

The Florida Bar Board of Governors  
December 12, 2008  
The Peabody Hotel  
Orlando, Florida

Pursuant to notice, the regular meeting of the Board of Governors of The Florida Bar was called to order at 9 a.m. Friday, December 12, 2008, at The Peabody Hotel, Orlando with President Jay White presiding.

**1. Roll Call**

John G. White, III	President
Jesse H. Diner	President-elect
Stephen H. Echsner	First Circuit
Lawrence E. Sellers, Jr.	Second Circuit
Dominic M. Caparello	Second Circuit
Clay A. Schnitker	Third Circuit
S. Grier Wells	Fourth Circuit
John J. Schickel	Fourth Circuit
Denise A. Lyn	Fifth Circuit
Andrew B. Sasso	Sixth Circuit
Murray B. Silverstein	Sixth Circuit
Charles Chobee Ebbets	Seventh Circuit
Mayanne Downs	Ninth Circuit
Daniel L. DeCubellis	Ninth Circuit
Robert M. Brush	10th Circuit
Ramon A. Abadin	11th Circuit
David Rothman	11th Circuit
Ervin A. Gonzalez	11th Circuit
Michael J. Higer	11th Circuit
Dennis G. Kainen	11th Circuit
Juliet Roulhac	11th Circuit
John H. Hickey	11th Circuit
Dori Foster-Morales	11th Circuit
L. Norman Vaughan-Birch	12th Circuit
William J. Schifino, Jr.	13th Circuit
William Kalish	13th Circuit
Gwynne Alice Young	13th Circuit
Clifford W. Sanborn	14th Circuit
David C. Prather	15th Circuit
Gregory Coleman	15th Circuit
Scott G. Hawkins	15th Circuit
Lisa S. Small	15th Circuit
Edwin A. Scales	16th Circuit
Allison K. Bethel	17th Circuit
Eugene K. Pettis	17th Circuit

Jay Cohen	17th Circuit
Frank C. Walker, II	17th Circuit
Clifton A. McClelland, Jr.	18th Circuit
John M. Stewart	19th Circuit
Laird Lile	20th Circuit
Ian M. Comisky	Out of State
Eric L. Meeks	Out of State
Brian D. Burgoon	Out of State
Jewel White Cole	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:

Carl B. Schwait	Eighth Circuit
Scott M. McMillen	Ninth Circuit
Nancy W. Gregoire	17th Circuit
A. Lawrence (Larry) Ringers	20th Circuit
Richard Arthur Tanner	Out of State

Staff Attending Meeting:

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

**2. Guests**

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

**3. Invocation and Pledge of Allegiance**

Mayanne Downs delivered the invocation and Dan DeCubellis led the Pledge of Allegiance.

**4. Welcome by Orlando Mayor Buddy Dyer**

Orlando Mayor Buddy Dyer welcomed to the board to Orlando and discussed projects and progress in the city.

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

President White swore in new members Michael Higer and Dori Foster-Morales, chosen in special elections since the last board meeting.

## **6. Public Reprimands**

Bar President Jay White administered 12 public reprimands in two sessions during the morning portion of the board's agenda.

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

Disciplinary Review Committee Co-Chair David Rothman listed non-roll call items as 12, 15, and 27, and Grier Wells gave the non-roll call Clients' Security Fund items as 9, 14, 47, and 48. For the Board Review Committee on Professional Ethics, the non-roll call items were 5b(iii), 5b(iv) and 5b(v).

## **8. Minutes**

The board approved the regular and grievance minutes from its October 3, 2008, meeting in Boston. The board's vote ratified the following Executive Committee actions, taken since the board's last meeting:

- A September 23 vote to approve three out-of-cycle rule amendments from the Criminal Procedure Rules Committee: 1) Rule 3.130(a) amended to require that both the state attorney and public defender or their designated assistant be present at first appearance either in person or by other electronic means; 2) Rule 3.704(d)(22) amended to change the phrase "criminal street gang" to "criminal gang" to conform to ch. 2008-238, Laws of Florida, and corrects the spelling of the word "benefiting"; and 3) Rule Forms 3.986(d), (e), and (f) amended related to judgment and sentence to conform to ch. 2008-238, Laws of Florida.

