

THE FLORIDA BAR BOARD OF GOVERNORS

Regular Minutes

January 28, 2005

The Wyndham Casa Marina Resort
Key West, Florida

Pursuant to notice, the regular meeting of the Board of Governors of The Florida Bar was called to order at 9:00 A.M. on Friday, January 28, 2005, in Key West, Florida, with President Kelly Overstreet Johnson presiding.

1. Roll Call

Board members present:

Kelly Overstreet Johnson, President
Ross M. Goodman, First Judicial Circuit
Lawrence E. Sellers, Jr., Second Judicial Circuit
Michael J. Glazer, Second Judicial Circuit
S. Grier Wells, Fourth Judicial Circuit
Henry M. Coxe, III, Fourth Judicial Circuit
William H. Phelan, Jr., Fifth Judicial Circuit
Andrew B. Sasso, Sixth Judicial Circuit
Murray B. Silverstein, Sixth Judicial Circuit
Robert A. Rush, Eighth Judicial Circuit
Warren W. Lindsey, Ninth Judicial Circuit
Robert M. Brush, Tenth Judicial Circuit
Francisco R. Angones, Eleventh Judicial Circuit
David Rothman, Eleventh Judicial Circuit
Ervin A. Gonzalez, Eleventh Judicial Circuit
Jennifer R. Coberly, Eleventh Judicial Circuit
Henry T. Courtney, Eleventh Judicial Circuit
Sharon L. Langer, Eleventh Judicial Circuit
Kimberly A. Bald, Twelfth Judicial Circuit
Timon V. Sullivan, Thirteenth Judicial Circuit
Gwynne A. Young, Thirteenth Judicial Circuit
Clifford W. Sanborn, Fourteenth Judicial Circuit
John G. White, III, Fifteenth Judicial Circuit
Jerald S. Beer, Fifteenth Judicial Circuit
Scott G. Hawkins, Fifteenth Judicial Circuit
Amy L. Smith, Fifteenth Judicial Circuit
James S. Lupino, Sixteenth Judicial Circuit
Alan C. Brandt, Jr., Seventeenth Judicial Circuit
Jesse H. Diner, Seventeenth Judicial Circuit
Frank C. Walker, II, Seventeenth Judicial Circuit
Clifton A. McClelland, Jr., Eighteenth Judicial Circuit
Harold G. Melville, Jr., Nineteenth Judicial Circuit
Richard A. Tanner, Out of State
Ian Comisky, Out of State
Gary J. Leppla, Out of State
Brian D. Burgoon, Out of State
Michael J. Faehner, YLD President
Jamie Billotte Moses, YLD President-elect

Board members absent:

Alan B. Bookman, President-elect
Gregory S. Parker, Third Judicial Circuit

Chobee Ebbets, Seventh Judicial Circuit
Mayanne Downs, Ninth Judicial Circuit
Russell W. Divine, Ninth Judicial Circuit
Benedict P. Kuehne, Eleventh Judicial Circuit
Steven E. Chaykin, Eleventh Judicial Circuit
John F. Rudy, II, Thirteenth Judicial Circuit
Nancy W. Gregoire, Seventeenth Judicial Circuit
J. Christopher Lombardo, Twentieth Judicial Circuit
A. Lawrence Ringers, Twentieth Judicial Circuit
Solomon L. Badger, III, Ed. D., Public Member
J. Blair Culpepper, Public Member

Staff attending the meeting:

John F. Harkness, Jr., Executive Director
Tina Ruffin, Assistant to the President
Paul Hill, General Counsel
Dana Wood, Secretary to the Board of Governors
Mike Tartaglia, Director of Programs Division
Elizabeth Tarbert, Director of Ethics and Advertising
Gary Blankenship, Senior Editor, Florida Bar News
Allen Martin, Division Director Finance and Accounting
Tony Boggs, Director Legal Division
Mary Ellen Bateman, Director, Ethics, Advertising and Professionalism Division
Ken Marvin, Director of Lawyer Regulation
Francine Walker, Director of Public Information

2. Guests

In addition to other individuals indicated hereafter, the following guests were present during the Board meeting:

Deborah Magid, President of Florida Association for Women Lawyers
Jane Curran, Florida Bar Foundation, Executive Director
Manny Morales, Chair of the 2004 Advertising Task Force
Judge Fred Tygart, Chair of the Florida Conference of Circuit Judges
Tom Hall, Clerk of the Florida Supreme Court
Chief Judge Don Moran, Fourth Judicial Circuit

3. Invocation and Pledge of Allegiance

Board member Jim Lupino offered the invocation and led the Board of Governors in the pledge of allegiance.

