

**THE FLORIDA BAR BOARD OF GOVERNORS**

**Regular Minutes**

August 13, 2004

Ponte Vedra Beach Resort and Inn

Ponte Vedra Beach, FL

Pursuant to notice, the regular meeting of the Board of Governors of The Florida Bar was called to order at 8:30 a.m. on Friday, August 13, 2004 at The Ponte Vedra Resort and Inn, Ponte Vedra Beach, Florida, with President Kelly Overstreet Johnson presiding.

**1. Roll Call**

Board members present:

Kelly Overstreet Johnson, President  
Alan B. Bookman, President-elect  
Ross M. Goodman, First Judicial Circuit  
Lawrence E. Sellers, Jr., Second Judicial Circuit  
Michael J. Glazer, Second Judicial Circuit  
Gregory S. Parker, Third Judicial Circuit  
S. Grier Wells, Fourth Judicial Circuit  
Henry M. Coxe, III, Fourth Judicial Circuit  
William H. Phelan, Jr., Fifth Judicial Circuit  
Andrew B. Sasso, Sixth Judicial Circuit  
Chobee Ebbets, Seventh Judicial Circuit  
Robert A. Rush, Eighth Judicial Circuit  
Mayanne Downs, Ninth Judicial Circuit  
Russell W. Divine, Ninth Judicial Circuit  
Warren W. Lindsey, Ninth Judicial Circuit  
Francisco R. Angones, Eleventh Judicial Circuit  
Ervin A. Gonzalez, Eleventh Judicial Circuit  
Jennifer R. Coberly, Eleventh Judicial Circuit  
Steven E. Chaykin, Eleventh Judicial Circuit  
Clifford W. Sanborn, Fourteen Judicial Circuit  
John G. White, III, Fifteenth Judicial Circuit  
Jerald S. Beer, Fifteenth Judicial Circuit  
Scott G. Hawkins, Fifteenth Judicial Circuit  
Amy L. Smith, Fifteenth Judicial Circuit  
Alan C. Brandt, Seventeenth Judicial Circuit  
Nancy W. Gregoire, Seventeenth Judicial Circuit  
Henry Latimer, Seventeenth Judicial Circuit  
Jesse H. Diner, Seventeenth Judicial Circuit  
Frank C. Walker, II, Seventeenth Judicial Circuit  
Clifton A. McClelland, Eighteenth Judicial Circuit  
Richard Tanner, Out of State  
Gary J. Leppla, Out of State  
Brian D. Burgoon, Out of State  
Michael J. Faehner, YLD President  
Jamie Billotte Moses, YLD President-elect  
Solomon L. Badger, III, Ed. D., Public Member

Board members absent:

Murray B. Silverstein, Sixth Judicial Circuit  
Robert M. Brush, Tenth Judicial Circuit

David Rothman, Eleventh Judicial Circuit  
Henry T. Courtney, Eleventh Judicial Circuit  
Sharon L. Langer, Eleventh Judicial Circuit  
Benedict P. Kuehne, Eleventh Judicial Circuit  
Kimberly A. Bald, Twelfth Judicial Circuit  
Timon V. Sullivan, Thirteenth Judicial Circuit  
John F. Rudy, II, Thirteenth Judicial Circuit  
Gwynne A. Young, Thirteenth Judicial Circuit  
James S. Lupino, Sixteenth Judicial Circuit  
Harold G. Melville, Jr., Nineteenth Judicial Circuit  
J. Christopher Lombardo, Twentieth Judicial Circuit  
A. Lawrence Ringers, Twentieth Judicial Circuit  
Ian Comisky, Out of State  
J. Blair Culpepper, Public Member

Staff attending the meeting:

John F. Harkness, Jr., Executive Director  
Paul F. Hill, General Counsel  
Tina Ruffin, Assistant to the President  
Dana Wood, Secretary to the Board of Governors  
Austin Newberry, YLD Program Administrator  
Elizabeth Tarbert, Director of Ethics and Advertising  
Gary Blankenship, Senior Editor, Florida Bar News  
Allen Martin, Director Finance and Accounting  
Tony Boggs, Director Legal Division  
Mary Ellen Bateman, Director, Ethics, Advertising and Professionalism Division  
Mike Tartaglia, Director of Programs Division  
Ken Marvin, Director of Lawyer Regulation  
Francine Walker, Director of Public Information

**2. Guests**

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

Jane Curran, The Florida Bar Foundation  
Fred W. Baggett, Florida Association of Court Clerks and Comptrollers  
Stephanie Birtman, Esq., Florida House of Representatives, Committee on Judiciary

**3. Invocation and Pledge of Allegiance**

Board member Solomon L. Badger, III offered the invocation and pledge of allegiance.

