

The Florida Bar
October 5, 2007
The Ritz Carlton
Coconut Grove, Florida

Pursuant to notice, the regular meeting of the Board of Governors of The Florida Bar was called to order at 8:30 A.M. on Friday, October 5, 2007, in Coconut Grove, Florida, with President Francisco R. Angones presiding.

1. Roll Call

Francisco R. Angones, President
John G. White, III, President-elect
Steve Ecschner, First Judicial Circuit
Lawrence E. Sellers, Jr., Second Judicial Circuit
Gregory S. Parker, Third Judicial Circuit
S. Grier Wells, Fourth Judicial Circuit
John J. Schickel, Fourth Judicial Circuit
Denise A. Lyn, Fifth Judicial Circuit
Andrew B. Sasso, Sixth Judicial Circuit
Carl B. Schwait, Eighth Judicial Circuit
Daniel L. DeCubellis, Ninth Judicial Circuit
Warren W. Lindsey, Ninth Judicial Circuit
Robert M. Brush, Tenth Judicial Circuit
Ramon Abadin, Eleventh Judicial Circuit
David Rothman, Eleventh Judicial Circuit
Ervin A. Gonzalez, Eleventh Judicial Circuit
Jennifer Coberly, Eleventh Judicial Circuit
Dennis Kainen, Eleventh Judicial Circuit
Juliet Roulhac, Eleventh Judicial Circuit
Benedict P. Kuehne, Eleventh Judicial Circuit
Steven Chaykin, Eleventh Judicial Circuit
Norman Vaughan-Birch, Twelfth Judicial Circuit
Timon V. Sullivan, Thirteenth Judicial Circuit
Gwynne Alice Young, Thirteenth Judicial Circuit
Clifford W. Sanborn, Fourteenth Judicial Circuit
Gregory Coleman, Fifteenth Judicial Circuit
Scott G. Hawkins, Fifteenth Judicial Circuit
Lisa S. Small, Fifteenth Judicial Circuit
Edwin Scales, Sixteenth Judicial Circuit
Allison Bethel, Seventeenth Judicial Circuit
Nancy W. Gregoire, Seventeenth Judicial Circuit
Eugene K. Pettis, Seventeenth Judicial Circuit
Jesse H. Diner, Seventeenth Judicial Circuit
Frank C. Walker, II, Seventeenth Judicial Circuit
Clifton A. McClelland, Jr., Eighteenth Judicial Circuit
John M. Stewart, Nineteenth Judicial Circuit
Laird A. Lile, Twentieth Judicial Circuit
Richard Arthur Tanner, Out-of-State
Ian M. Comisky, Out-of-State
Eric Meeks, Out-of-State
Brian D. Burgoon, Out-of-State
Scott Atwood, YLD President
Jewel White Cole, YLD President-elect
Arnell Bryant-Willis, Public Member

J. Blair Culpepper, Public Member

Board members absent:

Dominic M. Caparello, Second Judicial Circuit
Murray B. Silverstein, Sixth Judicial Circuit
Charles Chobee Ebbets, Seventh Judicial Circuit
Mayanne Downs, Ninth Judicial Circuit
William Kalish, Thirteenth Judicial Circuit
David Prather, Fifteenth Judicial Circuit
A. Lawrence (Larry) Ringers, Twentieth Judicial Circuit

Staff attending the meeting:

John F. Harkness, Jr., Executive Director
Paul F. Hill, General Counsel
Tony Boggs, Assistant to Division Director - Legal
Mary Ellen Bateman, Director, Ethics, Advertising and Special Projects Division
Ken Marvin, Director of Lawyer Regulation
Elizabeth Tarbert, Director of Ethics and Advertising
Lori Holcomb, Director of Unlicensed Practice of Law
Allen Martin, Director Finance and Accounting
Rosalyn Scott, Assistant to the President
Dana Watson, Secretary to the Board of Governors
Gary Blankenship, Senior Editor, Florida Bar News
Francine Walker, Director of Public Information

2. Guests

Jane Curran, Executive Director, Florida Bar Foundation
Tim Chinaris, Chair, Out of State Division
Judge Joseph P. Farina, Chief Judge, Eleventh Circuit
Sherri Johnson, President, FAWL
Marlene Quintanta, President-elect, CABA
Kalinthia R. Dillard, President, Virgil Hawkins Florida Chapter, National Bar Association
Elizabeth Hernandez, Chair, City, County & Local Government Law Section & President, CABA
Emma Hemness, Chair, Elder Law Section
John P. Murray, President, Dade County Bar Association
Matthew Ridgely, Executive Director, Dade County Bar Association
Lisa Walsh, President, Miami Dade FAWL
Barry Wax, President, Florida Association of Criminal Defense Lawyers, Miami Chapter
Kisha'sha Sharp, President, Black Women Lawyer Association
Ron Pena, President, Dade County Defense Bar Association
Jerry Kavulich, President, Coral Gables Bar Association
Christina McKinnon, Vice President, Wilkie D. Ferguson, Jr. Bar Association
Timothy M. Ravich, President-elect, Dade County Bar Association
Judge Emerson R. Thompson, Jr, Judicial Ethics Advisory Committee
Sharon Langer, Past Board of Governors member
Steve Brancock, Chair, Appellate Court Rules committee

3. Invocation and Pledge of Allegiance

The Invocation was given by David Rothman and the Pledge of Allegiance was led by Ramon Abadin.

