

The Florida Bar
December 8, 2006
Ritz Carlton Resort
Key Biscayne, 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, December 8, 2006, in Key Biscayne, Florida, with President Henry M. Coxe presiding.

1. Roll Call

Henry M. Coxe, III, President
Francisco R. Angones, President-elect
Ross M. Goodman, First Judicial Circuit
Lawrence E. Sellers, Jr., Second Judicial Circuit
Dominic M. Caparello, 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
Murray B. Silverstein, Sixth Judicial Circuit
Charles Chobee Ebbets, Seventh Judicial Circuit
Carl B. Schwait, Eighth Judicial Circuit
Daniel L. DeCubellis, Ninth Judicial Circuit
Warren W. Lindsey, Ninth 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
Sharon L. Langer, Eleventh Judicial Circuit
Benedict P. Kuehne, Eleventh Judicial Circuit
Steven Chaykin, Eleventh Judicial Circuit
Timon V. Sullivan, Thirteenth Judicial Circuit
William Kalish, Thirteenth Judicial Circuit
Gwynne Alice Young, Thirteenth Judicial Circuit
Clifford W. Sanborn, Fourteenth Judicial Circuit
John G. White, III, 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
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
Harold G. Melville, Nineteenth Judicial Circuit
Laird A. Lile, Twentieth Judicial Circuit
A. Lawrence (Larry) Ringers, Twentieth Judicial Circuit
Richard Arthur Tanner, Out-of-State
Ian M. Comisky, Out-of-State
Gary J. Leppla, Out-of-State
Brian D. Burgoon, Out-of-State
John M. Stewart, YLD President

Scott Atwood, YLD President-elect
Solomon L. Badger, III, Public Member
J. Blair Culpepper, Public Member

Board members absent:

Mayanne Downs, Ninth Judicial Circuit
Robert M. Brush, Tenth Judicial Circuit
Kimberly A. Bald, Twelfth Judicial Circuit
Gregory Coleman, Fifteenth Judicial Circuit
Nancy W. Gregoire, Seventeenth Judicial Circuit

Staff attending the meeting:

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

2. Guests

Bob Bardo, Cuban American Bar Association Board of Directors
John Bradley, Chair of the Entertainment, Arts, & Sports Law Section
Tony Castro, Cuban American Bar Association Board of Directors
Coral Lopez-Castro, President of the Cuban American Bar Association
John Cardillo, Past Board of Governor member
Beatrice Cazeau, President of the Haitian American Bar Association
Abby Cinnamon, Dade County President of FAWL
Reginald Clyne, Chair of the Equal Opportunities Law Section
Michael Cohen, Executive Director of Florida Lawyers Assistance
Jimmy Cunningham, President, Virgil Hawkins Florida Chapter of the National Bar Association
Jane Curran, Executive Director Florida Bar Foundation
Judge Jimmy Fensom, Fourteenth Judicial Circuit
Elizabeth M. Hernandez, President-elect of the Cuban American Bar Association
Rob Hurraine, President of the Wilke D. Ferguson Bar Association
Sherry Johnson, Florida Association for Women Lawyers
Rohan Kelly, Real Property, Probate and Trust Law Section
Manuel Garcia-Linares, Cuban American Bar Association representative
Carlos Martinez, Legal Needs of Children Committee
John Merriman, President-elect of Dade County Bar Association
Steve Metz, Chief Legislative Counsel
Marlene Quintana, President-elect designate of Cuban American Bar Association
Hector Revera, Puerto Rican Bar Association
Matthew J. Ridgely, Executive Director Dade County Bar Association
Luis Shriver, Cuban American Bar Association Board of Directors
Alice Som, Asian Pacific Bar Association
Erica Wright, President of the Gwen S. Cherry Bar Association

3. Invocation and Pledge of Allegiance

The Invocation and Pledge of Allegiance were led by Sharon Langer.

4. Non-roll call Grievance Agenda Items

Co-chair David Rothman reported that the only non-roll call grievance agenda items were numbers 13, 14, and 25.

Co-chair Grier Wells reported that the Client Security Fund items were numbers 2, 3, 5, 7, 8, 13, and 16.

5. Non-roll call Advertising Appeal Agenda Items

Chair Larry Ringers reported that the only advertising appeal agenda non-roll call items were numbers 5(b) (1), (2), (3) and (6).