4. Rescind approval to file an amendment to Rule 4-1.5 (f)(4)(B)(ii)

Board member Robert Rush made a motion at the onset of the meeting to rescind approval given at the April 2004 BoG meeting to file an amendment to the rule 4-1.5 (f)(4)(B)(ii). The motion was approved by the board.

5. Non-roll Call Grievance Items

Board member Warren Lindsey reported that the non-roll call grievance items were numbers 14, 16 and 19. There were no client security fund items.

6. Report of the Conference of Circuit Judges

President-elect designate Hank Coxe introduced two judges from Jacksonville, the Honorable Don Moran, the Chief Judge of the fourth judicial circuit, and the Honorable Frederick Tygart, Chair of the Florida Conference of Circuit Judges. Tygart reported to the board that since the year 2000, judges have been overlooked in regards to cost-of-living increases in their pay.

During this period, the legislature provided three general cost-of-living pay increases for state employees: 2.5% in 2001, 2.5% in 2002, and 2% in 2003. Although Florida judges were included in the 2002 increase, they received no increase in 2001 and only approximately one-half of the amounts they would have received in 2003 had they been fully included in the 2003 general state employee cost-of-living increase. The conference is requesting that the Legislature increase the judicial salaries in 2005 to the levels they would have reached had Florida judges been fully included in the 2001-2003 general state-employee cost-of-living adjustments.

7. APPROVAL OF MINUTES and EXECUTIVE COMMITTEE ACTION

- A. Regular Minutes December 10, 2004 meeting
- B. Grievance Minutes December 10, 2004 meeting
- C. Executive Committee action taken:

Tuesday, December 28, 2004, 10:00 a.m.

The Executive Committee met telephonically, and the following members were in attendance: Kelly Overstreet Johnson, Alan Bookman, Mike Glazer, Mike Faehner, Jesse Diner, Jerry Beer, Hank Coxe, Mayanne Downs and David Rothman. Staff in attendance were: Jack Harkness, Tina Ruffin, Carlos Leon and Tony Boggs.

The Executive Committee was presented with amendments to Rule 1-3.6 dealing with delinquent members. The rule amendments had previously been presented to the board members at the December 10, 2004 board meeting in Naples, where the Disciplinary Procedures Committee asked for a waiver of 2nd reading and for final action. Due to a replacement page passed out at the board meeting, Rules Committee chair, Cliff McClelland, requested further review of the rule before the board acted on it. The Rules Committee reviewed the rule and sent it to Executive Committee for approval, rather than waiting until the next board meeting on January 28, 2005, thereby ensuring timely presentation to the Supreme Court before January 31, 2005. The Executive Committee approved, without dissent, the amendments to Rule 1-3.6.

The Executive Committee was also asked by the JQC for approval to keep a list of past JQC committee members for use as alternates. The Executive Committee approved the request, with Executive Committee member Mike Glazer disclosing that a lawyer in his firm works with the JQC.

The meeting was adjourned at 10:26 a.m.

8. Consent Calendar

The following items were removed:

- a. Legislation Committee review
 - 1) New section legislative position requests for the 2004-2006 biennium
 - a) Young Lawyers Division
 - i) Student Loan Forgiveness-**included in the Legislation Committee report.**
 - b) Real Property, Probate and Trust Law Section
 - i) Repeal of F.S. 90.602, the "Deadperson's statute" amendment to F.S. 90.804(2)(e)-**Tabled by the Legislation committee**

The board of governors **approved** the following items:

