

The Florida Bar
June 1, 2007
Westin Resort
Key West, Florida

Pursuant to notice, the regular meeting of the Board of Governors of The Florida Bar was called to order at 9:00 A.M. on Friday, June 1, 2007, in Key West, Florida, with President Henry M. Coxe presiding.

1. Roll Call

Henry M. Coxe, III, President
Francisco R. Angones, President-elect
Lawrence E. Sellers, Jr., Second Judicial Circuit
Gregory S. Parker, Third Judicial Circuit
S. Grier Wells, Fourth Judicial Circuit
John J. Schickel, Fourth Judicial Circuit
Denise A. Lyn, Fifth Judicial Circuit
Andrew B. Sasso, Sixth Judicial Circuit
Carl B. Schwait, Eighth Judicial Circuit
Mayanne Downs, Ninth Judicial Circuit
Daniel L. DeCubellis, Ninth Judicial Circuit
Warren W. Lindsey, Ninth Judicial Circuit
Ramon Abadin, Eleventh Judicial Circuit
David Rothman, Eleventh Judicial Circuit
Ervin A. Gonzalez, Eleventh Judicial Circuit
Jennifer Coberly, Eleventh Judicial Circuit
Dennis Kainen, Eleventh Judicial Circuit
Sharon L. Langer, Eleventh Judicial Circuit
Benedict P. Kuehne, Eleventh Judicial Circuit
Steven Chaykin, Eleventh Judicial Circuit
Kimberly A. Bald, Twelfth Judicial Circuit
Timon V. Sullivan, Thirteenth Judicial Circuit
William Kalish, Thirteenth Judicial Circuit
Gwynne Alice Young, Thirteenth Judicial Circuit
Clifford W. Sanborn, Fourteenth Judicial Circuit
John G. White, III, Fifteenth Judicial Circuit
Scott G. Hawkins, Fifteenth Judicial Circuit
Edwin Scales, Sixteenth Judicial Circuit
Allison Bethel, Seventeenth Judicial Circuit
Nancy W. Gregoire, Seventeenth Judicial Circuit
Eugene K. Pettis, Seventeenth Judicial Circuit
Jesse H. Diner, Seventeenth Judicial Circuit
Frank C. Walker, II, Seventeenth Judicial Circuit
Clifton A. McClelland, Jr., Eighteenth Judicial Circuit
Harold G. Melville, Nineteenth Judicial Circuit
Laird A. Lile, Twentieth Judicial Circuit
Richard Arthur Tanner, Out-of-State
Ian M. Comisky, Out-of-State
Gary J. Leppla, Out-of-State
Brian D. Burgoon, Out-of-State
John M. Stewart, YLD President
Scott Atwood, YLD President-elect
Solomon L. Badger, III, Public Member

Board members absent:

Steve Echsner, First Judicial Circuit
Dominic M. Caparello, Second Judicial Circuit
Murray B. Silverstein, Sixth Judicial Circuit
Charles Chobee Ebbets, Seventh Judicial Circuit
Robert M. Brush, Tenth Judicial Circuit
Gregory Coleman, Fifteenth Judicial Circuit
Lisa S. Small, Fifteenth Judicial Circuit
A. Lawrence (Larry) Ringers, Twentieth Judicial Circuit
J. Blair Culpepper, Public Member

Staff attending the meeting:

John F. Harkness, Jr., Executive Director
Paul F. Hill, General Counsel
Rosalyn Scott, Assistant to the President
Dana Watson, 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
John Berry, Director of Legal Division
Tony Boggs, Director of Clients' Security Fund
Mary Ellen Bateman, Director, Ethics, Advertising and Special Projects Division
Francine Walker, Director of Public Information
Ken Marvin, Director of Attorney Regulation

2. Guests

Justice Raoul G. Cantero, III, Florida Supreme Court
Morgan McPherson, Monroe County Mayor
Marco Jimenez, Chair of the Attorney/Client Privilege Task Force
Steve Metz, Florida Bar Legislative Counsel
Connie and Alan B. Bookman, Past President of The Florida Bar
Juliet M. Roulhac, Incoming Board Member, Eleventh Circuit
David C. Prather, Incoming Board Member Fifteenth Circuit
Jewel White Cole, Young Attorneys Division, President-elect designate
Arnell Bryant-Willis, Incoming Board Public Member
Jane Curran, Executive Director Florida Bar Foundation
Marlene Quintana, President-elect designate of Cuban American Bar Association
Wendy Loquasto, President of Florida Association of Women Attorneys

3. Invocation and Pledge of Allegiance

The Invocation and Pledge of Allegiance were led by Ed Scales.