**4. Greetings and Other Guest Appearances**

The Honorable Timothy J. Corrigan, United States District Court, Middle District of Florida  
The Honorable Karen K. Cole, Fourth Judicial Circuit, State of Florida  
Reginald Luster Esq., President, Jacksonville Bar Association  
Laura Bailet, Nemours Children's Clinic  
Ben Crump, President of the Virgil Hawkins Chapter

**5. Swearing-in of Board Members not present at General Assembly**

President Kelly Overstreet Johnson swore in the following board members:  
Ross M. Goodman, First Judicial Circuit  
Greg Parker, Third Judicial Circuit  
Mayanne Downs, Ninth Judicial Circuit

Russell W. Divine, Ninth Judicial Circuit  
Amy L. Smith, Fifteenth Judicial Circuit  
John G. White, Fifteenth Judicial Circuit  
Alan C. Brandt, Seventeenth Judicial Circuit  
Frank C. Walker, II, Seventeenth Judicial Circuit

#### **6. Non-roll Call Grievance Items**

Board member Warren Lindsey reported that the non-roll call grievance items were: 4, 11, 17, and 21.

#### **7. Non-Roll call Advertising Appeal Items**

Board member Gary Leppla reported that the non-roll call advertising appeal item was:  
Advertising Appeal 04-01578.

#### **8. APPROVAL OF MINUTES and EXECUTIVE COMMITTEE ACTION**

- A. Regular Minutes May 28, 2004 meeting
- B. Grievance Minutes May 28, 2004 meeting

#### C. Executive Committee action taken:

##### **Friday, June 25, 2004**

Two items required Executive Committee approval. One involved UPL circuit committee nominations and the other legislative objections.

Item 1: The following seven individuals were nominated to serve on UPL circuit committees:

Harry Richard Detwiler, Jr., attorney member, committee 2

Darlene M. Flynn, public member, committee 4

Jack Arthur Moring as chair, attorney member, committee 5

Margaret Stack as chair, attorney member, committee 8

Phil C. Beverly, Jr., attorney member, committee 8

John Lewis Fishel as chair, attorney member, committee 14

Jonathan Dingus, attorney member, committee 14

The Executive Committee approved, by a vote of 9-0, the seven nominations to the UPL circuit committees.

Item 2: The Florida Bar received five objections, of which two are new objectors, to legislative positions #13, 14 & 15 for the current biennium. The date of the next Board meeting was past the applicable deadline for action on these objections, so intervening Executive Committee action was required. The Executive Committee approved, by a vote of 9-0, a pro rated refund in the amount of \$5.32 of membership fees to the five objectors to be remitted upon conclusion of the fiscal year.

##### **Wednesday, July 7, 2004**

One item required Executive Committee approval involving proposed amendments to six different sets of court rules. Tom Hall, by letter to Miles McGrane dated May 18, 2004, requested that this matter be submitted to the Court as a fast-track item. The letter specifically requested that one petition be filed on behalf of all the affected rules committees. All the rules committees had voted in favor of these changes.

The only change being made to the affected rules is to substitute the term "magistrate" for the term "master" and to substitute the term "judge" for the term "magistrate" wherever either term appears in the rules, which is required because the Florida Legislature, in Ch. 2004-11, Laws of Fla. (S.B. 192), made similar changes to all of the Florida Statutes containing these terms.

The following rules are affected:

Fla.R.Civ.P. 1.200, 1.490

Fla.R.Crim.P. 3.111, 3.120, 3.121, 3.125, 3.130, 3.131, 3.133, 3.220, 3.852  
Fla.Prob.R. 5.150, 5.697  
Fla.R.Juv.P. 8.060, 8.625  
Fla.R.App.P. 9.190, 9.200  
Fla.Fam.L.R.P. 12.015, 12.200, 12.490, 12.492, and selected family law forms  
The Executive Committee voted 10-0 to approve the proposed amendments.

#### **Friday, July 16, 2004**

Two items required Executive Committee approval. One involved 2 replacement members on the 2004-2005 UPL standing committee and the other involved nominees for the vacancy on the 3<sup>rd</sup> circuit JNC.

Item 1: The following two individuals were nominated to serve on 2004-2005 UPL standing committee:

Avonelle R. MacKerell, attorney member

Abraham Issa, attorney member

The Executive Committee approved, by a vote of 11-0, the two nominations to the 2004-2005 UPL standing committee.

Item 2: The following three individuals were recommended as nominees to the Governor for a vacancy on the 3<sup>rd</sup> circuit JNC due to the resignation of Christina Johnson in a 2006 term.

Angela M. Cancio was just appointed by the Governor from The Florida Bar list of three nominees which also included Andrew J. Decker, Live Oak, and S. Austin Peele, Lake City. The subsequent vacancy was advertised and the following submitted applications:

Rhett Bullard, White Springs

Kathleen M. Bishop, Perry (who was just replaced by Cancio)

Ernest A. Sellers, Live Oak

The following nominees were recommended for the 2006 vacancy:

Andrew J. Decker, Live Oak

S. Austin Peele, Lake City

Earnest A. Sellers, Live Oak

The Executive Committee approved, by a vote of 11-0, the three recommended nominations to be sent to the Governor.