- September 29 votes to: 1) approve comments to the Supreme Court from the Juvenile Court Rules Committee on an amendment to Juvenile Rule 8.255 proposed by the Steering Committee on Families and Children in the Court; 2) approve comments from the Civil Procedure Rules Committee to the Supreme Court on a report from the court's Task Force on the Management of Cases Involving Complex Litigation; and 3) appoint Terry L. Hill and Francine A. Walker as trustees of The Florida Bar Retiree Health Plan.

- An October 7 vote to approve a manual recount of the ballots for the runoff election for Seat 4 of the 11th Circuit.

- An October 7 vote to approve comments from the Family Law Rules Committee to the Supreme Court on proposed changes to the Rules of Civil Procedure in the report of the Task Force on the Management of Cases Involving Complex Litigation.

- An October 23 vote to allow the Criminal Law Section to join an amicus brief on a case involving the involuntary appointment of a lawyer, not on the registry of private attorneys who accept such appointments, to represent a criminal defendant because no other registry attorneys were available and the public defender and criminal conflict and civil regional counsel had conflicts from representing co-defendants.

- A November 24 vote to approve comments from the Appellate Court Rules Committee to be filed with the court on the court's recent approval of an amendment to

Fla. R. App. P. 9.141. The committee also approved a \$5.43 Bar dues refund for one member who objected to a Bar legislative position.

### **9. Consent Agenda**

The board approved the consent agenda. The vote included appointing the following UPL Committee appointments: John Foster Durrett to Circuit 3; Helen Arlene Peacock and Judy Revels to Circuit 4; Dennis A. Chen to Circuit 9A; Alina B. Cemitier to Circuit 12; Samantha Leone to Circuit 13B; Debra L. Horton to Circuit 17A; and Winston Anthony R. McClean to Circuit 18B. Alexis J. Lewis was appointed as a member of the Standing Committee on UPL.

The board acted on items from the Board Review Committee on Professional Ethics:

- Request for Review of Advertising Opinion Inquiry 26793: This item was withdrawn at the request of the filer.
- Request for Review of Advertising Inquiry 28154; the Board Review Committee on Professional Ethics voted 5-0 to recommend that the Board of Governors affirm the Standing Committee on Advertising decision in advertising inquiry 28154, determining that it constitutes an impermissible testimonial in violation of Rule 4-7.2(c)(1)(J) for an attorney to participate in a portion of the Avvo ratings service website in which the attorney provides the e-mail addresses of clients and the ratings service then produces e-mails from the attorney to the client that can be edited by the lawyer asking the client to rate the attorney and provide comments and provides a link to the website to enable the clients to do so. The Board of Governors voted to approve the Board Review Committee on Professional Ethics recommendation on the consent calendar.

Pursuant to the recommendation of the Rules Committee, the board approved the following rule amendments, which now go to the Supreme Court:

- 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.

Pursuant to the recommendation of the Disciplinary Procedure Committee, the board approved the following rule amendments and Standing Bar Policy changes. The rules now go to the Supreme Court:

- 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.

The board approved legislative consultant contracts on behalf of The Florida Bar for Steve Metz, Matt Bryan, Pamela Burch Forte, G. Herb Sheheane, and Jose Boscan

The board authorized eight new legislative positions for the Real Property, Probate and Trust Law Section:

- Supports amendment to F.S. §501.1377 to exclude lawyers, law firms, pro-bono and legal aid programs, title agents and the servicing, restructuring and workout companies employed by the holders of mortgages from the definition of "foreclosure rescue consultant."

- Supports legislation and/or regulatory action that establishes certainty within F.S. §201.02 as to the documentary stamp taxes due with regard to any debt forgiveness in connection with a short sale and which provides accurate sale price information for use by tax assessors and private property appraisers.