6. Approval of Minutes- Approved

- a. Regular Minutes, September 29, 2006 meeting
- b. Grievance Minutes, September 29, 2006 meeting
- c. Summary of Executive Action taken
 - 1) October 4, 2006BLS & RPPTL Section amicus briefs
 - 2) October 5, 2006 new certification committees' membership
 - 3) October 9, 2006 Fla.R.Jud.Admin.2.140(b)(2) &UPL circuit committee nominations
 - 4) October 24, 2006 Juv. Ct Rules/Probate Rules fast-track/Criminal Proc Rules
 - 5) October 13, 2006 RPPTL Section amicus curiae

8. Consent Calendar – Approved

The following items were **approved** by a voice vote:

- a. UPL Circuit Committees
 - 1) Nomination of Standing Committee Member
Herbert Milstein, Public Member
 - 2) Nomination of Circuit Committee Members: 3rd, 9th, 11th and 13th circuits
Joel F. Foreman, Attorney member, Third Judicial Circuit
John Stump, Attorney Member, Ninth Judicial Circuit
Jose A. Ortiz, Attorney Member, Eleventh Judicial Circuit
Stanley I. Foodman, Public Member, Eleventh Judicial Circuit
Jaime Schoolnik, Public Member, Thirteenth Judicial Circuit
- b. Board Review Committee on Professional Ethics
 - 1) Advertising Appeals 06-00517, 06-00522, 06-00524, 06-00525, 06-00527, 06-02328, 06-02329, 07-00178, 07-00179, 07-00180, 07-00181, 07-00183, 07-00185, 07-00186, 07-00187, 07-00188, 07-00189, 07-00192, 07-00196, 07-00197, 07-00198, and 07-00200
These advertising appeals concern application of Rules 4-7.2(b)(1)(B) and 4-7.2(b)(3), prohibiting statements that are likely to create an unjustified expectation about results the lawyer can achieve and statements that characterize the quality of legal services. Staff rendered an opinion on August 8, 2006, that the phrase "legal firepower when you need it most" was a statement that characterized the quality of legal services, in violation of Rule 4-7.2(b)(3). The staff opinion acknowledged that the phrase had been used in an advertisement that had previously been approved by staff. The filer then revised the advertisements, and staff rendered an opinion on September 15, 2006 that the phrase "Protecting you and your family for 25 years" is likely to create an unjustified expectation about results the lawyer can achieve, in violation of rule 4-7.2(b)(1)(B). The Standing Committee on Advertising upheld staff's opinions on September 15, 2006 and October 17, 2006. The attorney subsequently requested Board of Governors review.
 - A. The Board Review Committee on Professional Ethics voted 5-0 to affirm the Standing Committee on Advertising decision that the phrase "legal firepower when you need it most" characterizes the quality of the firm's legal services, in violation of Rule 4-7.2(b)(3). The board voted to approve the Board Review Committee on Professional Ethics recommendation on the consent calendar.
 - B. The Board Review Committee on Professional Ethics voted 3-2 to affirm the Standing

Committee on Advertising decision that the phrase "Protecting you and your family for 25 years" is likely to create an unjustified expectation about results the lawyer can achieve, in violation of rule 4-7.2(b)(1)(B).

The board voted to approve the Board Review Committee on Professional Ethics recommendation on the consent calendar.

2) 5(b)(5) ADVERTISING APPEALS 06-02498 and 06-02499

Advertising Appeals 06-02498 and 06-02499 concern application of Rule 4-7.2(b)(4), prohibiting visual portrayals that are deceptive, misleading or manipulative. Staff rendered an opinion on June 12, 2006, that a television advertisement contained a manipulative portrayal of a close-up of a doll riding in a toy convertible, a remote-controlled big wheel truck running into the convertible, followed by a girl picking up and hugging the doll then smiling, in violation of Rule 4-7.2(b)(4). Staff rendered an opinion on July 12, 2006 that a television advertisement contained a manipulative portrayal of toy race cars crashing into each other on a toy race track followed by a boy picking up one of the cars, in violation of Rule 4-7.2(b)(4). The Standing Committee on Advertising upheld staff's opinion on August 15, 2006. The attorney subsequently requested Board of Governors review.

A. The Board Review Committee on Professional Ethics voted 5-0 to affirm the Standing Committee on Advertising decision that the portrayal of a close-up of a doll riding in a toy convertible, a remote-controlled big wheel truck running into the convertible, followed by a girl picking up and hugging the doll then smiling is a manipulative portrayal in violation of Rule 4-7.2(b)(4).

The board voted to approve the Board Review Committee on Professional Ethics recommendation on the consent calendar.

B. The Board Review Committee on Professional Ethics voted 5-0 to affirm the Standing Committee on Advertising decision that the portrayal of toy race cars crashing into each other on a toy race track followed by a boy picking up one of the cars is a manipulative portrayal in violation of Rule 4-7.2(b)(4).

The board voted to approve the Board Review Committee on Professional Ethics recommendation on the consent calendar.

c. Rules, Bylaws & Policies

1) Rule 4-3.3 Candor Toward The Tribunal [2 components - comment & reorganization (Prof. Ethics Committee)]

Rearranges rule to more closely conform to ABA Model Rule -- within subdivision (a)(1), adds requirement that a lawyer correct any false statement of material fact or law previously made to the tribunal by the lawyer; within subdivision (a)(4), clarifies the lawyer's obligation regarding offering false testimony; adds new subdivisions (b) and (d) to clarify criminal or fraudulent conduct and the extent of the lawyer's duties; within commentary adds language regarding application of the rule to ancillary proceedings and presenting false evidence, and otherwise strengthens rationale for the rule.

