

**THE FLORIDA BAR BOARD OF GOVERNORS**

**Regular Minutes**

May 28, 2004

The Westin Diplomat

Hollywood, FL

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, May 28, 2004 at The Westin Diplomat, Hollywood, Florida, 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  
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  
Louis Kwall, Sixth Judicial Circuit  
Murray B. Silverstein, 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  
Robert M. Brush, Tenth Judicial Circuit  
Francisco R. Angones, Eleventh Judicial Circuit  
David Rothman, Eleventh Judicial Circuit  
Ervin A. Gonzalez, Eleventh Judicial Circuit  
Jennifer R. Coberly, Eleventh Judicial Circuit  
Don L. Horn, Eleventh Judicial Circuit  
Sharon L. Langer, Eleventh Judicial Circuit  
David W. Bianchi, Eleventh Judicial Circuit  
Steven E. Chaykin, 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  
John G. White, III, Fifteenth Judicial Circuit  
Jerald S. Beer, Fifteenth Judicial Circuit  
Michael T. Kranz, Fifteenth Judicial Circuit  
Amy L. Smith, Fifteenth Judicial Circuit  
James S. Lupino, Sixteenth 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  
Harold G. Melville, Jr., Nineteenth Judicial Circuit  
A. Lawrence Ringers, Twentieth Judicial Circuit

Richard Tanner, Out of State  
Ian Comisky, Out of State  
Gary J. Leppla, Out of State  
Brian D. Burgoon, Out of State  
Mark Romance, YLD President  
Michael J. Faehner, YLD President-elect  
Solomon L. Badger, III, Ed. D., Public Member  
Vivian Hobbs, Ph.D., Public Member

Board members absent:

Rob Blue, Jr., Fourteenth Judicial Circuit  
J. Christopher Lombardo, Twentieth Judicial Circuit

Staff attending the meeting:

John F. Harkness, Jr., Executive Director  
Tina Ruffin, Assistant to the President  
Dana Wood, Secretary to the Board of Governors  
Elizabeth Tarbert, Director of Ethics and Advertising  
Gary Blankenship, Senior Editor, Florida Bar News  
Allen Martin, Director Finance and Accounting  
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:

Ray Abadin, President, Cuban American Bar Association  
Jane Curran, The Florida Bar Foundation  
Veronica Valdez, President, Virgil Hawkins, Florida Chapter of the American Bar Association  
Dinita James, President of Florida Association for Women Lawyers

## **3. Invocation and Pledge of Allegiance**

Ray Ferrero, President of NOVA offered the invocation and pledge of allegiance.

## **4. Greetings and Other Guest Appearances**

Senator Skip Campbell, presented with the President's Legislation Award  
Representative Jack Seiler, presented with the President's Legislation Award  
Representative Dan Gelber, presented with the President's Legislation Award  
Kat Silvergate, spoke to the Board and guests during lunch  
Tod Aronovitz, Past President, The Florida Bar, presented with scrapbook from 2002-03.  
Manny Morales, Chair, gave Advertising Task Force report  
Michael Cohen, E.D. of FLA Inc. gave the Florida Lawyers Assistance report  
Chair Jeffery Cohen gave the BLSE report

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

Board member Brian Burgoon reported that the non-roll call grievance items were: 11, 12, 16, 17, 25, and 26

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

Board member Henry Latimer reported that the non-roll call advertising appeal items were:  
Advertising Appeal 0401312.

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

- A. Regular Minutes April 2, 2004 meeting
- B. Grievance Minutes April 2, 2004 meeting
- C. Executive Committee action taken:

### **April 23, 2004**

The Rules of Judicial Administration Committee (RJA Committee) proposed amendments to Rule 2.085 (e)(1) in the last biennial cycle at the suggestion of the Juvenile Court Rules Committee (JCR Committee) that resulted in alteration of some deadlines for certain delinquency and dependency actions. The Steering Committee on Families and Children in the Court (SCFCC) filed a comment and suggested some further changes to these deadlines. The Supreme Court referred the matter to the JCR Committee for its input, and the JCR Committee agreed with the SCFCC's recommendations by votes of 20-0 (as to changes in delinquency time frames) and 30-0 (as to changes in dependency time frames). Tom Hall asked the JCR Committee to file a report proposing these recommended changes by April 1, 2004. Because the proposal implicates the Rules of Judicial Administration, the chairs of the RJA Committee and the JCR Committee agreed that the RJA Committee would be the proponent of the report, and asked Tom for an extension until May 1, 2004, to file the proposal, which was granted. Subsequently, the RJA Committee met on April 13, 2004 and approved by a 15-0 vote the same changes adopted by the JCR Committee.

The Juvenile Court Rules Committee proposed that the presumptively reasonable time period for the completion of dependency cases for children not in shelter be 120 days, rather than the current 180 days. The Committee feels that 180 days is too long because the judiciary should try to achieve a swift resolution of all cases involving children, particularly in dependency cases. The Committee also advocates a new subdivision developing a time standard of 12 months for completion of permanency hearings, which is the same period mandated in the Adoption and Safe Families Act. In delinquency cases, the Committee proposes changing the limits on holding disposition hearings from 90 days to 120 days for children not detained, and from 21 to 36 days for children who are detained, which conforms the time standards to the standards mandated by Chapter 985, Fla. Stat.

- (e) **Time Standards.** The following time standards are hereby established as a presumptively reasonable time period for the completion of cases in the trial and appellate courts of this state. It is recognized that there are cases that, because of their complexity, present problems that cause reasonable delays. However, most cases should be completed within the following time periods:

(1) **Trial Court Time Standards.**

(A) Criminal.

Felony—180 days (arrest to final disposition)

Misdemeanor—90 days (arrest to final disposition)

(B) Civil.

Jury cases— 18 months (filing to final disposition)

Non-jury cases—12 months (filing to final disposition)

Small claims—95 days (filing to final disposition)

(C) Domestic Relations.

Uncontested—90 days (filing to final dispositions)

Contested—180 days (filing to final disposition)

(D) Probate.

Uncontested, no federal estate tax return—12 months) from issuance of letters of administration to final discharge)

Uncontested, with federal estate tax return—12 months (from the return's due date to final discharge)

Contested —24 months (from filing to final discharge)

(E) Juvenile Delinquency.

~~Adjudicatory Disposition~~ hearing —~~90~~ 120 days (filing of petition or child being taken into custody to hearing)

~~Adjudicatory Disposition~~ hearing (child detained) ~~21~~ 36 days (date of detention to hearing)

(F) Juvenile Dependency.

