

The Florida Bar Board of Governors  
March 28, 2008  
Willard InterContinental Hotel  
Washington, D.C.

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, March 28, 2008, in Washington, D.C. with President Francisco R. Angones presiding.

**1. Roll Call**

Francisco R. Angones, President  
John G. White III, President-elect  
Stephen H. Echsner, First Judicial Circuit  
Lawrence E. Sellers, Jr., Second Judicial Circuit  
Dominic M. Caparello, Second Judicial Circuit  
S. Grier Wells, Fourth Judicial Circuit  
John J. Schickel, Fourth Judicial Circuit  
Andrew B. Sasso, Sixth Judicial Circuit  
Murray B. Silverstein, Sixth Judicial Circuit  
Carl B. Schwait, Eighth Judicial Circuit  
Daniel L. DeCubellis, Ninth Judicial Circuit  
Warren W. Lindsey, Ninth Judicial Circuit  
Robert M. Brush, 10th Judicial Circuit  
David Rothman, 11th Judicial Circuit  
Ervin A. Gonzalez, 11th Judicial Circuit  
Dennis G. Kainen, 11th Judicial Circuit  
Benedict P. Kuehne, 11th Judicial Circuit  
L. Norman Vaughan-Birch, 12th Judicial Circuit  
Timon V. Sullivan, 13th Judicial Circuit  
William Kalish, 13th Judicial Circuit  
Clifford W. Sanborn, 14th Judicial Circuit  
David C. Prather, 15th Judicial Circuit  
Gregory Coleman, 15th Judicial Circuit  
Scott G. Hawkins, 15th Judicial Circuit  
Lisa S. Small, 15th Judicial Circuit  
Edwin A. Scales, 16th Judicial Circuit  
Jesse H. Diner, 17th Judicial Circuit  
Frank C. Walker II, 17th Judicial Circuit  
Laird Lile, 20th Judicial Circuit  
Richard Arthur Tanner, Out of State  
Ian M. Comisky, Out of State  
Eric L. Meeks, Out of State  
Brian D. Burgoon, Out of State  
Scott E. Atwood, YLD President

Jewel White Cole, YLD President-elect  
Arnell Bryant-Willis, Public Member  
J. Blair Culpepper, Public Member

Board members absent:

Gregory S. Parker, Third Circuit  
Denise A. Lyn, Fifth Circuit  
Charles Chobee Ebbets, Seventh Circuit  
Mayanne Downs, Ninth Circuit  
Ramon A. Abadin, 11th Circuit  
Jennifer Coberly, 11th Circuit  
Juliet Roulhac, 11th Circuit  
Steven Chaykin, 11th Circuit  
Gwynne Alice Young, 13th Circuit  
Allison K. Bethel, 17th Circuit  
Nancy W. Gregoire, 17th Circuit  
Eugene K. Pettis, 17th Circuit  
Clifton A. McClelland, Jr., 18th Circuit  
John M. Stewart, 19th Circuit

Staff attending meeting:

John F. Harkness, Jr., Executive Director  
John Berry, Director of Legal Division  
Ken Marvin, Director of Lawyer Regulation  
Rosalyn Scott, Assistant to the President  
Gary Blankenship, Senior Editor, Florida Bar News

## **2. Guests:**

Marlene Quintana, President, Cuban American Bar Association  
Sherri Johnson, President, Florida Association for Women Lawyers  
Tim Chinaris, Chair, Out of State Division  
Robert Spagnoletti, President-elect, District of Columbia Bar Association  
Susan Eisenhower, President, the Eisenhower Group, Inc.

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

The invocation was given by board member Brian Burgoon and board member Richard Tanner led the Pledge of Allegiance.

## **4. Appearance by Robert Spagnoletti, president-elect of the District of Columbia Bar**

Robert Spagnoletti welcomed the board to Washington, D.C., and noted similarities between the D.C. bar and The Florida Bar, including size, effective discipline systems and summer weather that is hot and humid. Unlike The Florida Bar, the D.C. bar can only

take a legislative position if it is approved by its membership in a referendum. Spagnoletti noted about 3,000 lawyers belong to both The Florida Bar and the District of Columbia Bar.

