

**THE FLORIDA BAR BOARD OF GOVERNORS**

**Regular minutes**

October 3, 2003  
Wyndham Chicago  
Chicago, Illinois

Pursuant to notice, the regular meeting of the Board of Governors of The Florida Bar was called to order at 9 a.m. on Friday, October 3 at Wyndham Chicago, Chicago, Illinois, with President Miles A. McGrane, III presiding.

**1. Roll Call**

**Board members present:**

Miles A. McGrane, III President  
Kelly Overstreet Johnson President-elect  
Alan B. Bookman, First Judicial Circuit  
Lawrence E. Sellers, Jr., Second Judicial Circuit  
Michael J. Glazer, Second Judicial Circuit  
William H. Phelan, Jr., Fifth Judicial Circuit  
Murray B. Silverstein, Sixth Judicial Circuit  
Chobee Ebbets, Seventh Judicial Circuit  
Russell W. Divine, Ninth Judicial Circuit  
David Rothman, Eleventh Judicial Circuit  
Jennifer R. Coberly, Eleventh Judicial Circuit  
Don L. Horn, Eleventh Judicial Circuit  
Steven E. Chaykin, Eleventh Judicial Circuit  
Kimberly A. Bald, Twelfth Judicial Circuit  
Rob Blue, Jr., Fourteenth Judicial Circuit  
John G. White, III, Fifteenth Judicial Circuit  
Jerald S. Beer, Fifteenth Judicial Circuit  
Amy Lee Smith, Fifteenth Judicial Circuit  
James S. Lupino, Sixteenth Judicial Circuit  
Nancy W. Gregoire, Seventeenth Judicial Circuit  
Jesse H. Diner, Seventeenth Judicial Circuit  
Harold G. Melville, Jr., Nineteenth Judicial Circuit  
J. Christopher Lombardo, Twentieth Judicial Circuit  
Richard Tanner, Out of State  
Ian M. Comisky, Out of State  
Gary J. Leppla, Out of State  
Brian D. Burgoon, Out of State  
Michael J. Faehner, YLD President-elect  
Solomon L. Badger, III, Ed.D., Public Member

**Board members absent:**

Gregory S. Parker, Third Judicial Circuit  
S. Grier Wells, Fourth Judicial Circuit  
Henry M. Coxe, III, Fourth Judicial Circuit  
Louis Kwall, Sixth Judicial Circuit  
Robert A. Rush, Eighth Judicial Circuit  
Mayanne Downs, Ninth Judicial Circuit  
Warren W. Lindsey, Ninth Judicial Circuit  
Robert M. Brush, Tenth Judicial Circuit  
Francisco R. Angones, Eleventh Judicial Circuit

Ervin A. Gonzalez, Eleventh Judicial Circuit  
Sharon L. Langer, Eleventh Judicial Circuit  
David W. Bianchi, Eleventh Judicial Circuit  
Timon V. Sullivan, Thirteenth Judicial Circuit  
John F. Rudy, II, Thirteenth Judicial Circuit  
Gwynne A. Young, Thirteenth Judicial Circuit  
Michael T. Kranz, Fifteenth Judicial Circuit  
Alan C. Brandt, Seventeenth Judicial Circuit  
Henry Latimer, Seventeenth Judicial Circuit  
Frank C. Walker, II, Seventeenth Judicial Circuit  
Clifton A. McClelland, Eighteenth Judicial Circuit  
A. Lawrence Ringers, Twentieth Judicial Circuit  
Mark Romance, YLD President  
Vivian Hobbs, Ph.D.Public, Member

**Staff attending the meeting:**

John F. Harkness, Jr., Executive Director  
Tina Ruffin, Assistant to the President  
Gary Blankenship, Senior Editor, Florida Bar *News and Journal*  
Tony Boggs, Legal Division Director

**2. Guests**

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

Veronica Valdez, President of the Virgil Hawkins Chapter of the National Bar Association  
Dinita James, President of Florida Association for Women Lawyers  
Scott Patterson, a member of the Out-of-State Practitioners Executive Council

**3. Invocation and Pledge of Allegiance**

Ian Comisky offered the invocation and led the Board of Governors in the pledge of allegiance.

**4. Greetings and Other Guest Appearances**

Michael Demetrias, President of the Chicago Bar

**5. Non-Roll call Grievance Agenda Items**

Board member Brian Burgoon gave the Non-Roll call Grievance items as numbers 4, 5, 12, and 22.