4. Non-roll call Grievance Agenda Items

Co-chair David Rothman reported that the non-roll call grievance agenda items were numbers 8, 15, 31, and discipline number 29.

5. Non-roll call Advertising Appeal Agenda Items

Staff member Elizabeth Tarbert reported that agenda items 5b (1) and 5b (2) were removed from the consent calendar.

6. Approval of Minutes- Approved

- a. Regular Minutes, March 30, 2007 meeting
- b. Grievance Minutes, March 30, 2007 meeting
- c. Summary of Executive Committee action taken
 - 1) April 6, 2007 – Legal Specialization and Education Budget Amendment

- 2) April 15, 2007 – ABA resolution regarding dues relief for military members
 - 3) April 16, 2007 – Public Interest Law Section
 - 4) May 1, 2007 – UPL Circuit Committee 11”A”
 - 5) May 8, 2007 – Family Law Rules Committee Fast-track Amendments
 - 6) May 9, 2007 – Criminal Law Rules Committee Fast-track Amendments
 - 7) May 16, 2007 – Approval of MJP Report
- d. Emergency Legislative Action
- 1) April 10, 2007 – Tax Section position to oppose SB 2482
 - 2) April 13, 2007 – Real Property, Probate and Trust Law Section regarding community associations
 - 3) April 24, 2007 – Tax Section position relative to 35 U.S.C. §102
 - 4) April 25, 2007 – Real Property, Probate and Trust Law Section position to oppose HB 1373 (2007) and SB 2816 (2007)

7. Consent Calendar - Approved except as noted

- a. UPL committee nominations
- 1) Circuit Committee nominations
Loretta M. Fabricant, Public Member, Eleventh Judicial Circuit
Robert L. Kaye, Attorney Member, Seventeenth Judicial Circuit
David J. Volk, Attorney Member, Eighteenth Judicial Circuit
Charles Schillinger, Attorney Member, Eighteenth Judicial Circuit
 - 2) Nomination of Standing Committee on UPL Members
Nancy Munjiova Blount, Attorney Member
Otto Nelson Espino, Attorney Member
Adrienne Katz, Public Member
Anthony Heary, Attorney Member
Barry Crown, Public Member
Amy Osteryoung, Attorney Member
Rebecca Frank, Public Member
N. Abraham Issa, Public Member
Bruce Douglas Lamb, Attorney Member
Bernard Schinder, Public Member
- b. Board Review Committee on Professional Ethics
- 1) Advertising Appeals 04-0267 and 06-02399 – **removed from consent**
 - 2) Advertising Appeals 06-01134, 07-01305, 07-01306, 07-01307, and 07-01638-**removed from consent**
- c. Rules, Bylaws & Policies
- 1) Rule 3-6.1 Employment of Certain Attorneys or Former Attorneys; Generally Extends the prohibitions re direct client contact and the handling of trust funds and property to all entities providing legal services when hiring an individual otherwise subject to this rule; clarifies that the employment restrictions and reporting requirements apply to law firms and other agencies through which legal services are provided.
 - 2) Rule 3-7.6 Procedures Before a Referee
Within subdivision (a), adds language requiring that a judge have 5 years experience as a judge in the state of Florida prior to appointment as a referee; adds appropriate subdivision titles and numbers consistent with controlling editorial protocols.
 - 3) Rule 5-1.1 Trust Accounts (overdraft protection)
Adds new subdivision (k) to prohibit an attorney from authorizing overdraft protection for any account that contains trust funds.
 - 4) SBP 15.55 Deferral of Disciplinary Investigation During Civil or Criminal Procedures
Amends policy to additionally apply to intake processes and analysis of disciplinary complaints; further formalizes procedures re the designated reviewer’s role in such matters and provides appropriate notice to respondent

and complainant in the event that a complaint file is closed and an investigation is deferred.

- 5) SBP 15.75 Policy on Review of Continuing Complaints
Amends policy to additionally apply to intake process; clarifies that various timelines commence after notice of any agreement re closure of a matter to all interested persons rather than the actual date of such action.
 - 6) CLE Policy 3.09 Policies Governing CLE Committee – Exhibits and Displays at Courses
Substantial revision of current policy, expanded to further include meals, events, and receptions sponsored and paid by outside entities, and to now permit all subject to approval of the CLE Committee or staff and the sponsoring bar section, if applicable, if such revision do not detract from the educational purpose or quality of the course; revises title accordingly, to read “Exhibits, Displays, Meals, Events, and Receptions at Courses”.
- d. Legal Services of North Florida’s Board of Directors nominations
Joan Anderson will serve a 3-year term.