2) Subchapter 6-10 Continuing Legal Education Requirement Rule (BLSE)

a) Rule 6-10.3 Minimum Continuing Legal Education Standards

[2 components - 1 from BLSE and 1 from Equal Opp. Law (bias elimination)]
Within subdivision (b), adds "bias elimination" to the list of approved CLE topics; within subdivision (e), clarifies that approved courses of other bars must still meet criteria for accreditation per policies pursuant to this rule; includes other edits consistent with controlling editorial protocols without substantive effect.

b) Rule 6-10.4 Reporting Requirements

Within subdivision (b), changes verbiage re assignment of CLE reporting cycles, from "as set forth in the rules" to "as assigned by The Florida Bar"; also within subdivisions (a) and (b) re required reports and time for filing.

c) Rule 6-10.5 Delinquency and Appeal

Within subdivision (a) re delinquency, adds reference to rule 1-3.4(a) re CLER delinquency; within subdivision (c), clarifies that appeal of a denial of certification must be by petition for review to the Supreme Court in accordance with

- Fla.R.App.P. 9.100.
- d) Rule 6-10.6 Reinstatement
Streamlines verbiage and adds reference to rule 1-3.7 which governs reinstatement to membership.
- 3) Subchapter 6-22 Standards for Certification of a Board Certified Antitrust and Trade
 - a) Rule 6-22.1 Antitrust and Trade Regulation; Generally
Adds new language to incorporate criteria of "character, ethics and reputation for professionalism".
 - b) Rule 6-22.3 Antitrust and Trade Regulation; Minimum Standards
Within subsection (c) re education, revises and streamlines language consistent with committee and BLSE policies.
 - c) Rule 6-22.4 Antitrust and Trade Regulation; Recertification
Amplifies preamble to include 5-year reference; within subdivision (a), eliminates redundant language; within subdivision (b), eliminates redundant language, along with requirement for samples of memoranda or briefs; within subdivision (d), streamlines and simplifies language; within subdivision (e), adds reference to note specific provisions waived for an applicant certified 14 years or more.
 - 4) Subchapter 10-7 Proceedings Before A Referee (UPL)
 - a) Rule 10-7.1 Proceedings for Injunctive Relief
Adds new subdivision (e) to define the record in such proceedings; clarifies the roles of referee and bar counsel in preparation and filing of the record; provides a mechanism for review of a referee's denial of a motion to supplement or remove items from the record; revises other subdivision entries as necessary.
 - b) Rule 10-7.2 Proceedings for Indirect Criminal Contempt
Adds new subdivision (e) to define the record in such proceedings; clarifies the roles of referee and bar counsel in preparation and filing of the record; provides a mechanism for review of a referee's denial of a motion to supplement or remove items from the record; revises other subdivision entries as necessary.
 - 5) General Practice, Solo, and Small Firm Section Bylaws
Within Article III, Section 4(d) (Officers – Term of Office - Chair Emeritus) adds provision authorizing immediate past chair to remain on executive committee for 1 year following service, and thereafter in chair emeritus status further serving as chair emeritus liaison to the council for 1 additional year; specifies duties of chair emeritus liaison and other rights of continued council membership by past chairs following service as chair emeritus liaison.
 - 6) SBP 6.31 Distribution of Proceeds (Budget Committee & Council of Sections)
Within subdivisions (a)(2) and (b)(2), adds other electronic media as means for delivery of CLE and inclusion in the calculation of CLE proceeds; revises subdivision titles accordingly; also within subdivision (b)(2), changes the Young Lawyers Division share of aftermarket sales for the basic course series, from 12.5% to a percentage split equal to the percentage split received for other CLE programs.
- d. Legislation Committee review
- 1) New section legislative position requests for the 2006-2008 biennium
 - a) Business Law Section
 - i. Supports legislation to update or modernize the assignment for benefit of creditors in Chapter 727, Florida Statutes.
 - b) Real Property, Probate and Trust Law Section
 - i. Supports legislation which codifies the common law and makes enforceable an arbitration clause in a will or trust requiring beneficiaries, a fiduciary, or any combination thereof, to resolve disputes by arbitration other than the validity of all or a part of a will or trust.
 - ii. Supports the creation of §733.620 F. S. to permit the testator of a will to provide for the exculpation from liability of a personal representative in the same manner as a settler of a trust can provide for the exculpation of a trustee in a trust.

