

The Florida Bar Board of Governors  
July 25, 2008  
Sandpearl Resort  
Clearwater, FL

Pursuant to notice, the regular meeting of the Board of Governors of The Florida Bar was called to order at 9 a.m. on Friday, July 25, 2008, in Clearwater, FL, with President Jay White presiding.

**1. Roll Call**

John G. White III, President  
Jesse H. Diner, President-elect  
Stephen H. Echsner, First Circuit  
Lawrence E. Sellers, Jr., Second Circuit  
S. Grier Wells, Fourth Circuit  
John J. Schickel, Fourth Circuit  
Denise A. Lyn, Fifth Circuit  
Andrew B. Sasso, Sixth Circuit  
Murray B. Silverstein, Sixth Circuit  
Charles Chobee Ebbets, Seventh Circuit  
Carl B. Schwait, Eighth Circuit  
Mayanne Downs, Ninth Circuit  
Daniel L. DeCubellis, Ninth Circuit  
Scott M. McMillen, Ninth Circuit  
Robert M. Brush, 10th Circuit  
Ramon A. Abadin, 11th Circuit  
David Rothman, 11th Circuit  
Ervin A. Gonzalez, 11th Circuit  
Dennis G. Kainen, 11th Circuit  
John H. Hickey, 11th Circuit  
Steven Chaykin, 11th Circuit  
L. Norman Vaughan-Birch, 12th Circuit  
William J. Schifino, Jr., 13th Circuit  
William Kalish, 13th Circuit  
Gwynne Alice Young, 13th Circuit  
Clifford W. Sanborn, 14th Circuit  
Gregory Coleman, 15th Circuit  
Scott G. Hawkins, 15th Circuit  
Edwin A. Scales, 16th Circuit  
Allison K. Bethel, 17th Circuit  
Nancy W. Gregoire, 17th Circuit  
Eugene K. Pettis, 17th Circuit  
Jay Cohen, 17th Circuit  
Clifton A. McClelland, Jr., 18th Circuit

John M. Stewart, 19th Circuit  
Laird Lile, 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  
Jewel Cole White, Young Lawyers Division President  
Roger J. Haughey II, Young Lawyers Division President-elect  
Arnell Bryant-Willis, Public Member  
Alvin V. Alsobrook, Public Member

Board members absent:

Dominic M. Caparello, Second Circuit  
Clay A. Schnitker, Third Circuit  
Juliet Roulhac, 11th Circuit  
David C. Prather, 15th Circuit  
Lisa S. Small, 15th Circuit  
Frank C. Walker, 17th Circuit  
A. Lawrence Ringers, 20th Circuit

Staff attending meeting:

John F. Harkness, Jr., Executive Director  
Paul Hill, General Counsel  
Ken Marvin, Director of Lawyer Regulation  
Francine Walker, Director of Public Information and Bar Services  
Mary Ellen Bateman, Director, Ethics, Advertising, and Special Projects  
Elizabeth Tarbert, Director, Ethics and Advertising  
Lori Holcomb, Director, Unlicensed Practice of Law  
Kathy Bible, Advertising Counsel and Liaison to Disciplinary Procedure Committee  
Roselyn Scott, Assistant to the President  
Terry Hill, Director, Program Division  
Gary Blankenship, Senior Editor, Florida Bar News

**2. Guests**

Marlene Quintana, President, Cuban American Bar Association  
Rebecca Steele, President, Florida Association for Women Lawyers  
Rachel Munson, Virgil Hawkins Florida Chapter of the National Bar Association  
Jane Curran, Executive Director, Florida Bar Foundation

**3. Invocation and Pledge of Allegiance**

The invocation was given by Andrew Sasso and the Pledge of Allegiance was led by Murray Silverstein.

#### **4. Welcome by Judge Robert J. Morris**

Judge Morris, chief judge of the Sixth Circuit, welcomed the board to Clearwater.

#### **5. Swearing in of Board Members**

New and reelected board members who were not sworn in at the Bar's June Annual Convention were sworn in by President White.

#### **6. Report from the Florida Bar Foundation**

Foundation President Kathy McLeroy reported on the organizations activities, including its participation in the Florida Attorneys Saving Homes program, which helps people facing mortgage problems, with the Bar and other entities. The foundation is also looking into the decline of pro bono hours reported by Bar members, working to keep state funding for the Civil Legal Assistance Act, and working with the Young Lawyers Division by granting money for its affiliates outreach program.