4. Non-roll call Grievance Agenda Items

Co-chair David Rothman reported that the only non-roll call discipline item was number 14.

5. Non-roll call Advertising Appeal Agenda Items

Chair Jennifer Coberly reported that agenda items 5b(i)(1) & (4), 5b(ii) and 5b(iv) were removed from the consent calendar. Items 5b(i)(6), 5b(v), 5b(vi), 20a and 20c were deferred to a later meeting.

6. Approval of Minutes- Approved

- a. Regular Minutes, August 17, 2007 meeting
- b. Grievance Minutes, August 17, 2007 meeting
- c. Summary of Executive Committee action taken
 - i) July 31, 2007 – Criminal Procedure Rules Committee – Rule Amendments
In an Administrative Order dated June 30, 2006, the Supreme Court asked the various Florida Bar rules committees to study whether changes to the rules were needed to implement certain recommendations of the Report and Recommendations of the Supreme Court Committee on Privacy and Court Records. The recommendations of the Supreme Court involved the issues of (1) keeping unnecessary personal information out of court records, and (2) how to avoid the unnecessary filing of discovery information with the court.
The Criminal Procedure Rules Committee reviewed each criminal procedure rule and form in light of the above recommendations. The committee recommended amendments to the following rules:
Rule 3.140 – Reference to social security number deleted to conform to recommendations of Committee on Privacy and Court Records. Information is currently omitted from charging documents despite current requirements of the rule.
Rule 3.211 – Language added that the report shall be filed and maintained under seal in the court file.
Rule 3.212 - Language added that the report shall be filed and maintained under seal in the court file.
Rule 3.216 - Language added that the report shall be filed and maintained under seal in the court file.
Rule 3.218 - Language added that the report shall be filed and maintained under seal in the court file.
Rule 3.219 - Language added that the report shall be filed and maintained under seal in the court file.
The report of the Criminal Procedure Rules Committee must be filed with the Supreme Court by August 1, 2007.
The committee voted 9-0 in favor of the amendments.
 - ii) August 17, 2007 - Amendment to The Florida Bar Employees' Pension Plan – Section 5.1 of Article V
The Board of Governors, in Executive Session, approved the Fifth Amendment to The Florida Bar Employees' Pension Plan. Said amendment affects Section 5.1 of Article V of the Plan as of January 1, 2007. Section 5.1 of Article V of the Plan is amended as follows:
5.1 Nonelective Contributions. Subject to the provisions of section 6.5 of Article VI, the Employer shall contribute to the Trust on behalf of each Participant employed by the Employer an amount equal to 13% of such Participant's Compensation plus 4.3% of such participants Excess Compensation; provided, however, that no contribution shall be made on behalf of a Participant unless such Participant (a) completes a Year of Service during such Plan Year and (b) is employed by the Employer on the last day of such Plan Year.
 - iii) August 31, 2007 – Legislative Objections
The Florida Bar received two member objections to Legislative Position #13 following its adoption. One of these objectors also objected to Legislative Position #12. Under Rules Regulating the Florida Bar 2-9.3, September 30, 2007 is the deadline for determining whether these objecting members should be refunded the \$5.67 in Bar dues (plus applicable interest) presently escrowed, or whether these objections should be referred to arbitration.

The Executive Committee approved the request for a refund by a vote of 10-0, with 1 abstention.

7. Consent Calendar – Approved

a. UPL committee nominations

- i) Circuit Committee Nomination
Heather Conley, Public Member, Thirteenth Circuit
- ii) Standing Committee Nomination
Maria del Carmen Cifuentes Marrero, Attorney Member

b. Board Review Committee on Professional Ethics

- i) Advertising Appeal 07-02227 – **Removed items 1 and 4 from consent, deferred item 6.**

Advertising Appeal 07-02227 concerns application of numerous attorney advertising rules to a direct mail advertisement.