#### **Thursday, July 22, 2004**

A meeting of the Executive Committee was held by conference call and the following members were in attendance: Kelly Overstreet Johnson, Alan Bookman, Mike Glazer, Mike Faehner, Jesse Diner, Jerry Beer, Mayanne Downs, Sharon Langer, Hank Coxe, David Rothman and Ervin Gonzalez. The following staff members were in attendance: Jack Harkness, Paul Hill and Tina Ruffin. Two items were discussed.

Item 1:

The Executive Committee, by a vote of 11-0, unanimously gave provisional approval to a draft amicus brief from the Elder Law Section in the case of Jeb Bush v. Michael Schiavo (Case No. SC 004-925) now pending before the Supreme Court of Florida. The committee will review a final draft of the section's brief prior to any filing, due Monday, July 26.

All parties in these proceedings – to include attorneys for the governor – have consented to the section's appearance. Standing Board Policy 8.10 otherwise controls amicus matters within the Bar. In considering the section's proposed filing, the Executive Committee opted to allow argument only on the separation of powers issues raised in this case. A separate argument relating to the right of privacy was not approved on behalf of the section, but will be asserted by other amicus the Executive Committee was told.

Also, in anticipation of a further request from the Public Interest Law Section – to be a co-party on the Elder Law Section's final brief or to file a mere endorsement of it – the Executive Committee authorized such action, subject to appropriate vote of PILS and the preferences of the Elder Law

Section.

Item 2:

The Criminal Procedure Rules Committee requested the Executive Committee approve their report proposing out-of-cycle changes to the Florida Rules of Criminal Procedure. The report was to be filed pursuant to Rule of Judicial Administration 2.130(f), which provides procedure for changes at the court's behest. Each of the proposed changes were in response to a referral from the court.

The first item in the report was in response to the court's request for a proposed amendment by October 1, 2004. The second and third items were referrals based on the recommendations of the court's Jury Innovations Committee, and a referral letter from Tom Hall asking for a report to be filed by August 6. The remaining proposals were based on 2004 legislation for which the court has asked the Bar to submit any needed rules changes through its fast track procedures. Those procedures are designed to allow adoption of rule changes by (or as close as possible to) the effective date of the legislation.

The Executive Committee approved, by a vote of 10-0, the Criminal Procedure Rules Committee's request to approve their report.

### **9. Consent Calendar**

The board of governors **approved** the following items:

- A. UPL Circuit committee nominations  
August 2004  
H. James Parker, Attorney member, Sixth Judicial Circuit  
Diane Victor Kuenzel, Attorney member, Sixth Judicial Circuit  
Alfred Walker Torrence, Jr., Attorney member, Sixth Judicial Circuit  
Francis J. Macauley, Public member, Sixth Judicial Circuit  
Rebecca Wilson Ribler, Attorney member, Eleventh Judicial Circuit  
Gregory Allan Richards, Jr., Attorney member, Thirteenth Judicial Circuit  
Scott Douglas Devore, attorney member, Fifteenth Judicial Circuit  
Johathan Harry Wasserman, Attorney member, Fifteenth Judicial Circuit  
Keith S. Grossman, Attorney member, Twentieth Judicial Circuit  
Aaron A. Haak, Attorney member, Twentieth Judicial Circuit
- B. Board Review Committee on Professional Ethics- **Removed from consent**
- 1) Advertising Appeal 04-01578
- C. Legislative Committee Review
- 1) New section legislative position requests for the 2004-2006 biennium
  - a) Business Law Section
    - i. Opposes legislation to impose income tax on limited liability companies and subchapter 5 corporations.
    - ii. **Supports amendment of Section 701.02 F. S., to provide that the UCC governs the attachment and perfection of a security interest in a mortgage upon real property and in a promissory note or other right to payment or performance secured by that mortgage, and no assignment of the mortgage is required to be recorded under this section for the attachment or perfection of a security interest in such a mortgage under the UCC.**
  - b) Real Property, Probate & Trust Law Section
    - i. Supports the revision of F. S. 222.21 (21)(a) to strengthen the exemptions from creditors' claims for IRAs and employee benefit funds or accounts exempt from taxation under the Internal Revenue Code of 1986.
    - ii. Supports the creation of a consolidated chapter for disclaimers of testamentary and non-testamentary property interests.
    - iii. Supports the revision of 718.117 F. S. process for terminating condominium property.