Disposition hearing (child sheltered)—88 days (shelter hearing to disposition)

Disposition hearing (child not sheltered)—~~180~~ 120 days (filing of petition for dependency to disposition hearing)

(G) Permanency Proceedings.

Permanency hearing —12 months (date child is sheltered to hearing)

The Executive Committee voted (9-0) by e-mail to approve the amendment.

#### **April 26, 2004**

Several matters needing action by the Executive Committee were forwarded to members via facsimile transmission on April 22, 2004 for review and vote. A quorum was reached with the following members participating: President Miles McGrane, President-elect Kelly Overstreet Johnson, Michael Glazer, Ervin Gonzalez, Henry Coxe, Jesse Diner, James Lupino, Robert Rush and Richard Tanner.

#### **Action Item 1 - Workers' Compensation Section:**

Formal action by the Executive Committee was taken on an Amicus request from the Workers' Compensation Section seeking leave to appear in a pending rules case to argue whether the Supreme Court or the Division of Administrative Hearings is the proper entity to promulgate WC rules of practice and procedure.

The Executive Committee approved, by a vote of 9-0, the Amicus request.

#### **Action Item 2 -Employee Retirement Plan Committee:**

The employee retirement plan committee, composed of Jesse Diner, Jerald Beer, Alton Ward, Jack Harkness and two Bar employees had unanimously recommended The Florida Bar appoint T. Rowe Price Trust Company as trustee of the Bar's employee pension plan and its Section 457 deferred compensation plan. Scudder Trust Company was the trustee of the pension plan and ING was the custodian of the deferred compensation plan. Additionally, the committee recommended T. Rowe Price Retirement Plan Services be retained to administer both plans.

A resolution needed to be approved by the Executive Committee to authorize the Executive Director to execute the needed contracts.

The Executive Committee approved, by a vote of 9-0, the resolution to authorize the Executive Director to execute the needed pension plan contracts.

#### **Action Item 3 -UPL Circuit Committee Nominations:**

The UPL Circuit Committee had five nominations and requested the Executive Committee's approval. Nominees included: Attorney Steven W. Simon, 11A, attorney Richard B. Rosenthal,

11A, public member Joanne Silva, 11A, public member Mary Belaval, 11A, and public member Etty Foodman, 11A.

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

#### **April 26, 2004**

There was a request of the Executive Committee by the Appellate Court Rules Committee to approve an amendment to Rule 9.331(d) 3, Determination of Causes in a District Court of Appeal en banc. The Committee voted 49-0 for the change.

In *Romero the State of Florida*, Case No. S. C02-1795, page 5, footnote 3, the Supreme Court requested the Board of Governors expedite its consideration of this rule amendment so that the court can consider this proposal in conjunction with the current 2 year amendment cycle.

The Proposed amendment eliminates the requirement that a motion for rehearing en banc must be filed in conjunction with a motion for rehearing. That requirement created a procedural problem precluding some parties from seeking review in the Supreme Court. Papers that file only a motion for rehearing en banc may find that the unauthorized motion did not hold retention, making their notice to invoke the Supreme Court jurisdiction untimely.

The Executive Committee 11-0 voted the approval of this amendment.

#### **May 4, 2004**

The Executive Committee met telephonically May 4, 2004 at 4:00 p.m. A quorum was reached with the following members participating: President Miles McGrane, President-elect Kelly Overstreet Johnson, Mike Glazer, Ervin Gonzalez, Henry Coxe, Mark Romance, Robert Rush and Richard Tanner. Alan Bookman and Jesse Diner voted via email. Staff members in attendance were John F. Harkness, Jr., Tina Ruffin and Paul Hill.

Item 1 - Trial Lawyers Sections Letter of Agreement:

The Executive Committee was to review an agreement between the Trial Lawyers Section and Ron Sachs Communications, Inc. of Tallahassee. The agenda item settled prior to the conference call with the section agreeing to make a contribution to a 501 c 4 (Consumer Federation of the S.E.), then the 501 c 4 will contract with Ron Sachs. Similar situations have been handled in the same manner in the past. Florida Bar General Counsel, Paul Hill, and counsel to the Trial Lawyer Section, Buddy Jacobs, worked out the details with the section.

Item 2 - Proposed amendments to the Workers' Compensation Rules:

Coming before the Executive Committee from the Worker's Compensation Rules Committee was a request to approve the proposed amendments to the Workers' Compensation Rules that the Board abstained from voting on at a prior meeting, so that the proposed amendments can be properly filed before the Court. Per a Supreme Court case disposition order, the Court has rejected without prejudice the biennial report filed by the Workers' Compensation Rules Committee because it did not comply with the requirements of Fla. R. Jud. Admin. 2.130(c), in that the Board of Governors did not officially "vote on each proposal to recommend acceptance, rejection, or amendment." The Committee noted this abstention in the following paragraph of its report: "The proposed amendments were submitted to the Board of Governors of The Florida Bar for consideration, pursuant to Fla. R. Jud. Admin. 2.130(c)(3). Because the Board recognized that there is a jurisdictional issue involving these rules, as discussed below, it took no formal vote on the proposed amendments."

The Executive Committee voted unanimously to approve the proposed amendments, noting that a position is not being taken on where jurisdiction lies.

### **8. Consent Calendar**

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

- A. UPL Standing and Circuit committee appointments:
  - 1) UPL Standing Committee nominations and reappointment nominations for 2004-2005
    - a. Maria del Cifuentes, Attorney Member
    - b. Bruce Lamb, Attorney Member

