

THE FLORIDA BAR BOARD OF GOVERNORS

Regular Minutes

July 28, 2006

Omni Resort at Championsgate
Orlando, 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, July 28, 2006, in Orlando, Florida, with President Henry M. Coxe presiding.

1. Roll Call

Henry M. Coxe, III, President
Francisco R. Angones , President-elect
Ross M. Goodman, First Judicial Circuit
Lawrence E. Sellers, Jr., Second Judicial Circuit
Dominic M. Caparello, 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
Murray B. Silverstein, Sixth Judicial Circuit
Charles Chobee Ebbets, Seventh 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
Robert M. Brush, Tenth Judicial Circuit
Ramon Abadin, Eleventh Judicial Circuit
David Rothman, Eleventh Judicial Circuit
Dennis Kainen, Eleventh Judicial Circuit
Benedict P. Kuehne, 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
Gregory Coleman, Fifteenth Judicial Circuit
Scott G. Hawkins, Fifteenth Judicial Circuit
Lisa S. Small, Fifteenth Judicial Circuit
Edwin Scales, Sixteenth Judicial Circuit
Allison Bethel, 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
A. Lawrence (Larry) Ringers, 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
J. Blair Culpepper, Public Member

Board members absent:

Ervin A. Gonzalez, Eleventh Judicial Circuit
Jennifer Coberly, Eleventh Judicial Circuit
Sharon L. Langer, Eleventh Judicial Circuit
Steven Chaykin, Eleventh Judicial Circuit
Nancy W. Gregoire, Seventeenth Judicial Circuit
Eugene K. Pettis, Seventeenth Judicial Circuit

Others in attendance:

Wendy Loquasto, President of Florida Association for Women Lawyers
Jimmy Cunningham, President, Virgil Hawkins Florida Chapter of the National Bar Association
Manny Linares, Cuban American Bar Association

Staff attending the meeting:

John F. Harkness, Jr., Executive Director
Tina Ruffin, 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
Tony Boggs, Director Legal Division
Mary Ellen Bateman, Director, Ethics, Advertising and Professionalism Division
Lori Holcomb, Director of Unlicensed Practice of Law
Francine Walker, Director of Public Information
Ken Marvin, Director of Lawyer Regulation

2. Guests

Buddy Dyer, Mayor of Orlando
Jane Curran, Florida Bar Foundation, Executive Director
Keith Park, Civil Rules Procedure Committee, Chair
Robert Machio, Environment and Land Use Law Section, Chair
Barry Crown, Ph.D., Citizens Forum member
Rudolph Frei, M.D., Citizens Forum member
Rebecca Frank, Citizens Forum member
John Beisinger, Citizens Forum member
Arnell Bryant-Willis, Citizens Forum member
Yvonne Loggins-Coleman, Citizens Forum member
Preston Jones, Ed.D., Citizens Forum member

3. Invocation and Pledge of Allegiance

Invocation and Pledge of Allegiance were led by Dan DeCubellis.

4. Welcoming Remarks by Orlando Mayor

Board member Mayanne Downs introduced Orlando Mayor Buddy Dyer. Dyer welcomed the board of governors to Orlando.

5. Non-roll call Grievance Agenda Items

Co-chair David Rothman reported that the only non-roll call grievance agenda item is number 16.

6. Non-roll call Advertising Appeal Agenda Items

Chair Larry Ringers reported that the only advertising appeal agenda item is number 5b(1).

7. Approval of Minutes- Approved

- a. Regular Minutes, June 2, 2006, 2006 meeting - Approved
- b. Grievance Minutes, June 2, 2006 meeting - Approved

8. Consent Calendar – Approved

The following items were approved by a voice vote:

- a. UPL Circuit committee nominations
July 2006
Bruce Haught, Attorney member, First Judicial Circuit
- b. Proposed Chapter 9 Plan - Harvesters Federal Credit Union Prepaid Legal Services Plan
- c. Legislation Committee
 - 1) New Section Legislative Position Requests for the 2006-2008 biennium
 - a) Tax Law Section
 - i) State Death Tax Credits
Supports an amendment to § 198.13 of the Florida Statutes [addition of paragraph (4)].
(4) Notwithstanding the foregoing provisions of this section, if a state death tax credit or a state generation-skipping transfer tax credit is not allowable pursuant to the Internal Revenue Code of 1986, as amended from time to time (the "Code") as of the decedent's death, the following provisions shall apply:
(a) If a state death tax credit is not allowable pursuant to the Code as of the decedent's death, the personal representative of an estate shall not be required to file a return pursuant to paragraph (1) of this section.
(b) If a state generation-skipping transfer tax credit is not allowable pursuant to the Code as of the decedent's death, the person who would otherwise be required to file a return pursuant to paragraph (3) of this section shall not be required to file such a return in connection with such estate.
 - b) Workers' Compensation Law Section
 - i) Legal representation in Workers' Compensation claims
Supports legislation which promotes access to courts and the ability of employer/carriers, self-insureds and employees to obtain legal representation in the handling of workers' compensation claims.
 - ii) Independence of Consumer Advocate
Supports legislation which would ensure the independence of the Consumer Advocate within the office of the Chief Financial Officer.
 - iii) Payment of Attorney's Fees
Opposes legislation restricting the payment of attorney's fees - either to the attorney of the injured worker or to the attorney for the employer/carrier/self-insured.
 - 2) Section Legislative Consultant Contracts
 - a) Business Law Section- Bill Wiley
 - b) Trial Lawyers Section – Buddy Jacobs

9. Report of Board Review Committee on Professional Ethics

1) ADVERTISING APPEAL 03-02483

Advertising Appeal 03-02483 concerns application of Rules prohibiting visual depictions that are false, misleading or manipulative. A law firm has been using an illustration of a pair of panthers for several years as part of the firm's logo in part as a play on the name of two of the partners (Panter). The law firm has received numerous opinions over the past several years that the panthers comply with the lawyer advertising rules. The law firm filed a revision of a yellow pages advertisement in file number 03-02483 specifically requesting that staff address the panther logo in light of the 2004 rules amendments. Staff rendered an opinion on October 28, 2004 that the

panthers complied with recent rules amendments. The law firm filed a revised advertisement on November 28, 2005. In the interim, the Supreme Court of Florida publicly reprimanded two Florida Bar members for use of a pitbull in a television advertisement in *The Florida Bar v. Pape & Chandler*, 918 So.2d 240 (Fla. Nov. 17, 2005). Based on that case, staff requested guidance from the Standing Committee on Advertising regarding the filing law firm's use of the panthers. At its February 21, 2006 meeting, the Standing Committee on Advertising was divided on the issue of whether use of the panthers violates any lawyer advertising rules in light of the *Pape & Chandler* case. Based on that guidance, staff issued an opinion on February 28, 2006 that the illustration of panthers does not comply with Rule 4-7.2(b)(4), which prohibits visual portrayals or depictions that are false, misleading, or manipulative. The Standing Committee on Advertising upheld staff's opinion on April 24, 2006. The attorney subsequently requested Board of Governors review.

The Board Review Committee on Professional Ethics voted 4-0 to remove this item from the consent calendar and reverse the SCA decision.

The board approved the board review committee's recommendation by voice vote.

2) DISCUSSION OF TERM "DOCTOR OF LAW"

At its June 2, 2006 meeting, the Board of Governors directed the Board Review Committee to study the issue of whether the term "Doctor of Law" or "Doctor of Laws" is misleading in the context of an advertisement published in English. The board decision was made in the context of reviewing an advertisement appearing in Spanish, in which the board approved the use of the term "Doctor En Leyes" in reconsidering an earlier decision affirm the Standing Committee on Advertising decision that the term "Doctor En Leyes" was misleading.

The Board Review Committee on Professional Ethics voted 3-1 to recommend that the board take the position that lawyers can state their own actual degrees, but that use of anything other than the degree is misleading and impermissible.

The board approved the board review committee's recommendation by a hand vote of 25-20. On a motion by board member Mayanne Downs, the board voted 20-17 to reconsider the vote. A motion by Mayanne Downs to approve any use of a lawyer's own actual degree and any reasonable translation of that degree was seconded and failed, 17-23.