8. Report on Professionalism Retreat

Florida Supreme Court Justice Raoul G. Cantero, III gave the board an update from the Commission on Professionalism Retreat and reported that he and President-elect would appoint a committee to study the issue of mandatory mentoring in Florida, how that would work, how much would it cost.

9. Attorney Client Task Force Report

The board received an interim report from Marcos Jimenez, chair of the Attorney-Client Privilege Task Force. Jimenez told the committee that the task force had requested legislation committee approval on one piece of legislation and 3 resolutions. Jimenez also requested that the board accept the report and its recommendations. The recommendations are as follows:

- a. That The Florida Bar take a legislative position in support of the legislation introduced by U.S. Senator Arlen Specter (S.186) or similar comprehensive legislation.
- b. That The Florida Bar make no proposal at this time to amend section 90.502 to include a selective waiver provision.
- c. That the concepts on inadvertent waiver contained in ABA Recommendation 120D be adopted and referred to the Florida Bar Civil Procedure Rules Committee and the Florida Bar Code and Rules of Evidence Committee for drafting of appropriate rules consistent with the concepts.
- d. That The Florida Bar not pursue amendments to Rule 4-3.8(e) of the Rules of Professional Conduct to restrict a prosecutor from subpoenaing a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client.
- e. That the Rules of Professional Conduct (including ABA Model Rule 3.4(g) and Florida’s rules) not be amended to address the issue of attorney-client privilege.
- f. That the issue of whether state rules and statutes governing civil procedure should be amended or adopted to protect from discovery draft expert reports and communications between an attorney and a testifying expert be referred to the Florida Bar Civil Procedure Rules Committee and the Florida Bar Code and Rules of Evidence Committee for review and consideration.
- g. That The Florida Bar take no action at this time on the issue of the proposed “firewall amendment” to S.186 or similar comprehensive legislation.

The resolutions are as follows:

- a. That The Florida Bar supports the preservation of the attorney-client privilege and work product doctrine as essential to maintaining the confidential relationship between client and attorney; opposes policies, practices and procedures of governmental bodies that would erode the privilege; and opposes the routine practice by governmental officials of seeking to obtain waivers of the privilege or work product doctrine by the granting or denial of a benefit. (Resolution 1)
- b. That The Florida Bar opposes government policies or practices that erode the

constitutional and other legal rights of employees by requiring, encouraging or permitting prosecutors or other enforcement authorities to consider the following factors in determining whether an organization has been cooperative: (1) that the organization provided counsel or paid the legal fees of the employee; (2) that the organization chose to retain or declined to sanction an employee who refused a government request for an interview, testimony or other information; (3) that the organization entered into a joint defense or common interest agreement with an employee; (4) that the organization shared its records with an employee. (Resolution 2)

c. That the attorney-client privilege and work product doctrine should be preserved with respect to audits of company financial statements. (Resolution 3)

The board approved the resolutions and accepted the report.

10. Legislation Committee Report

Chair Warren Lindsey told the board that the committee met and discussed a request from the Attorney Client Task Force for a Florida Bar legislative position. The legislation committee recommended that the board adopt the following Florida Bar legislative position.

13. The Florida Bar strongly supports the preservation of, and opposes policies and procedures that have the effect of eroding, the attorney-client privilege and work product doctrine, both of which are essential to maintaining the confidential relationship between client and attorney required to encourage clients to discuss their legal matters fully and candidly with their counsel so as to:

- (1) promote compliance with law through effective counseling,
- (2) ensure effective advocacy for the client,
- (3) ensure access to justice and
- (4) promote the proper and efficient functioning of the American adversary system of justice.

The board concurred and approved the position.

Lindsey told the board that the committee had also discussed and recommended the approval of the lobbying contract between the Elder Law Section and Tom Batchelor. The board concurred and approved the contract.

Steve Metz, chief legislative counsel, gave the board a brief overview of the 2007 legislative session. Gary Leppla made the motion per SBP 9.20(h) requesting a review of the Real Property, Probate and Trust Law Section's legislative position on the out of state personal representative statutes. After debate, the board voted 12-24, denying the request to review.

11. Budget Committee Report

Chair Mayanne Downs reported that the budget committee met and recommended the board approve the following budget amendments to the 2006-07 and the 2007-08 budgets:

2006-07

- | | |
|---|----------------------------------|
| 1) Retiree Health Plan Trust | \$1,203,784 – from fund balance |
| 2) Human Resources – Classified Ads | \$11,000 - from fund balance |
| 3) Print Shop – Paper | \$10,000 - from fund balance |
| 4) Professionalism – Furniture and Installation | \$2,902 - from equipment reserve |

2007-08

- | | |
|---|--|
| 1) Standing Committee on Physician-Attorney Relations | \$9,400 - \$2,600 from operating reserve - \$6,800 – time redistribution |
|---|--|

The board concurred and approved the budget amendments.