- iii. Supports the amendment of § 627.404 F. S. to make explicit the requirement of an insurable interest, detail those who may have an insurable interest in the life of another, clearly require the insured's consent to the purchase of a policy of insurance by another, and address the liability of the insurer in the absence of the necessary insurable interest.
- iv. Support technical amendments to the Florida Trust Code Florida Statutes Chapter 736 and related provisions.
- v. Supports amendments to § 689.071 F. S. to conform the cross-references that already appeared in the Florida Land Trust Act to the new Florida Trust Code.
- vi. Supports legislation requiring the distinguishability of limited liability company names.
- vii. Supports amendments to §§701.04 and 701.041 F. S. in order to clarify ambiguities in the current statutes and remove the requirement that a premium be promulgated and charged for the preparation, execution and recording of the affidavit of release contemplated by §701.041 F. S.

c) Tax Law Section

- i. Supports amendments to §213.015 F. S. to delete the contingency in the current bill of rights and direct the Department of Revenue to implement all listed taxpayers' rights through rulemaking.
- ii. Supports amendments to the taxpayer bill of rights to require the Department of Revenue, when auditing taxpayers, to look for both overpayments and underpayments and specifically require that the Department advise taxpayers of any overpayments and explain the taxpayer's rights to recover the same by offset, refund or otherwise.
- iii. Supports amendments to the taxpayer bill of rights and appropriate refund statutes to allow purchasers to apply for and receive sales tax refunds directly from the Department. The Department would be required to look solely to the dealer, as its collection agent, for verification of remittance of taxes to the State.
- iv. Supports legislation to provide for accrual of interest from receipt of refund application with proviso that no interest is payable if the refund is paid within 90 days of filing of the refund application. Legislation also conforms handling of the other refund applications to current law governing corporate income tax overpayments, and changes interest rate payable on refunds paid by Department without audit and later determined to have been paid in error.
- v. Supports legislation to simplify the venue statute for taxpayer actions to permit the filing of an action either in Leon County or in any other county in the State where the taxpayer is a resident or has an office, store or other fixed business location.
- vi. Supports amendments to the taxpayers' bill of rights to require that the Department of Revenue maintain an index of judicial decisions and maintain this index in a form which taxpayers can utilize.
- vii. Supports legislation to allow taxpayers to submit evidence of the exempt status of a sale in litigation under Chapter 72 or Chapter 120, Florida Statutes, even if that evidence was not previously submitted to the Department of Revenue during audit or any informal protest proceeding.
- viii. Supports the elimination of the requirement under § 198.113 F. S., of a personal representative of an estate to file a Florida estate tax return with the Department of Revenue if a state death tax credit is not allowable pursuant to the Code, as amended, from time to time as of the decedent's date of death. Also supports the elimination of the requirement under §198.13 F. S., of an individual who would otherwise be responsible for filing a return reporting a skipping transfer with the Department of Revenue if a state generation –skipping transfer tax credit is not allowable pursuant to the Code as of a decedent's date of death.
- ix. Supports the elimination of the existing requirement for a property owner's consent to a tax assessment lawsuit where a non-owner is responsible for the tax.

- x. Supports legislation which will allow the use of evidence at a value adjustment board hearing whether or not the evidence was previously produced at the request of either the taxpayer or property appraiser.
 - xi. Supports legislation which will require that the property appraiser comply with uniform standards of professional appraisal practice in considering statutory valuation factors. If the property appraiser does not consider the statutory factors, then the burden of proof should shift to the property appraiser to show that the appraised value is not in excess of fair value by the preponderance of evidence. If the property appraiser does consider the statutory valuation factors, then require that the taxpayer show value in excess of fair value by a preponderance of evidence.
 - xii. Supports legislation which will require that the property appraisers treat SMLLCs as disregarded entities for Florida property tax purposes when determining whether an entity is a section 501(c)(3) entity.
- 2) Section Legislative Consultant
- a) Workers' Compensation Section – Fausto Gomez

9. Rules Committee Report

Chair Brian Burgoon reported that the rules committee had met three times since the last board of governors meeting to prepare for a submission of rule amendments to the Florida Supreme Court. He told the board that the committee had heard from the board disciplinary procedures committee (DPC) concerning Rule 3-5.4. DPC told the Rules committee that it had voted to withdraw the rule from the submission. The Rules committee agreed with DPC. The rules committee recommendation was to request that the Supreme Court refer the proposal back to the Professionalism commission. The board concurred with the committee recommendation.

10. Investment Committee Report

Chair Ian Comisky reported that the Bar's investment portfolio had grown by \$1.2 million over the past 60 days. He reminded the board that it had approved the concept of moving up to 20% of the Bar portfolio to alternative investments in order to further diversify the portfolio. The committee met with Bagwell to discuss the options. The committee determined that it won't be going into managed futures or hedge funds. Comisky said that the committee would have a formal proposal to present at the next board of governors meeting. There were no board votes taken.

11. Board Review Committee on Professional Ethics Report

Chair Larry Ringers reported that the board review committee on professional ethics met and discussed the following items.