- c) Family Law Section
    - i. Supports amendments to F. S. 61.16 and F. S. 742.045 to clarify that the court has authority to award reasonable attorney's fees and costs incurred in establishing both the entitlement and the amount of attorney's fees, costs and suit money to be awarded in a proceeding.
  - 2) Section legislative consultant contracts-Approved
    - a) Business Law Section- Bill Wiley
    - b) Family Law Section-Fred Dudley
    - c) Trial Lawyers Section- Buddy Jacobs
- D. Rule 9-2.2 Prepaid Legal Services - Form and Content of Plan Application  
Within subdivision (e), increases the prepaid legal services plan application fee from \$50 to \$125.
- E. SBP 15.55 Deferral of Disciplinary Investigation During Civil or Criminal Proceedings  
Clarifies that the chief branch discipline counsel, rather than staff counsel, may approve deferrals; clarifies that bar counsel can determine appropriate proceedings if it becomes apparent that civil authority will not address the misconduct; requires that notice of deferral be given to the designated reviewer.
- F. Labor & Employment Law Section Bylaw Changes  
Within Article V (Terms of Officers and Executive Council Members, etc) adds requirements for those seeking the offices of chair of both the CLE Committee and CLE Subcommittee.
- G. Construction Law Certification Committee appointments  
Kimberly A. Ashby, Chair  
Alan C. Brandt, Jr.  
Bruce Gilmour Alexander  
Robert Anthony Emmanuel  
Melinda S. Gentile  
Larry R. Leiby  
George Joseph Meyer  
Clemon Warren Tripp, Jr.  
Michael Keith Wilson
- H. Legal Services of North Florida, Inc. appointment  
C. LeDon Anchors, Jr., Okaloosa-Walton Bar Association
- I. The Florida Bar Citizens Forum appointments  
James S. Lupino, Chair  
Linda A. Osmundson  
Anthony J. Abate  
Roddie F. Bailey  
Kimberly A. Bald  
John W. Biesinger, III  
Barry M. Crown  
Rebecca Frank  
Michael H. Greenhill  
Ivan "Marty" Ford  
Rudolph J. Frei, M. D.  
Frederick A. Hamblin  
Gail E. Honea  
Belinda Keiser  
Jennifer N. Mayfield  
Richard C. Myers  
Beth Rominger  
Dan Simmons  
Edward A. Strongin

#### **10. Jacksonville Literacy Speakers Bureau**

Board member Hank Coxe introduced Reginald Luster, President of the Jacksonville Bar Association, The Honorable Timothy J. Corrigan, The Honorable Karen K. Cole and Laura Bailet, Nemours Children's Clinic of the Jacksonville Literacy Speakers Bureau. Mr. Luster told the board that they care not only because literacy helps our citizens function in society, but because there is also overwhelming evidence that illiteracy endangers public health and public safety. Reading problems adversely affect not only education, but employment, substance abuse, mental health and family stability. A child who cannot read or reads poorly will fail in school and because of such failure is more likely to drop out of school and more like to use drugs, become depressed and violate the law. A shocking 47 percent of our population is functionally illiterate, meaning those individuals cannot read well enough to fill out a job application. The goal of the literacy speakers bureau is to make sure that literacy is a priority.

The Honorable Tim Corrigan, a federal district judge in Jacksonville told the board that he comes to this literacy issue for somewhat selfish reasons. As a federal judge, he sentences 18, 19, 20 and 21 year old defendants to 10 years, 20 years and longer sentences regularly. 85 percent of juvenile delinquents have reading problems and many high school juvenile delinquents read below the 4th grade level. Improving literacy is one effective way to improve the quality of life not only for those directly affected by these programs, but the community as a whole. He told the board that The Florida Bar, local Bar associations and lawyers individually as leaders in our community have a unique opportunity to take a leadership role on the literacy issue.

Laura Bailet, Ph.D. of the Nemours Children's Clinic asked the board: What is dyslexia? She said that it is a neuro-developmental reading disorder, caused by subtle malfunctions in the brain, it is not caused by brain damage, it is not caused by low IQ, it is fundamentally a language based disorder. It is not caused by a vision problem. She said that reading is an unnatural act. There are certain basic functions that our brains are genetically hardwired for such as learning to talk and walk. Reading is not one of those skills. Reading is a relatively late development in human developments. Functional magnetic resonance imaging, a research type of MRI, takes pictures of the brain at work. There are earmarked differences in the normal brains and the dyslexic brains, and the dyslexic brains look very much alike.

When you put dyslexic people into intensive, appropriate remedial training, for several months their brains begin to look like normal brains. About 17 to 20 percent of children experience serious reading problems. Dyslexia occurs across all races, intellectual and socio-economic classes and occurs in all languages. It is possible to identify preschoolers who are at risk of dyslexia. Ms. Bailet stated that because lawyers often hold respected positions in their community, they could be of tremendous help to this effort. She said that early intervention and training is like a vaccine in that it will possibly help a child avoid problems later.

The Honorable Karen K. Cole told the board that The Florida Bar has declared this the year of children. Children who can not read will have problems and are less likely to have meaningful employment.

By combining the talents of lawyers, judges, physicians and psychologist, we can ensure that all of our children know how to read.

