominated were:

- Supreme Court JNC: Cynthia G. Angelos, Port St. Lucie, Robert A. Butterworth, Hollywood, Candace R. Duff, Miami Beach, Gary D. Fox, Coral Gables, Paul R. Regensdorf, High Springs, and Louis K. Rosenbloum, Pensacola.
- First DCA JNC: Alan B. Bookman, Pensacola, Craig Gibbs, Jacksonville, Barbara C. Johnston, Jacksonville, Michael J. Korn, Jacksonville, Michael Grant Tanner, Jacksonville, and Linda Hohlt Wade, Pensacola.
- Second DCA JNC: Thomas H. Dart, Sarasota, Robert L. Donald, Ft. Myers, Theodore C. Eastmoore, Sarasota, Mitchell Dean Franks, Lakeland, Robert E. Johnson, Tampa, and Joshua Magidson, Clearwater.
- Third DCA JNC: Francisco R. Angones, Coral Gables, Jeffrey S. Bass, Miami, Raoul G. Cantero, Coral Gables, David Paul Horan, Key West, Hans Ottinot, Miami, and Peter Prieto, South Miami.
- Fourth DCA JNC: James W. Beasley, Jr, West Palm Beach, Robert E. Gordon, West Palm Beach, Kara B. Rockenbach, North Palm Beach, Amy S. Rubin, North Palm Beach, Louis Marc Silber, West Palm Beach, and Glenn J. Waldman, Weston.
- Fifth DCA JNC: Todd Eugene Copeland, Windemere, Michael E. Marder, Windemere, Lindsay N. Oyewale, Sanford, David A. Paul, Orlando, William C. Vose, Orlando, and Melvin B. Wright, Windemere.
- First Circuit JNC: Steven J. Baker, Pensacola, Michael John Griffith, Pensacola, Dana C. Matthews, Santa Rose Beach, C. Jeffrey McInnis, Ft. Walton Beach, Stephen S. Poche, Niceville, and Joseph A. Zarzaur, Jr., Pensacola Beach.
- Second Circuit JNC: James C. Banks, Linda G. Bond, Tammy Cicchetti, Gary K. Hunter, Jr., Randolph P. Murrell, and George L. Waas, all of Tallahassee.
- Third Circuit JNC: Cary Duncan Carmichael, D. Todd Doss, Joel F. Foreman, John J. Kendron, Terry R. McDavid, and Kimberly Kay Mears, all of Lake City.