12. Investment Committee Report

Chair Ian Comisky reported that the Bar portfolio had \$23.8 million when he took over as Investment Committee Chair and it now has \$30.8 million. He reminded the board that they had approved a transfer of \$3.5 million from the short term to the long term fund, experiencing a 5.3% increase, or \$1.5 million since July 1, 2006. Comisky also told the board that the diversified funds had an 11% increase.

13. Board Review Committee Report

- 1) 5b(1) ADVERTISING APPEALS 04-02267 and 06-02399
Advertising Appeals 04-02267 and 06-02399 concern application of Rule 4-7.2(c)(1), prohibiting false, misleading, or deceptive communications, which include a material misrepresentation of fact or law or a misleading omission.
In file 06-02399, staff rendered an opinion on June 16, 2006, that the advertisement was misleading because language regarding a money back guarantee did not disclose all restrictions and limitations. Staff noted and apologized that these issues were not addressed in opinions by other staff in prior similar advertisements. The filer revised the advertisement and staff rendered an opinion on December 19, 2006, that the advertisement was misleading because the following language did not specify all applicable restrictions and limitations: Money Back Guarantee: * Non-criminal, civil infractions only. Guarantee is limited. Some Restrictions Apply. Call 1-800-CITATION for details. The Standing Committee on Advertising upheld staff's opinion on February 20, 2007. The attorney subsequently requested Board of Governors review.
In file 04-02267, staff rendered an opinion on May 17, 2004, that the following language complied with the advertising rules: Money Back Guarantee! * No Points No School Call For Details *In Most Cases, Non criminal infractions only. Staff rendered an opinion on June 9, 2005, that the following revised language complied with the advertising rules: Money Back Guarantee! *No Points No School *In Most Cases, Non Criminal Infractions only CALL FOR DETAILS.
The filer revised the advertisement and staff rendered an opinion on December 19, 2006, that the advertisement was misleading because the following language did not disclose all applicable limitations and restrictions: Money Back Guarantee! * Non criminal civil infractions only, guarantee is limited some restrictions apply, call for details.
The Standing Committee on Advertising upheld staff's opinion on February 20, 2007. The attorney subsequently requested Board of Governors review.
The Board Review Committee on Professional Ethics voted 5-0 to reverse the Standing Committee on Advertising, finding the statements are not misleading.
The board voted to approve the Board Review Committee on Professional Ethics recommendation.
- 2) 5b(2) ADVERTISING APPEALS 06-01134, 07-01305, 07-01306, 07-01307 & 07-01638
Advertising Appeals 06-01134, 07-01305, 07-01306, 07-01307 & 07-01638 concerns application of the following rules: 1) 4-7.9(a) prohibiting misleading trade names; and 2) 4-7.9(c) requiring attorneys who advertise under a trade name to practice under that trade name, including on letterhead, business cards, and together with the attorney's signature on pleadings.
Staff rendered opinions on December 19, 2006 (files 07-01305, 07-01306, and 07-01307), on February 12, 2007 (file 07-01638), and on February 19, 2007 (file 06-01134) that the filer's advertisements contained a misleading trade name, that the filer failed to include the trade name on the filer's letterhead, and that the filer was operating a misleading franchise, in violation of Rules 4-7.9(b) and (c) and 4-7.2(c)(1).
The Standing Committee on Advertising reversed staff's opinion in part (files 07-01305, 07-01306, and 07-01307), finding that the filer was not engaged in a misleading franchise on February 20, 2007, based on the filer's statements that the filer changed how she was conducting her practice. The Standing Committee on Advertising upheld staff's opinion in part (files 07-01305, 07-01306, and 07-01307) on February 20, 2007, finding that although use of the telephone number "1-800-Got-Ticket" alone is not a trade name, the filer's use of the telephone number as a descriptor for her law firm ("1-800-Got-Ticket Traffic Ticket & DUI Attorneys" and "1-800-Got-Ticket Racing Team") is a trade name that is misleading because it is not clear it is a private law firm, and that the filer was in violation of Rule 4-7.2(c) because the filer failed to practice under the trade name, including failing to use the trade name on her letterhead. The Standing Committee on Advertising upheld staff's opinion (files 06-01134 and 07-01638) on March 20, 2007, finding that although use of the telephone number "1-800-Got-Ticket" alone is not a trade name, the filer's use of the telephone number as a descriptor for her law firm ("1-800-Got-