1) 5(b)(1) ADVERTISING APPEAL 06-02610

Advertising Appeal 06-02610 concerns the issue of whether an Internet banner ad must be filed for review. The filer is a lawyer who is the editor and publisher of the S2 Report, which is an e-newsletter providing business news to subscribers. Subscribers sign up to receive the S2 report on the S2 website and are periodically e-mailed the S2 Report. The filer states that the S2 Report is a separate corporation that is not affiliated with the filer's law firm, other than the fact that the filer owns both entities. On the S2 Report e-mail is a banner ad for the filer's law firm, which includes the firm name and the phrase "Ambition is Good" with a link to the law firm's website. Staff rendered an opinion on June 28, 2006, that the banner advertisement was required to be filed for review and comply with Rule 4-7.2. Staff determined that the advertisement was not exempt from filing, because it contained the statement "Ambition is GOOD" which is not information listed in Rule 4-7.2(c)(12). Staff also determined that the filer failed to include a geographic disclosure. The Standing Committee on Advertising upheld staff's opinion on August 15, 2006. The attorney subsequently requested Board of Governors review on the issue of whether the banner advertisement must be filed for review. The Board Review Committee on Professional Ethics voted 3-2 to reverse the Standing Committee on Advertising decision on the basis that the phrase "Ambition is Good" is salutary language as listed in Rule 4-

7.2(c)(12)(J) after the filer informed the Board Review Committee on Professional Ethics that the phrase "Ambition is Good" is the motto of the S2 Report e-newsletter. The Board Review Committee on Professional Ethics reported as an informational item that it voted 4-1 that the banner advertisement was not information on request. The board voted to **approve** the Board Review Committee on Professional Ethics recommendation.

2) 5(b)(2) ADVERTISING APPEALS 06-01531, 06-01532, 06-01534, 06-01535, 06-01536, and 06-02599

Advertising Appeals 06-01531, 06-01532, 06-01534, 06-01535, 06-01536, and 06-02599 concern application of the rule prohibiting misleading information. Based on guidance from the Standing Committee on advertising, staff rendered opinions that television advertisements using the telephone numbers 1-800-Justice and 1-800-Justicia were misleading. The telephone numbers 1-800-Justice and 1-800-Justicia are owned by a Missouri company that sells the numbers to lawyers practicing in different law firms. Each purchasing lawyer is given exclusive use of the 1-800-Justice telephone number in his or her specified geographic region. The opinion indicated that use of the 1-800-Justice and 1-800-Justicia telephone numbers was misleading, because it implies that all of the lawyers who had purchased and were advertising the telephone number practice in a single law firm, and the entire practice of the sale of the common mnemonic telephone number constituted a misleading franchise in violation of Rule 4-7.2(b)(1)(A). The Standing Committee on Advertising upheld staff's opinion on September 15, 2006. The attorney subsequently requested Board of Governors review. The Board Review Committee on Professional Ethics voted 4-0 to reverse the Standing Committee on Advertising decision, finding that use of the toll free numbers 1-800-Justice and 1-800-Justicia is not misleading, although the telephone numbers are owned and sold by a Missouri company to different lawyers for exclusive use in specified geographic areas. The board voted to **approve** the Board Review Committee on Professional Ethics recommendation. Board member Pettis recused himself from the discussion and vote at both the Board Review Committee on Professional Ethics and board meetings.

3) 5(b)(3) ADVERTISING APPEALS 06-01251 and 06-01274

Advertising Appeals 06-01251 and 06-01274 concern application of the rule prohibiting misleading statements or information in advertisements. Based on a prior decision from the Standing Committee on Advertising relating to another firm's advertisement, staff rendered opinions that two television advertisements using the telephone number 1-800-Justice were misleading. The telephone number 1-800-Justice is owned by a Missouri company that sells the number to lawyers practicing in different law firms. Each purchasing lawyer is given exclusive use of the 1-800-Justice telephone number in his or her specified geographic region. The opinion indicated that use of the 1-800-Justice telephone number was misleading, because it implies that all of the lawyers who had purchased and were advertising the telephone number practice in a single law firm, and the entire practice of the sale of the common mnemonic telephone number constituted a misleading franchise in violation of Rule 4-7.2(b)(1)(A). The Standing Committee on Advertising upheld staff's opinion on September 15, 2006. The attorney subsequently requested Board of Governors review. The Board Review Committee on Professional Ethics voted 4-0 to reverse the Standing Committee on Advertising decision, finding that use of the toll free number 1-800-Justice is not misleading, although the telephone numbers are owned and sold by a Missouri company to different lawyers for exclusive use in specified geographic areas. The board voted to **approve** the Board Review Committee on Professional Ethics recommendation. Board member Pettis recused himself from the discussion and vote at both the Board Review Committee on Professional Ethics and board meetings.