#### **11. Young Lawyers Division Report**

Michael Faehner, President of the Young Lawyers Division introduced several members of the Young Lawyers Division board. Faehner reported that the Practicing With Professionalism (PWP) rule to get rid of the deferment for government lawyers is pending before the Supreme Court. There is only one party objecting to the petition and they are anticipating an oral argument on that issue sometime in the fall. Faehner thanked Jerry Beer for working out a new CLE split arrangement for the YLD. He reported that the proposal will be brought to the Board of Governors at their meeting in December so that The Florida Bar Standing Board Policies can be amended. Faehner reported on the diversity symposium. The YLD has studied the report and has designated certain committees to work on implementing and outreaching to various law schools to get more members involved with The Florida Bar.

#### **12. Out of State Practitioners Division Report**

Scott Atwood, President of the Out of State Practitioners Division, reported that they looked forward to hosting the board in October in Las Vegas at the out of state board of governors meeting. They are still working on

the social aspect of their plans. They will host a reception for the board most likely on Friday evening with the International Law Section.

### **13. Advertising Task Force Report**

Task force vice-chair Chobee Ebbets reported that they are the third task force to look at the advertising issue. He informed the board that there are a number of complicated issues and the task force has held numerous meetings. The task force is charged with examining the rules to make them clearer and easier to follow. The task force is also charged with reviewing the advertising evaluation process, including the possibility of requiring prior review of attorney advertisements. The task force hopes to accomplish its task by the end of the fiscal year.

President Johnson has asked that Barry Richard prepare a memo on the history of attorney advertising regulation in Florida and the constitutional issues involved, which will be of assistance to the board in making final decisions on the rules.

### **14. Budget Committee Report**

Committee Chair Jerry Beer reported that the committee unanimously approved and recommended board approval of the five following amendments:

- |    |                                             |                                                |
|----|---------------------------------------------|------------------------------------------------|
| A. | Refunds to Legislative Objectors            | \$79, which does not affect the General Fund.  |
| B. | The Bar Center Security System              | \$15,926, also not affecting the General Fund. |
| C. | Certification Strategic Communications Plan | \$50,000, not affecting the General Fund.      |
| D. | The Bar Web Cast                            | \$8,500 from the General Fund.                 |
| E. | Annual Meeting Entertainment                | \$46,996 from the General Fund.                |

The board approved the amendments.

The committee also reported it is considering changing standing board policy 6.21(d), the rule regarding splits of profits from section sponsored certification review courses. The committee may recommend that the board delete Rule 6.21(d) from the standing board policies.

Finally, the animal law committee requested a \$5,300 amendment. The budget committee has approved \$1,500, pending the animal law committee reporting back with its recommended detail budget. The board approved the amendment with a voice vote.

### **15. Rules of Judicial Administration Committee Report**

Past chair Stanford Solomon called in to the board meeting and gave the following report via the telephone. Solomon spoke to the board about the proposed amendments to Florida Rule of Judicial Administration 2.050 intended to clarify the relationship between courts and clerks due to the Revision 7 to Article V. The Rules of Judicial Administration Committee proposed including this sentence in rule 2.050(3): "The clerk of court shall discharge its constitutional and statutory duties at the direction of and in consultation with the chief judge to effectively and efficiently accomplish the administrative plan." Subdivision (9) would have these sentences added: "The clerks of court shall be subject to the direction of the chief judge for the efficient and proper administration of all courts within the circuit. The clerk of court shall perform all responsibilities required by law and provide such other services for the efficient and proper administration of the court as may be required by administrative order or local rule."

Many members of the board did not agree with the proposed changes to the rule. The board discussed the rule and other modifications to the rule rather than that of the committee. The board's proposed modifications would alter both sections to say the chief judge would have "administrative supervision" rather than "direction" over the clerks. The last sentence of subdivision (9) would be shortened to "The clerk of court shall perform all responsibilities required by law."

Solomon told the board the issue arose when a proposed local rule in the Sixth Circuit was forwarded to the committee. He said a subcommittee was appointed to study the issue, and it concluded that past case law clearly gives judges control over clerk functions that affect court operations.

Trial Court Budget Commission (TCBC) Vice Chair Judge Stan Morris told the board that there were many



battles and compromises while drafting the statute during the legislative session. The outcome was one that both the TCBC and the clerks could live with. Fred Baggett, of the clerks association said the delineations in the Revision 7 laws were carefully worked out over two years. Baggett said that the clerks are in a supporting role; they operate in support of the courts and under the administrative supervision of the chief judges, but as independent constitutional officers. He also said the clerks would support the compromise language that the board had suggested.

President Johnson told the board that she had received a letter from six legislators: Representative Benson; Representative Goodlette; Representative Negron; Representative Gelber; Representative Seiler; and Senator Rod Smith, which said that the proposed rule infringed on legislative prerogatives and that the legislature has already delineated duties of the courts of clerks. The letter said that the assignment of responsibilities by a judge to a non-judicial constitutional officer without a transfer of funding to match those responsibilities is tantamount to controlling the appropriations process. Citing a 1991 Florida Supreme Court decision the letter said that only the legislature could set the fiscal priorities, thus the proposed rule appears to violate Florida's Separation of Powers doctrine.