#### **7. Introduction of Citizens Forum**

Members of the Citizens Forum, attending the board meeting, were introduced. They were: Andy Cheney, Ron Kalapp, Connie Bookman, Nancy Biesinger, Giselle Carson, Sam Stark, Ricardo Gonzalez, and Dia Kuykendall.

#### **8. Report from the Elder Law Section**

Chair Linda Chamberlain said the section revised its mission statement this year to cultivate and promote professionalism and expertise to help the elderly and persons with special needs; is working with state agencies, particularly the Department of Children and Families, to mitigate the impacts of state budget cuts on the elderly; and is working on using its CLE programs to encourage section members to become certified in elder law.

#### **9. Report from the Trial Lawyers Section**

Chair Robert Palmer said the 7,000-member section is overhauling its website to make it a one-stop resource for trial lawyers and has also revised its benchmark standards of conduct and professionalism for trial practitioners.

#### **10. Report from the Florida Board of Bar Examiners**

Chair Suzanne Judas summarized the FBBE's activities in conducting bar exams and doing character and fitness investigations of applicants. The organization continually reviews the bar exam and continually trains and has speakers on substance abuse, mental health, and ADA compliance issues. The FBBE is regarded nationally as having the most

thorough investigative process for applicants. The FBBE will be working with the new Supreme Court committee examining the character and fitness review of bar applicants.

### **11. Non-roll Call Grievance Items**

Disciplinary Review Committee Co-chair David Rothman said the non-roll call items were number 8, with a report on item 10.

### **12. Approval of Minutes**

The board approved the minutes for its May 30 meeting. The approval included ratifying the following Executive Committee actions from the following meetings:

- June 2, 2008, nominated three candidates from each circuit to the governor for one vacancy each on the Third, 10th, 12th, and 20th circuits judicial nominating commissions.
- June 3, 2008, approved allowing the Real Property, Probate and Trust Law Section to make an amicus appearance in *Pugliese v. Pukka Development* in the U.S. District Court for the Southern District of Florida.
- June 16, 2008, endorsed three Family Law rule and form changes proposed by the Family Law Rules Committee necessitated by law passed by the legislature earlier this year.
- June 25, 2008, endorsed three rule and form changes to the Family Law Rules as needed to conform with recent statutory changes.
- June 30, 2008, endorsed 12 changes to the Rules of Judicial Administration, the Rules of Juvenile Procedure, and the Rules of Appellate Procedure proposed by the Appellate Court Rules Committee, the Juvenile Court Rules Committee, and the Rules of Judicial Administration Committee. The rules committees were responding to recommendations from the District Court of Appeal Performance and Accountability Commission. The Executive Committee also endorsed two proposed new rules and fourteen amended rules proposed by the Probate Rules Committee to conform to amended F.S. § 393.12, which was effective July 1, 2008. In addition, the committee endorsed several Committee Note changes to conform to the two of the changes in the statute.

### **13. Consent Calendar**

The board approved the consent calendar for the July 25 meeting. That included action on these advertising appeals by the Board Review Committee on Professional Ethics:

Agenda item 5bi - Request For Review Of Advertising Inquiry 26793, deferred at the request of the inquirer; Agenda item 5bii, Advertising appeal 08-02084, committee voted 3-0 to recommend that the Board of Governors affirm the Standing Committee on Advertising decision that the statement "Through my close network of contacts and experience in criminal law, I will work hard to advocate on your behalf" in a direct mail advertisement for criminal defense in reference to the filer's former employment as an

Assistant State Attorney is misleading in violation of Rule 4-7.2(c)(1)(A) because it implies special influence over government officials.

Agenda item 5biii - Advertising Appeal 08-02283, deferred due to lack of time.

The board endorsed the reactivation of numerous legislation positions from the 2006-08 legislative biennium for the 2008-10 biennium for the Administrative Law, Appellate Practice, Business Law, Elder Law, Entertainment, Arts and Sport Law, Family Law, Government Lawyer, Health Law, International Law, Public Interest Law Section, Real Property, Probate and Trust Law, Tax, and Workers' Compensation sections, and for the Out of State and Young Lawyers divisions. Also endorsed were one new legislative position each for the Business Law and Real Property, Probate and Trust Law Sections. The board approved the Business Law Section's legislative consultant contract with William B. Wiley.