Ticket Traffic Ticket & DUI Attorneys" and "1-800-Got-Ticket Racing Team") is a trade name that is misleading because it is not clear it is a private law firm, and that the filer was in violation of Rule 4-7.2(c) because the filer failed to practice under the trade name, including failing to use the trade name on her letterhead. The Standing Committee on Advertising determined that the filer could resolve the issue by using the telephone number standing alone and not as a descriptor, which turned the mnemonic device into a trade name. In the alternative, the filer could advertise "1-800-Got-Ticket" as a trade name, but the filer must include the disclaimer "A Private Law Firm" with the trade name and practice under the trade name, including on the filer's letterhead, business cards, office signs, and together with the filer's signature on pleadings.

The attorney subsequently requested Board of Governors review.

The BRC voted 4-1 to affirm the Standing Committee on Advertising decision to the extent that the term "Got Ticket" is being used as a trade name in the advertisements, that the disclaimer "a private law firm" should be used with the trade name, and that the filer must practice under the trade name "Got Ticket" including using it on her letterhead, office signs, business cards and together with her signature on pleadings.

The board voted to approve the Board Review Committee on Professional Ethics recommendation.

14. Communication Committee Report

Chair Tim Sullivan told the board that the communications committee met and discussed discipline on the website.

The committee also discussed the manner in which board members communicate with their constituents based on a survey of current governors. The committee members discussed the suggestion that next years' committee develop a "tool kit" including standard protocol, methods, processes etc. for good constituent communications.

Sullivan reported that the committee reviewed and approved a request from the Construction Law Committee of the RPPTL Section for a new consumer pamphlet titled "Building a Home." The committee recommended that the Bar print 3,000 of these pamphlets in English and 3,000 in Spanish, place the text and pdf versions on the Web site, and begin marketing availability as soon as possible.

15. Special Committee on Judicial Evaluation Report

Mary Ellen Bateman, staff liaison reported that the committee was established by Florida Supreme Court Chief Justice Lewis through an administrative order in September. The committee is chaired by Judge Peter Webster of the 1st DCA. This committee was tasked with looking at the proper method of evaluating judges in this state both active and senior and then reporting back. At the present the committee is in an educational mode and has been looking at what other states are doing to evaluate its judges. The committee recommendations are due to the Supreme Court on June 30, 2008.

16. Disciplinary Procedures Committee Report

Chair Andy Sasso reported that the committee met and recommended that the board approve the following items on second reading.

- 1) Rule 4-7.10 Attorney Referral Services
Within subdivision (a) and commentary, clarifies that it is a violation of the Rules Regulating The Florida Bar for a member of the bar to accept referrals from a private, for-profit attorney referral service that does not comply with the requirements of rule 4-7.10; within subdivision (b) re a attorney's responsibility to ensure that an attorney referral service from which the attorney accepts referrals is in compliance with the Rules Regulating The Florida Bar, adds that it shall be a violation of such rules if the attorney knows or should have known any referral service is not in compliance with applicable rules or if the attorney failed to seek such information to determine compliance.
- 2) SBP 15.90 Policy on Judicial Referrals and Complaints
New policy, to formalize the manner in which the bar will coordinate with judicial officers

about attorney disciplinary matters referred by them to the bar for investigation; allows judicial referrals without a complaint, by formal complaint, or by comment on attorney conduct in the issuance of orders or opinions; instructs bar counsel on how such referrals are to be recorded and sets forth those events that should be communicated to judicial officers throughout the processing of a referred matter.

The board concurred and **approved** the items. Sasso told the board that the committee also discussed the following items on **first reading** which required no board votes to be taken.

- 1) Rule 3-3.3 Counsel for The Florida Bar
Clarifies that a member of a grievance committee may represent the bar in disciplinary cases before a referee or court if the case was considered by a grievance committee other than the one on which the member serves; includes other non-substantive edits and new subdivision titles throughout consistent with controlling editorial protocols.
- 2) Rule 3-7.18 Expunging Disciplinary Records
New rule to provide guidelines for limited expunging of grievance records.
- 3) Rule 4-1.5 Fees and Costs for Legal Services (test of reasonableness)
Within subdivision (e) adds requirement that a fee for legal services that is nonrefundable in any part must be confirmed in writing and explain the parties' intent as to its nature and amount; also in subdivision (e) and commentary, clarifies that the test of reasonableness is applicable to all fees regardless of their characterization; also within commentary, clarifies various types of fees, their ownership, and appropriate financial account placement.
- 4) SBP 1.60 Board Action on Proposed Rule or Policy Amendments
Within subdivision (c), adds additional separate reviews of proposed rule or policy amendments by both the budget committee and the program evaluation committee, to evaluate and determine the effect of the amendment, if any, on the bar's budget and strategic plan; requires these committees to report their findings to the board.