- 1) The Board Review Committee on Professional Ethics voted 3-1 to reverse the Standing Committee on Advertising, determining that the trade name and domain name of the filer, Ticket Wizards LLC and www.ticketwizards.org, do not promise results in violation of Rule 4-7.2(c)(1)(G). – **Removed from consent.**
- 2) The Board Review Committee on Professional Ethics voted 3-1 to affirm the Standing Committee on Advertising, determining that the trade name and domain name of the filer, Ticket Wizards LLC and www.ticketwizards.org, characterize the quality of legal services in violation of Rule 4-7.2(c)(2).
- 3) The Board Review Committee on Professional Ethics voted 3-1 to affirm the Standing Committee on Advertising, determining that the trade name Ticket Wizards LLC is false, misleading or deceptive under Rule 4-7.2(b) and 4-7.2(c)(1) because it characterizes the quality of legal services under Rule 4-7.2(c)(2).
- 4) 5b(i)(4) The Board Review Committee on Professional Ethics voted 3-2 to reverse the Standing Committee on Advertising, determining that illustrations of a wizard are not false, misleading or manipulative and are therefore permissible under Rule 4-7.2(c)(3). – **Removed from consent.**
- 5) The Board Review Committee on Professional Ethics voted 3-2 to affirm the Standing Committee on Advertising, determining that a photograph of a police car as seen through the driver side mirror in the context of an advertisement for representation in traffic ticket matters is false, misleading or manipulative in violation of Rule 4-7.2(c)(3).
- 6) The Board Review Committee on Professional Ethics voted to defer issue 6, regarding whether there is a watermark of a police car with flashing lights and whether that image is false, misleading or manipulative in violation of Rule 4-7.2(c)(3), so that the committee can examine the original advertisement. – **Deferred to a later meeting.**
- 7) The Board Review Committee on Professional Ethics voted 4-0 to affirm the Standing Committee on Advertising, determining that the direct mail advertisement, which is prompted by a specific occurrence, fails to disclose how the lawyer obtained the recipient's information that prompted the mailing as required by Rule 4-7.4(b)(2)(I).
- 8) The Board Review Committee on Professional Ethics voted 4-0 to affirm the Standing Committee on Advertising, determining that the direct mail advertisement, which is a postcard prompted by a specific occurrence, reveals the nature of the prospective client's legal problem in violation of Rule 4-7.4(b)(2)(J).
- 9) The Board Review Committee on Professional Ethics voted 4-0 to affirm the Standing Committee on Advertising, determining that the direct mail advertisement fails to provide sufficient information detailing the background, training, and experience of the filer as required by Rule 4-7.2(b)(2)(D).
- 10) The Board Review Committee on Professional Ethics voted 4-0 to affirm the Standing Committee on Advertising, determining that the direct mail advertisement, which states "speeding tickets as low as \$149.99" on the front without any disclosure of whether the client will be responsible for costs, states "speeding tickets as low as

\$149.99 plus costs where applicable in [specified] counties ONLY" and "attorney fees refunded - Guaranteed" on the back, fails to adequately disclose whether the client may be responsible for costs as required by Rule 4-7.2(c)(7).

11) The Board Review Committee on Professional Ethics voted 4-0 to affirm the Standing Committee on Advertising, determining that the advertised money back guarantee to refund the attorney's fee if points are assessed is misleading under Rule 4-7.2(c)(1), because it fails to disclose that the guarantee is applicable only to civil infractions when Rule 4-1.5(f)(3)(B) prohibits charging a contingent fee in a criminal case.

- ii) Advertising Appeal 07-01801 – **Removed from consent.**
 - iii) Advertising Appeal 07-02190
Advertising Appeal 07-02190 concerns application of Rule 4-7.2(c)(1)(G), prohibiting statements that promise results to a print advertisement. The Board Review Committee on Professional Ethics voted 4-0 to affirm the Standing Committee on Advertising, determining that the statement "Attorneys Righting Wrongs" and the domain name "rightingwrongs.com" promise results under Rule 4-7.2(c)(1)(G).
 - iv) Advertising Appeal 07-01829, 07-01830, 07-01831, 07-01833, 07-01834 and 07-01835 – **Deferred to a later meeting.**
 - v) Advertising Appeal 07-02429 and 07-02477 –**Deferred to a later meeting.**
 - vi) Advertising Inquiry 26793 –**Deferred at the request of the inquirer.**
- c. Rules, Bylaws & Policies
- i) Rule 2-7.3 Creation of Sections and Divisions
Conforms list of section titles due to a merge between the Practice Management and Development Section and the General Practice, Solo and Small Firm Section, reletters accordingly.
 - ii) International Law Section Bylaws
Within Article I Section 1 (Name and Purpose – Name), revises official section name, as "The Florida Bar International Law Section" rather than the International Law Section of The Florida Bar; within Article VI, Section 1 (Committees – Standing Committees) streamlines and identifies the responsibilities of various standing committees.
- d. Legislative Committee
- i) Section & division legislative position requests
 - (1) Business Law Section
 - (a) Supports the replacement of word "files" and "filing" with "serves" and "serving" wherever they appear in subsection (1) of §768.79, the Offer of Judgment and Demand for Judgment Statute.
 - (b) Supports glitch amendments of a technical, corrective and clarifying nature to Florida Statutes, Chapter 607 re: Corporations and Chapter 608 re: Limited Liability Companies.
 - (c) Supports the creation of §702.55 F.S., providing for notice to homeowner in mortgage foreclosure action of possibility of relief under U. S. Bankruptcy Code.
 - (2) Family Law Section
 - (a) Supports legislation to create §61.075 (6)(a)(7) F.S. to clarify the burden of proof to overcome the gift presumption and require proof by a clear and convincing showing to demonstrate that real or personal property held in joint tenancy by the entities is marital property.
 - (b) Supports legislation to create a presumption in Florida Statutes Chapter 61 proceedings by the addition of §61.075 (6)(a)(6) F.S. to provide that personal property titled jointly by the parties as tenants by the entireties shall be presumed to be a marital asset. However, that presumption may be overcome by a challenging party who has the burden of proof to rebut that presumption by establishing that the personal property, in whole, or in part, is non-marital in nature.