**6. APPROVAL OF MINUTES and EXECUTIVE COMMITTEE ACTION**

- A. Regular Minutes August 22, 2003, meeting
- B. Grievance Minutes August 22, 2003, meeting
- C. Executive Committee action taken:
  - 1. September 5, 2003, UPL circuit committee chair nomination
  - 2. September 16, 2003, DNA testing rule 3.853 — request for emergency amendment

**7. Consent Calendar** - the following items were approved:

- A. UPL Circuit committee nominations

1. October 2003
  - a. Gary Barrick, Attorney Member, 10th Judicial Circuit
  - b. Jonathan Preiksats, Attorney Member, 11th Judicial Circuit
  
- B. Rules Committee Review
  1. Rule 10-2.1 Rules Governing the Investigation and Prosecution of the unlicensed Practice of Law — Definitions — Generally
  2. City, County and Local Government Law Section Bylaws
  
- C. Legal Needs of Children Standing Committee Chair Nomination — Edith Osman

### **8. Young Lawyers Division Report**

President-elect Michael Faehner reported that the YLD board was requesting a waiver from its bylaw dismissing board members who miss four meetings. He said that currently five YLD board members are pregnant and three have some complications. At the same time, because of scheduling the board has three meetings in three months. Faehner said an amendment should be ready for the BoG's approval at the December meeting. After discussion, the board approved the request.

President-elect Faehner presented for first reading its recommended changes to its Practicing with Professionalism and Basic Skills Courses. It will be debated at the BoG's December meeting, and in the meantime the division will continue meeting with the Government Lawyer, Criminal Law, and City, County, and Local Government Law sections as well as other groups to address their concerns. The main change from earlier versions, he said, was government lawyers who have practiced for six years would be exempt from taking the required three basic skills courses when they leave public employment and enter private practice. The latest versions would still require all government lawyers to take the one-day Practicing With Professionalism course. The YLD will reprise its Government Affairs Symposium at its January meeting in Orlando, Faehner announced, and the topic will again be Article V funding. The division remains active with local affiliates on outreach programs and was planning to attend both state and ABA meetings on those programs, he said. The YLD also has instituted, as part of the Bar's For The Children program, an award recognizing the local affiliate outreach program that best helps children.

### **9. Out-of-State Practitioners Division Report**

President Scott Atwood reported that division membership was increasing, and the division is using CLE programs, receptions, regional liaisons to build a sense of community and keep division members informed. He also said the division is exploring opening a website, and looking to develop networking opportunities for members.

### **10. Disciplinary Procedure Committee Report**

Chair Don Horn presented the following items:

- A). Items presented on first reading:
  - 1) Rule 3-3.4 Rules of Discipline — Jurisdiction to Enforce Rules — Grievance committees, which allows grievance committee members whose terms have

expired to continue to participate in pending cases.

2) Rule 3-7.2 Rules of Discipline — Procedures upon Criminal Professional Misconduct, which creates an interim suspension procedure for attorneys who have been disbarred, suspended, or resigned for disciplinary reasons in another jurisdiction.

3) Rule 3-7.6 Rules of Discipline — Procedures before a Referee, which relieves the referee of the requirement of serving a copy of the record on the Bar.

4) Rule 4-5.4 Rules of Professional Conduct — Professional Independence of Lawyer, which specifies that payments or bonuses made to nonlawyer employees may not be tied to a percentage of fees on work brought in by the employee or to a percentage of fees earned in a case.

B) Items for second reading at the December meeting:

1) Rule 1-3.6 Delinquent Members, which provides that Bar members who are admitted to the Bar on supervised probation, those who agree (including agreement to pay the fees) to be diverted to the ethics school following a grievance complaint or similar program, or those who are ordered to repay a client following a fee arbitration award in an agreed to Bar arbitration will be treated as dues delinquent members.

2) Rule 1-7.3 Membership Fees. Makes changes to conform with the amendments to Rule 1-3.6.

3) Rule 3-2.1 (n) Generally (definition of staff counsel). Specifies conditions when the Bar Executive Director can designate an alternate staff counsel.

4) Rule 4-1.5 Fees for Legal Services, Alternate Billing Methods and Reasonable Costs. Provides guidance to members as to how costs are determined to be reasonable and establishes a safe harbor for costs that are sufficiently detailed in written contract or other document approved by the client.

5) Rule 4-3.4 Rules of Professional Conduct — Fairness to Opposing Party and Counsel. Conforms the rules to recent court rulings and specifically allows an attorney to express an opinion about the credibility of a witness in certain circumstances when the statement is supported by the record and/or authorized by law or rule.