4) 5(b)(6) ADVERTISING APPEALS 07-00481 and 07-00482

Advertising Appeals 07-00481 and 07-00482 concern application of Rule 4-7.2(b)(4), prohibiting visual portrayals that are false, misleading or manipulative. Based on prior Board of Governors and Standing Committee on Advertising decisions, staff rendered an opinion on September 15, 2006, that film clips of lawyers in the law firm's mock courtroom [file number 07-00481] and of the law firm's mock courtroom with a person on

- a) Subchapter 4-1 Client-Lawyer Relationship
 - i. Rule 4-1.8 Conflict of Interest; Prohibited and Other Transactions
Within comment re gifts to lawyers, clarifies that "relatives" specified in subdivision (c) of the rule includes relatives by both blood and marriage; within comment re financial assistance, clarifies that an attorney may advance costs for a client's "diagnostic" medical examination used for litigation purposes.
 - ii. Rule 4-1.9 Conflict of Interest; Former Client
Within subdivisions (b) and (c), adds provisions to clarify that a lawyer is prohibited from disclosing information relating to a former client's representation unless either permitted or required under the rules of professional conduct.
 - iii. Rule 4-1.18 Duties of Prospective Client
Within comment, corrects reference to "paragraph" (d)(2)(i) of the rule to read "subdivision" (d)(2)(i).
- b) Rule 4-2.4 Lawyer Serving as Third Party Neutral
In connection with companion amendment of rule 4-3.3, deletes language within comment regarding lawyer conduct in representing clients before a third-party neutral and whether third-party neutrals are considered a tribunal for purposes of rule 4-3.3.

The board concurred with the committee recommendation and approved the rule amendments to Chapter 4, Rules of Professional Conduct.

b. Items on **first reading**-

- 1) Rule 3-7.17 Designation of Vexatious Litigant and Limitation of Filings
New rule, proposing a procedure for the bar to petition for -- or the court on its own motion to issue -- an order prohibiting vexatious conduct and/or limiting other activities of those engaged in such behavior.
- 2) Rule 4-7.2 - Communications Concerning a Lawyer's Services (use of flag) – **the committee requested a waiver of second reading which the board conditionally approved pending official notice in Bar News.**
Within subdivision (b), clarifies that the content of an advertisement or communication must be permitted by law.

Sasso reported that the committee discussed Rule 4-3.8 Special Responsibilities of Prosecutors and voted 8-0 to refer the rule to the Attorney Client Task Force.

16. Florida Lawyers Assistance Program

The board received a report from Michael Cohen, Executive Director of Florida Lawyers Assistance.

17. Real Property, Probate & Trust Law Section Report

The board received a report from Rohan Kelly, chair of the Real Property, Probate & Trust Law section.

18. Entertainment, Arts & Sports Law Section Report

The board received a report from John Bradley, chair of the Entertainment, Arts & Sports Law section.

19. Public Interest Law Section Report

The board received a report from Tamara Gray, chair of the Public Interest Law section.

20. Equal Opportunity Law Section Report

The board received a report from Reginald Clyne, chair of the Equal Opportunity Law section. The following amended section bylaws are on first reading.

Within Article IV, Section 4.3.1 (Executive Council – Composition), adds a provision allowing committee vice-chairs a seat on the executive council; also within Article IV, adds new Section 4.4 to provide an attendance requirement for members of executive council; within Article V (Committees), adds new Section 5.19 to establish the Attorneys with Disabilities Committee; otherwise throughout, language is added or revised to better describe the groups this section represents, as "minorities, women, persons with

disabilities, and gays, lesbians, bisexuals, and transgenders"; housekeeping edits also delete transitional language pertaining to the start-up of the section that are no longer relevant.

There were no board votes taken.

21. Program Evaluation Committee Report

Chair Gwynne Young reported that the committee had met with Gerry Glynn, chair of the Legal Needs of Children committee and Judge Sandy Karlan, member the LNC committee and original chair of the original Legal Needs of Children Commission to discuss the on going evaluation of the LNC committee. The committee informed the guests that the ongoing existence of the committee had already been approved Young told the board that the committee met with Chair Camille Lurillo and Chair-elect Kevin Johnson and voted to terminate the Practice Management & Development Section. Young said that the committee would work with section members to determine if the section could possibly be restructured. The board will vote on a committee recommendation at the January meeting.

Young reported that the committee discussed the Quality of Life committee. Young said that the committee did not send a representative and that the PEC determined that the committee is not meeting its mission. The committee voted to terminate the Quality of Life committee. The board will vote on a committee recommendation at its January meeting.

Young reported that the committee is looking at a proposal by the Member Outreach committee to change its name. The PEC told them to also look at changing the committee mission and to bring the proposal back to PEC. No board votes were taken.

22. Florida Probate Rules Committee Report

Board liaison Gwynne Young reported that the Florida Probate Rules Committee has revised the amendments proposed for the following rules and is resubmitting these rules to the Board pursuant to Fla. R. Jud. Admin. 2.140 (b) (2). The amendments are as follows:

Rule 5.490 –Phrase “at the option of the personal representative” in third sentence of new (f) deleted as unnecessary

Rule 5.496 – Requirement in (b) for service of objection to a claim “in the manner provided for service of formal notice” deleted and replaced by requirement for certificate or other proof of service, which establishes date of service.