17. Board of Legal Specialization and Education Report

Board liaison Ben Kuehne reported that the BLSE met and discussed the following items on **first reading** requiring no board votes to be taken.

- 1) Rule 6-8.1 Standards for Certification of a Board Certified Criminal Attorney
Adds new language to incorporate criteria of "character, ethics and reputation for professionalism."
- 2) Rule 6-8.2 Definitions and Committee; Criminal
Within subdivision (c), adjusts language to allow for "at least" 2 criminal appellate attorneys to serve on Criminal Law Certification Committee rather than the current maximum of 2, and otherwise effectively deletes current committee membership maximum of 9; adds new subdivision (d) re trials, to address specific proceedings that may satisfy the trial requirement; also adds new subdivision (e) re protracted litigation, moved from rule 6-8.3(a)(2).
- 3) Rule 6-8.3 Criminal Trial; Minimum Standards
Within subdivision (a), adds "competence" to subdivision title and minimum standards; deletes from subdivision (a)(2) language re protracted litigation, now moved to rule 6-8.2; within subdivision (b), adds new language prohibiting relatives or current associates or partners from acting as references, and adds new language that peer review received on behalf of an applicant must demonstrate competence in the practice of criminal trial law as well as ethics and professionalism; within subdivision (c) re education, revises and streamlines language consistent with committee and BLSE policies; within subdivision (d), adds new language requiring the criminal law certification exam also test an applicant's skills in practicing criminal trial law; includes other non-substantive edits consistent with controlling editorial protocols.
- 4) Rule 6-8.4 Criminal Trial Recertification
Within subdivision (a), eliminates "continuous" as to substantial involvement and integrates actual language of rule 6-8.3(a)(4) into text instead of mere cite to that provision; within subdivision (b) re trials, adds language to allow consideration of other criteria deemed appropriate by the committee; within subdivision (c) re education,

- streamlines language to allow reliance upon initial certification criteria; within subdivision (d), adds new language to prohibit relatives or current associates or partners from acting as references, and states peer review received on behalf of an applicant must demonstrate competence in criminal trial law, as well as ethics and professionalism; within subdivision (e), adds provisions for waiver of the trial criteria for applicants certified 14 years or more, to include satisfaction of peer review, education, and substantial involvement; includes other non-substantive edits consistent with controlling editorial protocols.
- 5) Rule 6-8.5 Criminal Appellate; Minimum Standards
Within subdivision (a), adds "competence" to subdivision title and minimum standards; specifies "criminal" as to appellate actions; adds provision allowing attorneys who are or have been judicial clerks/staff attorneys, if restricted by rules of court, to submit a letter from their employer judge stating the number of appellate actions in which the applicant participated; adds new subdivision (a)(3) requiring submission of pleadings in 2 recent criminal appellate proceedings; within subdivision (b), adds new language prohibiting relatives or current associates or partners from acting as references, and adds new language that peer review received on behalf of an applicant must demonstrate competence in the practice of criminal appellate law as well as ethics and professionalism; within subdivision (c) re education, revises and streamlines language consistent with other areas; within subdivision (d), new language requires that the criminal law certification exam also test an applicant's skills in criminal appellate law; includes other non-substantive edits consistent with controlling editorial protocols.
 - 6) Rule 6-8.6 Criminal Appellate Recertification
Within subdivision (a), specifies 5-year time frame preceding application for satisfaction of recertification requirements; eliminates "continuous" as to substantial involvement and integrates actual language of rule 6-8.5(a)(3) into text instead of mere cite to that provision; within subdivision (b) clarifies appellate actions as "criminal" and adds provision allowing attorneys who are or have been judicial clerks/staff attorneys, if restricted by rules of court, to submit a letter from their employer judge stating the number of appellate actions in which the applicant participated; within subdivision (c) re education, streamlines language to allow reliance upon initial certification criteria; within subdivision (d), adds new language prohibiting relatives or current associates or partners from acting as references, and states peer review received on behalf of an applicant must demonstrate competence in criminal appellate law, as well as ethics and professionalism; within subdivision (e), adds provisions for waiver of the appellate action criteria for applicants certified 14 years or more, to include satisfaction of peer review, education, and substantial involvement; includes other non-substantive edits consistent with controlling editorial protocols.
 - 7) Rule 6-13.1 Standards for Certification of a Board Certified Appellate Practice Attorney
Adds new language to incorporate criteria of "character, ethics and reputation for professionalism."
 - 8) Rule 6-13.2 Definitions; Appellate Practice
Adds new subdivision (b), to define "appellate action" and updates other subdivision entries.
 - 9) Rule 6-13.3 Minimum Standards; Appellate Practice
Within subdivision (a), adds waiver language for up to 2 of the 3 years of substantial involvement for appellate judges, clerks, career attorneys, or staff attorneys in an appellate court; within former subdivision (a)(2) – new (b) – adds language to specify that creditable appellate actions occur during the 5-year period immediately preceding application, to further clarify primary responsibility in such matters, and to describes applicant obligations re demonstrating case participation as substantial and direct; within former subdivision (a)(3) – new (c) – adds language to clarify primary responsibility in oral arguments and to describe applicant obligations re demonstrating case participation as substantial and direct; deletes current subdivision (a)(4) re activities as an appellate attorney within 3 years immediately preceding application; within new subdivision (d), includes provisions from former subdivision (c) and adds language to provide that