- Supports amendment of FS §731.201 to add a definition of "minor" to the Florida Probate Code consistent with the definition in the Florida Guardianship code.

- Supports amendment of F.S. §732.108(2) to provide that the four-year statute of limitations under F.S. §95.11(3)(b) does not apply to actions to establish paternity under §732.108(2) after the death of the alleged father.

- Supports amendment of F.S. §193.155(3) to clarify that transfers of ownership interests, whether legal or equitable, pursuant to which the same person or that person's spouse continues to hold legal or equitable title of the homestead real property or otherwise continues to qualify for the homestead exemption under the requirements of F.S. §196.031, Florida Statutes, will not be treated as a change in ownership for purposes

of re-setting the “Save Our Homes” cap.

- Supports amendments of the elective share statutes: (i) to clarify that transfers made in satisfaction of the elective share are inter vivos transfers; (ii) to clarify that the elective estate excludes certain assets under the community property laws of Florida or of any other state; (iii) to clarify the treatment of nonqualifying trusts under FS § 732.2075; (iv) to clarify FS § 732.2075 regarding contributions from direct recipients of assets within the elective estate; and (v) to amend FS § 732.2135 regarding the assessment of attorneys’ fees when a spouse withdraws an election

- Supports: (i) amendment of FS § 739.201 to add a savings provision protecting against inadvertent disqualification of certain post-mortem disclaimers under §2518 of the Internal Revenue Code; (ii) amendment of § 739.402(2)(a) to correct a typographical error; and (iii) amendment of § 739.501 to clarify interpretation of Florida’s long-standing statutory prohibition on disclaimers by insolvent persons.

- Supports clarification of F.S. 193.1556 regarding: (i) whether a separate notice to the property appraiser of a change of ownership of real property is required when the real property is conveyed by an instrument recorded in the public records; (ii) whether any notice to the property appraiser is required pursuant to the statute with respect to transfers of interests in publicly traded companies or parent companies; and (iii) whether the statute requires disclosure of the identity of beneficial owners of trusts or of business entities.

The board authorized one new position for the Business Law Section: Supports amendment of F.S. §607.1620 to allow Florida corporations to take advantage of technological improvements by utilizing electronic financial statements and e-proxies.

The board approved section legislative consultant contracts between the Workers’ Compensation Section and Fausto Gomez and the Business Law Section and Dudley Goodlette.

Pursuant to the recommendation of the Program Evaluation Committee, the board approved the following rule amendments for the Bar’s certification program:

- 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.

The board approved bylaws changes sought by the General Practice, Solo and Small Firm Section.

The board approved several items related to the Bar's pension plan, including: the plan as amendment and restated effective January 1, 2008; summary plan description; administrative claims policy; procedures for determining status of domestic relations orders; and the trust agreement between T. Rowe Price Trust Company and The Florida Bar.

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

On the recommendation of the Unlicensed Practice of Law Committee, the board approved proposed changes to the Supreme Court-approved forms dealing with landlord-tenant eviction matters. Bar UPL Counsel Lori Holcomb said the forms were last amended in 1998, and the revisions were reviewed and approved by the Real Property, Probate and Trust Law Section and the Housing Group of Florida Legal Services. The forms now go to the Supreme Court for its review.

### **11. Legislation Committee Report**

Committee Chair Greg Coleman reported that the committee recommended authorizing 13 additional Bar legislative positions, all of which have been Bar positions in past years. The board both found the positions within the ambit of allowed Bar legislative activities and approved by a two-thirds vote all of the positions. They are that the Bar:

- 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.
- 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.
- Supports legislation consistent with the Supreme Court of Florida's certification of need for new judges.
- Supports adequate funding of the state courts system, state attorneys' offices, public defenders' offices, and court-appointed counsel.
- 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.
- 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.
- Supports adequate funding for civil legal assistance to indigent persons through the Florida Access to Civil Legal Assistance Act.
- 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.
- 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.