- Fourth Circuit JNC: Henry G. Bachara, Jr., Jacksonville, Oliver D. Barksdale, Jacksonville, Scott Sanford Cairns, Jacksonville, Hugh Cotney, Jacksonville, Wesley R. Poole, Fernandina Beach, and Robert F. Spohrer, Jacksonville.
- Fifth Circuit JNC: Timothy S. Babiarz, The Villages, Darryl W. Johnston, Brooksville, Michele L. Lieberman, Beverly Hills, Avonelle R. Mackerell, Dunnellon, Lauren E. Merriam III, Ocala, and Del G. Potter, Mount Dora.
- Sixth Circuit JNC: Marcus A. Castillo, Seminole, Stephen Cole, Clearwater, Robert H. Dillinger, St. Petersburg, Sean K. McQuaid, St. Petersburg, Chandra Lee Miller, St. Petersburg, and H. James Parker, New Port Richey.
- Seventh Circuit JNC: R. Scott Costantino, Ponte Vedra Beach, Craig Sinclair Dyer, Daytona Beach, Frank B. Gummey, III, Daytona Beach, Lester A. Lewis, Ponce Inlet, Tance E. Roberts, St. Augustine, and Horace Smith, Jr., Ormond Beach,
- Eighth Circuit JNC: Jack L. Fine, Kathryn M. Lancaster, Shannon M. Miller, Gainesville, Peggy-Anne O'Connor, Kirstin J. Stinson, and David W. Wagner, all of Gainesville.
- Ninth Circuit JNC: Jeffrey B. Jones, Windemere, Samuel P. King, Winter Park, William E. Sublette, Orlando, Maria D. Tejedor, Orlando, William D. Umansky, Orlando, and Kevin B. Weiss, Winter Park.
- 10th Circuit JNC: Gregory P. Abaray, Auburndale, Patrick Thomas, DiCesare, Lakeland, Matthew E. Kaylor, Winter Haven, Timothy J. McCausland, Bartow, Mark A. Sessums, Lakeland, and Donald H. Wilson, Jr., Homeland.
- 11th Circuit JNC: Jill Nexon Berman, Pinecrest, Melanie E. Damian, Miami Beach, David Oscar Markus, Pinecrest, Mark Anthony Romance, Coral Gables, Maria L. Rubio, Miami, and Marva L. Wiley, El Portal.
- 12th Circuit JNC: Brian M. Beason, North Port, Kevin R. Bruning, Sarasota, Bertram V. Dannheisser, Sarasota, Kathi B. Halvorsen, Sarasota, Anthony James Rolfes, Osprey, and Robert C. Widman, Sarasota.
- 13th Circuit JNC: J. Carter Andersen, Tampa, Pedro F. Bajo, Jr., Tampa, Jack E. Fernandez, Tampa, John A. Guyton, III, Tampa, Patrick J. McNamara, Tampa, and Amanda Arnold Sansone, Tampa.
- 14th Circuit JNC: Robert C. Blue, Jr., Panama City, Anthony W. Graham, Panama City, William A. Lewis, Panama City, Melvin C. Magidson, Jr., Port St. Joe, Holly K. Melzer, Panama City, and John D. O'Brien, Lynn Haven.
- 15th Circuit JNC: Mariano Garcia, West Palm Beach, Philip H. Hutchinson, West Palm Beach, Nancy S. La Vista, Juno Beach, James M. McCann, Jupiter, Michael D. Mopsick, Boca Raton, and Richard D. Schuler, Jupiter.
- 17th Circuit JNC: Jeff Steven Abers, Ft. Lauderdale, Alfreda D. Coward, Lauderdale, Jamie Finzio Bascombe, Lighthouse Point, D. David Keller, Plantation, Stefanie C. Moon, Parkland, and Frank C. Walker, Ft. Lauderdale.
- 18th Circuit: Gregory W. Eisenmenger, Merritt Island, David P. Gillespie, Longwood, James P. Kelaher, Longwood, William H. Morrison, Heathrow, Phillip F. Nohrr, Indialantic, and David J. Volk, Satellite Beach.
- 19th Circuit JNC: Thomas R. Bakkedahl, Palm City, Canda L. Brown, Vero Beach, George W. Bush, Jr., Palm City, Louis B. Vocelle, Jr., Vero Beach, Linda L. Weiksnar, Palm City, and Gregory Scott Weiss, Hobe Sound.

▪ 20th Circuit JNC: Gerald T. Berry, Naples, John P. Cardillo, Naples, Brenda C. Garretson, Naples, Joseph A. Linnehan, Jr., Ft. Myers, F. Joseph McMackin III, Naples, and Terry T. Rankin, Jr., Ft. Myers.

The board appointed A. Hamilton Cooke of Jacksonville, Cleveland Ferguson III of Jacksonville, Leslie Goller of Jacksonville, Diana Martin of Palm Beach Gardens and Charles R. Stepter, Jr., of Winter Park for two-year terms on the Florida Legal Services, Inc., Board of Directors.

The board appointed Harry Lee Anstead of Tallahassee, Billy J. Hendrix of Tallahassee, and Barnaby L. Min of Miami for three lawyer seats and Barbara Geraghty of Ft. Myers, and Judy S. Rivenbark of Fernandina Beach for two nonlawyer seats on the Florida Lawyers Assistance, Inc., Board of Directors. They will serve three-year terms.

The board appointed James J. Nosich of Coral Gables to a two-year term on the Florida Medical Malpractice Joint Underwriting Association.

The board appointed R. Lee Bennett of Orlando and Jack P. Brandon of Lake Wales for four-year terms on the Supreme Court's Commission on Professionalism.

The board appointed John A. Yanchunis of Tallahassee to a two-year term on the Supreme Court's Judicial Management Council.

The board appointed Patricia Lowry of West Palm Beach for a two-year term on the Judicial Ethics Advisory Committee.

The board appointed Douglas Halsey of Miami to fill an unexpired three-year term on The Florida Bar Foundation Board of Directors.

29. Young Lawyers Division Report – Agenda Item 9

YLD President R.J. Haughey noted the YLD activities scheduled for the upcoming Annual Convention and recounted its extensive CLE activities from the past year, including continuing to improve and modernize the Practicing with Professionalism Program.