- c. Kathy Smith, Attorney Member
  - d. Tania Mazza-Martinez, Attorney Member
  - e. Rebecca Frank, Public Member
  - f. Suzanne Poumakis, Public Member
  - g. Bernie Schinder, Public Member
  - h. Gail Hurst, Public Member
  - i. Esperanza Martinez, Public Member
  - j. Hugh Sackett, Public Member
  - k. Joseph R. Boyd, Attorney Member
  - l. John Hume, Attorney Member
  - m. Marsha Rydberg, Attorney Member
  - n. Margaret Averill, Public Member
  - o. Stanton T. Cooper, Public Member
- 2) UPL Circuit Committee Nominations
- a. Alex Dombrowsky, Attorney Member, Second Circuit
  - b. Lyneete C. Sybia, Attorney Member, Fourth Circuit
  - c. Janet A. Walder, Public Member, Sixth Circuit
  - d. Steven Robinson, Attorney Member, Seventh Circuit
  - e. Martha J. Cannon, Attorney Member, Ninth Circuit
  - f. Joseph B. McFarland, Attorney Member, Ninth Circuit
  - g. Jamie Sites, Public Member, Tenth Circuit
  - h. Johnette L. Hardiman, Attorney Member, Eleventh Circuit
  - i. Thomas Henry Sands, II, Public Member, Eleventh Circuit
  - j. Maria V. Rodriguez-Echeverria, Attorney Member, Eleventh Circuit
  - k. Timothy M. Ravich, Attorney Member, Eleventh Circuit
  - l. Raymond Zamora, Public Member, Eleventh Circuit
  - m. Carol Ann Stuart, Public Member, Eleventh Circuit
  - n. Candis D. Trusty, Attorney Member, Eleventh Circuit
  - o. Roberta E. Robbins, Attorney Member, Eleventh Circuit
  - p. Sherwin Scott Choos, Attorney Member, Eleventh Circuit
  - q. Joy B. Spill, Attorney Member, Eleventh Circuit
  - r. John Kinney, Public Member, Eleventh Circuit
  - s. Diana L. Joks, Public Member, Eleventh Circuit
  - t. Linda Osberg-Braun, Attorney Member, Eleventh Circuit
  - u. Susan Jollie Hahn, Attorney Member, Eleventh Circuit
  - v. Robert A. Bernstein, Attorney Member, Eleventh Circuit
  - w. Jason E. Dimitris, Attorney Member, Eleventh Circuit
  - x. Ana Crucet, Public Member, Eleventh Circuit
  - w. Robert Myers, Public Member, Eleventh Circuit
  - x. Luis A. Espinoza, Public Member, Eleventh Circuit
  - y. Altom M. Maglio, Attorney Member, Twelfth Circuit
  - z. Anne Sheffletr Douglass, Attorney Member, Twelfth Circuit
  - aa. John B. Roe, Public Member, Twelfth Circuit
  - bb. Adam P. Schwartz, Attorney Member, Thirteenth Circuit
  - cc. Alan S. Johnson, Attorney Member, Fifteenth Circuit
  - dd. Shahar Vinayi Pasch, Attorney Member, Fifteenth Circuit
  - ee. Chip Lubeck, Public Member, Fifteenth Circuit
  - ff. David Stein, Attorney Member, Fifteenth Circuit
  - gg. Marc D. Stollman, Attorney Member, Fifteenth Circuit
  - hh. Debra D. Duckett, Attorney Member, Fifteenth Circuit
  - ii. Roslyn Rothman, Public Member, Fifteenth Circuit
  - jj. Spencer Meridith Sax, Attorney Member, Fifteenth Circuit

- kk. Timothy Joseph Koenig, Attorney Member Sixteenth Circuit
- ll. Victoria Regina Brennan, Attorney Member, Sixteenth Circuit
- mm. Patricia Ann Eables, Attorney Member, Sixteenth Circuit
- oo. Hope W. Calhoun, Attorney Member, Seventeenth Circuit
- pp. Catherine Magealena Rodriguez, Attorney Member, Seventeenth Circuit
- qq. Gregg Rossman, Attorney Member, Seventeenth Circuit
- rr. Debra L. Block, Public Member, Seventeenth Circuit
- ss. James Solomon Haliczzer, Attorney Member, Seventeenth Circuit
- tt. Patrick B. Guinta, Attorney Member, Seventeenth Circuit
- uu. Julie Fara Klahr, Attorney Member, Seventeenth Circuit
- vv. Carlos M. Llorente, Attorney Member, Seventeenth Circuit
- ww. John L. Remsen, Jr., Public Member, Seventeenth Circuit
- xx. Haas A. Hatic, Attorney Member, Seventeenth Circuit
- yy. Christopher Mark Neilson, Attorney Member, Seventeenth Circuit
- zz. Stephanie Jean Toothakeer-Walker, Attorney Member, Seventeenth Circuit
- aaa. Mark Fravel, Public Member, Seventeenth Circuit
- bbb. Mark R. Dissette, Public Member, Seventeenth Circuit
- ccc. Ian L. Gilden, Attorney Member, Eighteenth Circuit
- ddd. George Russell Petersen, Attorney Member, Nineteenth Circuit
- eee. Stephen P. Hoskins, Attorney Member, Nineteenth Circuit
- fff. Glenn Rains, Public Member, Nineteenth Circuit

B. Rules, Bylaws & Policies

- 1) Rule 3-7.2 (f) Procedures Upon Criminal or Professional Misconduct; Discipline Upon Determination or Judgement of Guilt of Criminal Misconduct (petition to modify or terminate suspension)  
within subdivisions (b) and (c) extends conclusive proof provisions from felony cases to all criminal cases and requires a member of the bar who is arrested to give notice of the arrest to the executive director; also within subdivision (f), adds language stating that a petition to modify or terminate a suspension due to criminal conviction may only challenge the jurisdiction of the criminal court proceeding or the validity of the criminal proceedings due to a denial or lack of due process; amends subdivision titles accordingly.
- 2) Rule 3-7.10 (g) Reinstatement and Readmission Procedures - Petition for Reinstatement  
Within subdivision (g), requires petitioner to allow inquiry into petitioner's history of treatment or counseling of chemical or alcohol dependency or a medical condition that adversely affects the petitioner's fitness to practice, but provides that if such information is confidential, that confidentiality may be preserved by sealing that portion of the record; also within subdivision (l)(4) clarifies that "groups" as well as "persons" may respond to a petition for reinstatement and direct comments to bar counsel.
- 3) Rule 3-7.11 General Rule of Procedure  
Within subdivision (f), revises and restates procedure for processing contempt actions to provide 1 procedure in all contempt matters; also provides procedure to institute proceedings, requires responses within court-established timelines, allows bar reply; permits assignment of a referee to develop factual record and clarifies that any proceedings before a referee are processed under the Rules Regulating The Florida Bar; deletes subdivision (g) and incorporates the contents therein within subdivision (f); reorganizes subdivisions accordingly; within new subdivision (g), provides that if the bar has court reporters as employees and a respondent objects to their service, the respondent is required to compensate the bar for the cost of hiring an independent court reporter.
- 4) Rule 4-1.5 Fees for Legal Services  
Within subdivision (e) and comment, adds language clarifying that the fact that a fee

contract may not be in accord with Rules Regulating The Florida Bar is an issue between lawyer and client, and a matter of professional ethics – not a basis for any action or defense by an opposing party in the attendant litigation.