- Supports legislation that would waive civil court costs and fees for a person whose income is equal to or below 150 percent of then-current federal poverty guidelines.
- Supports adequate funding of the Legal Services Corporation by the federal government, and opposes any funding cuts.
- Supports federal legislation to amend §120 of the Internal Revenue Code to restore, increase and make permanent the exclusion from an employee's gross income of employer contributions to group legal service plans.
- Supports a substantial pay increase for the federal judiciary.

The board also approved the committee's recommendation to hire Dudley Goodlette as an additional legislative consultant for The Florida Bar who will focus on court budget issues.

Greg Coleman and Bar Chief Legislative Consultant Steve Metz reviewed efforts to improve state court funding. They noted that the Bar's January 16 summit, presented by the Young Lawyers Division, will focus on the court funding crisis.

## **12. Investment Committee Report**

Committee Chair Ian Comisky reported the committee met three times with investment advisor James Bagwell of Morgan Stanley because of the recent volatility and downturns on the stock market. The Bar's conservative-based investments are only 40 percent as volatile as the stock market, he reported. Consequently, while the Dow Jones Industrial Average has declined 35 percent and the Standard and Poors 500 had dropped 42 percent, the Bar's investment portfolio has been reduced only 15 percent by the economic turmoil, he said. Comisky said the committee is continuing to monitor the situation closely, is satisfied with the Bar's mix of investments, and that the Bar has plenty of liquidity and is not threatened by the crisis.

## **13. Audit Committee Report**

Committee Chair Dan DeCubellis reported that the Bar got a favorable finding from its auditors with no problems to report. He also said because of changing government auditing standards, future audits will require additional work.

## **14. Family Law Rules**

Family Law Rules Committee member Norberto Katz presented out-of-cycle rule amendments related to document needed on support issues in child custody cases. He said while the forms are needed in every child support case, none has been formally approved as part of the rules. The forms relate to income deduction orders establishing, enforcing, or modifying alimony, child support, or both. The board endorsed Forms 12.995(a) and 12.995(b), which now go to the Supreme Court, 30-0.

### **15. Report from the Real Property, Probate, and Trust Law Section**

Section Chair Sandra Diamond delivered the section annual report to the board. Highlights from the past year include the first webcasting of a section CLE, overhauling the section's website, maintaining an active amicus curiae program, and keeping up the section's newsletter, which is distributed both electronically and by print. The section is continuing its diversity outreach program, including disabled lawyers and the section has been actively involved in running and providing volunteers for the Bar's Florida Attorneys Saving Homes program.

### **16. Uniform Title Standards**

Acting on the request from the Real Property, Probate and Trust Law Section, the board re-endorsed the Florida Uniform Title Standards. The standards are used in the Florida Association of Realtors/Bar Contract for Sale and Purchase of Property and also for determining marketable title in Florida.

### **17. Appearance by Representative Dean Cannon**

State Representative Dean Cannon, scheduled to be a future speaker of the Florida House of Representatives, appeared briefly before the board and noted the state's budget problems and pledged the Legislature will work diligently on that.

### **18. Appellate Court Rules**

Appellate Court Rules Committee member Jamie Moses presented out-of-cycle amendments for Rules 9.110(b), 9.110(g), and 9.360(a), required to conform to recent changes in state law imposing and raising filing fees. The board endorsed the amendments, which now go to the Supreme Court, 39-0.

### **19. Criminal Procedure Rules**

Board member David Rothman presented an out-of-cycle amendment for Rule 3.172, which provides that if someone is charged with an offense that could lead to revocation of his or her driver's license, the defendant must be advised of that before pleading guilty or no contest. The change conforms the rules with a recent Florida Supreme Court ruling. The board endorsed the amendment 33-0, and it now goes to the court.