- (c) Supports legislation to create §61.075(5) F.S. to provide trial courts the discretion to make interim partial equitable distribution awards when justified by extraordinary circumstances and upon a sworn motion setting forth such good cause.
 - (d) Supports legislation to allow the trial court to modify child support relative to military service members called into service.
 - (e) Supports legislation allowing trial courts to temporarily reduce, suspend or abate child support in temporary circumstances necessitating a reduction of support.
- (3) Public Interest Law Section
- (a) Supports adding “homelessness” as a protected category to Florida’s existing hate crimes law at § 775.085 F.S.
- (4) Real Property, Probate and Trust Law Section
- (a) Supports amendment of §739.102(8) F.S. to include the definition of “insolvent” solely for the purposes of the Florida Uniform Disclaimer of Property Interests Act.
 - (b) Supports the adoption of §689.28 F.S. to provide that transfer fee covenants recorded after effective date do not run with the title to real property and are not binding on successor owners, purchasers or mortgagees.
 - (c) Supports legislation to amend Chapter 765, Florida Statutes, to improve the law concerning advance directives and to integrate federal HIPPA privacy laws with Florida law.
 - (d) Supports legislation to amend §733.604 F.S. to treat inventories which are filed with the clerk of court in a probate proceeding in connection with the spousal elective share procedure the same as estate inventories in terms of not being subject to public inspection.
 - (e) Supports legislation to provide for alienation of plan benefits under the Florida Retirement System (§121.131 F.S. and §121.091 F.S.), Municipal Police Pensions (§185.25 F.S.) and Firefighter Pensions (§175.241 F.S.) in a dissolution proceeding and authorizing such alienation of benefits in a dissolution of marriage under §61.076 F.S.
 - (f) Supports legislation to (1) change the titles of §222.11 F.S. to clearly reflect that this statute applies to earnings and is not limited to “wages” (2) provide an expanded definition of “earnings” because the term “wages” is not the exclusive method of compensation and (3) add deferred compensation to the exemption statute.

8. Disciplinary Procedure Committee Report

Chair Andy Sasso reported that the committee recommended the approval of the following rule amendments on second reading:

- i) Rule 3-7.6(m) & (q) Procedures Before a Referee
Within subdivision (m), adds provision that the referee’s report and the records shall not be filed until disposition of a motion to assess costs or expiration of the time for filing such motion; within subdivision (q), adds 15-day timeframe from entry of referee’s report for the filing of a motion to assess costs if the report does not address the issue; clarifies that failure to move to assess costs when necessary, without good cause, constitutes a waiver; adds comment clarifying that provisions for the assessment of disciplinary costs before the Supreme Court are addressed in rule 3-7.7.
- ii) Rule 3-7.7(c)(7) Procedures Before Supreme Court of Florida
Within subdivision (c), adds new procedures re motions to tax costs, creating a 10-day timeframe from entry of the court’s order for filing such motion if not costs

were not otherwise addressed; allows 10 days for objection by the party from whom costs are sought; states that failure to timely object, without good cause, constitutes a waiver; upon timely objection or court direction allows for remand to the referee for supplemental report re costs and assessment; further allows a party to seek review of any supplemental report in the same manner as any other report.

- iii) Rule 3-7.11(d)(f) General Rules of Procedure [companion to 5-1.2(g)]
In connection with separate proposed amendments to rule 5-1.2, within subdivision (d) and (f), eliminates redundancy between the 2 rules and clarifies procedure for confronting failure to comply with subpoenas for trust account records.
- iv) Rule 5-1.2(g) Trust Accounting Records and Procedures [companion to 3-7.11(d)(f)]
In connection with separate proposed amendments to rule 3-7.11, within subdivision (g), deletes existing language and adds provision clarifying that a failure to comply with a subpoena for trust account records shall be considered as a matter of contempt, processed pursuant to rule 3-7.11(d) & (f).
- v) Rule 3-5.1(d) Generally (administration of public reprimands, see also SBP 15.92)
In connection with separate proposed amendments to Standing Board Policy 15.92, within subdivision (d), adds language stating the Bar's preference that all public reprimands should be administered by personal appearance of the respondent before the board of governors and adds language defining when a file is considered a disciplinary case.
- vi) SBP 15.92 Administration of Public Reprimands (See also 3-5.1(d))
In connection with separate proposed amendments to rule 3-5.1, new policy, stating the Bar's preference that all public reprimands should be administered by personal appearance of the respondent before the board of governors - companion policy to rule 3-5.1.

