

The Florida Bar Board of Governors  
October 3, 2008  
Marriott Long Wharf Hotel  
Boston, MA

Pursuant to notice, the regular meeting of the Board of Governors of The Florida Bar was called to order at 9 a.m. Friday, October 3, at Boston, MA, with President Jay White presiding.

**1. Roll Call**

John G. White III, President  
Jesse H. Diner, President-elect  
Stephen H. Echsner, First Circuit  
Dominic M. Caparello, Second Circuit  
Clay A. Schnitker, Third Circuit  
S. Grier Wells, Fourth Circuit  
John J. Schickel, Fourth Circuit  
Andrew B. Sasso, Sixth Circuit  
Murray B. Silverstein, Sixth Circuit  
Carl B. Schwait, Eighth Circuit  
Mayanne Downs, Ninth Circuit  
Daniel L. DeCubellis, Ninth Circuit  
Scott M. McMillen, Ninth Circuit  
Ramon A. Abadin, 11th Circuit  
David Rothman, 11th Circuit  
Dennis G. Kainen, 11th Circuit  
John H. Hickey, 11th Circuit  
L. Norman Vaughan-Birch, 12th Circuit  
David C. Prather, 15th Circuit  
Gregory Coleman, 15th Circuit  
Scott G. Hawkins, 15th Circuit  
Lisa S. Small, 15th Circuit  
Nancy W. Gregoire, 17th Circuit  
Eugene K. Pettis, 17th Circuit  
Jay Cohen, 17th Circuit  
Laird Lile, 20th Circuit  
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

Members Absent:

Lawrence E. Sellers, Jr., Second Circuit  
Denise A. Lyn, Fifth Circuit

Charles Chobee Ebbets, Seventh Circuit  
Robert M. Brush, 10th Circuit  
Ervin A. Gonzalez, 11th Circuit  
Juliet Roulhac, 11th Circuit  
William J. Schifino, Jr., 13th Circuit  
William Kalish, 13th Circuit  
Gwynne Alice Young, 13th Circuit  
Clifford W. Sanborn, 14th Circuit  
Edwin A. Scales, 16th Circuit  
Allison K. Bethel, 17th Circuit  
Frank C. Walker, 17th Circuit  
Clifton A. McClelland, Jr., 18th Circuit  
John M. Stewart, 19th Circuit  
A. Lawrence Ringers, 20th Circuit  
Richard Arthur Tanner, Out of State  
Ian M. Comisky, Out of State

Staff attending meeting:

John F. Harkness, Jr., Executive Director  
Ken Marvin, Director of Lawyer Regulation  
John Berry, Director of Legal Division  
Roselyn Scott, Assistant to the President  
Gary Blankenship, Senior Editor, Florida Bar News

## **2. Guests**

Marlene Quintana, President, Cuban American Bar Association  
Rebecca Steele, President, Florida Association for Women Lawyers  
Roland Sanchez Medina, President-elect, Cuban American Bar Association

## **3. Invocation and Pledge of Allegiance**

Eric Meeks led the invocation and Brian Burgoon led the Pledge of Allegiance.

## **4. Non-roll Call Items**

Disciplinary Review Committee Co-Chair Brian Burgoon announced the nonroll call agenda items were numbers eight and 12.

## **5. Approval of the Minutes**

The minutes from the board's July 25, 2008, meeting were approved. The action included approving the minutes from several Executive Committee meetings:

- August 1, 2008, the committee approved clarifying changes to three Bar rules previously approved by the Board of Governors: rule 3-7.2(1)(2), rule 3-7.6(q)(5), and rule 3-7.7(c)(7).

- August 6, 2008, the committee reviewed and approved comments from the Rules of Judicial Administration Committee on recommendations of the Trial Court Performance and Accountability Commission on standards relating to court reporting services. The committee approved reinstating, in an abundance of caution, a Bar

legislative position supporting federal legislation that preserves the attorney-client privilege and work product protections. The committee approved the nomination of ETTY Foodman as a public member of the Standing Committee on Unlicensed Practice of Law.

- August 12, 2008, the committee endorsed one rule and four form amendments proposed by the Juvenile Court Rules Committee for Rule 8.225, Form 8.962, Form 8.963, Form 8.968, and Form 8.977.

- August 28, 2008, the committee endorsed Family Law Rules Committee proposed changes required by the Legislature's approval of law earlier in the year. The board also endorsed the Appellate Court Rules Committee's comments on amendments to the Florida Rules of Appellate Procedure proposed by the Commission on Trial Court Performance and Accountability.