Rule 5.499 – Requirement in new (e) (former (c)) for service of objection to item listed in proof of claim as to be paid “in the manner provided for service of formal notice” deleted and replaced by requirement for certificate or other proof of service, which establishes date of service.

Rule 5.530 – Text in (a) modified to delete as unnecessary the following struck-through language: “The petition shall be signed and verified by each petitioner as required by law and shall contain...” Subdivision (a) (9) amended to clarify contents of petition regarding status of creditors’ claims in summary administration proceeding.

The board voted 32-0 to approve the submission to be filed in February with the Florida Supreme Court.

23. Communications Committee Report

Chair Tim Sullivan reported that the committee met and focused on two directives. The first was putting disciplinary history on the website. Sullivan told the board that the all member biographies will be put on the Florida Bar web site, including those attorneys who are suspended, reprimanded or disbarred. He explained that each member biography page would have a link for the member’s discipline record. The link will take the viewer to the Florida Supreme Court website so that the viewer can see the actual order and referee report. The second issue that the committee discussed is the Justice Teaching program. Sullivan told the board that 1,500 attorneys had volunteered to go to the classrooms around the state and teach the children in the schools that have requested to take part in the Justice Teaching. So far 600 schools have requested to take part in the program. He said that training sessions are being scheduled around the state. The participating attorney will receive CLE credits for the training session and will possibly receive CLE credits for the time spent teaching. Sullivan closed by challenging the

entire board to volunteer.

24. Legislation Committee Report

Chair Warren Lindsey reported that the committee met and approved several items for the Business Law Section, the Real Property, Probate & Trust Law Section, and the Tax Law Section, as well as the Workers' Compensation Section lobbyist contract with Fausto Gomez, all of which were on the consent calendar.

He told the board that the RPPTL section also had two legislative position requests that would have been included on the consent calendar but for the late date of the submissions. The committee recommendation was to allow the following RPPTL legislative positions:

57. Opposes proposed omnibus amendments to Florida Statutes Chapter 617, the Florida Not for Profit Corporation Act. The changes intended to facilitate to charitable corporate governance with voluntary membership would impair other non profit corporations' governance with required membership.

58. Supports technical corrections to Florida Land Trust Act (2006).

The board concurred and approved the RPPTL legislative positions.

Lindsey told the board that the committee had considered and approved five Florida Bar positions which had been prior Florida Bar positions. The board concurred and approved the following positions with a 2-part vote.

2. Opposes amendments to the Florida Constitution that would alter the authority of the Supreme Court of Florida to regulate the admission of persons to the practice of law or the discipline of persons admitted.
3. Opposes amendment of Article V, Section 2(a) of the Florida Constitution that would alter the Supreme Court's authority to adopt rules for practice and procedure in all courts, or that would change the manner by which such rules may be repealed by the legislature.
4. Supports adequate funding of the state courts system, state attorneys' offices, public defenders' offices, and court-appointed counsel.
5. Supports adequate funding for civil legal assistance to indigent persons through the Florida Access to Civil Legal Assistance Act.
6. Supports language in the Legislative Appropriations Act to permit the payment of government attorneys' Florida Bar membership fees and continuing legal education costs from funds within budget entities.

Lindsey told the board that the committee approved two other positions that were brought to the board by the Legal Needs of Children Committee. The first position (# 7) was a Big Bar position for the 2004-06 biennia, and the other is new. The board concurred with the committee recommendation and approved the following Florida Bar positions with a 2-part vote:

7. Supports legislation to require that a child have a meaningful opportunity to consult with an attorney before waiving his/her right to counsel in a delinquency proceeding.
9. Opposes the indiscriminate use of chains and shackles in juvenile court proceedings, and encourages the adoption of a ban on the indiscriminate use of chains and shackles in juvenile court proceedings through court rule, legislation and executive branch policy.

Finally, Lindsey told the board that the Young Lawyers Division had requested that the Bar adopt a legislative position concerning the repayment of lawyer student loans. The committee approved and recommended the adoption of the following Florida Bar position:

8. 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 concurred and adopted the positions with a 2-part vote.

Lindsey reported that Steve Metz, chief legislative counsel had appeared and spoken to the legislation committee about some of the new members in the legislature, as well as newly appointed staff in the legislature and Governor-elect's office. Lindsey told the board that one of the new staff members would be board member Larry Ringers (Naples), who had been selected by Lieutenant Governor-elect Jeff Kottkamp to be his chief of staff. Lindsey concluded his report by telling the board that Metz would be speaking to the board at its meeting in January and that he expects to be handing out legislator assignments to the board members at that time.