- authorization for education credit be within the purview of the certification committee or BLSE; within former subdivision (b) – new (e) – adds language to exclude relatives or current associates from providing reference statements on an applicant's behalf; deletes former subdivision (c), now included in new subdivision (d); redesignates other subdivision entries to accommodate proposed changes and includes other non-substantive edits consistent with controlling editorial protocols.
- 10) Rule 6-13.4 Recertification; Appellate Practice
Within preamble, adds language to specify that creditable appellate actions occur during the 5-year period immediately preceding application; within subdivision (b), eliminates "Requirement" from subdivision title consistent with titles as styled in other area standards, and adds language to clarify primary responsibility in appellate actions and describe applicant obligations to demonstrate their case participation as substantial and direct; creates new subdivision (c) to clarify primary responsibility in oral arguments and describe applicant obligations to demonstrate participation as substantial and direct, further allowing the committee to waive this requirement; within former subdivision (c) – new (d) – amends subdivision title consistent with styling in other area standards and revises verbiage to allow 30 hours of judicial education to satisfy the standard 50 CLE hours required for recertification; within subdivision (d) – new (e) – adds language to prohibit relatives or current associates or partners from acting as references; creates new subdivision (f), to specify expanded requirements for judges re recertification in accordance with their responsibilities either in an appellate capacity or otherwise, previously within rule 6-13.5;); redesignates other subdivision entries to accommodate proposed changes and includes other non-substantive edits consistent with controlling editorial protocols.
- 11) Rule 6-13.5 Appellate Court Judges; Appellate Practice
Deleted in view of expanded provisions proposed within rule 6-13.4 as new subdivision (f).
- 12) BLSE Policy 5.05 Justice Teaching Classroom Presentations
Adds new subsection (f), to allow participants in the Justice Teaching Program to receive 1 credit hour per presentation at an elementary, middle, or high school classroom, with a cap of 5 credit hours in a 3-year CLER reporting cycle for such activity.

18. Young Lawyers Division Report

President John Stewart reported that the Young Lawyers Division would be a sponsor to the minority mentoring picnic and will be providing the pro bono lapel pins. He told the board that the YLD is very active at the Bar's Annual meeting, such as an annual 5K run. The proceeds will go to the Florida Skin Cancer Foundation. Free skin cancer screenings are offered at the event.

19. Program Evaluation Committee Report

Chair Gwynne Young reported that the committee had received a request from President-elect Angones that PEC review the composition of the executive committee and the strategic planning committee to determine whether the PEC chair and DRC chair should be added to the executive committee; that could affect the membership of the strategic planning committee which is the executive committee plus certain chair-elects of Board committees. The committee determined that it will conduct a program evaluation on this topic in the coming year. Rule 1-4.3 - re Committees and SBP 10.50 – re Strategic Planning Policy are deferred to a future date. Young reported that the committee finalized the merger between the Practice Management and Development Section and the General Practice, Solo and Small Firm Section. PEC unanimously approved the motion and recommended that the board approve the merger. The board concurred with the committee recommendation.

Young reported that the PEC received a request from the Rules of Judicial Administration Committee to amend the current rule that puts term limits on committee membership. They proposed a change that would allow for between one-third and two-thirds of committee appointments in each year to be persons who have not served on the committee during the previous three years. The PEC recognizes that those on the rules committee really believe that

one of the downsides of having term limits is you do lose some institutional memory. The PEC voted to deny the request and recommended that the board do the same. The board concurred with the committee recommendation and denied the request.

Young told the board that PEC had received a proposal from the Code and Rules of Evidence Committee to explore establishing a joint committee with the legislature to recommend changes to the evidence code. The PEC determined that it would appoint a subcommittee to conduct a full program evaluation of the Code and Rules of Evidence Committee.