- 5) Rule 4-7.7 Evaluation of Advertisements (filing fee)  
Within subdivision (b)(5), increases the filing fee for the evaluation of lawyer advertisements, from \$100 to \$150.
- 6) Rule 4-8.1 Bar Admission and Discipline  
Adds new subdivision (c) and comment to specify that an applicant for admission or a lawyer in connection with an admission or disciplinary matter shall not commit an act that adversely reflects on the applicant's fitness to practice law; further specifies that an applicant who commits such an act before admission, but which is discovered thereafter, is subject to discipline under the Rules Regulating The Florida Bar.
- 7) Rule 10-2.1 Generally  
Clarifies what legal forms are Supreme Court-approved forms for purposes of the rule.
- 8) Elder Law Section Bylaw Changes  
Within Article II (Membership) revises the definition of affiliate members by deleting graduates of any law school, legal assistants, and public members; also adds and defines "at large" membership in the section; within Article III (Officers) adds that the chair-elect shall serve as chair of the legislative committee, and clarifies that the chair-elect automatically becomes chair at the conclusion of duties, without election; within Article IV (Executive Council) revises membership to include past chairs for the 5 preceding years rather than just the immediate past chair; also adds at large members, if any, to the council; within Article V (Committees) deletes from the administrative division group the coordination & liaison committee and the public & member information committee; also deletes from the substantive division group the home & community-based services for the elderly & residency issues committee and the health care committee; retitles estate & financial planning committee, to be the estate planning & advance directives committee, and revises committee scope accordingly; adds medicaid committee to the substantive group; clarifies scope of government benefits committee, to exclude medicaid issues; within Article VI (Meetings) clarifies that advance notice of meetings shall be at least 15 days and may include regular modes of electronic communication used by the section; within Article VIII (Miscellaneous) clarifies that compensated contractual services require the approval of the executive committee, and adds a procedure for approval of bylaw amendments by the executive council.  
Reorganizes throughout to conform to latest guideline.
- 9) Government Lawyer Section Bylaw Changes  
Within Article III (Officers) – deletes provision for nominating officers by petition but adds provision for nominations from the floor at the annual meeting, deletes provision whereby the section chair appoints the section secretary and treasurer, and revises outdated references to "convention" to read "annual meeting;" within Article IV (Executive Council) allows meetings by conference call, adds all past section chairs as eligible members of executive council, allows chairs of special committees as eligible for executive council membership, and deletes provision for nominating executive council members by petition but adds new election procedures for utilization at annual meeting; within Article V (Meetings) specifies quorum and voting requirements for annual and regular meetings of executive council, authorizes conference call attendance at regular meetings; and within Article VI (Committees) deletes pro bono services committee.
- 10) Young Lawyers Division Bylaw Changes  
Within Article IV (Election of Division Officers) revises voting time lines for office of president-elect, effectively shortening the process by 1 month in most instances; within Article V (Board of Governors) deletes provisions requiring automatic removal of board members for lack of attendance, and substitutes new provision allowing removal for



cause by resolution of the board adopted by two-thirds vote of the entire membership; revises subdivision title accordingly, from "Lack of Attendance," to "Removal".

- C. Board Review Committee on Professional Ethics
  - 1) Advertising Appeals 04-01312  
Advertising Appeal 04-01312 concerns application of Rule 4-7.2(b)(1)(A), which prohibits information that is false, misleading or deceptive, to a direct mail advertisement. After receiving guidance from the Standing Committee on Advertising, staff rendered an opinion on February 17, 2004, that language included in the direct mail advertisement regarding "free legal services" offered by the law firm violated Rule 4-7.1(b)(1)(A), among other violations. The Standing Committee on Advertising upheld staff's opinion on April 21, 2004. The attorney subsequently requested Board of Governors review. The filer's position is that the language is not misleading, because the law firm is offering to provide a limited number of hours of legal services at no charge to prospective clients. At the Board Review Committee on Professional Ethics meeting of May 25, 2004, the filer stated that a condition of the prospective client receiving the free hours of legal services is that the prospective client retain his firm exclusively for 2 years. The filer's retainer agreement states that if the filer's services are terminated within 2 years, the client must repay the "free" hours of services already used. The Board Review Committee on Professional Ethics voted 7-0 to affirm the SCA decision that the language is misleading.
  - 2) Advertising Appeal 04-00761- Removed from consent
- D. Legislative Objections to 2002-2004 Biennium, position #12

### **9. Tax Law Section Report**

Tax Law section liaison, Jerry Beer reported that Richard Comiter, the Tax Law section chair could not appear in person. Therefore, the Tax Law section written report would be distributed to Board members at a later date.

### **10. Young Lawyers Division Report**

Young Lawyers Division President Mark Romance reported that the petition to proposed changes to the Practicing with Professionalism (PWP) rules will be filed with the Supreme Court on Tuesday, June 1, 2004.

The Government lawyers requested several changes to the rules, some of which could be accommodated, others which could not. They requested a need based fee reduction for the PWP. Under the new rule, government lawyers are required to attend the PWP. Under the need based fee reduction, if a lawyer makes less than a certain amount of money, they would only pay a percentage of the fee. The YLD is continuing to work with the government lawyers to determine the dollar amount and percentage of payment.

The YLD, and local bar organizations are planning a day trip during The Bar's Annual meeting in Boca Raton, to the Broward Children Center in Pompano Beach.

At the most recent YLD meeting at Ocean Reef, the YLD honored Austin Newberry and thanked him for the good job he is doing with the YLD.

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

Chair Hank Coxe reported on the following items:

- A. Review of the proposed amendments to BLSE Policies:
  - 1) 2.04 (c) and (f) - 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) 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.
- 3) 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.
  - 4) 700 Series - Basic Skills Course Requirement  
Re-write of BSCR policies to conform to current practice and to reflect corrections 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.
- B. Review of the proposed amendment to Rule 6-3.5 Florida Certification Plan/Standards for Certification  
Adds new provision allowing attorneys applying for certification in international law to count the international practice of law as up to 3 of the 5 years required for certification.
- C. Review of the Equal Opportunities Law Section  
The Program Evaluation Committee (PEC) discussed the Equal Opportunities Law Section (EOL). The committee questioned whether the EOL had the membership numbers to remain a section. It was determined that the current membership rules requiring more members, were adopted after EOL became a section, so the section is "grandfathered" in. The committee gave a favorable review to the EOL section.
- D. Review of the proposed Animal Law Committee  
The PEC discussed the creation of an Animal Law Committee. The committee wanted to ensure that this wasn't an animal rights activist effort, but in fact a meaningful attempt to create a substantive law committee. The committee approved unanimously the concept of an animal law committee with the understanding they will come back with more details on the mechanics and budget issues to be addressed. It is approved for an interim year after which it will be subject to further review.