### **20. Board Review Committee on Professional Ethics Report**

Committee Chair David Prather reported on several advertising and ethics appeals and on a proposed amendment to the ABA Model Rules:

- Advertising appeal 08-2283: The Board Review Committee on Professional Ethics voted 3-2 to recommend that the Board of Governors reverse the Standing Committee on Advertising decision in file 08-02283, determining that the term "center," which was used as part of the lawyer's URL in the advertisement at issue, is not misleading when referring to a sole practitioner. The Board of Governors voted to approve the Board Review Committee on Professional Ethics recommendation.
- Advertising appeal 08-2311: 1. The Board Review Committee on Professional Ethics voted 5-0 to recommend that the Board of Governors reverse the Standing Committee on Advertising decision in file 08-02311, determining that the statement "Sue Their Pants Off!" and the domain name "www.suetheirpantsoff.com" do not promise

results the lawyer can achieve 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. 2. The Board Review Committee on Professional Ethics voted 5-0 to recommend that the Board of Governors affirm the Standing Committee on Advertising decision in file 08-02311, determining that the statement “Sue Their Pants Off!” and the domain name “www.suetheirpantsoff.com” are verbal depictions that are false, misleading, or manipulative in violation of Rule 4-7.2(c)(3). The Board of Governors voted to approve the Board Review Committee on Professional Ethics recommendation.

- Advertising appeal 08-03511: The Board Review Committee on Professional Ethics voted 4-1 to recommend that the Board of Governors reverse the Standing Committee on Advertising decision in file 08-03511, determining that the statement “Pago de Inicio \$99 Plan de Pago Disponible” (Initial Payment \$99 Payment Plan Available) does not require a disclosure of whether the client will also be responsible for costs under Rule 4-7.2(c)(7), in an advertisement for bankruptcy cases where the lawyer charges a flat fee that includes costs, the lawyer sets up a payment plan for those clients who wish it, and the initial payment of the payment plan is \$99. The Board of Governors voted to approve the Board Review Committee on Professional Ethics recommendation.

- Recommendation on proposed amendments to ABA Model Rule 1.10, use of screening to resolve conflicts of interest when attorneys change firms: In July 2008, the Board of Governors voted to direct its ABA delegates to vote in favor of amendments to ABA Model Rule 1.10, which would permit screening to resolve conflicts of interest when attorneys change firms. The ABA Standing Committee on Ethics and Professional has amended its original proposal. The Board Review Committee on Professional Ethics voted 5-0 to recommend that the Board of Governors advocate and vote for the report and recommendation. The Board of Governors voted to approve the Board Review Committee on Professional Ethics recommendation.

- Ethics appeal 27880: The Board Review Committee on Professional Ethics voted 4-1 to recommend that the Board of Governors reverse the Professional Ethics Committee action in ethics inquiry 27880 and affirm the original staff opinion as written, which indicates that the inquirer may not communicate with his wife about the subject matter of the dissolution matter because she is represented by counsel in the dissolution matter, regardless of whether the inquirer is represented by separate counsel or represents himself. The Board of Governors voted to approve the Board Review Committee on Professional Ethics recommendation.

- Ethics Appeal 28080: The Board Review Committee on Professional Ethics voted 5-0 to recommend that the Board of Governors affirm the denial of staff’s opinion in ethics inquiry 28080, regarding the inquirer’s desire to write a publicly disseminated news article that includes the inquirer’s assertion that 2 judges engaged in conduct to cover up a failure by others, including a federal agency, to provide restitution to customers of a company and about which staff declined to issue an opinion because of insufficient facts on which to base an opinion and because the conduct appeared to be related to a pending disciplinary case. The Board of Governors voted to approve the Board Review Committee on Professional Ethics recommendation.