### **5. Non-roll call items**

Disciplinary Review Committee co-chair David Rothman reported that non-roll call items for the executive session were items 8 and 12 in the disciplinary agenda. Grier Wells reported non-roll call items 3, 5, 21, 28, 30, 64, 65, 66, and 69 on the Clients' Security Fund agenda.

### **6. Report of the Out of State Division**

Division Chair Tim Chinaris welcomed the board at this out-of-state meeting. He said the division had proposed bylaw changes adding more at-large members to its executive council and shortened council terms with the goal of encouraging more division members to participate. Other amendments allow the council to hold meetings electronically. The division is also using technology to benefit its members, including offering streaming audio for CLE courses. The division is continuing its annual seminar in New York City, and had a seminar on federal law preceding the board meeting, Chinaris said, and its "Potpourri for the General Practitioner" seminar at the Bar's Annual Convention has been designated as a Presidential Showcase seminar.

Following Chinaris' presentation, the board approved the division's proposed bylaw changes.

### **7. Approval of Minutes**

The board approved the minutes from its March 28, 2008, meeting with this addition to the Board Review Committee on Professional Ethics report: The Florida Bar Board of Governors voted to reverse the Standing Committee on Advertising decision in file numbers 08-00642, 08-00653, 08-00644, 08-00645, 08-00646, 08-00647, 08-00648, 08-00649, 08-00650, 08-00651, 08-00652, 08-00653, and 08-00874, determining that the statement "Don't settle for less than you deserve" does not characterize the quality of legal services being offered in violation of Rule 4-7.2(c)(2) and is therefore permissible. (The board vote was taken in executive session and hence was mistakenly omitted from the minutes.)

The minutes approval included ratifying action taken by the Executive Committee at its meetings on February 5, 11, 19, 25, 28, and March 7, 2008. That included appointing Linda Sims as a public member to the 15th Circuit UPL Committee. The following legislation positions for the Real Property Probate and Trust Law Section were endorsed:

- Supports amendment of F.S. §732.402 to update limitations on "exempt property" to: (i) increase the dollar limitation on household goods, from \$10,000 to \$20,000; (ii) change the personal "automobile" limitation to a "motor vehicle" limitation

based on gross weight and limit the exemption to two motor vehicles; and (iii) include all qualified tuition plans authorized by IRC § 529.

- Supports amendment of F.S. §733.602 to remove an unnecessary and incorrect cross-reference to the Florida Trust Code.

- Supports amendment of F.S. §718.111(11) to clarify what are or are not common expenses when insurance proceeds are insufficient for reconstruction, as well as to restructure the statute to clearly describe and state the adequacy and scope of insurance and responsibilities in the event of reconstruction following a casualty.

- Supports amendment of F.S. §718.115 to provide that unless the manner of payment or allocation of common expenses is otherwise addressed in the declaration of condominium, the expenses of items or services required by any governmental entity, such as water or sewer meters or fire safety equipment required to be installed by a governmental entity, are common expenses under Chapter 718.

- Supports amendment of F.S. §718.117(17) to provide that in the event of termination of a condominium, when the proceeds are distributed to purchase-money lienholders on units to the extent necessary to satisfy their liens, such distribution shall not exceed a unit's share of the proceeds.

- Opposes the adoption of summary guardianship proceedings outside the protections of Chapter 744, Florida Statutes.

- Opposes amendments to F.S. §393.12 that would (i) remove the existing requirement that a guardian advocate for a developmentally disabled adult must be represented by an attorney if the guardian advocate is delegated authority to manage property, (ii) remove the existing requirement that the petition to appoint a guardian advocate must disclose the identity of the proposed guardian advocate, and (iii) expand the list of individuals entitled to receive notice of the guardian advocate proceedings.

- Opposes amendments to Chapter 720, F.S., that would require both pre-suit mediation and pre-suit arbitration before filing a civil action over homeowners' association disputes.

The following legislative positions for the Elder Law Section were endorsed:

- Opposes the adoption of summary guardianship proceedings outside the protections of Chapter 744, Florida Statutes.

- Supports the development and implementation of a public education program stressing the need for screenings for memory impairment and the importance of early diagnosis and treatment of Alzheimer's disease and related disorders; and supports the mandate that the Department of Elder Affairs conduct, or provide support for, a study on the benefits of memory screenings and the scientific evidence on the techniques for memory screening.