#### **14. Report of the Board Review Committee on Professional Ethics**

Agenda item 20a - Ethics Inquiry 27698 was deferred by the committee due to a lack of time.

Agenda item 20b - Proposed Advisory Opinion 07-2 on Outsourcing: The Board Review Committee on Professional Ethics voted 3-0 to recommend that the Board of Governors affirm Proposed Advisory Opinion 07-2 on the issue of outsourcing as redrafted by staff, but deleting the sentence beginning at the end of line 160 through line 163. The opinion concludes that a lawyer is not prohibited from engaging the services of an overseas provider to provide paralegal assistance as long as the lawyer adequately addresses ethical obligations relating to assisting the unlicensed practice of law, supervision of nonlawyers, conflicts of interest, confidentiality, and billing, and that the lawyer should be mindful of any obligations under law regarding disclosure of sensitive information of opposing parties and third parties. The Board of Governors voted to approve the Board Review Committee on Professional Ethics recommendation by voice vote. Additionally, the BRCPE reported that it voted 3-0 to refer to the appropriate committee to look comprehensively at the use of others outside of a law firm to assist in the provision of legal services and whether additional guidelines should be adopted including but not limited to, whether outsourcing should be allowed outside the U.S.

Agenda item 20c, informational item on Advertising Opinion A-00-1: Deferred due to lack of time.

#### **15. ABA House of Delegates Report and Recommendations on Model Rule 1.10**

Agenda item 31 - The BRCPE voted 2-1 to recommend that the Board of Governors instruct its delegates to the ABA House of Delegates to vote in favor of the Report and Recommendation to the ABA House of Delegates regarding ABA Model Rule 1.10 to allow screening to resolve conflicts of interest when a lawyer changes law firms. The

Board of Governors voted to approve the Board Review Committee on Professional Ethics recommendation by voice vote.

### **16. Young Lawyers Division Report**

YLD President Jewel White Cole outlined the division's activities, which included working with the Bar's Florida Attorneys Saving Homes program to help homeowners threatened with foreclosures, passing new bylaws to create a YLD law student division, and working to encourage lawyers to do more pro bono in light of recent reports showing a decline in reported service. Cole noted lawyers have said they are reluctant to offer services in legal areas with which they are unfamiliar, so the division is looking at posting video CLEs on its website to help lawyers take such cases.

### **17. Public Reprimands**

Bar President Jay White administered 14 public reprimands.

### **18. Legislation Committee Report**

Chair Greg Coleman reported that the committee is studying court-funding problems, including looking for a dedicated financial source. The board approved the committee's recommendation to approve the legislative consulting contract of the Family Law Section with a team of attorneys and lobbyists from Becker & Poliakoff.

### **19. Investment Committee Report**

The board approved the Investment Committee's recommendation to switch the small cap fund investment in the Bar's portfolio from Franklin PCG to MDT Advisers. The board also approved the committee's recommendation to continue with James Bagwell of Morgan Stanley as the Bar's investment advisor. Committee Chair Ian Comisky reported that the Bar's investments, because of their conservative orientation, had a slight gain for the second quarter of 2008, despite an overall decline in the stock market.

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

Chair Gwynne Young said the committee recommended – and the board then approved – three rollover budget amendments from the 2007-08 budget to the 2008-09 budget. They were \$41,200 to exterior painting of the Bar headquarters, \$147,757 for building renovations, and \$75,000 for computer consultants. The first two items were funded from the Bar's Building Reserve Fund and the third from the General Fund.

### **21. Program Evaluation Committee Report**

Chair-elect Gwynne Young said the committee had no items requiring a vote, but was actively reviewing several matters, including:

- Reviewing several certification plan amendments relating to Family Law certification.
- Considering a request from the Federal Court Practice Committee to allow it to add the clerks of the various federal courts in Florida as ex-officio members.
- Considering a request from Bar members to create a substantive committee on mediation. Young said PEC discussed whether such a committee should cover the broader topic of alternative dispute resolution, and whether it should be a standing or substantive committee.
- The Business Law Section has joined the Florida Attorneys Saving Homes program, which includes the Bar Foundation, the Real Property Probate and Trust Law Section, the Young Lawyers Division, and the Bar, and helps Florida residents facing possible mortgage foreclosures.
- Considering having a screening committee review lawyer applicants for the Florida Association of Realtors/Florida Bar Joint Committee.
- Hearing an update from Bar Professionalism Center Director Carl Zahner on an ongoing study on creating a mentoring program for new Bar members. Young said that the PEC is also monitoring the center's examination of its operations and possible changes in its programs.
- Preparing for the three-year review of the Animal Law Committee and considering a review of the Fee Arbitration Committee.