The Board Review Committee on Professional Ethics and Board of Governors deferred action on Proposed Advisory Opinion 90-6 (Reconsideration), concerning a

criminal defense attorney's obligation when he or she learns that a client is proceeding under a false name. Chair Prather also gave an informational report on the results of a survey on the issue of lawyer-to-lawyer communications. The Supreme Court of Florida declined to adopt a proposed amendment to the attorney advertising rules which would exempt lawyer-to-lawyer communications from application of the attorney advertising rules. The court invited The Florida Bar to revisit the issue at a later time with additional information. The Board of Governors approved a survey of Florida Bar members at the request of the Board Review Committee. Survey Results were provided in the board agenda materials and support The Florida Bar's position that communications between lawyers should be exempt from the attorney advertising rules. Bar staff will file a renewed request to amend the Rules on or before January 31, 2009 at the direction of the court. In addition, Chair Prather gave an informational report that the Supreme Court of Florida has directed that The Florida Bar review its advertising program including a survey of contemporary attitudes of the public toward lawyer advertising. See, *In re: Amendments to the Rules Regulating the Florida Bar - Advertising*, 971 So. 2d 763 (Fla. 2007). The item was discussed at the Program Evaluation Committee meeting.

### **21. Budget Committee Report**

Committee Chair Gwynne Young presented several amendments for the 2008-09 budget, which were approved by the board:

- \$1,400 for an improvement for a phone line used for conference calls at the Bar's Tampa office.
- \$27,500 for upgraded insurance coverage at the Bar's headquarters that was shown to be needed by a review.
- \$144 for Bar members who have objected to Bar legislative positions.
- \$64,240 to upgrade an elevator at the Bar's headquarters.
- \$45,867 to hold two special elections to fill board vacancies from the 11th Circuit.
- \$25,000 to hire an additional legislative consultant.
- \$4,800 to make Lobbytools online legislative information service available to all members via the Bar website.

Young said the committee was continuing to study two other items, a \$50,000 amendment for an advertising survey as part of a review of advertising rules requested by the Supreme Court and a \$18,000 amendment for the Public Interest Law Section for a membership growth project.

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

President-elect Jesse Diner previewed the strategic planning report and recommendations scheduled for the board's January 2009 meeting. He also announced that the meeting schedule for his 2009-10 presidential year had been finalized: July in Naples, October in Hollywood, December in Amelia Island, January in Tallahassee, March in New York City, and May in Key West.

### **23. Communications Committee Report**

Committee Chair Ray Abadin presented figures on use of the Bar's website and said the committee is studying the overhaul of the site and using technology in general to improve information and services provided to members.

### **24. Special Appointments**

The board made several appointments, including:

- Hank Coxe of Jacksonville to a six-year term on the Judicial Qualifications Commission.
- William J. Haley of Lake City, David R. Carter of New Port Richey, Thomas D. Wright of Marathon, Gary J. Nagle of Juno Beach, and G. Thomas Ball of Orlando to two-year terms on the Florida Realtor-Attorney Joint Committee.
- Mark A. Perry of Delray Beach to a three-year term on the Florida Rural Legal Services, Inc., Board of Directors.
- Michael S. Olin of Miami to a four-year term as a representative of the Federal Southern District of Florida on the U.S. 11th Circuit Judicial Conference.

### **25. Young Lawyers Division Report**

YLD President Jewel White Cole reported on the division's wide range of activities, which include its January 2009 Affiliates Outreach Conference, the first meeting of its Law School Division at the conference, using its website as the primary vehicle for communicating with its members, and working on the Chief Justice's initiative to help children aging out of the state's foster care system. The YLD is also looking at ways to encourage young lawyers to provide more pro bono service, including free CLE courses in areas where pro bono lawyers are needed, which would address concerns some lawyers lack the needed knowledge to do some types of pro bono work, Cole said.

### **26. Disciplinary Procedure Committee Report**

Committee Chair Murray Silverstein reviewed the consent agenda items passed on second reading and presented several items on first reading, including allowing a disciplinary revocation in rules 3-5.1, 3-6.1 and 3-7.12 as an alternative to a disbarment by consent. Silverstein said some attorneys will not agree to a disbarment by consent because it requires them to admit to certain underlying facts that could leave them open to criminal charges. The disciplinary revocation would be similar to a no-contest plea in a criminal case, he said, and would not require an admission to potentially damaging facts. The advantage to the Bar would be reducing the number of cases that have to be tried before referees and the Supreme Court as well as speedy resolution with a finite result in these cases. The Bar would retain the option of rejecting a disciplinary revocation and seeking disbarment in egregious cases. The minimum time for disciplinary revocation would be five years instead of the three years allowed under the former disciplinary resignation rule. Disbarment by consent will still be available as Rule 3-7.9(e), part of the general consent judgment rule. The DPC will also be considering a revision to Rule 3-7.9(e) that would allow the equivalent of *nolo contendere* pleas in disbarments by consent as well.