## **11. Program Evaluation Committee Report**

The following items were reported by Vice Chair Dude Phelan. The first dealt with proposed Rule 6-9 Standards for Certification of a Board Certified Real Estate Lawyers and Rule 6-13, Standards for Certification of a Board Certified Appellate Lawyer. Most of the changes were minor or housekeeping. For real estate certification, the main change was to require experience with transactions to be specific to Florida real estate transactions. With appellate certification, the most notable change was to exempt sitting judges from the requirement of taking the certification exam.

The second item dealt with proposals from the board's Certification Plans Appeals Committee and the Board of Legal Specialization and Education. Phelan said the committee decided to make that the principal focus of its December meeting and that all interested parties have been invited to that session. The third item was the committee's review of the Voluntary Bar Communications Grant/Underwriting Program. That program began a few years ago with a \$25,000 budget, which wasn't entirely used, Phelan said. For the past few years, the budget has been \$5,000 and there have been no applications and no money spent. The PEC recommended closing the program at the end of the fiscal year, but in the meantime publicizing it and seeking more local Bar participation. If there was activity by the year's end, Phelan said the committee would reconsider terminating the program. Board members, however, said they were reluctant to vote on the matter and suggested more publicity, including in the *Bar News*, and then revisiting it at the end of the fiscal year. Vice Chair Phelan withdrew the motion, saying the committee was comfortable following the board's expressed wishes.

### **12. Rules Committee Report**

Committee member Brian Burgoon reported that the committee may be taking a more substantive role in reviewing proposed rules rather than focusing mostly on drafting. He said the committee was reviewing various items for future board review: Family Law Section bylaw changes, amendments to Board of Legal Specialization and Education policies, and the multijurisdictional practice rule package.

### **13. Communications Committee Report**

Chair Jim Lupino reported that the committee had an update on the Dignity in Law Program, and that several potential new stories were in the works, including ones that will emphasize the Bar's For The Children program. The committee also reviewed the Bar's annual media awards program and decided not to make any changes. The committee has also set up a subcommittee to review plans to reduce the contents of the Bar *Journal* directory now that much of the information is available on the Bar's Web site. Lupino noted that some complaints had been received about the exclusion in this year's directory of the Rules Regulating The Florida Bar. The committee also approved broadcasting on the Bar's website - a video of important Bar activities and message, beginning with a message on Article V funding. Lupino noted the Budget Committee had approved that program.

### **14. Investment Committee Report**

Investment Committee Chair Ian Comisky reported the Bar's investments continued to do well, earning about \$200,000 since August and overall increasing about 17 percent since the beginning of the calendar year.

### **15. Budget Committee Report**

Chair Jesse Diner presented that Bar expenditures and revenues for the 2003-04 budget years were about as expected. He said the committee tabled a request to help fund a seminar sponsored by the Committee on Relations Between The Florida Bar and the Institute of CPAs because it was unsure there was enough appeal for lawyers and whether it fell within the committee's purview to put on seminars. He presented the board with three actions items, all of which were approved. The first was an \$11,340 expenditure to Web cast important Bar messages via the Bar's Web site. Of that, \$7,020 will come from the operating reserve. The second was a \$37,500 amendment to the contract with the Bar's outside legislative counsel funded from the operating reserve. The third item was a \$25,000 expenditure toward a \$100,000 study by the independent TaxWatch government watchdog group on court funding. This authorization id from the new program reserve. Diner said the Bar hopes to raise money from other groups such as ABOTA and the Academy of Florida Trial Lawyers. Bar Executive Director John F. Harkness, Jr., said the study was suggested by Bar Chief Legislative Counsel Steve Metz who said TaxWatch is a respected independent group with strong ties to the business community and the legislators would listen to them on the necessity of adequate funding for the courts. Diner said the business community is becoming concerned about court funding, having seen problems getting business cases heard in other states that have cut court funding. President McGrane said he has been meeting with legislative leaders who frequently don't understand what the Bar is and who it represents, and with business leaders on how they could be affected. Legislative Committee Chair Alan Bookman announced that committee also supported the study.

### **16. Legislative Committee Report**

Chair Alan Bookman said the committee is continuing to work on the key contacts program and invited board members to fill out forms for any legislators they know. He noted that President McGrane testified at the House Judiciary Committee on unlicensed practice of law issues, and the committee is following up by studying legislative suggestions about increasing criminal UPL penalties from a first degree misdemeanor to a third degree felony. He said Sen. Alex Villalobos, Sen. Rod Smith, and Rep. Holly Benson would be at the board's December 5 meeting to receive awards for their work on Article V funding in the 2003 legislative sessions.