## **12. Investment Committee Report**

Chair Ian Comisky reported that The Bar portfolio was worth \$15.7 million. Although the Bar's portfolio was up to \$16 million in January, the last 60 days have been tumultuous, at one point the portfolio was down to \$15.3 million. The diversification that the investment committee has undertaken definitely cushioned the shock that the Bar portfolio had taken.

## **13. Audit Committee Report**

Chair Russell Divine reported that although the Sarbanes Oxley Act does not directly apply to The Bar, they are trying to comply with the emerging best practices from the act. The committee published an RFP for another accounting firm to come in and look at the internal controls in five selected areas. Two proposals were received, one from a Tallahassee firm and one from the national firm of K, P, M, G. The committee recommended that The Bar engage the Tallahassee firm of Thomas, Howell & Ferguson. The board unanimously approved the committee recommendation and authorized the Executive Director to sign the necessary contracts.

## **14. Budget Committee Report**

Chair Jesse Diner reported that the committee has three amendments, two that were derived from the diversity seminar, and one for legislative objectors.

- A. Update Bar Records Project \$ 10,221- from the General Fund
- B. Survey voluntary Bar \$ 8,040 - from the General Fund
- C. Legislative objectors \$ 6 - from "other operating" Fund

**The board approved the amendments.**

Incoming chair Jerry Beer reported that the board had the member objections to the 2004-05 budget in their materials. The committee recommended the board approve the request from the Special Commission on Lawyer Regulation to appropriate \$8,775 in the 2004-05 Florida Bar budget. The board unanimously approved the committee recommendation and directed staff to file the budget as amended with the Florida Supreme Court for its review.

**15. Communications Committee Report**

Chair Jim Lupino reported that the Communications Committee recognized three of the members of the Citizens Forum who have completed their terms. During its meeting, the Citizen's Forum discussed mandatory clauses on fee agreements in their contracts as a referral from the Board. The members of the forum also discussed how they can be more effective in serving The Florida Bar as an advisory group, he said. Nominations have been received for open positions on the forum and a subcommittee will make recommendations to President-elect Johnson for her appointments. Another major topic of discussion was the BLSE's plans to launch a promotional campaign. BLSE chair Jeff Cohen attended the committee's meeting to discuss the need for the campaign and to address concerns of committee members that these activities be coordinated with the Bar's overall Communications program. Mr. Cohen agreed that his board will work with the Communications committee in that regard. Mr. Lupino also announced that the member communications audit was completed and the results will be addressed by the 2004-5 Communications Committee.

**16. Certification Plan Appeals Committee Report**

Chair David Rothman reported that the committee is working on two appeals now. The committee is also concerned with the perception that some people may have about certification and the process. Most of the cases that are pending now concern the resolution of the constitutional issue will come back to us and will get to them in the next year.

**17. Legislation Committee Report**

Chair Alan Bookman reported that The Bar had a good legislative session. The courts asked for \$170 million to pay for the Article V Revision 7 change over, and were appropriated \$115 million plus access to a \$20 million working capital fund. The Article V, Revision 7 glitch bill included provisions to authorized counties to charge \$65 in court fees, to pay for legal aid, law libraries, guardian ad litem, and teen courts. Although the courts were well funded, there were no new judges included in the 2004-05 budget.

The Kids Deserve Justice specialty license plate bill passed and is on its way to the Governor. It is expected to raise about \$250,000 per year to help fund the legal needs of children.

Bookman reported that The Bar was in the process of having legislators appointed to the rules committees. The Bar and the sponsor of the legislation which would have removed the rulemaking authority from the Supreme Court agreed that this would be a good first step.

House Bill 1357, the Advertising regulation bill, died in committee in the Senate after swiftly passing through the House. The bill regulated lawyer advertising. The legislature recognized that as drafted, the bill would not meet Constitutional muster. Incoming Senate President Tom Lee requested that The Bar assist the legislature in drafting advertising regulations that would be within the constitution, as he intends to address this issue next session.

Incoming Florida Bar President Kelly Overstreet Johnson is interested in having a "Law school for Legislators" program. This could possibly be part of the new Legislator's orientation.

**18. Report on Diversity Program**

The board of governors heard about a new committee to help diversity and received a preliminary written report and heard verbal narrations on the event from St. Thomas Law School Dean Bob Butterworth, who

hosted the symposium at St. Thomas, and Miami attorney MaryAnne Lukacs, who chaired the gathering. In the report, seminar participants said one problem in trying to evaluate The Bar's diversity is the lack of specific information about the makeup of its membership. The board approved 2 amendments to The Bar's budget to carry out surveys that were proposed by seminar participants. The first amendment, for \$10, 221, will be used to survey Bar members to get an exact picture of The Bar's ethnic makeup. The funds for the second budget amendment will be used to survey minority bar associations to try to determine why more minorities are not participating in Florida Bar activities. Seminar participants noted that while minorities and woman see The Bar as unwelcoming, The Bar frequently has trouble finding minority and woman applicants for various appointments and positions. Bar President Miles McGrane said the two actions show The Bar is committed to doing more than just talking about diversity and is working to carry out the recommendations of the seminar.

### **19. Disciplinary Procedures Committee Report**

Chair Don Horn reported on the following items:

- A. Items on first reading
  - 1) Rule 3-7.2 (b)(c) Procedures Upon Criminal or Professional Misconduct; Discipline Upon Determination or Judgement of Guilt of Criminal Misconduct  
Within subdivision (f) restricts the types of challenges that may be brought in the "injunction" action, but does not limit their consideration in the follow up actions.
  - 2) Rule 4-1.8 (h) Conflict of Interest; Prohibited and Other Transactions (limiting Liability for Malpractice)  
Adds new subdivision (c) and comment to specify that an applicant for admission or a lawyer in connection with an admission or disciplinary matter shall not commit an act that adversely reflects on the applicant's fitness to practice law; further specifies that an applicant who commits such an act before admission, but which is discovered thereafter, is subject to discipline under the Rules Regulating The Florida Bar.
  - 3) Standing Board Policy 15.55 Deferral of Disciplinary Investigation During Civil or Criminal Proceedings  
Recently approved policy codifies when The Bar will defer disciplinary action in favor of civil or criminal tribunal review. Bar counsel have expressed concerns about time requirements needed to obtain affirmative approval from the DR's. Suggested revisions substitute notice to the DR's with objection authority for the affirmative review now required.
- B. Items for final action-**Approved**
  - 1) Rule 3-7.10 (l) (4) Reinstatement and Readmission Procedures (Comments on Petition)  
Within subdivision (l)(4) clarifies that "groups" as well as "persons" may respond to a petition for reinstatement and direct comments to bar counsel.