The board voted 28-4 to recommend the board of governor's changes to the Rules of Judicial Administration Committee before that committee sends their proposal to the Supreme Court of Florida.

#### **16. Audit Committee Report**

Chair Russ Divine reported that the Audit committee had met with John Thomas and Jeff Barbacchi of Thomas, Howell, Ferguson P.A. They are currently reviewing the internal controls and provided the committee their preliminary feedback. They recommended The Bar expand their engagement so that they could look at the cash disbursements with in The Bar. This requires the board to approve a \$4,000 - \$6000 contract amendment which the committee recommended. The board concurred and approved the contract amendment with a voice vote.

Divine told the board that the committee is also discussing the role of the Audit committee. The committee will prepare a mission statement.

#### **17. Investment Committee Report**

Chair Jay White reported that the Investment committee unanimously voted to renew the contract with The Bar's financial advisors at Morgan Stanley and recommended that the board approve the contract. The board concurred with the committee and approved the contract.

The committee also unanimously voted to move some of the large cap funds from the American Funds to NWQ, based on the advise from The Bar's advisor James Bagwell. The board concurred and approved the move with a voice vote.

#### **18. Legislation Committee Report**

Vice Chair Frank Angones reported that the committee heard presentations by the Family Law Section and the Public Interest Law Section regarding their separate legislative position requests to lobby for removal of the statutory ban on homosexual adoptions and institution of a "best interests" standard to determine who may adopt in Florida. He told the board that after hearing from both sections, the committee discussed the divisiveness of the issue and the extent of lawyers' awareness about it. Thereafter, Evan Marks, chair of the Family Law Section, and Deborah Schroth, legislative chair of the Public Interest Law Section, withdrew the two requests in order for the sections to further inform the Bar and to try to gain the support of more Bar sections. Both PILS and the Family Law Section intend to resubmit their requests to the board for the December meeting. Angones reminded the board that, per SBP 9.20(d), the Bar biennially sunsets all its legislative positions. Sections are given an opportunity to request that some of their legislative positions be reactivated and rolled over to the next legislative biennium. The committee recommended to the board that it reactivate all requested section rollover positions. The board concurred and approved the recommendation by voice vote. No Florida Bar legislative positions were recommended for consideration or reactivation at this time. Angones reported that the committee recommended that the board approve the legislative consulting contracts for Steve Metz, the Bar's chief legislative consultant, as well as those for Doug Bruce, Matt Bryan, Pamela Burch Fort, Mike Harrell, Julie Myers, Michelle Lorenzo Palacio and Herb Sheheane, Jr.,

who serve as additional legislative consultants for the Bar. The board concurred and approved the contracts in a voice vote.

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

Chair Gary Leppla reported that the committee considered the following items:

ADVERTISING APPEAL 04-01578, which was removed from the consent calendar. Advertising Appeal 04-01578 concerns application of Rule 4-7.2(b)(1)(B), prohibiting statements that refer to past results to a print advertisement. Staff rendered an opinion on February 19, 2004, that the language "We Measure Success by Our Clients' Satisfaction" improperly refers to past results, in violation of Rule 4-7.2(b)(1)(B). The Standing Committee on Advertising upheld staff's opinion on April 21, 2004. The attorney subsequently requested Board of Governors review. The Board Review Committee voted 5-0 to remove the item from the board's consent calendar and to recommend that the Board of Governors reverse the Standing Committee on Advertising, finding the language permissible. The board concurred in the recommendation of the Board Review Committee.

### **Changes to the Florida Bar Procedures for Ruling on Questions of Ethics and the Florida Bar Procedures for Issuing Advisory Opinions Relating to Lawyer Advertising or Solicitation**

Staff requested proposed changes to the Florida Bar Procedures for Ruling on Questions of Ethics and the Florida Bar Procedures for Issuing Advisory Opinions Relating to Lawyer Advertising or Solicitation. The change would correct the bar headquarters address to which requests for opinions and requests for review of opinions must be sent. Changes to these procedures are final when approved by the board, in accordance with Bylaw 2-9.4, Rules Regulating The Florida Bar. The Board Review Committee voted 5-0 to adopt the changes to the procedures.

The board heard the informational report of the committee at first reading, directed that an official notice be placed in the bar News of the proposed change, and directed that the item be returned to the board for second reading and final action at the board's December 2004 meeting.

### **20. Communications Committee Report**

Chair Mike Glazer reported that the communications committee met and discussed the plans of the Board of Legal Specialization and Education to implement a public relations program directed at both lawyers and the public to provide education on certification. The BLSE had considered hiring an outside public relations firm, however, the committee recommended that the program be supervised in-house. The Bar has contracted with an accredited public relations professional, Lisa Garcia, APR, owner of PR Florida, whose sole job, on a part-time basis, is this program. The one-year program will be conducted within the Bar structure, using Bar resources and assuring that all Bar messages are integrated and coordinated.