## **8. Consent Agenda**

The board approved the consent agenda, including several appointments to circuit UPL committees. Those are:

- John B. Flynn to Committee 10.
- Jorge I. Gonzalez del Valle to Committee 11C.

- Troy H. Myers, Jr., to Committee 12.
- Mary Lou DiMaggio to Committee 12.
- Any Beth Maloy to Committee 16
- Joyce B Fuller to Committee 11B
- Sarah Carcano to Committee 11B

### **9. Legislation Committee Report**

Committee Chair Jesse Diner reported on the Florida Legislature's activities relating to the judicial budget, including that budget cuts proposed in the House were greater than those proposed in the Senate. He said cuts could severely hamper the courts' ability to handle cases because any significant reductions would require laying off court staff, since most of the state money for courts goes for salaries. Board members discussed ways to educate legislators about problems the courts would face and ways to rally support for adequate funding. Diner said courts would be forced to give priority to criminal and certain domestic relations cases, with other types of cases typically facing long delays. He also said the most recent reductions proposed by both the House and Senate were less drastic than original budget proposals, but still threatened to do significant harm to court operations.

### **10. Budget Committee Report**

Budget Committee member Jesse Diner presented two amendments for the Bar's 2007-08 budget. One was for a \$6,768 increase in travel for section administration travel and the other was for \$106,937 to accommodate a postage rate increase for mailing the *News*. Both were ratified by the board.

Diner presented the 2008-09 Bar budget, which predicted almost \$38.5 million in revenues and almost \$38.4 million in expenditures, with a \$94,000 surplus. The board approved the budget, and will consider any member comments at its May 30 meeting.

### **11. Investment Committee Report**

Investment Committee Chair Ian Comisky noted recent volatility in the stock market but said he would not have a report on the effects on Bar investments until the end of the first quarter for 2008. He said the committee recommended, and the board approved, increasing the maximum of the Bar can investment in cash or equivalent investments to a maximum of 10 percent. The committee also recommended increasing the band around the target allocations to plus or minus 30 percent, but with no less than plus or minus 3 percent. The committee also recommended and the board approved switching one of the Bar's large cap growth fund manager from TCW Large Cap Growth to the Turner Large Cap Growth. This change is expected to reduce volatility.

## **12. Executive Session**

The board went into executive session to discuss a variety of grievance and Clients' Security Fund matters.

## **13. Disciplinary Procedure Committee Report**

The board approved the following two rule amendments on the recommendation of the DPC:

- Rule 3-7.6(a), Procedures Before a Referee: Within subdivision (a), adds language requiring that, before a judge may be appointed to serve as a referee, the judge must have served as a judicial referee under these rules at least once or have certified to the Supreme Court that the judge has reviewed pertinent referee training materials; adds appropriate subdivision titles and designations consistent with controlling editorial protocols.

- Rule 3-7.13, Incapacity Not Related to Misconduct: Broadens application of the rule to a bar member's incapacity or hospitalization under the authority of "applicable law" – as well as the Florida Mental Health Act – when that lawyer is incapable of practicing due to physical or mental illness, incapacity, or other infirmity; deletes outdated references to "incompetence" throughout; adds provision allowing a lawyer to consent to incapacity not for misconduct in the same manner as other consent judgments in rule 3-7.9; adds subdivision titles consistent with controlling editorial protocols and redesignates other affected entries as necessary.

The board was presented on first reading with the following items, which could come to the board for final approval at its May 30 meeting.

- Rule 3-2.1(p), Designated Reviewer for Special Grievance Committee: Within subdivision (p) designated reviewer, codifies that a designated reviewer for a specially created grievance committee will be selected by the president and approved by the board.

- Rule 3-5.4, Publication of Discipline (new): Proposed new rule, to codify court and bar policy regarding publication of disciplinary sanctions in the Southern Reporter and The Florida Bar News, and on The Florida Bar's website. Board member Ben Kuehne questioned whether this would change a board policy about not publishing admonishments on the Bar's Web site.

- Rule 4-7.10(c), Definition of a Lawyer Referral Service: Within subdivision (c), revises the definition of a lawyer referral service to clarify that the referral of clients for any consideration constitutes a referral service.