- a. Legislation Committee review
 - 1) New section legislative position requests for the 2004-2006 biennium
 - a) Real Property, Probate and Trust Law Section
 - i) Amendment to F.S. 701.02, Assignment of Mortgages Supports amending §701.02 (Assignment of Mortgages) to conform it to revised UCC Article 9 and provide that:
 - 1. perfection of UCC security interest in a pledged mortgage is governed solely by the UCC and not by §701.02, and
 - 2. filing of a UCC financing statement is not "notice" under §701.02 and does not affect reliance rights of creditors and bona fide purchasers without notice

- with respect to instruments executed by the “mortgagee of record” as determined under §701.02.
- ii) Amendment to F.S. 704.01(2) and F.S. 704.04, Way of Necessity Supports amending §704.01(2) to provide landlocked landowners with a statutory way of necessity.
 - iii) Oppose Section 2 of SB 298, Notary Journals Supports amending §704.01(2) to provide landlocked landowners with a statutory way of necessity.
 - iv) Amend the construction lien law Supports changes to the Florida Construction Lien Laws governing conditional payment bonds and changing procedures for determining whether a claim will be covered by such bonds.
 - v) Technical assistance to clarify numerous construction bond and lien statutes Technical Assistance - The section does not oppose House Bill 113 as originally drafted, but favors additional changes to numerous construction bond and lien statutes.
- 2) Section legislative consultant contracts
 - a) Workers’ Compensation Law Section
- b. Legislative Objections – 2004-2006 Biennium (Position #1)
 - c. Confirmation of appointments to Legal Services of North Florida Board of Directors
 - 1) Martin R. Dix
 - 2) M. Catherine Lannon
 - 3) Theodore E. Mack
 - 4) Benjamin Crump
 - 5) Carolyn Cummings

9. Young Lawyers Division Report

Michael Faehner, President of the Young Lawyers Division reported that on January 11, 2005 he and Mark Romance, immediate past president of the Young Lawyers Division, had argued the Practicing with Professionalism rule amendments in front of the Florida Supreme Court. He said that the time allotted for the argument was extended to 1 hour.

Faehner told the board that the YLD was requesting permission to lobby the legislature on the subject of student loan forgiveness. He told the board that there had been two bills filed relating to student loan forgiveness.

The YLD contributed \$1,500 to tsunami relief on behalf of the Bar. Faehner told the board that the YLD had completed its hurricane relief efforts. He said that from August through January the Bar received about 12,000 phone calls.

Faehner told the board that they would be receiving an electronic newsletter soon, if they hadn’t already received it. He also announced that John Stuart had been elected as President-elect designate for the YLD.

10. Program Evaluation Committee Report

Chair Richard Tanner reported that the committee had met the prior day and discussed the following items:

- a. Continuation of review of Certification Standards and Requirements of Various Committees.
Tanner reported that the committee members had agreed that there appears to be gender fairness in the certification process and, to become certified, it is simply a matter of passing the test. The committee discussed special needs for members with disabilities who wish to take the certification exam. The committee concluded that a variety of accommodations are currently being offered for those who list their special needs on an “exam agreement form”.
Tanner reported that PEC is finished with its evaluation of the certification standards and requirements.
- b. Continuation of review of The Florida Bar meeting structure

- Tanner reported that the committee was not in agreement as to why the attendance for the Bar's three meetings had decreased. He stated that the issue is a collision of goals. The Bar tries to find locations that are both economical for its members, and is large enough to accommodate a group as large as The Florida Bar. Necessary long term planning collides with the need for flexibility. Tanner noted that PEC has solicited the opinion of past Annual meeting chairs. The feedback it received was that the CLE was the most important part of the meetings, and the social aspect was less important. The topic will be further reviewed.
- c. Review of project "FLASH" – Florida Lawyers Legal Search Help
Tanner reported that Frank Walker presented the Member Benefits Committee's Project *FLASH* Report and stated that the genesis for a legal research component on the Bar's website originally came from the Technology Task Force. He mentioned how President Johnson recently approached the Member Benefits Committee to request a study on the feasibility of a legal research component. Tanner told the board that 87% of all legal research done by lawyers under the age of 35 was done online. To accomplish its task, the Members Benefit Committee sent a "Request for Proposal" to seven major legal research suppliers. Proposals were received from six of the seven companies and a subcommittee of the Member Benefits Committee evaluated each proposal thoroughly. Advantages and disadvantages were listed for each supplier's product and the subcommittee, as well as the Member Benefits Committee, highly recommended Fastcase. PEC recommended the board approve the FLASH project. The board concurred, approved the recommendation.
- d. Review of recommendations made by the Workers' Compensation Rules Committee:
Tanner reported to the board that the committee had discussed the Supreme Court's recent opinion (No. SC 04-110) which repealed the Workers' compensation rules, directly impacting the mission of the Workers' Compensation Committee. Tanner reported that the members of the Workers' Compensation Rules Committee felt that in order for the WCRC to be effective after the Supreme Court decision, a reduction in size and a change in scope was necessary. Tanner told the board that the PEC recommended that the board reaffirm the role of the Florida Bar Workers Compensation Rule committee in the decision making process in respect to revisions going on in the Workers Compensation Rules arena. The board concurred with the committee recommendation and approved the motion.