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

Mr. D. Culver Smith, III on behalf of Chair Adele Stone, gave the report on the Special Committee to Review the ABA Model Rules 2002. The special committee recommends changes to numerous bar rules after reviewing changes to the ABA Model Rules proposed by the ABA Ethics Commission 2000. The special committee met numerous times, issued an interim report for comments, tendered a final report to the Board at its December 5, 2003 meeting, and made recommendations to the Board on comments made on the final report. The final recommendations of the special committee were approved by the Disciplinary Procedures Committee and the Rules Committee. Based on an objection from the City, County and Local Government Law Section, board member Ervin Gonzalez made a motion to table consideration of the proposed rules changes until the board's August 2004 meeting, stating that he was contacted by section officials who said disclosure requirements in the proposed rules, as well as current Bar rules, place extra requirements on government lawyers. He said section officials thought the problems could be worked out in about 30 days, in plenty of time for the board to take up the rule

changes at its August 13 meeting. Mr. Smith, representing the special committee noted most of the issues the section objected to were already in the rules and were merely being moved from one section to another. The objections, Smith pointed out, apply to only a few of the many recommendations made by the committee. The board voted 20 to 16 in favor of Gonzalez's motion to table the rules to consider the section's concerns.

### **21. Judicial Nominating Procedures Committee**

Richard Doran, chair of the Judicial Nominating Procedures Committee (JNPC), reported to the board on a proposal by board member Jennifer Coberly. Coberly proposed the recording of all JNPC interviews at the board's April meeting, however the board voted to seek the input of the JNPC and the Judicial Administration, Selection, and Tenure Committee. Doran told the board that a survey of his committee found 17 members in favor of recording candidate interviews, 14 opposed, three abstaining, and nine not voting.

Coberly made the motion to task the JNPC with drawing up an amendment to the Uniform Rules of Procedure for JNC's to provide for recording all JNC judicial interviews using court reporters who have agreed to volunteer their services. She said she hoped the new proposed uniform rule could be considered at the next scheduled JNC annual training session, usually conducted in the fall. The board approved the motion to require all JNC interviews to be recorded.

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

President-elect Kelly Overstreet Johnson reported that the ski retreat was scheduled for February 26-March 5, 2005 at the Charter at Beaver Creek. The deadline to sign up for the retreat is June 23, 2004. She reported that she is still working on topics for the retreat, one of which may be revamping midyear and annual meetings. She is appointing a membership outreach committee as a follow up to the diversity program. Alan B. Bookman will chair the committee with Ray Abadin as vice-chair. Jennifer Coberly and Jack Rudy will be on the committee as well. The board approved a motion to accept the committee assignments that Johnson made. Johnson went on to appoint the executive committee. She appointed Alan B. Bookman, Ervin Gonzalez, Jerry Beer, Mayanne Downs, Mike Glazer, Sharon Langer and Michael Faehner to the Executive Committee. Johnson conducted the election for the 3 board elected executive committee members. The board elected Hank Coxe, Jesse Diner and David Rothman.

### **23. Judicial Nominating Commissions**

The board selected 3 nominees for each vacancy, by a voice vote they approved the following nominations:

#### **Supreme Court**

Ky M. Koch, Belleair  
Jane Kreuzler-Walsh, N. Palm Beach  
Diana Santa Maria, Cooper City

#### **First DCA**

A. Graham Allen, Jacksonville  
Tracy S. Carlin, Jacksonville  
Vikki R. Shirley, Monticello

#### **Second DCA**

David M. Caldevilla, Tampa  
John P. Cardillo, Naples  
Betsy E. Gallagher, Tampa

#### **Third DCA**

Ramon A. Abadin, Miami  
Peter Prieto, Miami  
Adrienne F. Promoff, Miami

#### **Fourth DCA**

Richard E. Berman, Ft. Lauderdale  
Joel L. Kirschbaum, Ft. Lauderdale  
Gerald F. Richman, Palm Beach Gardens

#### **Fifth DCA**

O. John Alpizar, Melbourne Beach  
Kirk N. Kirkconnell, Altamonte Springs  
Jill S. Schwartz, Maitland

**First Circuit**

Stephen F. Bolton, Pensacola  
Terence A. Gross, Gulf Breeze  
Drew S. Pinkerton, Shalimar

**Second Circuit**

Michael F. Coppins, Tallahassee  
Elaine N. Duggar, Tallahassee  
Dean R. LeBoeuf, Tallahassee

**Third Circuit**

Angela M. Cancio, Live Oak  
Andrew J. Decker, III, Live Oak  
S. Austin Peele, Lake City

**Fourth Circuit**

Patricia M. Dodson, Jacksonville  
William C. Gentry, Jacksonville  
Joseph William Prichard, Jacksonville

**Fifth Circuit**

Katherine P. Glynn, Reddick  
Jeannette M. Haag, Inverness  
Joseph J. Mason, Jr., Brooksville

**Sixth Circuit**

Joshua Magidson, Clearwater  
Paul A. Meissner, Clearwater  
Scott E. Schiltz, Clearwater

**Seventh Circuit**

Harold C. Hubka, Ormond Beach  
Michael H. Lambert, Ormond Beach  
Brynn Gail Newton, Flagler Beach

**Eighth Circuit**

Zelda Hawk, Gainesville  
Leonard E. Ireland, Jr., Gainesville  
Sharon T. Sperling, Gainesville

**Ninth Circuit**

Wayne L. Helsby, Winter Park  
Mary Ann Morgan, Winter Park  
Richard P. Reinhart, Winter Park

**Tenth Circuit**

Sidney M. Crawford, Mulberry  
Richard E. Straughn, Winter Haven

Janet M. Stuart, Lakeland

**Eleventh Circuit**

Cynthia A. Everett, Miami  
Eugenio Hernandez, Coral Gables  
Maria L. Rubio, Pinecrest

**Twelfth Circuit**

Patricia D. Crauwels, Bradenton  
Lori M. Dorman, Bradenton  
Shirin M. Vesely, Bradenton

**Thirteenth Circuit**

Caroline Kapusta Black, Tampa  
Edward W. Gerecke, Tampa  
William F. Jung, Tampa

**Fourteenth Circuit**

Larry Ashmore Bodiford, Panama City  
John N. Boggs, Panama City  
Jeffrey P. Whitton, Lynn Haven

**Fifteenth Circuit**

Susan F. Kornspan, Boca Raton  
David C. Prather, Jupiter  
Spencer Sax, Boca Raton

**Sixteenth Circuit**

David P. Horan, Key West  
Richard M. Klitenick, Key West  
Thomas D. Wright, Marathon

**Seventeenth Circuit**

Ileana M. Almeida, Ft. Lauderdale  
Steve E. Moody, Davie  
Valeria Shea, Ft. Lauderdale

**Eighteenth Circuit**

Leonard A. Barrow, Jr., Melbourne  
Harold T. Bistline, Indian Harbour Beach  
Julie G. Pierce, Melbourne Beach

**Nineteenth Circuit**

Stephen Paul Hoskins, Ft. Pierce  
Renee Marquis-Abrams, Port St. Lucie  
Louis B. Vocelle, Jr., Vero Beach

**Twentieth Circuit**

Jeffrey D. Fridkin, Naples  
Eugene H. Smith, Ft. Myers  
Christopher T. Vernon, Naples

#### **24. Prepaid Legal Services**

The board heard the following rule amendment on first reading:

- A. Rule 9-2.2 Form and Content of Plan Application  
Within subdivision (e), increases the prepaid legal services plan application fee from \$50 to \$125.