### **17. Bar President's Report**

President McGrane reported that he had attended the September 26 judicial nominating commission training meeting in Orlando, where he spoke along with Chief Justice Harry Lee Anstead and Gov. Jeb Bush. He noted that Gov. Bush said he wants a judiciary in the next eight to 10 years that is as diverse as Florida's population, and in order to do that the JNCs have to reflect the diversity of the population. McGrane announced that he had appointed the screening committees for next year's Bar JNC nominations, and that President-elect Kelly Overstreet Johnson will be the overall chair. Chairs of the DCA screening committees are Greg Parker for the First DCA, Larry Ringers for the Second DCA, David Bianchi for the Third DCA, Amy Smith for the Fourth DCA, and Warren Lindsey for the Fifth DCA. President McGrane said he testified at the House Judiciary Committee in September and received a warm reception. He said he talked first about overall Bar operations and then about Bar unlicensed practice of law activities. There is interest among some lawmakers, McGrane reported, in increasing the state's criminal penalties for UPL from a first degree misdemeanor to a third degree felony. Lawmakers also urged the Bar to go on Hispanic radio stations and find other media outlets to get the word out about UPL. The President said he is scheduled to meet with Sens. Smith and Villalobos in November to discuss Article V funding.

McGrane reported that the Supreme Court had suspended the October 1 filing deadline for inmates to seek DNA testing of evidence following the Rules of Criminal Procedure Committee filing an emergency petition seeking a one-year extension of the deadline. The court invited comment from all interested parties and set oral arguments for November 7.

Finally, the President reported he had received a letter from Chief Justice Anstead asking him to appoint lawyers from around the state to an arts committee that will oversee art exhibits at the Supreme Court.

### **18 Audit Committee Report**

Chair Russ Divine reported that the final audit for the 2002-03 fiscal year had been distributed to board members, and the committee would be presenting it at the board's December 5 meeting.

### **19. International Law Section Report**

Chair David Willig reported the section is reaching out to other Bar sections since international law issues now overlap with most areas of law. He said the section is planning several CLE seminars with other sections, and has signed protocols with several foreign bar associations, including in Canada, Russia, and around the Americas. The section worked with the Bar on the proposed multijurisdictional practice rules to ensure they would not be a hindrance to locating the secretariat of the Free Trade Association of the Americans in Miami. The section is also, Willig said, exploring ways to help the Haitian judicial system, perhaps with a gift of books and other legal materials. President McGrane thanked the section for helping on the FTAA issue, and invited its help on the Bar's For The Children Campaign, perhaps on international child custody issues.

### **20. Certification Plans Appeals Committee**

Chair David Rothman said the committee would be presenting its plan for a new appeals committee and process at the board's December 5 meeting.

### **21. Special Commission on Lawyer Regulation**

Commission member David Rothman reported the committee held its first meeting in September at the Bar's General Meeting. It had a broad ranging discussion about consistency and efficiency in Bar grievances, and how to determine what was working and what could be improved. The commission is planning to survey those who have had contact with the system, including complainants, judges, respondents, and those who represent attorneys in grievances, to get their input. One problem the commission is having, Rothman said, is that many of the people who have complained about the system have little understanding of how it works. He also said judges need better training about the grievance process, how it works, and their role in it.

**22. Professionalism Report**

Board member Mike Glazer reported that while the organization of professionalism activities can appear odd, it works very well. There are three parts, he said. The Supreme Court Commission on Professionalism, the Bar's Committee on Professionalism, and the Bar's Professionalism Center. The commission, he said, works on overall policy and programs. The committee, staffed with volunteers, works on award programs and carrying out various policies and programs. The center has the staff to do training, conduct seminars, and serves as a resource for the commission, the committee and the profession. Glazer said there is a move underway to create a professionalism diversion program similar to the ethics diversion program, to help lawyers before they have serious professional problems. He said the Professionalism Commission and the Professionalism Committee set up a joint subcommittee to look at ways to generate income for professionalism programs, which cost the Bar about \$500,000 annually. Online professionalism CLE courses have been successful and helped bring in money, he said.

**23 Time and Place of Next Meeting**

The next scheduled board meeting is December 3-6 at the Ritz-Carlton, Amelia Island, Florida.

There being no further business. The board adjourned at 11:55 a.m.

Respectfully submitted

Gary Blankenship  
Senior Editor, Florida Bar News

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