11. Members Benefit Committee Report

Chair Frank Walker reported to the board that the Members Benefit Committee had reviewed the 6 requests for proposals for legal research, which had been returned. The committee sent RFPs to 7 of the most popular legal research companies. Westlaw is the only company that did not respond. Walker told the board that the committee listed the pros and cons from the 6 companies that did respond. After reviewing each of the companies, the committee recommended Fastcase based on features offered and costs. Fastcase could provide the legal research services for about \$1 per member. Walker told the board that the Budget committee had approved the expense. The contracts are expected to be approved at the April board meeting and the service should be available by June 2005. Some of the board members questioned how Fastcase could offer the Bar such a good price, and wanted to know that the due diligence was done before the contract was signed. Walker assured the board that the committee had thoroughly researched Fastcase. President Johnson told the board that Fastcase is presently being used by the Louisiana and Virginia Bars. It was suggested by some of the board members that a Continuing Legal Education class be created to teach the membership to use it. Johnson responded that the Annual meetings committee would look into offering such a class at The Bar's Annual Meeting. Committee member Mike Glazer told the board that the communications committee had discussed Fastcase at its meeting and that information concerning Fastcase would be readily available at The Bar's Annual meeting. Walker shared with the board that Fastcase does have a help number to assist the novice user negotiate its site. Walker told the board that the committee would be bringing a contract to the board in April for its approval.

12. Advertising Task Force Report

Chair Manuel R. Morales, Jr. reported that the advertising task force will report its final recommendations to the board at its April meeting. He told the board that the recommendations were before them today on first reading, that the task force had completed its work, and that any requested changes should be sent to Bar staff for drafting. The task force held its final meeting the prior Thursday, received written input from many bar members, and heard from many bar members at the meeting in Miami during The Bar Midyear meeting.

Morales reported that the task force clarified and re-organized the advertising rules. He noted that there are now only 10 proposed rules: 4-7.1 through 4-7.10. These rules cover all advertisements by Florida Bar members and advertisements directed to Florida residents. Proposed rule 4-7.1 sets forth the communications to which the advertising rules apply. Communications with other lawyers, family members, current clients, former clients and prospective clients upon request are not subject to the attorney advertising rules, but are subject to rule 4-8.4(c), prohibiting conduct involving fraud, deceit, dishonesty and misrepresentation. Rule 4-7.2 was reorganized into three sections: required information, permissible content, and prohibited content. Permissible content of advertisements was expanded. The task force recommended deleting some general regulation of advertisements, including prohibitions against "unfair" advertisements, against advertising for cases in areas not currently practiced, advertising local telephone numbers without qualifying language that the lawyer does not have an office in that location, and advertising for cases that the lawyer intends to refer to another lawyer without appropriate qualifying language. The prohibition against statements creating unjustified expectations was deleted and a prohibition against guaranteeing results was added. The hiring disclosure is omitted from rule 4-7.3(b), because the task force believes it is no longer of value. The task force discussed extending the 30 day prohibition on direct mail to criminal cases, but unanimously voted against the recommendation after receiving numerous written comments and hearing from numerous bar members at its Miami meeting. The most significant change to rule 4-7.5 was to delete the requirement that a nonlawyer spokesperson provide an oral disclosure that the person is not a lawyer, except where it is unclear that the person is a spokesperson. Rule 4-7.6 remained largely unchanged, except that the task force recommends that websites sponsored by a lawyer or law firm not be subject to the attorney advertising rules. Instead, they would be considered information on request and subject only to the rule prohibiting dishonesty or misrepresentation. The task force recommends deleting rule 4-7.9 regarding information on request in its entirety, as the issue is addressed in proposed changes to rule 4-7.1. The task force recommended against adopting changes to the filing requirement in rule 4-7.7 that would require prior review of advertisements. Instead, the task force recommends changes that would encourage, but not require, pre-approval of advertisements by creating a safe harbor for advertisements that have been pre-approved. No significant changes to Rules 4-7.10 (firm names and letterhead) and 4-7.11 (lawyer referral services) are recommended.