25. Young Lawyers Division Report

President John Stewart began by thanking the board for its support on the legislative position concerning the repayment of lawyer student loans. He told the board that the YLD had been actively pursuing law students to encourage them to become involved in the YLD and Bar programs. Stewart told the board that the YLD will be holding its annual Government Symposium in January, in Miami at the Florida Bar Midyear Meeting. He invited all members to attend.

26. Special Appointments

President Coxe told the board that it needed to appoint 2 lawyers for 6-year terms to the Florida Judicial Qualifications Commissions. After a lengthy discussion, Miles A. McGrane, III, from Coral Gables and Terrence J. Russell of Fort Lauderdale were appointed.

Coxe told the board that it needed to appoint 5 lawyers, one from each appellate district, for 2-year terms to the Florida Realtor-Attorney Joint Committee. The board appointed William J. Haley from Lake City for the 1st Appellate District; Raymond J. Bowie from Naples for the 2nd Appellate District; Thomas D. Wright from Marathon for the 3rd Appellate District; Gary J. Nagle from Juno Beach for the 4th Appellate District; and G. Thomas Ball from Orlando for the 5th Appellate District.

Coxe told the board that it needed to appoint 1 lawyer for a 3-year term commencing January 1, 2007 to the Florida Rural Legal Services, Inc. Board of Directors. The board appointed Owen L. Luckey, Jr. from LaBelle.

27. Unlicensed Practice of Law Report

Lori Holcomb, Director of Unlicensed Practice of Law reported that the committee met and recommends that the board approve the following rule amendments to Chapter 17 which are on second reading.

1) Chapter 17 Authorized House Counsel Rule

a) Subchapter 17-1 Generally

i. Rule 17-1.2 Definitions

Within subdivision (a), moves non-definitional terms to other appropriate rules; adds definition of "authorized house counsel" as someone who has been certified as such by the Supreme Court of Florida.

ii. Rule 17-1.4 Registration

Within subdivision (a), allows inactive members to provide certification of inactive status in lieu of a certificate of good standing; clarifies that an authorized house counsel must be familiar with chapters 4 and 17 of the Rules Regulating The Florida Bar; also includes language removed from rule 17-1.2, requiring registrants to provide certified statement that they have not been permanently denied admission to practice due to character and fitness; within subdivision (b), deletes unnecessary language regarding examples of grounds for returning applications; adds new subdivision (e) – Duty to Update – re a certified authorized house counsel's continuing need to advise the bar re inactive status in any other jurisdiction.

iii. Rule 17-1.5 Termination or Withdrawal of Registration

Within subdivision (a), adds involuntary placement on inactive status as another ground for termination of authorized house counsel status; within subdivision (b), clarifies procedure for notifying individuals and business employers of any termination of status.

iv. Rule 17-1.9 Continuing Legal Education Requirement

New rule, to accommodate non-definitional provision re CLE removed from rule 17-1.2.

The board concurred with the committee recommendation 25-0 and approved the rule amendments on second reading.

Holcomb also reported that the committee has begun to look at the issue of a name change. They will discuss this further at future meetings.

28. Code and Rules of Evidence Committee Report

Board liaison Hal Melville explained to the board that the Code and Rules of Evidence committee

(CREC) previously submitted proposed rule amendments to the Rules of Judicial Administration committee (RJA) and to the board for the CREC's two-year cycle ending in 2006, and received board approval. Thereafter, the rule amendment reporting cycle was changed from two to three years, and CREC was moved from the 2006 reporting cycle to the 2007 reporting cycle. The following rule amendments included in the 2007 3-year cycle are:

Rule 90.602, 90.804 (2) (e) – To bring statutory code and court rules into agreement and thereby avoid the problem of determining which portions of these statutory code provisions are procedural and which are substantive.

Rule 90.503 (1) (a) – To bring the statutory code and court rules into agreement and thereby avoid the problem of determining which portions of these statutory code provisions are procedural and which are substantive.

The board approved the rule amendments 28-0.

29. The Florida Bar/Florida Medical Association Joint Committee Report

Chair Grier Wells spoke to the board about the doctor lawyer committee. He reported that there are four doctor members and four lawyer members, including board members Jennifer Coberly, Grier Wells and Gary Leppla. Wells reported that the committee had held a telephone conference, and had decided to move forward with the joint committee on physician attorney relations. Each organization will appoint a co-chair and presidents of both organizations will appoint members. The mission of the committee is to explore issues of commonality and to continue to promote mutual understanding and respect and to positively impact the medical/legal status of the citizens. The committee also discussed meeting four times a year, twice at each organization, trying to make the meetings centrally located in the state. The committee will have no direct authority, but will make recommendations to both constituent organizations. The committee recognizes that it has only been approved in concept and it hopes to receive final approval at the board meeting in January.

30. Time and Place of Next Meeting

The next board of governors meeting will be held January 25-27, 2007 at the Florida Bar Headquarters in Tallahassee, Florida.

There being no further business to discuss the board adjourned at 5:04 PM.

Respectfully submitted,

Dana M. Watson

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