#### **25. Labor & Employment Law Section Bylaw Changes**

The board heard the following section bylaw change on first reading:

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.

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

Chair Hank Coxe reported that the surveys that the commission sent out were returned and had been analyzed. They will now be distributed to subcommittees who will further analyze them. The preliminary results of the survey are as follows:

72% of complainants are not satisfied with how The Florida Bar addresses complaints.

Only 10% of the respondents say that the process is not fair, and 21% of their lawyers say it isn't fair.

In response to the complainant's responses, the commission is adding 2 non-lawyer members. Coxe requested that board members Vivian Hobbs and Solomon Badger join the commission. The commission will meet again on June 24, when Justice Cantero will share with the commission how the Supreme Court feels about the functioning of the discipline system.

Coxe shared with the board that excluding advertising issues, the 2004-2005 proposed budget included over \$10 million for lawyer regulation.

#### **27. Florida Board of Bar Examiners**

Board member Peter Brandt, Chair of the Florida Board of Bar Examiners Screening Committee, reported that the committee was nominating to the Supreme Court, pending Board approval, 6 lawyers for two vacancies for 5-year terms commencing November 1, 2004. They are as follows:

Alan H. Aronson, Miami  
Victoria R. Brennan, Tavernier  
Reginald J. Clyne, Coral Gables  
Gregorio A. Francis, Orlando  
Reginald D. Hicks, Orlando  
Jason M. Murray, Miami

The Supreme Court will make the final selection of two lawyers. The Board approved the screening committees nominations.

#### **28. Special Appointments**

The board made the following appointments by separate voice votes.

- A. American Bar Association House of Delegates  
Edith Osman, 2-year term  
Miles McGrane, -2-year terms,  
Howard Coker, 1-year term, to fill Steve Zach's seat, as he was elected as chair of ABA House of Delegates.

- Michele Cummings, 1-year term to fill Tod Aronovitz seat, as he has chosen to resign  
Jennifer Ator, under 35 years delegate.
- B. Florida Legal Services Board of Directors  
Cristina Alonso, Miami  
James L. Bell, Charleston, SC  
Sally Dee Millward Kest, Orlando  
Warren Thomas LaFray, Clearwater  
Daniel F. Wilensky, Jacksonville
- C. Florida Lawyers Assistance, Inc. Board of Directors  
William L. Blackwell, Punta Gorda  
Barbara Dena Geraghty, Fort Myers  
Billy J. Hendrix, Tallahassee  
Norman S. Moss, Orlando  
Mary L. Wakeman, Tallahassee
- D. Supreme Court's Commission on Professionalism  
Kevin A. Ashley, Lake Wales  
Martha F. Barrera, Tallahassee  
Douglas Duncan, West Palm Beach  
Diana Santa Maria, Ft. Lauderdale  
Thomas G. Schultz, Miami  
Vivian Hobbs, Tallahassee
- E. Supreme Court's Judicial Ethics Advisory Committee  
Marjorie Gadarian Graham, Palm Beach Gardens
- F. Florida Medical Malpractice Joint Underwriting Association Board of Governors  
James J. Nosich, Coral Gables

**29. Board Review Committee Report**

Chair Henry Latimer reported on the following items:

- A. 5d(2) ADVERTISING APPEAL 04-00761  
The request for Board of Governors review of Advertising File 04-00761 was withdrawn by the filing attorney.
- B. RECONSIDERATION OF ADVERTISING APPEAL 04-00984  
Reconsideration of Advertising Appeal 04-00984 concerns application of Rule 4-7.7, requiring filing of non-exempt advertisements to a yellow pages advertisement that contains a photograph of an American flag. Pursuant to the Standing Committee on Advertising yellow pages compliance review program, staff requested on November 4, 2003, that the attorney file the yellow pages advertisement with a late filing fee. In response to the attorney's inquiry, staff indicated on November 20, 2003, that the yellow pages advertisement was not exempt because it contains the image of an American flag. The attorney requested Standing Committee on Advertising review on December 2, 2003. The Standing Committee on Advertising upheld staff's opinion on January 16, 2004. The attorney subsequently requested Board of Governors review. At its April 2, 2004 meeting, the Board of Governors voted on its consent calendar to affirm the decision of the Standing Committee on Advertising that the advertisement must be filed for review, including the late fee. At the request of President-elect Johnson, the issue was placed on the Board's agenda to reconsider whether the Board should waive the filing fee, because the attorney is no longer using the advertisement and the advertisement complies with the attorney advertising rules other than the filing requirement.  
The Board Review Committee on Professional Ethics voted 6-1 to recommend that the Board



decline to reconsider the Board's earlier decision that the advertisement must be filed for review, including the \$250 late fee.

**The Board of Governors concurred in the committee's recommendation.**

C. ETHICS APPEAL 25146

On December 2, 2003, the inquiring attorney requested a written staff opinion regarding a potential conflict of interest. The attorney inquired about the ethical propriety of representing a lienholder in making a demand for storage charges against another of the inquiring attorney's current clients, also a lienholder on the same assets. The demand letter is a condition precedent to filing suit, and if the demand letter is not timely answered, the second client's lien loses its priority to the client making the demand. Florida Bar Staff Opinion 25146 concludes that the representation is ethically impermissible, because it is directly adverse to the interests of the other client and a disinterested lawyer would conclude that the client should not consent to the adverse representation. On January 14, 2004, the attorney requested Professional Ethics Committee review of the staff opinion. The Professional Ethics Committee affirmed the staff opinion at its meeting of March 26, 2004. The attorney subsequently requested Board of Governors review.

The Board Review Committee on Professional Ethics voted 6-0 to affirm Florida Bar Staff Opinion 25146 as written.