- Rule 5-1.1, Trust Accounts; IOTA: Adds new subdivision (k) to prohibit an attorney from authorizing overdraft protection for any account that contains trust funds. In subdivision (g) better defines what is a "nominal" trust account deposit.

- Rule 3-3.2, Board of Governors; Authority to File a formal Complaint (companion to Rule 3-7.2): In connection with separate proposed amendments to rule 3-7.2, within subdivision (b) re authority to file complaints based on felony charges, adds that a grievance committee chair's decision to not file a complaint may be reviewed by the full committee, which may affirm or reverse the chair's decision; also adds a decision of the Florida Supreme Court imposing judicial discipline in an action brought by the

Judicial Qualifications Commission to the list of events that authorizes the filing of a formal lawyer disciplinary complaint; includes other non-substantive edits, adds appropriate subdivision titles and numbers consistent with controlling editorial protocols, and redesignates other affected entries as necessary.

- Rule 3-7.2(m) Procedures Upon Criminal or Professional Misconduct; Discipline Upon Determination or Judgment of Guilt of Criminal Misconduct – Discipline on Removal from Judicial Office (companion to Rule 3-3.2): In connection with separate proposed amendments to rule 3-3.2, adds new subdivision (m), re discipline upon removal from judicial office, to require notice to the bar of any order of the Supreme Court removing a member from judicial office; upon receipt of such order, also authorizes the bar to file a formal complaint with the court and to seek appropriate discipline; further provides that the findings of fact by the court in any proceedings resulting in the removal of a member from judicial office shall be conclusive proof of such facts in bar disciplinary proceedings.

- Rule 3-7.11(f)(2), Contempt; Failure to Respond to Official Bar Inquiries (companion to Rule 4-8.4): In connection with companion amendment of rule 4-8.4(g), within subdivision (f) re contempt, provides a summary process for addressing a respondent's failure to respond to official bar inquiries in disciplinary proceedings; requires bar petition to supreme court, for contempt and order to show cause; provides 10 days for respondent's response; allows for assignment of matters to a referee for factual findings; and authorizes suspension in such cases.

- Rule 4-8.4(g) Misconduct; Summary Process for Failure to Respond (companion to Rule 3-7.11): In connection with companion amendment of Rule 3-7.11(f), within subdivision (g) specifies that failure to respond to an official bar inquiry without good cause shown may be a matter of contempt.

- Standing Board Policy 15.77, Access to Designated Reviewer; Expresses bar policy that designated reviewers shall exercise sound discretion with respect to discussions concerning disciplinary cases with persons other than members of the board of governors, bar counsel, or other bar staff; further states as policy that designated reviewers should report such communications to bar counsel so that bar counsel may be better informed and provide more competent representation.

- Standing Board Policy 15.92, Administration of Public Reprimands; New policy which would require the bar president to approve the video recording of the administration of a public reprimand. Further states that the bar will not post the video of the administration of a public reprimand on its website.

Other items under consideration by the committee include:

- Rule 3-7.1(d) and (e), Confidentiality; The DPC is considering how the courts are addressing the issue of privacy rights and public documents. The DPC may consider a rule in disciplinary proceedings doing likewise.

- Rule 4-8.2, Judicial and Legal Officials; The DPC has determined not to pursue amendments to this rule at this time.

#### **14. Special Appointments and Nominations**

The board considered the 10 applicants for a two-year appointment to the Supreme Court's Bar Admissions Committee, but in light of the large number decided to have a screening committee review the applications. The board approved the recommendation of the Public Member Screening Committee and nominated Alvin V. Alsobrook of Gainesville, Judith O. Rosenkranz of Tampa, and Marni F. Stahlman of Winter Park for the upcoming public member vacancy on the Board of Governors. The Florida Supreme Court will make the final appointment.

#### **15. Appearance by Susan Eisenhower**

Susan Eisenhower, granddaughter of the former president, board member of the Eisenhower Institute at Gettysburg College, and president of the Eisenhower Group, Inc., addressed the board. She spoke on space exploration, nuclear power, lessons of history, the importance of education and especially studying history, critical decision making, Russia, understanding other nations and peoples, and her grandfather's record.