- September 1, 2008, the committee approved and submitted to the Supreme Court reports from two separate entities that reviewed proposed changes to rule of Judicial Administration 2.420 on court records. One report came from the Special Joint Committee, made up of members of the Appellate Court Rules Committee, the Criminal Procedure Rules Committee, the Rules of Judicial Administration Committee and the Access Committee, and the second report came from the Rules of Judicial Administration Committee.

## **6. Consent Agenda**

The board approved the consent agenda with no changes or exceptions. The vote included ratifying the nomination of John Yuzzonlin to the 12th Circuit UPL Committee and Herbert Guy Green, Jr., to the 14th Circuit UPL Committee.

The board gave final approval to nine rule amendments on certification and three Board of Legal Specialization and Education policy amendments:

- Rule 6-3.6: 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: 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: 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: 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: 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: 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: 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: 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: Re-designated to correct and conform with controlling editorial protocols.

- BLSE Policy 2.04: 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): 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: 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.

The board endorsed five legislative positions for the Real Property, Probate and Trust Law Section, one for the International Law Section, and seven positions for the Family Law Section, as follows.

Real Property, Probate and Trust Law Section:

- Supports amendment of F.S. §736.0813 to clarify the meaning of the requirement that a trustee furnish qualified beneficiaries with a “complete copy” of a trust document.

- Supports amendment of F.S. §736.0306 to provide that a trustee cannot be given authority to appoint “designated representatives” for trust beneficiaries to whom the trustee can account in lieu of accounting directly to the beneficiaries.

- Supports amending F.S. §§736.0302 and 736.0103(4) to provide that a “permissible appointee” under a power of appointment is not a “beneficiary” of a trust unless the power of appointment is irrevocably exercised in favor of the appointee, and that the potential interests of permissible appointees can be represented by those who take the trust property if the power of appointment is not exercised.

- Supports amendment of F.S. §738.602 to provide a method for trustees to characterize payments from deferred compensation plans, annuities, retirement plans, IRAs or other similar arrangements as principal or income when payable to a trust named as the beneficiary.

- Supports amendment of F.S. §735.203 to clarify that, if the petitioner of a petition for summary administration is also the trustee of a trust that is a beneficiary of the decedent’s estate, the beneficiaries of the trust are interested persons who are entitled to notice of the petition for summary administration and, if not served with formal notice of the petition, must either consent to the relief being sought in the petition or join in the petition as a petitioner.

International Law Section:

- Supports changing the substantive law that governs international commercial arbitrations in Florida, specifically by adoption of the UNCITRAL Model International Commercial Arbitration Law and repeal of the current Florida International Arbitration Act within F.S. Ch. 684. The new law will be known as the “Florida International Commercial Arbitration Act.”

Family Law Section:

- Supports an amendment to F.S. §61.14(6) to specify the application of payments when obligations exist for current alimony or spousal support, arrears of alimony or spousal support, and interest on alimony or spousal support.

- Supports amendments to F.S. §61.14 & 742.08 regarding the enforcement and accrual of interest on child support, alimony, and spousal support judgments.

- Supports amendments to F.S. §61.30 to streamline, simplify, and clarify the methodology of calculating child support.
- Supports changes to F.S. §61.13 codifying the standard required for modification of parental responsibility, a parenting plan and /or time-sharing schedule.
- Supports amendments to F.S. §61.13001 streamlining the requirements and criteria governing relocation.
- Supports amendments to §61.075, F.S. to allow for the assessment of interest and award of security regarding delayed equitable distribution payments.
- Supports amendments to F.S. §61.08 (alimony statute) to recognize the court's discretion to fashion alimony awards that are appropriate based upon the statutory factors including bridge-the-gap, rehabilitative, durational, and permanent alimony.

The board approved section legislative consultant contracts between the Trial Lawyers Section and Bob L. Harris and Mark Herron and between the Criminal Law Section and Rod Smith.

### **7. Public Reprimand**

President Jay White administered one public reprimand.

### **8. Communications Committee Report**

Chair Ray Abadin said the committee is studying how the Bar's Web site is used, with that data being evaluated to suggest possible changes and improvements to the site. He reported the committee had approved a logo for the new Florida Registered Paralegal program, and the board ratified that selection.

### **9. Budget Committee Report**

Committee member Mayanne Downs reported on the September meeting of the Council of Sections, which went over the recently revised financial splits between the Bar and sections on CLE programs. She said sections were generally pleased with the new program, which has been phased in over the past three years, although some sections had smaller profits from CLE operations.