The board approved the amendments.

Sasso reported that the committee is considering the following items on **first reading**. Lori Holcomb, Director of Unlicensed Practice of Law, reported on rules 1-3.10(b), 10-6.3, 10-7.1 and 10-7.3.

- i) Rule 1-3.10(b) Appearance for Non-Florida Lawyer and a Florida Court
Within subdivision (b), allows a Florida resident who has a pending application for admission to The Florida Bar and who has not previously been denied admission to The Florida Bar to appear pro hac vice.
- ii) Rule 3-7.7(c)(6) Procedures Before the Supreme Court of Florida; Procedure for Review;
Judgment of Supreme Court of Florida (codifying authority for costs judgments; extending judgments to restitution and forfeiture of fees)
Within subdivision (c)(6), adds new provisions specifying that, where appropriate, the judgment from the Supreme Court shall indicate the party to whom costs are awarded, the persons to whom restitution is ordered, or the persons to whom a fee is ordered to be forfeited; also adds subdivision titles to address such new matters.
- iii) Rule 5-1.2(b) Trust Accounting Records and Procedures (original check requirement)
Within subdivision (b) re minimum trust account records, deletes the requirement that original canceled checks be maintained, and substitutes a legible copy requirement provided that such copies include all data contained in the original.
- iv) Rule 10-6.3 Recommendations and Disposition of Complaints
Changes order of sentences for clarity; clarifies role of the board of governors.

- v) Rule 10-7.1 Proceedings for Injunctive Relief
Two Proposals Under Consideration
Option 1
Summary: Within subdivision (d)(1), deletes provisions re imposition of a civil penalty not to exceed \$1000 per incident of UPL; adds within (d)(2), as an allowable cost, a litigation expense in an amount up to \$1000 per incident, to encompass litigation costs not otherwise specified; revises other affected subdivision entries as necessary; within (d)(3) adds a provision to allow the referee to consider testimony as well as documentary evidence when reviewing a restitution request; within subdivision (e)(2), deletes provision that court orders of restitution contain a requirement that the respondent provide to the Bar monthly reports of payment to the complainant, instead adding a new requirement that such orders specify that payment be sent to the Bar, payable to the complainant, and forwarded by the Bar to the complainant; further specifies that if the complainant cannot be located such restitution shall be returned to the respondent by the Bar.
Option 2
Summary: Within subdivision (c)(2), adds new requirement that, if civil penalties are requested, the referee's order of a case management conference shall include notice to respondent re respondent's burden to show an inability to pay such penalty; within subdivision (d)(3), deletes provision that states restitution shall be paid before costs, and adds provision to allow the referee to consider testimony as well as documentary evidence when reviewing a restitution request; creates new (d)(4) – civil penalty – requiring the referee's determination and report of the respondent's ability or inability to pay such penalty in unstipulated cases, confirming the respondent's burden to show inability via sworn affidavit, and specifying the application of statutory indigency criteria in the process; revises other affected subdivision entries as necessary; adds new (d)(6) – timing of payment – specifying that the order of payment in such cases is restitution, then costs, and then civil penalty; and within subdivision (e)(2) re Supreme Court review, adds new provisions specifying the Court's determination of whether civil penalties shall be awarded, that orders imposing restitution or civil penalties require their transmittal to the Bar – with restitution payable to the complainant and civil penalties payable to the Court – for forwarding by the Bar to those respective payees; further specifies that if the complainant cannot be located such restitution shall be returned to the respondent by the Bar.
- vi) Rule 10-7.3 Enforcement of Awards of Civil Penalty
New rule, authorizing The Florida Bar to conduct discovery in aid of execution if a respondent fails to timely pay a civil penalty; allows dissolution of the penalty by the court on motion of the Bar stating that the respondent is unable to pay; if discovery shows otherwise, allows the penalty to stand and authorizes the Bar to file a petition for indirect criminal contempt. NOTE -- This rule needs to be adopted only if option 2 of rule 10-7.1 is adopted.
- c. Report Informational Only – **Not Recommended/ No action by board.**
 - i) Rule 3-7.18 Expunging Records
New rule to provide guidelines for expunging of grievance records. Mr. Sasso reported that the DPC withdrew its earlier approval of q and its recommendation to adopt the proposed rule.
 - ii) Rule 4-3.8 Special Responsibilities of Prosecutors. Mr. Sasso reported that the DPC studied the rule and the referral of the court and determined that no further amendment was necessary at this time.

9. Communications Committee Report

Chair Richard Tanner reported that he had appointed a subcommittee to enhance the expanded member profile section of the Bar's website. Bar members will now be able to add any advance law degrees, all federal court admissions, and most significantly the practice area that identifies what the member wants the public to know. The number of practice areas to select from has been expanded from 32 to 110.