**The Board concurred in the committee's recommendation.**

D. ETHICS REQUEST 25291

This item was brought as a hand-carry to the Board meeting. Florida Bar Staff Opinion 25291 was issued on March 11, 2004, concerning division of fees between a law firm and its "of counsel" lawyer. Professor Timothy P. Chinaris, representing the inquiring attorney, requested Professional Ethics Committee review of the staff opinion on April 8, 2004. After Professor Chinaris requested review, but prior to the Professional Ethics Committee meeting of June 25, 2004, the Supreme Court of Florida issued its order in Amendments to Rules Regulating The Florida Bar, No. SC03-705, (5/20/2004). Among the rules changes approved by the court were amendments to Bylaw 2-9.4, creating new subdivision (e). The new subdivision prohibits members of the Professional Ethics Committee from representing parties other than The Florida Bar in any proceedings involving the provision of ethics opinions for one year after the member completes service on the Professional Ethics Committee without the consent of the Board. The rules were made effective immediately by the Supreme Court of Florida. Professor Chinaris, as former chair of the Professional Ethics Committee whose service ended June 30, 2003, sought the board's consent to represent the inquiring attorney in requesting Professional Ethics Committee review of the staff opinion within one year of completing his service on the committee. The BRC voted 7-0 to recommend that the Board consent to Professor Chinaris' representation of a Florida Bar member in seeking review of Florida Bar Staff Opinion 25291 before the Professional Ethics Committee under Bylaw 2-9.4(e)(2).

**The Board concurred in the committee's recommendation.**

**30. Advertising Task Force Report**

Chair Manny Morales reported that President-elect Johnson had appointed a very diverse committee composed of people from all over the state with different backgrounds. Chobee Ebbets is the vice chair of the committee. The committee is reviewing every word of every rule that deals with advertising. The committee met in March at the Tampa Bar location and decided to divide the committee into 4 subcommittees and to split the rules evenly between the 4 groups to review. Barry Richard spoke to the committee concerning the constitutional aspect of the regulations. The committee met 2 times telephonically and once in Tallahassee. The committee is considering requiring the prior approval of

advertisements by The Bar. They will meet again in late July or August to begin deciding specifically which rules need to be changed. Morales noted that on May 20, 2004 the Supreme Court released their opinion concerning rules dealing with board certification and advertising. The rules loosen the constraints on advertisements, allowing attorneys to list their certifications in their advertisement.

### **31. Florida Lawyers Assistance Report**

Michael Cohen, Executive Director for Florida Lawyers Assistance, Inc.(FLA, Inc.), reported that FLA, Inc. had a bylaw amendment reducing the number of required meetings from 4 to 3, now meeting more with electronic means. **The board approved the motion.** He went on to welcome the new board members and thanked the board for its support. Mr. Cohen reported that the money that Bar members give to FLA, Inc. goes toward fulfilling the mission that was drafted by The Bar and confirmed by the Supreme Court, which was to assist lawyers suffering from substance abuse or psychological or other compulsive disorders. He told the board that Florida was the second state to allow conditional admission, since the practice of conditional admission began in 1988-89. There have been more than 400 attorneys helped with less than 10 percent resulting in further discipline, indicating a success rate of 90%. Cohen reported that the Florida Lawyers Assistance board was hiring a part-time clinician who would be helpful to The Bar as a whole. He reported that the number of referrals from judges and law schools had increased, which was not a bad sign for the profession, but rather a sign that attorneys know that they have a resource to go to other than the grievance process.

### **32. Board of Legal Specialization and Education Policies Report**

Board chair Jeffrey Cohen reported on the following items:

- A. 200 Series - first reading
  - 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 - first reading
  - 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 - first reading  
Re-write of BSCR policies to conform to current practice and to reflect corrections 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 Deferment
  - 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
- D. Rules 6-3.5 Standards for Certification - **Approved**  
Adds new provision allowing attorneys applying for certification in international law to count the international practice of law as up to 3 of the 5 years required for certification.

**33. Time and Place of Next Meeting**

The next Board of Governors meeting will be held August 11-15, 2004 at the Ponte Vedra Inn and Club in Ponte Vedra Beach, FL.

There being no further business to discuss, the Board of Governors meeting adjourned at 4:00 p.m.

Respectfully submitted,

Dana M. Wood  
Secretary to the Board of Governors

SUBJECT INDEX

ADVERTISING TASK FORCE REPORT.....	18
AUDIT COMMITTEE REPORT.....	10
APPROVAL OF MINUTES.....	3
Regular Minutes.....	3
Grievance Minutes.....	3
Executive Committee Actions.....	3
BOARD OF LEGAL SPECIALIZATION AND EDUCATION POLICIES REPORT.....	18
BOARD REVIEW COMMITTEE ON PROFESSIONAL ETHICS.....	16
BUDGET COMMITTEE REPORT.....	11
COMMUNICATIONS COMMITTEE REPORT.....	11
CONSENT CALENDAR.....	5
CERTIFICATION PLAN APPEALS COMMITTEE REPORT.....	11
DIVERSITY PROGRAM REPORT.....	12
DISCIPLINARY PROCEDURE COMMITTEE REPORT.....	12
FLORIDA BOARD OF BAR EXAMINERS.....	16
FLORIDA LAWYERS ASSISTANCE INC. REPORT.....	18
GUESTS.....	2
GREETING AND OTHER GUEST APPEARANCES.....	2
INVESTMENT COMMITTEE REPORT.....	10
INVOCATION.....	2
JUDICIAL NOMINATING COMMITTEE APPOINTMENTS.....	13
JUDICIAL NOMINATING PROCEDURE COMMITTEE REPORT.....	13

LABOR & EMPLOYMENT SECTION.....	15
LEGISLATION COMMITTEE REPORT.....	11
NON ROLL CALL ADVERTISING APPEAL ITEMS.....	3
NON ROLL CALL GRIEVANCE ITEMS.....	2
PREPAID LEGAL SERVICE.....	15
PRESIDENT-ELECT'S REPORT.....	13
PROGRAM EVALUATION COMMITTEE REPORT.....	9
PUBLIC MEMBER SCREENING COMMITTEE REPORT.....	14
ROLL CALL.....	1
SPECIAL APPOINTMENTS.....	16
SPECIAL COMMISSION ON LAWYER REGULATION.....	15
SPECIAL COMMITTEE TO REVIEW THE ABA MODEL RULES 2002.....	12
SUPREME COURT BAR ADMISSIONS COMMITTEE APPOINTMENT.....	14
TAX LAW SECTION REPORT.....	9
TIME AND PLACE OF NEXT MEETING.....	19
YOUNG LAWYERS DIVISION REPORT.....	9