## **22. Unlicensed Practice of Law Report**

The board approved the recommendation of the Standing Committee on UPL to approve revisions to the simplified residential lease forms. The changes were also supported by the Real Property, Probate and Trust Law Section and by the housing group of Florida Legal Services. Bar UPL Director Lori Holcomb said the changes included having only two forms instead of three, one for single family homes and one for multi-family dwellings. The forms now go to the Supreme Court for its review. The board also approved changes for Bar Rule 1-3.12 and Bar Rule 4-5.5 which deal with provision of legal services following a disaster. Holcomb said the amendments allow out-of-state attorneys to provide temporary services to Florida residents following an in-state disaster, or out-of-state attorneys to establish temporary offices in Florida to serve their clients following a disaster in their home state. Holcomb said the amendments track changes to the ABA Model Rules. The amendments now go to the Supreme Court.

## **23. Clients' Security Fund Report**

The board approved a recommendation from the Clients' Security Fund Committee, the Disciplinary Procedure Committee, and the Rules Committee clarifying that the Clients' Security Fund is supervised by the Clients' Security Fund Program, and not the Programs Division, under a recent internal Bar reorganization.

## **24. Traffic Court Rules**

Traffic Court Rules Committee member Peter Sartes presented the three-year cycle rule amendments, noting the main change is a provision to allow traffic court hearing officers to also hear boating-related infractions. The board endorsed the proposed amendments 31-0.

## **25. Juvenile Court Rules**

The board endorsed 32-0 the bulk of the Juvenile Court Rules Committee's recommendations on delinquency and dependency issues. Robert Mason, immediate past committee chair, said that included a requirement that a juvenile be represented at all stages of a detention proceeding, including first appearance, unless the juvenile waived his or her rights after consulting with an attorney. The board discussed separately the committee's recommendation to amend Rule 8.100 to prevent the routine shackling of juvenile defendants unless ordered by a judge to prevent harm to others, disruptive behavior, or the child attempting to escape. The board endorsed that rule amendment 30-0.

## **26. Criminal Procedure Rules**

Board member David Rothman, liaison to the Criminal Procedure Rules Committee, presented the committee's three-year-cycle rules, none of which he said were controversial. The board endorsed those amendments 30-0. Rothman then presented two out-of-cycle rule amendments from the committee. One allows a successor judge, appointed to a case after the defendant is convicted, to impose a sentence. The second requires an assistant state attorney and an assistant public defender to be present at all first appearance hearings. Rothman noted some judges are reluctant to set an individual bond and instead set a standard bond for all defendants when a state attorney does not attend the first appearance, and that results in people who otherwise would have made bail remaining in jail, sometimes for several weeks. Board members discussed the implications of the rule, including its effect on the finances of state attorneys and public defenders who have already had deep budget cuts. Rothman said those rules will come to the board at a future meeting.

## **27. Disciplinary Procedure Committee Report**

Chair Murray Silverstein announced a revamping of committee duties. He said the DPC would continue to exercise oversight for rule amendments affecting Chapters 3 and 5 of the Bar rules, as well as Standing Board Policies, but the Rules Committee would begin primary responsibility for changes proposed to Chapter 4.

The board approved the committee's recommendation for an amendment to the fee arbitration rules (Rule IV of the Fee Arbitration Rules) to allow appearances by telephone.