10. City, County & Local Government Law Section Report

The board received a report from Elizabeth Hernandez, Chair of the City, County & Local Government Law Section.

11. Audit Committee Report

Chair Dan DeCubellis reported that the Audit Committee had met with the managing partner of Carr, Riggs and Ingram CPAs, the auditing firm. The firm reported that there were no problems in the audit. The December 2007 Board packets should have a copy of the audit for each board member. DeCubellis told the board that emergency generators were being installed at the Bar's headquarters and the topic of information security was still being studied.

12. Budget Committee Report

Committee member Jesse Diner reported that the committee had reviewed the following BLSE policy on **first reading**:

a. BLSE Policy 2.04 Certification of Fees

Within subdivision (c), increases the annual fee for certification, from \$125 to \$150.

Diner told the board that the committee recommended the following budget amendments be approved.

- Member Outreach Committee – Disability Poll \$1,000 from Operating reserves
- Scanners and printer– Lawyer Reg./ ACAP \$14,900 from Equipment reserves
- Public Service – Statewide Pro Bono Coordinator \$50,000 from Fund Balance, unspent 2006-07 authority
- Lawyer Reg. – Disciplinary Sanctions on web \$29,611 from Operating reserves
- IS- Remote Data Backup Service \$11,200 from Operating reserves

The board approved the budget amendments.

13. Investment Committee Report

Chair Ian Comisky reported that as of September 30, 2007 the Bar's portfolio balance was \$33.3 million, up from \$32.7 million at the end of previous quarter. He reported that most of the increase was in the large cap and emerging markets portfolios.

14. Program Evaluation Committee

Chair Ervin Gonzalez reported that the committee reviewed the following BLSE policy.

a. BLSE 2.03(a) New Area Requests (number of members)

Provides that in order to be eligible for consideration, proposed areas of certification must demonstrate a commitment of no fewer than 75 members to apply for certification in the new area within three years of implementation.

Gonzalez reported that the policy required further study.

Gonzalez told the board that the committee recommends the approval of the following rule amendment and Standing Board Policy regarding the Elections Committee on **second reading**.

a. Rule 2-4.5 Nominations for President-elect

In connection with separate proposed amendments to Standing Board Policy 2.20,

deletes the second paragraph of subdivision (b) and all of subdivision (c) which contain specific time frames for campaigning for president-elect.

b. SBP 2.20 Election of President-elect

In connection with separate proposed amendments to Rule 2-4.5, rewrites and streamlines current policy to update various definitional terms, consensual restrictions on campaigning, and matters of Bar aid to candidates for president-elect; includes other non-substantive edits and revises existing subdivision entries as necessary.

The board approved the rule and policy.

Gonzalez reported that the committee was continuing to study the Certified Public Accountant/Lawyer Committee, as well as trying to find a solution to the Code and Rules of Evidence Committee's concerns about its influence with the legislature. Gonzalez told the board that in regards to evaluating the executive committee and strategic planning, the PEC voted in favor of adding DRC to the current membership of the executive committee. Finally, Gonzalez reported that the committee had preliminarily approved a submission from the Board of Legal Specialization and Education to allow certification in adoption law and education law.

15. Young Lawyers Division Report

Scott Atwood, President of the Young Lawyers Division reported that two of the things that the YLD focuses on are education and outreach. He said the YLD is attempting to involve sections that have an interest in basic skills courses, involving them in the relevant basic skills courses and inviting them to come in and distribute materials and solicit members. The YLD is also doing a complete review and overhaul of the practice with professionalism course. The class sizes have been cut in half and doubled the locations in the state. Atwood told the board that through the outreach program, the YLD has reached out to law schools. They were able to get into nearly every law school in the state for orientation. A member of the YLD board of governors spoke and let students know that the division is there and encourages the students to be active. The YLD is considering the creation a law school division. The YLD sponsors on campus lunch and learn programs at all 10 law schools.

Atwood reported that the YLD is the founding sponsor of a new minority mentoring picnic that is going to be starting in central Florida and will be participating in the Affiliate Outreach Conference at the Vinoy in St. Petersburg.

Atwood closed by telling the board that Congress had passed, and President Bush had signed a student loan forgiveness bill for public defenders and state attorneys.

16. Special Appointments

The board appointed Travis Trueblood to the Florida Rural Legal Services to fill the remainder of a 3-year term to expire December 31, 2007.

17. Appellate Rules Committee Report

Steve Brancock told the board that the committee recommended the approval of the following 4 appellate rule amendments.