30. Program Evaluation Committee Report – Agenda Item 13

Chair Gwynne Young reported the committee recommended the following, which were approved by the board:

- An amendment to Rule 6-3.8, Board Certified Judicial Fellow and Rule 6-3.12(h), Board Certified Judicial Fellow Annual Fee: Proposed new Rule 6-3.8 to establish a new status of "board certified judicial fellow" for Florida Bar members that are appointed as judicial officers while board certified. Within subdivision (a), identifies the reason the new board certification status is created, which is to preserve and distinguish the achievement of board certification. Within subdivision (b), provides a definition for the term judicial officer. Within subdivision (c), indicates that the board certified judicial fellow status is automatic for any Florida Bar board certified member

that becomes a judicial officer; the member need not apply and request the status. Within subdivision (d), indicates that the board certified judicial fellow must remain a member in good standing with The Florida Bar, if required to hold the judicial office, to retain the certification status and that board certified judicial fellow status will continue through the term of judicial service. Within subdivision (e), indicates that a member may identify his or her certification status to the public, but must state the area of law practice in conjunction with "board certified judicial fellow". Within subdivision (f), explains that if a member is no longer a judicial officer and resumes his or her status as a lawyer, the member may reapply for board certification or recertification pursuant to the area standards. Within subdivision (g), indicates that the current procedures for revoking board certification will also be the procedures for revoking board certified judicial fellow status. Within subdivision (h), explains that upon the effective date of the new rule and for two years following, any member who became a judicial officer while board certified and relinquished such certification may request a board certified judicial fellow status. Within subdivision (i), indicates that a board certified judicial fellow is subject to an annual fee no greater than one third of the annual fee for board certification. Rules 6-3.8 through 6-3.11 renumbered accordingly. Rule 6-3.11 renumbered to 6-3.12 and new subdivision (h), adds the judicial fellow annual fee in the listing of certification fees (actual amount of the fee is identified in BLSE Policy 2.04); relettered accordingly.

- An amendment to BLSE Policy 2.04 Certification Fees: Within subdivision (a), clarifies that the filing fee is for both initial and recertification applications; Within subdivision (b), removes "BLSE" as the title of the office that receives the exam cancellation notice replaced with "legal specialization and education" consistent with language elsewhere in these policies; Within subdivision (c), revises the reference as to who pays the annual fee to "board certified member" instead of "plan participant;" Within subdivision (d), increases the reapplication fee from \$100 to \$150. Within subdivision (e), removes "application denial challenge" as an item that may accompany a \$125 challenge/petitioning fee because the process no longer exists except as an appeal; New subdivision (i), new fee proposed to accompany proposed new rule 6-3.8 Board Certified Judicial Fellow, which indicates that members classified as "board certified judicial fellows" shall pay an annual fee in an amount that shall not exceed one third of the annual fee required for board certified members; and proposed new Rule 6-3.12 (currently 6-3.11) Judicial Fellow Annual Fee, that authorizes a fee to be assessed each member that is classified as a board certified judicial fellow; New subdivision (j), appeal fee is increased from \$125 to \$500. The appeal referenced is an appeal of a BLSE decision.

- An amendment to Bylaws of the Workers' Compensation Section: Within Article II, Officers, Section 1. Eligibility, rearranges language to refine and clarify definitions of membership; allows affiliate membership status to the section for law students, law college faculty, legal assistants, or paralegals, who are not members of The Florida Bar. Within Article IV, Duties and Powers of Executive Council, Section 2. Meetings, establishes guidelines for a quorum and clarifies regular and special meetings, also within Article IV, authorizes the use of electronic or telephonic communications to conduct committee meetings.

Young presented on first reading Rule 6-3.2, Certification Committees: Divides current rule into two subdivisions and adds titles; subdivision (a) establishes and provides criteria for initial certification committee appointments and membership terms; new subdivision (b) proposes an alternative membership range of 5 to 15 members for established committees and provides for staggered terms.

Young presented the committee's findings on its review of the Bar's diversity efforts and the Member Outreach Committee. The board approved the committee's 12 recommendations, which including phasing out the Member Outreach Committee and creating a new Special Committee for Diversity and Inclusion.

The board approved the committee's recommendation for creating as a board committee the Clients' Security Fund Procedures Committee.