Silverstein said the committee is studying several other issues, including:

- Setting policies to protect confidential parts of Bar proceedings when the remaining records are made electronically accessible.
- The possible need for training for new board members, new Bar staff, and judges serving as referees for the first time on grievance issues.
- An amendment for Rule 3-7.13 that would allow for the temporary emergency incapacity suspension of a mentally ill lawyer who has not otherwise violated Bar rules.
- Amending fee arbitration rules to limit proceedings to those with a value of no more than \$100,000 and which can be arbitrated in eight hours or less.
- How to implement a recent Supreme Court ruling that lawyers who receive a garnishment writ after they have written a check to a client from the lawyer's trust account must issue a stop order on the check if it has not been cashed.
- Examining re-introducing disciplinary resignations and the possibility of re-naming the process as disciplinary revocations with some important changes to the former disciplinary resignation process. Silverstein said that after the original disciplinary resignation rule was revoked and replaced with disbarment by consent; respondents must plead guilty in order to obtain disbarment by consent judgment. They are sometimes reluctant to do that because it would involve admitting to possible criminal activities. The committee is looking at increasing the minimum time before a lawyer getting a disciplinary revocation could reapply for admission from three to five years.

Silverstein also reported the committee has been discussing the board policy that requires all public reprimands to be administered by the Bar president at board meetings, noting that multiple reprimands take up a significant segment of the board's time. Board member David Rothman moved to suspend Standing Board Policy 15.92(b), which calls for reprimands to be administered at board meetings. President Jay White noted the moratorium will affect only future orders by the court and there are enough reprimands already ordered to continue having a large number of in-person reprimands at the next several board meetings. The board approved Rothman's motion 30-3.

## **28. Rules Committee Report**

Chair Nancy Gregoire said the committee, which recently had been more concerned with stylistic, format, and grammar issues on proposed rule changes, will now be more involved in substantive reviews, particularly on issues related to Chapter 4 of the Rules Regulating The Florida Bar. She said the Program Evaluation Committee will have primary oversight of Board of Legal Specialization and Education issues and the Disciplinary Procedure Committee over discipline rules, but other matters will fall under the Rules Committee. The committee reviewed and recommended five rule changes, although four were covered in other reports to the board – two related to UPL (see the UPL report in these minutes), one on the Clients' Security Fund (see that section of these minutes), and one on the fee arbitration rules on limiting the size and complexity of those cases (see the DPC report in these minutes). The Rules Committee recommended, and the board approved, changes to the bylaws of the Criminal Law Section which were proposed by the section.

## **29. Communications Committee Report**

Chair Ray Abadin reported that the committee met with the Citizens Forum and is undertaking a review of the bar's strategic planning policies and its website. He noted recent Bar membership surveys which showed that an increasing number of Bar members, 92 percent, have access to the Bar website, and about 66,000 have registered for a PIN that enables them to pay annual membership fees, register for CLE courses, change their official Bar address, and perform other Bar related functions through the website. He said more than 15,000 have used the website to pay Bar-related expenses and around 16,750 have used the free Fastcase legal research service offered by the Bar through the website.

## **30. Board of Legal Specialization and Education Report**

Board member Norman Vaughn-Birch, liaison to BLSE, presented on first reading several BLSE rule and policy amendments:

- Rule 6-3.6(b)(2), Recertification, Minimum Standards for Proficiency: Within subdivision (b)(2), restates the minimum continuing legal education requirement as 50 credit hours over the 5-year certification period, rather than 10 hours each year during the 5-year certification period.

- Rule 6-15.1 Standards for Certification of a Board Certified immigration and Nationality Lawyers, Generally: Adds new language to incorporate "character, ethics and reputation for professionalism" as criteria upon which to evaluate candidates for board certification.

- Rule 6-15.3 Standards for Certification of a Board Certified Immigration and Nationality Lawyer, Minimum Standards: Within subdivision (a), changes the qualified period of practice from "full time" to the 5 years immediately preceding the date of application; within subdivision (b)(1), revises language to include and correct titles of immigration and nationality federal agencies; within subdivision (b)(2), adds deportation, asylum only, and appeals as matters before the Executive Office for Immigration Review; within subdivision (b)(5), clarifies that the representation of clients is for immigration and nationality matters; within subdivision (c), revises language to parallel other areas' standards as to peer references, adds "character, ethics, and reputation of professionalism" as a component for evaluation, adds language to require at least 1 reference to be board certified in immigration and nationality law; within subdivision (d), reduces the required continuing legal education credit from 60 to 50 credit hours during the 3-year period immediately preceding the date of application; language regarding CLE activities is deleted and replaced by reference to policies of the committee consistent with other areas' standards; within subdivision (e), adds professionalism as a component of the examination consistent with a directive by BLSE for all area exams; includes other non-substantive edits consistent with controlling editorial protocols.