Glazer told the board that the committee plans to look further at the results of the member communications audit. It included a number of recommendations, including taking a closer look at the *Bar News*, the *Bar Journal*, and the Bar Web site. The committee will be working on several communications initiatives, including the Kids Deserve Justice license plate, and will be looking at the *Journal/News* editorial board guidelines which have not been reviewed since 1982.

The committee discussed the Citizens Forum and considered ways to increase forum activities and input to the board. Glazer told the board that board member Jim Lupino is the chair of the forum and that board member Kimberly Bald is the board liaison and communications committee liaison.

### **21. Special Committee to Review the ABA Model Rules 2002**

Bar Ethics Counsel Elizabeth Tarbert reported that Chair Adele Stone was unable to attend the meeting due to Hurricane Charley. Tarbert said that the report was the culmination of 3 years of work. The special committee made their recommendations based on changes made by the ABA Ethics commission 2000 to the ABA model rules. Tarbert explained that there was a prior committee in 2001 that made recommendations to the Florida delegates to the ABA House of Delegates. The ABA voted in both February and August of 2002 on their changes. This special committee was then appointed to study the changes. The special committee issued an interim report in April 2003, which was circulated to all Bar sections and committees for comment. The committee received numerous comments, adopted some of the proposed

changes and declined to adopt others. The special committee issued a final report to the board in December 2003. The board circulated the final report and received additional comments. The special committee met and made recommendations on those comments to the board in March. The Disciplinary Procedures Committee (DPC) met in March and approved all of the changes, with the exception of an addition to the comment to Rule 4-1.4, which stated "Client telephone calls should be promptly returned or acknowledged." The Rules Committee met in March and approved all of the proposed changes. The board was scheduled to take final action on the report in May 2004, but received additional comments from the City, County & Local Government Law Section (CCL) as a hand carry item. The board deferred action until the following board of governors meeting. The special committee met with representatives from the CCL to discuss the recommended changes, adopted some of the changes and declined to adopt others. Representatives of the CCL and special committee met with the DPC to address the CCL's concerns. The DPC voted to recommend that the board adopt the recommendations of the special committee. Board member Robert Brush submitted a separate amendment to the comment to Rule 5-1.1 that clarified a lawyer's duty to hold funds in trust only where the lawyer had an independent legal duty to a third party. That amendment was not reviewed by the special committee. Board member Cliff McClelland moved Brush's amendment, and the board approved the amendment.

Board member Robert Rush voiced objections to some of the rule amendments based on the concerns raised by the CCL. He offered two amendments, both of which failed by a voice vote.

The board concurred with recommendations of the DPC and the special committee and approved the amendments, including the McClelland/Brush amendment, and including the DPC's proposed deletion of the comment to Rule 4-1.4 as noted above.

## **22. Program Evaluation Committee Report**

Chair Richard Tanner reported that the mission of the Program Evaluation Committee (PEC) is to evaluate the programs at The Florida Bar. The PEC met and considered the creation of the Animal Law Committee. The proponents of the committee have submitted the applications and met the prerequisites procedurally. The PEC voted unanimously to create the Animal Law Committee, with the caveat that it will not be an animal rights committee, but rather one that deals with laws relating to animals. The PEC recommended to the board that they approve the committee as an interim committee to be reviewed after 1 year, rather than the usual 3 years. The board concurred with the PEC and approved the creation of the committee.

The PEC also looked at the Clients' Security Fund. Tanner told the board that the Clients' Security Fund has very substantial discretionary authority. The PEC feels that the discretionary authority is adequate for all of the purposes which are anticipated that the fund may be addressing in the future, including increasing the magnitude and multitude of new clients. The PEC suggested that there be no further review of the fund.

The Education Law Committee received its triennial review. The PEC noted that there seems to be a decline in membership of the committee. The PEC recommended allowing the Education Law Committee to continue to exist. The board concurred and approved the continual existence of the committee.

Tanner told the board that the PEC is in the process of reviewing the Board of Legal Specialization and Education (BLSE). They are looking at the existing certification requirements, some of which are archaic, such as geography, gender and racial issues. PEC also reviewed suggested amendments to the BLSE Series 500 policies and some amendments to Rule 6.35. BLSE is revising some of the language for its continuing legal education requirements, how to award credits, and when it will award credits. The PEC recommended that the board approve the BLSE changes with one exception. The issue of how to decide what is an advance program, an intermediate program and a basic program needs to be addressed more clearly. The board concurred with the PEC recommendation and approved the BLSE changes.

Tanner told the board that besides looking at the BLSE certification issue, they will be looking at the Practice Management and Development Section. They will also be looking at the way the Bar manages and supervises the structure of the Bar meetings.