#### **16. Young Lawyers Division Report**

YLD President Scott Atwood reported that the YLD Board of Governors has elected R.J. Haughey of Tampa as the YLD president elect. He also said the division's annual Government Symposium, held February 22 at the Florida State University Law School and which focused on judicial independence, was a success and is available as a podcast on the division's Web site. Atwood said the division is working on a civics Web site aimed at non-lawyers and which will be separate from the main YLD Web site. He also said the YLD is working to upgrade its Practicing With Professionalism program to make it more user friendly.

#### **17. Annual Convention Committee Report**

Chair Scott Hawkins reported the committee has obtained pledges from a record number of law firms to sponsor the Judicial Luncheon.

#### **18. Rules Committee Report**

Chair Dominic Caparello reported the committee, with one exception, approved all the rule and policy amendments it reviewed, and which were brought to the board by other committees. The only exception was a rule amendment to allow for CLE credit to elected members of the executive branch, similar to what is allowed for elected members of the legislative branch. The proposal addressed the Cabinet offices by name as those qualifying for exemption, while Caparello said the committee suggested that it should just refer to elected Cabinet officials. He noted there is a proposal in the legislature to amend the constitution to again have an elected Education Secretary as part of the Cabinet, and the committee's proposal would allow for that if it is approved. Board



member Laird Lile said the amendment should also include the lieutenant governor, who is also an elected executive branch official.

### **19. Certification Plan Appeal Committee Report**

Chair Jake Schickel reported the committee considered an appeal from an applicant who was denied recertification and who subsequently appealed that action to the board. He noted the board must find clear and convincing evidence that CPAC made an error in order to overturn its action. The board voted to uphold the CPAC action.

### **20. Report of the Board of Legal Specialization and Education**

The board discussed proposed amendments to Rule 6-3.7, Board Certified Emeritus Status, but postponed a decision after several board members questioned whether the emeritus status could be confusing to potential clients, who might think a retired lawyer with emeritus status was still actively practicing or that a practicing lawyer with emeritus status was still certified in that practice area.

The board did approve amendments to:

- Rule 6-16.4, Business Litigation, Recertification; within subsection (b) adds provision for waiver of the evidentiary hearing criteria for applicants who have been certified in business litigation for 14 years or more.
- BLSE Policy 2.02(d), Area Evaluation, and 2.02(e), Evaluation Results; Within new subdivision (c), requires that proposed amendments to any certification areas be shared with various bar groups for comment prior to submission to the BLSE; within new subdivision (d), adds provision for an evaluation of any certification area that does not reach a 75-member minimum aspirational threshold upon completion of its third application cycle; within new subdivision (e), specifies that the BLSE will submit a written report of its evaluation results to the board of governors within 3 months of completing its evaluation.

### **21. Family Law Rules Amendment**

By a 25-0 vote, the board endorsed a proposed amendment to Family Law Rule 12.010(b)(1), which restates the purpose of the Family Law Rules of Procedure. The amendment now goes to the Florida Supreme Court.

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

The next Board of Governors meeting will be held May 28-31 at the Westin Key West Resort & Marina in Key West

There being no further business, the board adjourned at 2:23 p.m.

SUBJECT INDEX

ANNUAL CONVENTION COMMITTEE REPORT .....	8
APPEARANCE BY ROBERT SPAGNOLETTI.....	2
APPEARANCE BY SUSAN EISENHOWER .....	8
APPROVAL OF MINUTES .....	3
BOARD OF LEGAL SPECIALIZATION AND EDUCATION REPORT .....	9
BUDGET COMMITTEE REPORT .....	5
CERTIFICATION PLAN APPEAL COMMITTEE REPORT .....	9
CONSENT AGENDA .....	4
DISCIPLINARY PROCEDURE COMMITTEE REPORT .....	6
EXECUTIVE SESSION .....	6
FAMILY LAW RULES REPORT .....	9
GUESTS.....	2
INVESTMENT COMMITTEE REPORT .....	5
INVOCATION AND PLEDGE OF ALLEGIANCE .....	2
LEGISLATIVE COMMITTEE REPORT .....	5
NON-ROLL CALL ITEMS .....	3
OUT OF STATE DIVISION REPORT.....	3
ROLL CALL .....	1
RULES COMMITTEE REPORT.....	8
SPECIAL APPOINTMENTS AND NOMINATIONS .....	8
TIME AND PLACE OF NEXT MEETING .....	9
YOUNG LAWYERS DIVISION REPORT .....	8