- Rule 6-15.4, Standards for Certification of a Board Certified Immigration and Nationality Lawyer; Recertification: Clarifies 5-year time frame for completion of requirements; within subdivision (b), editorial revisions are included along with removal of reference to initial CLE rule replaced by reference to policies of the committee

consistent with other areas' standards; includes other non-substantive edits consistent with controlling editorial protocols.

- Rule 6-19.1 Standards for Certification of a Board Certified Aviation Lawyer, Generally: Adds new language to incorporate "character, ethics and reputation for professionalism" as criteria upon which to evaluate candidates for board certification.

- Rule 6-19.3 Standards for Certification of a Board Certified Aviation Lawyer, Minimum Standards: Within title of rule, removes " Aviation Law" to conform with editorial style guides; within subdivision (c), revises language to parallel other areas' standards as to peer references, and adds "character, ethics, and reputation of professionalism" as a component for peer reference evaluation; within subdivision (d), editorially revises the language of the education requirement and language as to CLE activities is removed.

- Rule 6-19.4 Standards for Certification of a Board Certified Aviation Lawyer, Recertification: Clarifies the 5-year time frame for completion of requirements; within subdivision (b), reduces the required continuing legal education credit from 75 to 60 hours; within subdivision (c), reduces the required number of references for peer review from 5 to 3; "character, ethics, and reputation of professionalism" is added as a component for peer review evaluation consistent with amendments to 6-19.1, and editorial revisions are incorporated.

- Rule 6-26.3 Standards for Certification of a Board Certified Intellectual Property Lawyer, Minimum Standards: Moves language allowing a registered patent attorney in good standing with the USPTO to be exempt from examination from subdivision (f) to subdivision (g), which deals with other exemptions; renumbers subdivisions in (g) to allow for insertion of new language as (1); new subdivision (g)(1) incorporates the language removed from (f) and provides registered USPTO attorneys the option to waive one or more sections of the exam, while still being required to demonstrate core competency in intellectual property law; within subdivision (g)(2), revises language regarding exemption from litigation section of exam and replaces the language "be exempted from the portion" with "not be required to take the section" to clarify the optional nature of this exemption and correspond with the language in the exam specifications; proposed language also allows the subdivisions (g)(1) and (g)(2) to mirror each other; within subdivision (g)(3) [currently (g)(2)] allows one additional year (through 10/31/09) for attorneys eligible for the 20-year waiver to apply; revises language and requirements of examination and exemption from examination for all initial certification applicants.

- Rule 6-26.4 Standards for Certification of a Board Certified Intellectual Property Lawyer, Recertification: Re-designated to correct and conform with controlling editorial protocols.

- BLSE Policy 2.01 Administration: New subdivision (c), adds language to address certification program staff support to codify balance of effective administration and fiscal considerations.

- BLSE Policy 2.04(f) Lapse Reinstatement Fee: In connection with proposed new BLSE policy 2.19, creates new subdivision (f) to establish a \$150 fee for reinstatement of a certification status that has lapsed; re-designates subdivisions (g) through (i) accordingly.

- BLSE Policy 2.12(d) Grading, Review, and Petition Process; Grade Review Panel: Within new subdivision (2), institutes 60 day time frame for petition(s) to be disseminated to grade review panel; reduces, accordingly, from 120 to 60, the number of days the panel has to review and issue a decision; revises language regarding extensions granted for review; adds language requiring return receipt notice to petitioner for any extension; and, adds language prohibiting extensions beyond the registration deadline for the next year's exam.

- BLSE Policy 2.19 Lapse for Certification: Proposed new policy, to define conditions that may cause board certification to lapse and to specify procedures for notification, reinstatement, and removal of lapse status.

### **31. Member Benefits Report**

Bar Programs Division Director Terry Hill presented five new member benefits for board approval: ADP Payroll Services, Staples Office Supply, Worker's Compensation Insurance through BPC Financial, Pet Insurance through BPC Financial, and TheBillableHour.com, which offers law-related books, games, and gifts. The board approved adding all five to the Member Benefits Program.