### **10. Rules Committee Report**

Chair Nancy Gregoire presented five items on first reading:

- Rule 1-3.5: Within Rule 1-3.5, provides for permanent retirement without possibility of reinstatement.
- Rule 1-3.7: Within new subdivision (e), provides that members who are permanently retired may not be reinstated, but must be readmitted through the Florida Board of Bar Examiners process, and renumbers subsequent paragraphs accordingly.
- Rule 4-7.7(b)(7): The amendments clarify that a filing fee of \$150 is owed for each advertisement timely filed and a filing fee of \$250 is owed for each advertisement filed late.
- Rule 10-8.1: Within subdivision (e)(4), clarifies that the UPL record becomes public when a designated reviewer approves a recommendation for litigation.
- Rule 14-1.2: Within subdivision (a), adds requirement that written contracts comply with rule 4-1.5(i) and limits fee arbitration cases to matters in which the only

bona fide disputed issue is the entitlement to or amount of a legal fee, the amount of the legal fee in dispute does not exceed \$100,000, and the time necessary for the arbitration does not exceed one 8-hour day.

### **11. Disciplinary Procedure Committee Report**

Chair Murray Silverstein presented four items on first reading:

- Rule 3-5.2: Title of the rule is expanded to add "Or Interim Placement on the Inactive List for Incapacity Not Related to Misconduct; within subdivision (a), adds procedures for an emergency suspension when an attorney receives discipline in a foreign jurisdiction; within subdivision (b), allows placement on the inactive membership list in lieu of probation for incapacity unrelated to misconduct.

- Rule 3-7.13: Within subdivision (a), provides an interim process using the procedures of emergency suspension and interim probation when exigent circumstances reveal that an attorney lacks the capacity to practice law but has not engaged in misconduct that is normally required to start a disciplinary proceeding.

- Rule 5-1.1: Within the comment adds reference to a Supreme Court of Florida decision that lawyer trust accounts may be the proper target of garnishment actions but leaves the interpretation of the law to the discretion of the lawyer.

- Standing Board Policy 15.92: Within subdivisions (b) and (c), the proposed change would allow bar counsel, after consultation with chief branch discipline counsel, staff counsel, and the designated reviewer, to determine whether an in-person public reprimand before the Board of Governors is necessary in a particular case; new subdivisions (d) and (e) establish exceptions that may be made on a case-by-case basis where alternative means of issuing the reprimand are available and appropriate to the circumstances; re-designates subdivisions (f) through (h) accordingly.

### **12. Welcome by Thomas Menino**

Boston Mayor Thomas Menino welcomed the board to the city.

### **13. Investment Committee Report**

President White reported that the Bar's investments had suffered only a fraction of the loss of the broader market because of its conservative investment strategy. He said the Investment Committee recommended a change in investment policy to allow the Bar to exceed the investment guideline of 10 percent in cash for a short period. The board approved that recommendation.

### **14. Report on the Florida Attorneys Saving Homes Program**

Adele Stone, a member of the steering committee for the homes program, reported that the program has received more than 10,000 calls since June 25, plus another 1,000 online contacts. Around 670 lawyers have volunteered to help distressed homeowners and around 1,125 of those who have contacted the Bar have had applications processed and around 600 have been assigned volunteer lawyers. Stone said the demand is outstripping the number of available lawyers and she hopes to eventually have 1,000 volunteer attorneys. Bar members seeking information about the program can visit [www.floridaprobono.org](http://www.floridaprobono.org).

### **15. Young Lawyers Division Report**

YLD President Jewel White Cole reported that at the request of the Federal Emergency Management Agency, the YLD has activated its legal hotline for Florida residents who have legal problems stemming from damage caused by Tropical Storm Fay. She also said the YLD's new Law Student Division is well underway and that the YLD is working on its annual legislative seminar, tentatively to be held early in 2009 and focusing on court funding. The YLD has sponsored a unique moot competition featuring arguing a pretrial motion, which was held at Stetson University law school. Cole said she has met with her counterparts in other southern state bars and those leaders are looking at regular meetings, with the first being held in Florida early next year.

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

Governor Norman Vaughan-Birch, liaison for the BLSE, presented five items, all relating to marital and family lawyer certification, to the board on first reading:

- Rule 6-6.1: Revised rule title and verbiage to identify standards for board certification in marital and family law, rather than as standards for a board certified marital and family lawyer; adds new language to incorporate criteria of character, ethics and reputation for professionalism; and, adds new language to reference the provisions for judicial officers to achieve board certification.
- Rule 6-6.2: Adds new subdivision (c) defining a judicial officer; adds new subdivision (d) defining a trial for purposes of the trial requirement in the standards; and, adds new subdivision (e) defining substantial involvement for purposes of the substantial involvement requirement in the standards.
- Rule 6-6.3: Within subdivision (a), increases, from 30 percent to 50 percent, the required percentage of time that the applicant must have been actively participating in marital and family law; within subdivision (b), incorporates language regarding substantial involvement from subdivision (c) as new subdivisions (1), (2), & (3), revises all affected subdivision entries accordingly; also within subdivision (b)(1), reduces the required number of trials from 10 to 7 and allows attendance and/or teaching of an advanced trial advocacy seminar approved by the marital and family law certification committee to qualify as 1 of the 7 trials; within subdivision (b)(2) deletes the substantial involvement definition [moved to subdivision 6-6.2(e)] and allows trials in excess of 7 to automatically qualify as substantial involvement, within subdivision (b)(3) adds language to allow the certification committee to determine whether an applicant meets the substantial involvement requirement as to each case submitted; within new subdivision (c)(1), adds language to ensure the peer references have had substantial interaction over the prior 5-year period; within new subdivision (c)(2), increases, from 2 to 3, the number of judicial officers required for peer review, and increases, from 2 to 5, the number of years an applicant can appear as an advocate in a trial or evidentiary hearing immediately preceding the date of application; within new subdivision (c)(3), strengthens explanation and purpose of peer review; within subdivision (d), increases the required number of continuing legal education credit hours from 50 to 75 credit hours, but expands the education period from 3 to 5 years; and, adds new language to specify that 5 of the 75 education hours must be in ethics, dispute resolution, collaborative law and/or mental health; within subdivision (e), adds professionalism as a component of the examination.

•Rule 6-6.4: Replaces "judges and general masters" with "judicial officers" in title and throughout the rule; within subdivision (a) increases from 30 percent to 50 percent the required percentage of time that the applicant must have been actively participating in marital and family law; within subdivision (b) renames trial requirement as minimum number of cases, reconstructs the language regarding trial and substantial involvement qualifications, reduces the required number of trials from 10 to 7, and adds new subdivisions (1) - (3) to allow the certification committee to determine whether an applicant meets the substantial involvement requirement as to each case submitted; within subdivision (c), revises the peer review requirement to be the same as that required for lawyer applicants, requiring the submission of 6 lawyers' names, of which 5 must be members of The Florida Bar with their principal office in the state of Florida, and restates that no judicial references are required; within subdivision (d), revises the language referencing the education requirement to be the same as that required for lawyer applicants, as defined in 6-6.3(d).

• Rule 6-6.5: In connection with separate proposed amendments to rules within subchapter 6-6, within subdivision (a), adds language that specifies 50 percent as the required percentage of time devoted to practice or judicial service in marital and family law; within subdivision (b), removes reference to rule 6-6.3(c), revises language regarding minimum number of trials and references new definition of a trial, revises language regarding minimum number of cases and references new definition of substantial involvement, adds language allowing attendance and/or teaching of an advanced trial advocacy seminar approved by the marital and family law certification committee to qualify as 1 of the 5 trials, and adds new language to allow the certification committee to determine whether an applicant meets the substantial involvement requirement as to each case submitted; within subdivision (c), removes the allowance of examination to qualify as a substitute for CLE and retains 75 credit hour requirement; within subdivision (d), new language clarifies judicial peer review not required for judicial officers.

### **17. Certification Plan Appeal Committee**

Chair Norman Vaughan-Birch reported that the Supreme Court recently upheld by a per curiam opinion a CPAC denial of recertification in marital and family law.

### **18. Moment of Silence**

President Jay White called for and the board observed a minute of silence in honor of Steve Chaykin, a board member who passed away in an accident a few days after the board's July meeting.

### **19. Legislation Committee Report**

Chair Greg Coleman moved and the board approved allowing the Workers' Compensation Law Section to support a pay increase for Judges of Compensation Claims. He also said the committee is continuing to monitor the court funding crisis and the Bar's legislative program will work with the Legislature to find more funding. If that fails, the committee is studying alternatives to provide a guaranteed source of funding for the court system. Coleman reiterated that it is important for board members to meet with legislators and educate them about the importance of the third branch of government.

## **20. President-elect's Report**

President-elect Jesse Diner reported that the Long Range Planning Committee will meet in December to make plans for the upcoming Bar year. He announced the schedule of board meetings for the 2009-10 Bar year: Naples in July/August, Hollywood in October, Amelia Island in December, Tallahassee in January/February, New York City in March/April, and Key West in late May/early June. The Florida Bar also, he noted, recently became the second largest state bar, passing Texas, and is growing at about 2,500 members per year.

## **21. Executive Director's Report**

Executive Director John F. Harkness, Jr., reported that Bar staff is working on an agreement to undertake a study of the Bar's advertising rules in light of a request for additional study made by the Supreme Court in 2007 when it approved advertising rule amendments. A budget amendment is expected to be presented at the board's December meeting. He also noted a report on CLE programs which shows that more and more lawyers are turning to webcasts and DVDs for their CLE, and fewer are attending live courses.

## **22. Time and Place of Next Meeting**

The next Board of Governors meeting will be December 10-13 at the Peabody Hotel in Orlando.

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