Board members Rush and Rothman spoke in favor of extending the 30 day ban on written solicitation to criminal cases.

Board members Courtney, Diner and Sullivan expressed concerns about deleting the prohibition against advertising for cases in areas that the lawyer does not currently practice and the requirement that a lawyer disclose the lawyer's intent to refer cases to another lawyer.

Board member Lindsey suggested the board consider adopting a rule that prohibits a lawyer from sending direct mail unless the lawyer first confirms with the appropriate clerk that no lawyer has filed a notice of appearance to represent the intended recipient.

Board members Moses, Rush and Silverstein expressed concerns about the task force proposal to exempt websites from the general advertising regulations.

Board member Comisky stated that, at a minimum, the board should add that websites are subject to the general prohibition against conduct involving dishonesty in rule 4-7.6.

President Johnson requested that the board members send all suggested alternatives to staff for drafting as soon as possible and directed staff to provide drafted alternatives for the board's April 2005 meeting.

13. Disciplinary Procedure Committee Report

Nonrefundable fees in civil traffic cases. Rob Rush, presiding member, reported that the committee discussed rule 4-1.5 that allows contingent fees in non-criminal traffic cases and many ticket clinics advertise such fees. The committee was advised that some judiciary feel that these contracts put the trial judges in an untenable position of being asked to rule in a manner that determines if the lawyers get paid. The committee discussed those concerns and decided to defer action to seek input from the Citizen's Forum, the Advertising Task Force, the Coxe Commission, and the ABA and other jurisdictions.

Rule 3-7.2 (proceedings on felony convictions). Based on a request for review by the Supreme Court the committee discussed the procedures for entry of a suspension for felony misconduct. The committee discussed including in the proposal a requirement that the office of the state attorney notify the Bar in cases involving attorney felony arrests. The committee heard from offices of two state attorneys indicating that they would not object to accepting this additional responsibility.

Rules 4-1.5 and 4-1.8. The committee deferred consideration of the amendment to these two rules concerning the propriety of adding to contracts for legal representation provisions requiring arbitration a fee disputes (4-1.5) and provisions requiring arbitration of malpractice claims (4-1.8). Standing Board Policy 15.90 - Review and Approval of Disciplinary Cost Payment Plans. The committee is also considering amendments to the standing board policy regarding approval of disciplinary cost payment plans to extend the opportunity of payment plans to restitution, fee arbitration, and fees assessed in diversion cases. The policy under consideration allows such plans to be approved by staff if the plan is completed in under one year. Plans that require more than one year must be reviewed and approved by the board. The proposed amendment under consideration applies the same considerations to plans for payment of restitution, fee arbitration awards, or diversion fees as are currently approved for disciplinary costs payment plans.

Rule 3-5.1 (minor misconduct). Rush also advised that the committee was considering an amendment to rule 3-5.1. The proposed amendment adds language clarifying that the administrative fee of \$1250 applies to cases in which minor misconduct is found or agreed to.

Rule 4-1.5 (f)(4)(B)(ii) , Fees for Legal Services. Rush reported that the committee voted to request that the board rescind approval to file the amendment to this rule concerning the procedures for judicial review of a petition for approval of a contingency fee in excess of the fees stated in (f)(4)(B)(i). The reasons for the committee's action are comments received from the membership in response to the published notice of intent to file this rule amendment. The comments received indicated that further study was warranted and the committee voted unanimously to request rescission by the board. After debate, the board approved the motion to rescind, without dissent.