### **32. Continuing Legal Education Report**

Bar Program Director Terry Hill reported on trends in CLE programs, which is toward fewer live and group video replays of seminars and greater sales of video and particularly DVD recordings, which have increased dramatically in the past year. He attributed that to several factors, mostly increased travel expenses and the greater convenience of watching recorded CLEs at the viewer's convenience, which also minimizes time out of the office and related costs. He said in the past year, sections cumulatively made around \$665,000 from CLE programs, while the Bar made around \$90,000.

### **33. Appointments**

The board nominated to the Supreme Court nine lawyers for three vacancies on the Florida Board of Bar Examiners by the Bar Board of Governors. Two are for five-year terms beginning November 1 and the third for a term that began August 1 and ends October 31, 2011. The board nominated Valeria J. Davis of Sarasota, Christopher B. Hopkins of West Palm Beach, and G. Carson McEachern of Naples for one of the five-year terms, and Richard B. Hadlow of Tampa, Dixon Ross McCloy, Jr., of Panama City, and Gail E. Sasnett of Keystone Heights for the second five-year term. Chet Kaufman of Tallahassee, Alan S. Wachs of Jacksonville, and Gary S. Winston of Miami were nominated for the unexpired term. The board also elected board member Grier Wells to a two-year term on the Supreme Court Judicial Management Council.

### **34. Discussion on Trust Accounts and Bank Failures**

Board members, noting queries from Bar members, discussed lawyer liability and related issues that would be caused by the failure of a bank that holds a lawyer's trust account.

Bar Executive Director Jack Harkness noted that under FDIC rules, every client with money in a trust fund would be covered up to a maximum of \$100,000, although if the client had a separate, personal account at the bank, the maximum the client would be covered for is \$100,000 for both the personal and trust account. He recommended lawyers with questions visit the FDIC's website. Bar Foundation Executive Director Jane Curran reported that a court decision in New York held that lawyers are not personally responsible for lost client trust funds when a bank fails. Board members said the Bar will continue to monitor the issue, noting that Bar members can call the Bar's Ethics Hotline or Law Office Management Assistance Service if they have questions.

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

The next Board of Governors meeting will be held October 1-4 at the Marriott Long Wharf in Boston, MA.

There being no further business, the meeting was adjourned at 3:27 p.m.

Respectfully submitted,

Gary Blankenship

## SUBJECT INDEX

ABA MODEL RULE 1.10 .....	5
APPOINTMENTS .....	12
BOARD OF LEGAL SPECIALIZATION AND EDUCATION REPORT.....	10
BOARD REVIEW COMMITTEE ON PROFESSIONAL ETHICS REPORT.....	5
BUDGET COMMITTEE REPORT .....	6
CITIZENS FORUM.....	3
CLIENTS SECURITY FUND.....	7
CONTINUING LEGAL EDUCATION REPORT.....	12
COMMUNICATIONS COMMITTEE REPORT .....	9
CONSENT AGENDA .....	4
CRIMINAL PROCEDURE RULES .....	8
DISCIPLINARY PROCEDURE COMMITTEE REPORT.....	8
ELDER LAW SECTION REPORT .....	3
FLORIDA BAR FOUNDATION REPORT .....	3
FLORIDA BOARD OF BAR EXAMINERS REPORT .....	3
GUESTS .....	2
INVESTMENT COMMITTEE REPORT.....	6
INVOCATION AND PLEDGE OF ALLEGIANCE.....	2
JUVENILE COURT RULES .....	8
LEGISLATION COMMITTEE REPORT .....	6
MINUTES APPROVAL.....	4
NON-ROLL CALL GRIEVANCE ITEMS.....	4
PROGRAM EVALUATION COMMITTEE REPORT.....	6
PUBLIC REPRIMANDS.....	6
ROLL CALL.....	1
RULES COMMITTEE REPORT.....	9
SWEARING IN OF NEW AND RE-ELECTED BOARD MEMBERS.....	3
TIME AND PLACE OF NEXT MEETING.....	13
TRAFFIC COURT RULES.....	7
TRIAL LAWYERS SECTION REPORT .....	3
TRUST ACCOUNTS DISCUSSION.....	12
UNLICENSED PRACTICE OF LAW REPORT.....	7
WELCOME BY JUDGE ROBERT J. MORRIS .....	3
YOUNG LAWYERS DIVISION REPORT.....	6