20. Certification Plan Appeals Committee Report

Chair Hal Melville reported that the committee received a petition to review. The petitioner was denied initial certification as a Board Certified Civil Trial Lawyer. Upon review of the entire record CPAC decided to affirm the findings of the Grade Review Panel and deny the Petitioner's application. The petitioner objected to the absence of individual scores for each subpart of the Litigation Skills essay question. Melville told the board that the holistic method of grading has been fully reviewed and approved by the Supreme Court in The Florida Bar re John O. Williams. The CPAC recommended that the board deny the review. The board concurred with the committee recommendation to deny review. Board members Carl Schwait, Tim Sullivan, Jay White, Larry Sellers, Jake Schickel, David Rothman and Ben Keuhne recused themselves from the board vote.

21. Special Appointments

- a. ABA House of Delegates
The board appointed Henry M. Coxe from Jacksonville, Edith G. Osman from Miami, and Herman J. Russomanno from Miami and John G. White, III from West Palm Beach for 2-year terms beginning August 13, 2007.
- b. Florida Legal Services, Inc., Board of Directors
The board appointed Howard A. Caplan from Jacksonville, J. Dudley Goodlette from Naples, Donna M. Krusbe from West Palm Beach, Theodore W. Small, Jr. from Deland, Daniel H. Thompson from Tallahassee and Barbara Twine-Thomas from Tampa for 2-year terms and Cleveland Ferguson, III from Jacksonville, and Diana L. Martin from Palm Beach Gardens for 1-year terms beginning July 1, 2007.
- c. Florida Lawyers Assistance, Inc., Board of Directors
The board appointed attorneys Stacy Lynn Feinstein from Plantation, Billy J. Hendrix from Tallahassee and Brian M. McDonnell from Palm Beach and non-lawyers Mitchell Feld from Boca Raton and Barbara D. Geraghty from Fort Myers for 3-year terms beginning July 1, 2007.

22. Special Nominations

- a. Florida Board of Bar Examiners
The board recommended Allan H. Aronson from Miami, Lisa L. Brody from St. Petersburg, David M. Chesser from Shalimar, Christopher B. Hopkins from West Palm Beach, Malcolm J. Pitchford from Sarasota, David A. Rowland from Tampa Charles M. Trippe from Jacksonville, Melvyn Trute from Bay Harbor Islands and Shirley J. Whitsitt from LaBelle to Supreme Court to fill three 5 year-term positions. Board member Bill Kalish recused himself from the vote.

23. President-elect Report

President-elect Frank Angones reported that the following people would serve on the executive committee because they chair the budget committee - Mayanne Downs, legislative committee - Jesse Diner, and the communications committee -Richard Tanner. Angones appointed Eugene Pettis and Gwynne Young, and the board appointed David Rothman, Tim Sullivan and Grier Wells. Angones also reported that the list of standing committee officers, board committee assignments and board liaison assignments needed to be approved. The board approved the list of standing committee officers unanimously.

24. Time and Place of Next Meeting

The board's next meeting is August 15-18, 2007 in Palm Beach, Florida at The Breakers.

There being no further business to discuss, the board adjourned at 3:50 P.M.

Respectfully submitted,

Dana M. Watson

SUBJECT INDEX

APPROVAL OF MINUTES	2
Regular	2
Executive	2
ATTORNEY CLIENT TASK FORCE REPORT	4
BOARD OF LEGAL SPECIALIZATION & EDUCATION REPORT	8
BOARD REVIEW COMMITTEE REPORT	6
BUDGET COMMITTEE REPORT	5
CERTIFICATION PLAN APPEALS COMMITTEE REPORT	11
COMMUNICATIONS COMMITTEE REPORT	7
CONSENT CALENDAR	3
DISCIPLINARY PROCEDURE COMMITTEE REPORT	8
GUESTS	2
INVESTMENT COMMITTEE REPORT	6
INVOCATION	2
LEGISLATION COMMITTEE REPORT	5
NON ROLL CALL GRIEVANCE ITEMS	2
NON ROLL CALL ADVERTISING APPEAL ITEMS	2
PRESIDENT-ELECT REPORT	12
PROFESSIONALISM RETREAT REPORT	4
PROGRAM EVALUATION COMMITTEE REPORT	11
ROLL CALL	1
SPECIAL APPOINTMENTS	11
SPECIAL NOMINATIONS	12
SPECIAL COMMITTEE ON JUDICIAL EVALUATION REPORT	7
TIME AND PLACE OF NEXT MEETING	12
YOUNG LAWYERS DIVISION REPORT	10