14. Law School Study Committee Report

Chair Robert Rush reported that the committee is making a lot of progress. They have met with Justice Lewis to discuss the topic of interns working at the Supreme Court. The committee believes that the Bar needs to provide some assurance to the Supreme Court that the student has been cleared as an intern, and they won't be an embarrassment to the court. The committee is hopeful to have suggestions on how to do this for the board to formally review in April.

15. Special Commission on Lawyer Regulation Report

Chair Hank Coxe reported that the commission had met the previous Thursday and also Friday in Miami at the Bar's Midyear meeting. The commission discussed the lawyer complaint intake process. They were given a demonstration of the Florida Bar's ACAP (Attorney Consumer Assistance Program). As one of their functions, ACAP offers a phone-in service for lawyer complaints where the complainant receives one on one attention. The commission discussed the option of expanding the role of ACAP to receive all of the complaints and not just the complaints that were called in. The commission is going to be dealing with the following three issues: policy; rule changes; and standing board policy changes. The commission will be meeting again on April 21 and 22, 2005, in order that they might have a preliminary report by the Bar's annual meeting.

Another issue discussed was when a lawyer who pleads guilty to money laundering in federal court, is not adjudicated for 4-5 months and then discipline is further delayed while the Bar acts. The commission is looking at emergency suspensions as a solution. On the administration of public reprimands, Coxe shared with the board that he had always believed that they should never be held in front of the board of governors; however, the commission agreed that every public reprimand should be in front of the board. The topic is being sent to the citizens' forum for its feedback. Coxe said that there are between 50 and 70 per year, and they are perceived to be extremely effective.

16. Special Committee to Study the Constitutional Amendment Process Report

Chair Hal Melville reported that the committee met the previous day and discussed the current constitutional revision process. Melville told the board that during the 2004 legislative session; the legislature had studied the process as well, and had passed three joint resolutions through the process only to have two of the three joint resolutions die in House messages. Melville told the board that the joint resolution that managed to get out of House messages, and signed by the Governor, moved the date that the sponsors of the citizens initiatives had to turn in its petition to the Secretary of State's office to February 1 of the election year, and set the date that the Supreme Court had to issue its opinion on the language clarity by April 1. The electorate of Florida approved the amendment in November 2004. The other two joint resolutions dealt with the percentage of the vote needed to pass constitutional amendments and what was called a "filter". Melville told the board that Senator King had filed Senate Bills 4 and 6 for the 2005 legislative session, which mirrored the 2004 legislation. Melville also shared with the board that Senator Webster, the chair of the Senate Judiciary committee is planning on doing a constitutional re-write, or a streamlined version of the Florida Constitution. He told the board that at this time there had been no substantive legislation filed to do this, but that Webster had filed several shell bills that could be used as vehicles. Melville told the board that the committee recommended the following Bar level legislative position:

The Florida Bar supports the concept of having the Florida Legislature enact a joint resolution to place on the ballot a provision that amendments or revisions made to the constitution should only concern subjects such as addressing a basic or fundamental right of a citizen, altering, or amending an existing constitutional provision, or changing the basic structure of the state government.

The board discussed the position and concluded that the position was contrary to the goal of another special board committee, since the Judicial Independence Committee was in the process of studying an issue that may only be resolved through the citizens' initiative process. The board tabled the motion.

17. Legislation Committee Report

Chair Sharon Langer reported that the committee met the previous day. Langer told the board that the committee voted to table one of the Real Property, Probate and Trust Law section's legislative position request (located at 5c(1)(b)(i)) regarding the "deadperson" statute pending further feedback from the Trial Law section and the Code and Rules of Evidence committee. The committee recommends that the board accept the following section legislative positions for the 2004-2005 biennium:

- 2) Business Law Section
 1. Supports legislation consistent with the Supreme Court of Florida's November 30, 2004 certification of need for additional judges.
 2. Technical Assistance - The section offers technical assistance to the Florida Legislature with respect to the proposed Florida Trademark Act, Florida Statutes Chapter 495.
 3. Supports the following clarifying amendments to the Uniform Commercial Code:
 1. add new subsection (4) to §679.623, to read: "The debtor retains all of the debtor's rights in collateral, including title if the debtor has title, until the secured party has completed one of the actions in subsection (3)"; and
 2. add new subsection (4) to §679.609, to read: "neither title nor legal or equitable ownership pass to the secured party by taking possession of

collateral after default unless the secured party acquires ownership by purchase pursuant to §679.610 or by acceptance in satisfaction of the obligation pursuant to §679.621 and § 679.622.”