- a. 9.130(a)(3)(C)(ii) - Allows appeals from nonfinal orders granting, modifying, dissolving, or refusing to grant, modify, or dissolve writs of replevin, garnishment or attachment.
- b. 9.130(a)(5) - Clarifies 9.130(a)(5) by referencing the right to immediate review of any authorized motion for relief from judgment rather than specifically identifying a particular rule.
- c. 9.140(c)(3) - Scrivener's change to correct cross-reference.
- d. 9.370 - Adds a new subdivision to allow potential amici, when a party has invoked the discretionary jurisdiction of the Supreme Court, to file a notice of intent to file an amicus brief on the merits should the court accept jurisdiction.

The board approved the amendments 34-0,

18. 2006 Survey of Florida Lawyers with Disabilities

The board received a report from Sharon Langer on a 2006 survey of Florida lawyers with disabilities. She reported that the Member Outreach Committee would be studying the survey results to find ways to reach more of Florida's disabled lawyers.

19. Annual Meeting Committee Report

Chair Scott Hawkins gave the board a brief report on the planning and fund raising activities concerning The Florida Bar's Annual meeting to be held in June 2008 in Boca Raton.

20. Special Committee on Diversity Report

Chair Eugene Pettis reported that the committee had been looking at the 2004 report that came out of the diversity symposium to gauge the success of the implementation of the recommendations. The committee is considering moving the annual symposium from the spring, to the Bar's Annual meeting to increase participation and broaden the audience.

21. Board Review Committee on Professional Ethics

- a. PROPOSED CHANGES TO ATTORNEY ADVERTISING RULES
This item was deferred due to time constraints at the Board Review Committee on Professional Ethics meeting.
- b. PROPOSED CHANGES TO FLORIDA BAR PROCEDURES FOR RULING ON QUESTIONS OF ETHICS AND FLORIDA BAR PROCEDURES FOR ISSUING ADVISORY OPINIONS RELATING TO LAWYER ADVERTISING OR SOLICITATION
At its August 16, 2007 meeting, the Board Review Committee on Professional Ethics voted 6-0 to approve proposed changes to The Florida Bar Procedures for Ruling on Questions of Ethics and The Florida Bar Procedures of Issuing Advisory Opinions Relating to Lawyer Advertising or Solicitation to require that The Florida Bar give official notice inviting member comment at least 30 days before a meeting at which an existing formal advisory ethics or advertising opinion may be withdrawn. Vice-chair Lawrence E. Sellers reported the recommendation to the Board of Governors as first reading on August 17, 2007. The Rules Committee voted 6-0 to approve the proposed changes via conference call on September 18, 2007. The Disciplinary Procedures Committee voted 8-0 to approve the changes on October 4, 2007. The Board of Governors voted to approve the proposed changes as second and final reading by voice vote.
- c. DISCUSSION OF LAWYER TO LAWYER ADVERTISING
The chair reported that the Board Review Committee on Professional Ethics is studying possible changes to the attorney advertising rules to address the issue of communications between lawyers, given the Supreme Court of Florida's opinion in re: Amendments to the Rules Regulating the Florida Bar - Advertising, 31 Fla. L. Weekly S767 (Fla. Nov. 2, 2006), including strengthening arguments for exempting such communications from application of the rules.
- d. 5b(i)ADVERTISING APPEAL 07-02227 SECTIONS 1 AND 4. – **Items removed from the consent calendar.**
Advertising Appeal 07-02227 concerns application of numerous attorney advertising rules to a direct mail advertisement.
5b(i)(1) The Board Review Committee on Professional Ethics voted 3-1 to reverse the Standing Committee on Advertising, determining that the trade name and domain name of the filer, Ticket Wizards LLC and www.ticketwizards.org, do not promise results in violation of Rule 4-7.2(c)(1)(G). The Board of Governors voted to approve the Board Review Committee on Professional Ethics recommendation.
5b(i)(4) The Board Review Committee on Professional Ethics voted 3-2 to reverse the Standing Committee on Advertising, determining that illustrations of a wizard are not false, misleading or manipulative and are therefore permissible under Rule 4-7.2(c)(3). The Board of Governors voted to approve the Board Review Committee on Professional Ethics recommendation.
- e. 5b(ii) ADVERTISING APPEAL 07-01801- **Item removed from the consent calendar.**
Advertising Appeal 07-01801 concerns application of Rule 4-7.2(c)(1)(G), prohibiting statements that promise results to a newspaper advertisement. The Board Review Committee on Professional Ethics voted 4-0 to reverse the Standing Committee on Advertising, determining that the statement "Make Your One Shot At Compensation Count" does not promise results under Rule 4-7.2(c)(1)(G) and is therefore permissible. The Board of Governors voted to approve the Board Review Committee on Professional

- Ethics recommendation.
- f. 5b(iv) ADVERTISING APPEAL 07-01829, 07-01830, 07-01831, 07-01833, 07-01834, 07-01835 – **Item removed from the consent calendar.** Advertising Appeal 07-01829, 07-01830, 07-01831, 07-01833, 07-01834, and 07-01835 concerns application of Rule 4-7.5(b)(2)(B), requiring that television advertisements provide an oral disclosure that a nonlawyer spokesperson is being used. This item was removed from the consent calendar at the request of Board of Governors member Laird A. Lile. The Board Review Committee on Professional Ethics voted 4-0 to affirm the Standing Committee on Advertising, determining that the television advertisements, in which an announcer is used to introduce the attorney at the beginning of the advertisement and to provide the attorney's telephone number and suggest that viewers call at the end of the advertisement, requires an oral disclosure that a nonlawyer spokesperson is being used required under Rule 4-7.5(b)(2)(B). The Board of Governors voted 29-9 to approve the Board Review Committee on Professional Ethics recommendation.
- The chair informed the Board of Governors that the Standing Committee on Advertising is drafting proposed changes to Rule 4-7.5(b)(2)(B).