Young reported the committee has completed its review of Florida Lawyers Assistance, Inc., and, working with the Florida Board of Bar Examiners as well as FLA, has made several recommendations to the Supreme Court on improving oversight of conditionally admitted Bar members.

Young said the committee has completed its review of the Entertainment, Arts and Sports Law Section and made several recommendations to the section on how its Executive Council conducts business.

Young reported that a group of lawyers has approached the committee about creating a new section focusing on alternative dispute resolution and the committee is working with those lawyers to bring the proposal to the board.

31. Communications Committee Report – Agenda Item 18

Chair Juliet Roulhac recommended and the board approved accepting the SAGE report on the Bar's website and how to improve it. The committee recommended and the board approved continuing the BLSE strategic communication program, subject to submission of a written plan. Roulhac said the committee recommended, and the board approved a plan for improving the Bar website based on recommendations in the SAGE report. She also outlined several improvements that have been made or will be made shortly to the site, including improved overall site search engine, improved member search function, and a vCard function which allows viewers to download contact information for Bar members. Roulhac reported the committee will be bringing a recommendation to the board at its July meeting that Bar members not be allowed to list ratings from various lawyer rating services and companies on their expanding profile in the Bar's website.

32. Report on E-Filing and Electronic Access to Court Records – Agenda Item 25

Board member Murray Silverstein presented a resolution to the board declaring that the Bar supports the creation of a mandatory e-filing system for state courts. The board unanimously approved the resolution.

33. Comments for the Good of the Order

Departing board members commented on their years of service. Those making comments were board members Chobee Ebbetts, Dominic Caparello, Sandy Sanborn, YLD President R.J. Haughey, FAWL President Tasha Dickinson, Virgil Hawkins Florida Chapter National Bar Association President Kenneth Pratt, and Bar President Jesse Diner.

34. Informational Items

The board received Guidelines of Practice for Attorneys Who Represent Children in Delinquency Proceedings from the Legal Needs of Children Committee and the written annual report from the International Law Section.

35. Time and Place of Next Meeting

The board meets again July 23, 2010, at the Ritz-Carlton in Sarasota. There being no further business, President Diner adjourned the meeting at 4:48 p.m.

SUBJECT INDEX

APPEARANCE BY JUDGE WAYNE MILLER	3
APPEARANCE BY MONROE COUNTY BAR ASSOCIATION PRESIDENT CARA HIGGINS	4
APPEARANCE BY REP. RON SAUNDERS	3
APPELLATE PRACTICE SECTION REPORT	6
BOARD OF LEGAL EDUCATION AND SPECIALIZATION REPORT	5
BOARD REVIEW COMMITTEE ON PROFESSIONAL ETHICS REPORT	7
BUDGET COMMITTEE REPORT	5
BUSINESS LAW SECTION REPORT	6
CLIENTS' SECURITY FUND PROCEDURES COMMITTEE REPORT	10
COMMENTS FOR THE GOOD OF THE ORDER	16
COMMUNICATIONS COMMITTEE REPORT	15
CONSENT AGENDA APPROVAL	4
DISCIPLINARY PROCEDURE COMMITTEE REPORT	5
E-FILING AND ELECTRONIC ACCESS TO COURT RECORDS REPORT	15
ELDER LAW SECTION REPORT	6
EXECUTIVE SESSION	5
GUESTS	2
INFORMATIONAL ITEMS	16
INVESTMENT COMMITTEE REPORT	5
INVOCATION AND PLEDGE OF ALLEGIANCE	3
LEGISLATION COMMITTEE REPORT	9
MINUTES APPROVAL	3
PRESENTATION OF SCRAPBOOKS TO FORMER PRESIDENT JAY WHITE	5
PRESIDENT-ELECT'S REPORT	7
PROGRAM EVALUATION COMMITTEE REPORT	13
REQUEST FOR OPINION ON LAWYERS' DISCARDED COMPUTER EQUIPMENT	9
ROLL CALL	1
RULES COMMITTEE REPORT	8
SPECIAL APPOINTMENTS	11
SPECIAL COMMITTEE ON MEDICAL LIEN RESOLUTION REPORT	8
STAFF IN ATTENDANCE	2
TAX SECTION REPORT	3
TRIAL LAWYERS SECTION REPORT	3
TIME AND PLACE OF NEXT MEETING	16
YOUNG LAWYERS DIVISION REPORT	13