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

President Johnson reported on the following items which the board approved:  
Board of Legal Specialization and Education Policies

- a. 200 Series for final action
  - 1) Policy 2.04 Certification Annual Fee  
Within subdivisions (c) and (f), adds new policy to assess \$50 late fee for annual fee payments more than 45 days late and increases the annual fee and recertification file extension fees from \$100 to \$125.
  - 2) Policy 2.11 Exam Preparation and Administration  
Within subdivision (e), replaces "approved" with "eligible" to describe certification candidates found to have satisfied the application criteria sufficient to sit for examination.
- b. 600 Series for final action
  - 1) Policy 6.03 Calculation and Allowance of Educational Credit  
Within subdivision (c), updates policy language to include reference to "mental illness awareness" component of CLER; clarifies that taking the same course more than once during a 3-year CLER reporting cycle will not entitle a member to additional credit.
- c. 700 Series Basic Skills Course Requirement for final action  
Re-write of BSCR policies to conform to current practice and to reflect updates consistent with existing rules; removes duplicative rule 6-12 language; cites specific references to the rules to eliminate the necessity for further policy revisions upon changes to the rule; eliminates annual reporting of deferral entitlement; eliminates hearing procedures for noncompliance; adjusts delinquency reinstatement fee consistent with rule 1-3.7(b); adds reinstatement provisions consistent with rule 1-3.7(c) through (e); and, eliminates reference to the rules of procedure and burden of proof required in proceedings before BLSE.
  - 1) Policy 7.01 Administration
  - 2) Policy 7.02 Deferral
  - 3) Policy 7.03 Exemption
  - 4) Policy 7.05 Procedures on Noncompliance and Appeal
  - 5) Policy 7.06 Reinstatement
  - 6) Policy 7.08 Rules of Procedure and Burden of Proof

#### **24. Certification Plan Appeals Committee Report**

Chair Larry Sellers reported that the certification plan appeals committee hears appeals from people who were denied certification. Much of what the committee looks at and does is confidential. The committee met on August 12, 2004 and decided 2 appeals.

#### **25. Florida Board of Bar Examiners Screening Committee Report**

Chair Peter Brandt told the board that the committee unanimously selected Allison K. Bethel, Reginald J. Clyne and Suzanne Meyer Judas for the vacancy created by a resignation of one of the members. The appointee will serve the unexpired term which is approximately four and a half years. The board concurred with the committee recommendations and approved the nominees.

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

The board heard the following on first reading:

UPL Report

- a. Items on first reading
  - 1) Rule 10-6.1 Hearings  
Revises title to read Taking of Testimony instead of Hearings; within subdivision (a), similarly revises reference to when hearings are held, to read when testimony is taken; and within subdivision (d) additionally revises references to a complainant's right to be present at any circuit UPL committee proceeding rather than hearing further clarified to be when the

- respondent is present before the committee to give testimony.
- 2) Rule 10-8.1 Files  
Consistent with proposed revisions to rule 10-6.1, adds "transcribed testimony" to the definitions of the record for UPL and circuit committee purposes.

**27. Report of the Symposium on Diversity**

President Johnson told the board that she was referring the final report from the diversity symposium to the membership outreach committee, chaired by President-elect Bookman, to have them make recommendations.

**28. Special Commission on Lawyer Regulation Report**

Chair Hank Coxe reported that the commission had heard from Florida Supreme Court Justice Cantero. Cantero said that the Supreme Court was pleased with the process and the handling of the process by the Florida Bar. However, the courts did have some suggestions, one of which is, when the Florida Bar is dealing with multiple respondents arising from the same transaction or series of transactions. The matters shouldn't come to the courts without the Bar advising the courts that there are other related cases. Justice Cantero also told the commission that The Florida Bar should revisit if it wants to consider more emergency suspensions. Emergency suspensions have been confined to trust thefts. Justice Cantero suggested that The Florida Bar consider if there are other types of cases in which an emergency suspension would be appropriate, such as cases in which disbarment is likely. Justice Cantero also discussed the consequences of a short term suspension to a solo practitioner compared to the consequences to a lawyer in a large firm. A short term suspension has a more disparate effect on a solo practitioners business, whereas clients can be shared in a large firm as the large firm can shift the suspended lawyers clients to other lawyers in the firm.

Coxe reported that recently Judge Nelly Khouzam, past chair of the conference of circuit judges, and Manny Menendez, Chief judge of the 13<sup>th</sup> circuit, spoke to the commission about the use of county judges as referees in Bar discipline cases.

Finally, Coxe told the board that the commission will continue to look at changing the image that lawyers protect their own kind and don't respond to complaints. Coxe said that the commission should be finished with its work before the end of President Johnson's term.

**29. Time and Place of Next meeting**

The next Board of Governors meeting will be held October 12-17, 2004 in Las Vegas, Nevada. President Johnson reminded the board to return their social information to The Bar.

There being no further business to discuss, the Board of Governors meeting adjourned at 1:30p.m.

Respectfully submitted,

Dana M. Wood  
Secretary to the Board of Governors

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