Other rule amendments presented on first reading include:

- Rule 3-7.1, within subdivision (d), adds reference to new subdivision (m), which maintains privacy rights under existing laws and court rules; new subdivision (m) adds language to specifically follow rule 2.420 of the Rules of Judicial Administration regarding privacy of certain information in court records.

- Rule 3-7.7, within subdivisions (c) through (f), amends the nomenclature of the bar rule and time periods for filing answer briefs and reply briefs identical to those for filing notices of appeal and briefs in regular appeals under rule 9.210, Florida Rules of Appellate Procedure; within subdivision (h), allows pending disciplinary cases to be dismissed by the court in disciplinary revocation orders.

Silverstein also reported that the committee is studying a Standing Board Policy to address grievance training standards for Bar counsel, grievance committee members, and board members.

### **27. Petitions Relating to Rejected Rule Amendment Requests**

Rules Committee Vice Chair Mayanne Downs said Mr. Brian Pitts had requested amendments to civil, appellate, and judicial administration rules that would allow nonlawyers to represent others in court and be paid for it, all of which were rejected by the various rules committees. Mr. Pitts then appealed to the board. Downs said the Rules Committee reviewed his petition and recommended the board deny his request. The board approved that recommendation.

### **28. Program Evaluation Committee Report**

Chair Frank Walker said the committee recommended approving bylaws changes for the Young Lawyers Division and the board approved those. The committee also recommended, and the board approved, a change to Board of Legal Specialization and Education Policy 2.01, Administration. The new subdivision (c), adds language to address certification program staff support to codify balance of effective administration and fiscal considerations. Walker said the committee is engaged in several other reviews, including:

- A voluntary self-disclosure statement for trial-level judicial candidates, proposed by the Judicial Administration and Evaluation Committee, to provide information for voters in contested trial court races.
- A proposed public survey on advertising as part of a Supreme Court-requested review of Bar advertising rules. Walker said the committee conceptually approved the survey, but wanted to see if a Florida company might be able to do the work for less money than the company initially proposed.
- Bylaws amendments requested by the Family Law Section and the Labor and Employment Law sections. Walker said the PEC is seeking more information before acting on those.
- The Bar's three Bar-wide yearly meetings (Annual, Midyear, and General) to see if all three are still needed.
- Creating a subcommittee to review the Fee Arbitration Program, including whether it should be fee based and potential training standards.
- Creating a subcommittee to review the Animal Law Committee.

- Creating a subcommittee to review the Bar's Henry Latimer Center for Professionalism plans for a change in its emphasis and program. Walker said that review could be extensive and last past the current Bar year.

Additionally, Walker said the PEC looked at a proposal to merge the Eminent Domain Committee into the Real Property, Probate and Trust Law Section, but since the committee opposed it decided to take no further action on that matter.

### **29. Member Benefits Committee Report**

Board member Frank Walker presented the committee's recommendation to endorse Celedinas Insurance Group as a provider of group excess liability insurance coverage as part of the Bar's Member Benefits Program. The board approved that recommendation.

### **30. Grievance Committee Conflict of Interest Policy**

Board member Clif McClelland made a motion to direct the Disciplinary Procedure Committee to develop a policy on conflicts of interest for members of grievance committees. President White said he could direct the committee to do that, without a board vote, and would do so.

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

The board will next meet January 28-30 at the Bar headquarters in Tallahassee. There being no further business, President White adjourned the meeting at 3:38 p.m.

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