Langer also shared that the Young Lawyers Division had its first legislative position request. The committee recommended that the board approve the position as follows:

The Young Lawyers Division supports legislation to create reasonable financial student loan assistance for all government lawyers and legal aid attorneys who have served in that capacity for more than 3 years.

The board accepted the position on its purview and merits.

Finally, Langer told the board that the committee recommended the following Bar level position in regards to the report on the cost of living adjustments for judges:

The Florida Bar supports increases in state judicial salaries consistent with the 2005 recommendations of the Florida Conferences of District Court of Appeal, Circuit Court, and County Court judges.

The board accepted the position on its purview and merits. Langer went on to remind the board that the 2005 Legislative session would be starting on March 8, 2005.

18. Continuing Legal Education Committee Report

Immediate past chair, Tom Hall reported that the continuing legal education committee recommends that the board approve the following item on **second reading (final action)**

SBP 6.31 Distribution of Proceeds - Section Disbursements

Adds new subdivision (a)(1)(B), to allow for the capping of proceeds if the total gross fees for a CLE course, after subtraction of allowable expenses, are less than the percentage share specified in subdivision (a)(1)(A).

The board concurred with the committee recommendation.

19. Budget Committee Report

Chair Jerry Beer reported that the budget committee had two budget amendments. The first is the Florida Lawyers' Assistance proposed lease. They need more space and can expand in the building they presently occupy, and can extend the lease for 5 years. They are requesting \$20,000 per year to fund this amended lease. The budget committee recommended the board approve the amendment. The second is a request from the Health law section. They have put together a very big program that is going to be held in a couple weeks without budget authority. The budget committee recommended the Board not approve the requested amendment since the request came after all contracts were signed. They recognize this program is going forward but, if there's a loss, it will come out of the Health Law section reserves. Upon the committees motion the two amendments were unanimously approved.

Beer reported that the committee discussed FLASH and it's expected cost of \$75,000. Since The Bar already has \$100,000 in the budget for this project this year no amendment is necessary. Beer told the board that one and a half years ago past Bar President Miles McGrane appointed a special task force to study the issue of section splits and the Young Lawyers Division splits. McGrane appointed: Beer, William Kalish, and Marsha Rydberg to this task force. The task force has settled the YLD split issue, but is still in discussions with the sections. Rydberg was present representing the sections. Beer explained to the board that most of the sections depend on the Bar to subsidize their section administrative costs. Beer went on to tell the board that CLE programs are another aspect of the financial arrangements. Beer noted that sections get 12.5 to 20 percent of the gross revenue from CLE and the Bar gets the rest and pays all of the expenses. In some recent years, the sections overall made hundreds of thousands of dollars from CLE, while the Bar lost upwards of \$250,000. The task force has looked at several options, including increasing section dues with the Bar getting up to \$16.50 a member, ending a discount that sections get for using Bar internal services— such as printing — or charging the sections more for administrative services if those exceed CLE profits by a certain amount, Beer said. But sections rejected those proposals. Council of Sections Chair Marsha Rydberg said she looked at various solutions — including a cap on administrative expenses — but at the council's January 22 meeting, the sections voted to advocate no change. Rydberg said the sections have several