22. Judicial Ethics Advisory Committee Report

Judge Emerson Thompson, Jr. came to the board with a report on a proposal from chief circuit judges to amend Canons 4 and 5 to allow judges to raise funds for selected charitable, educational, religious and civic groups by solicitation. Thompson gave examples of past situations as to why this is not a good idea. He told the board that the Judicial Ethics Advisory Committee had submitted a report to the Supreme Court opposing the changes. The issue was referred to the Bar Executive Committee for study.

23. Legislation Committee Report

Chair Jesse Diner reported that the legislation committee had lengthy discussions concerning the Out of State Division's request to elevate, to a Florida Bar-level position, its legislative position in support of statutory changes to allow non-resident members of The Florida to serve as personal representatives. Diner told the board that the committee had requested the opinion of outside counsel Barry Richard as to whether the issue was one which The Florida Bar would be allowed to lobby under *The Florida Bar Re Schwarz*, 552 So. 2d 1094 (1989). Diner said that Richard responded that the issue was outside the parameters set by *Schwarz* and other authorities. Diner told the board that while Richard's opinion weighed on the committee recommendation, it wasn't the only factor. The committee determined that it did not believe that elevating the Out of State Division legislative position to a Florida Bar position was the appropriate action to take. The committee recommended that the board take no action on the Division's request. The board took no action.

Diner told the board that the committee recommended the approval of the Workers' Compensation Section legislative consultant contract with Fausto Gomez. The board approved the contract.

24. Board of Legal Specialization and Education Report

Board liaison Ben Kuehne reported on the following items on **first reading**.

- i) BLSE Policy 2.02 Areas of Certification
Within subdivision (b) adds state and federal government and administrative practice and intellectual property to the approved areas of certification; adds new subdivision (c), to ensure Bar sections, divisions, and related substantive committees are afforded the opportunity to offer comment on proposed amendments to certification standards before referral to the BLSE, Program Evaluation Committee, and the Board of Governors.
- ii) BLSE Policy 2.05 Applications for Certification
Within subdivision (e), assigns intellectual property law and state and federal government and administrative practice to the second application filing cycle.

- iii) BLSE Policy 2.08 Peer Review
Within subdivision (3), codifies practice of excluding members of the Supreme Court from the solicitation of peer review for certification applicants.
- iv) BLSE Policy 2.10 Approved Continuing Legal Education
Within new subdivision (b), codifies practice of awarding CLE credit for grade review panel service, up to 5 hours of credit; redesignates other affected entries as necessary.
- v) BLSE Policy 2.13 Applicant Review Process for Certification or Recertification
Within subdivision (e), modifies language to allow certification committees discretion in determining if supplemental documentation submitted by an applicant warrants or makes appropriate further investigation of the applicant's qualifications for certification or recertification.
- vi) BLSE Policy 5.01 Course Approval Administration
Within subdivision (j), alters the maximum accreditation period of a course with multiple dates and locations, from 1 year, to 18 months; within subdivision (k), adds CDs and DVDs as credit-eligible media for CLE courses.
- vii) BLSE Policy 5.04 Course and Credit Approval
Deletes subdivision (b) and related language elsewhere re maximum credit hours per CLE cycle in law office management and economics, computer training, ethics, substance abuse, self improvement, stress management, mental illness, and other non-law courses; redesignates other affected entries as necessary; and adds new language that further defines ethics and substance abuse for application of the CLE ethics requirement.
- viii) Proposed BLSE Policy 5.06 Accreditation Revocation
New policy, to provide the BLSE authority to rescind CLE credit if the course content or speaker credentials do not reflect the accreditation standards set forth by BLSE.
- ix) BLSE Policy 5.07 Complimentary CLE (formally 5.06 Complimentary Audiotapes)
Changes policy number and revises title, to read "5.07 – Complimentary CLE" and adds new language that would require The Florida Bar to provide 10 credit hours of CLE materials to each county law library per year, as well as to out-of-state bar associations that meet required criteria.

25. Time and Place of Next Meeting

The board will next meet December 12-15, 2007 at the Ritz Carlton in Amelia Island Florida.

There being no further business to discuss, the board adjourned at 3:00 PM

Respectfully submitted,

Dana M. Watson

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