reservations. One is that while the Bar is concerned about the administrative costs, those are entirely under the Bar's control, with the Bar hiring and paying section coordinators and deciding how much computer, accounting, and other services are worth. Sections are also worried, she said, that the Bar sees their aggregate of \$2.5 million of reserves as a potential source of Bar income. And Rydberg questioned whether it was fair to allocate G&A costs to sections since many other Bar operations, such as meetings and conventions and lawyer regulation, don't pay their G&A costs out of income, and those costs are then subsidized with members' dues. Calculating G&A can also be unfair, she said. Sections that hire lobbyists and are active in other ways have bigger budgets, and hence are assessed a larger portion of G&A. Often donations that sections get fund extra activities, which are also counted in the allocation. Such practices, Rydberg said, actually offer a financial incentive for sections to be less active and not to seek outside sponsorships. Another difficulty is a few sections actually are profitable for the Bar, with CLE revenues more than offsetting CLE, administrative, and G&A costs, Rydberg said. Those sections would be unhappy with a section dues increase or other levy and such an action could pit section against section, she warned. Profitable sections might also be encouraged to leave the Bar and operate as an outside independent group if they saw themselves victimized, Rydberg said. Board members expressed concerns that they want to protect Bar finances from a spike of expenses similar to two years ago. Beer said the board will get a variety of options at its April meeting, and Johnson urged board members to discuss this issue with sections, but also added it's time to resolve the issue.

20. Special Appointments

The board elected the following two people to The Florida Bar Foundation, Board of Directors to serve three year terms beginning on July 1, 2005:

Julio C. Jaramillo, Miami
Miles A. McGrane, III, Miami

21. Investment Committee Report

Chair Jay White reported that the Bar had a 7.5% return for the fourth quarter, for an annual increase of 10% or \$1.6 million. White told the board that there were two action items. The investment committee recommended that the board replace one of the small cap managers with Thompson Smith and Wombley and in the midcap growth funds, replace TCW with Congress midcap growth. The board concurred and approved the changes.

22. Judicial Independence Committee Report

Chair Jesse Diner reported that the committee had held two meetings since being appointed, one telephonically and the other on site on the previous day. Diner told the board that the committee was expected to grow to about 25 members, consisting of both lawyers and non-lawyers. Diner said that the committee had narrowed its scope down to about 5 or 6 issues, and is considering an All Bar Conference as a forum to solicit more input on the independence of the judiciary. Diner noted that the committee's term of existence may extend beyond the 5 to 6 months that had previously been expected, to become a standing committee of the Bar. Diner made reference to the fact that one solution to some of the issues that the committee is examining might be via constitutional amendment. Diner told the board that the JIC is continuing to study the issues and would be meeting again in April and in June at the Bar's Annual meeting.

23. Communications Committee Report

Chair Mike Glazer reported that the committee met and discussed numerous items. The committee continues to oversee the BLSE communications program implemented by a consultant in coordination with the Bar's Public Information Department. Glazer reported that the committee recommends that the board approve the public relations consultant's contract for the 05-06 Bar year pending BLSE's budget approval. Glazer said that the committee received an update on the Web site redesign. The plan is to have the new Web site ready to roll out by late spring or early summer, and to make a big announcement at the annual convention. Glazer reported that the

committee heard a report on the successful December 2004 Reporters Workshop: 18 reporters came to Tallahassee for two days of intense learning about covering the courts and the legal system, and there were more presenters involved than there were students. The committee discussed the composition of the Citizens Forum, primarily regarding a concern raised that the Citizens Forum is not diverse enough. Additional discussion will be held at the April meeting. Using the 04-05 communications budget for grants to underwrite local bars' media/law seminars, the committee recommended approval of a request from the Broward County Bar Association for \$1,017 for a February event. The board concurred with the committee and approved the expenditure.

24. Audit Committee Report

Chair Lindsey reported that the Audit committee had met and gone over a draft of the audit committee charter, which they will submit to the board in April. The committee is also reviewing the report from Thomas, Howell Ferguson with staff, and plans to bring any recommendations to the board at its next meeting in April, as well.

25. Certification Plan Appeals Committee Report

Chair Larry Sellers reported that the committee had heard an appeal and made its recommendations.

26. Time and Place of Next Meeting

The Florida Bar Board of Governors will meet April 6-9, 2005 in Tallahassee, FL at The Florida Bar Headquarters.

There being no further business to discuss, the board adjourned at 3:10 PM.

Respectfully submitted,

Dana M. Wood
Secretary to the Board of Governors

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