3) ETHICS REQUEST 26068

On March 11, 2005, the State of Florida Commission on Ethics requested an advisory opinion from The Florida Bar providing clarification and/or expansion of ethical guidance to Florida Bar members regarding conflicts of interest in representing public officials as expressed in Florida Ethics Opinion 77-30. The Florida Bar Executive Director requested the Professional Ethics Committee's guidance on how The Florida Bar Board of Governors should respond to the request. At its June 23, 2005 meeting, the Professional Ethics Committee voted to recommend that the board respond to the inquiry by informing the commission that the opinion is good, the commission should continue to refer lawyers who appear before it to the opinion, and that enforcement of the ethics rules is not within the purview of the committee. At its August 2005 meeting, the board deferred this issue to obtain input from the City, County and Local Government Law Section. At its December 16, 2005 meeting, the board reviewed the response by the City, County and Local Government Law Section, which indicated that the opinion was overbroad and should be modified. The board voted to refer Florida Ethics Opinion 77-30 to the Professional Ethics Committee to review and modify the opinion in light of current rules and practices. After study by a subcommittee and discussion by the full committee, the Professional Ethics Committee voted at its April 10, 2006 meeting not to modify the opinion, which is based on a limited set of facts.

At its June 2006 meeting, the board voted to defer action on Florida Ethics Opinion 77-30 and direct staff to draft a revised opinion that addresses consent and waiver for the board's consideration.

The Board Review Committee on Professional Ethics voted 4-0 to adopt the draft proposed advisory opinion reconsidering Florida Ethics Opinion 77-30.

The board voted to approve the board review committee's recommendation by voice vote.

10. Budget Committee Report

Chair Jesse Diner reported that the budget committee had approved 2 rollover budget amendments from the 2005-2006 budget. The board approved the 2005-2006 budget amendments on a voice vote.

The items are:

AC repair work	\$213,805 from Building Reserves
Renovations	\$209,053 from Building Reserves

Diner went on to tell the board that the committee approved 5 budget amendments to the 2006-2007 budget. The board approved the 2006-2007 budget amendments on a voice vote. The items are:

Lawyer Regulation Attorney Consumer Assistance Program	\$128,066 Operating Reserve
CLE Audio Video	\$23,140 Operating Reserve
Lawyer Regulation – Orlando	\$45,612 General Fund
AC replacement	\$60,000 Building Reserve
Replace Waterline	\$25,000 Building Reserve

11. Investment Committee Report

Chair Ian Comisky reported that for the second quarter of 2006 the Bar's portfolio is up by 2.8%. He told the board that its portfolio did better for the second quarter than the Nasdaq or the S & P. Comisky told the board that the committee had determined that the Bar may need to further diversify its portfolio. Comisky introduced James Bagwell as the Florida Bar's Morgan Stanley advisor. Bagwell told the board that over the past year he had been working with the investment committee on diversifying its investments. He said that the committee was asking the board to conceptually approve up to 20% in alternative investments. Several of the board members voiced their discomfort at the idea of giving them approval to begin moving investments. Comisky explained that the vote would only allow the committee and Morgan Stanley to continue studying the effects diversifying would have on the Bar's portfolio. The board approved a motion to allow the investment committee and Morgan Stanley to continue to study diversification of the Florida Bar's investment portfolio.

12. Unlicensed Practice of Law Report

Lori Holcomb reported to the board that there were 2 items to be approved. The board approved both items.

a. Items on second reading - Approved

- 1) Rule 1-3.11 Appearance by Non-Florida Lawyer in an Arbitration Proceeding in Florida Within subdivision (e) re content of verified statement for leave to appear, deletes requirement that non-Florida lawyers supply their social security number to The Florida Bar; adds requirement that such lawyers otherwise provide The Florida Bar with appropriate attorney or bar numbers from those states in which they are eligible to practice law.
- 2) Rule 2.061 Foreign Attorneys
Deletes form motion from the rule; allows Supreme Court of Florida to promulgate form motion; adds requirement that the out-of-state attorney supply the Bar or attorney number for all states where currently eligible to practice law.

b. SBP 16.21 Waiver of Disqualification as Attorney for Respondents (first reading)- **pulled for total re-write**

Consistent with rule 10-5.2, establishes a procedure for attorneys to follow when seeking a waiver of disqualification from representing a UPL respondent.

13. The Florida Bar Foundation Report

President Coxe introduced John Thorton, President of The Florida Bar Foundation (TFBF). Thorton told the board that due to Florida's mandatory pro bono reporting, the TFBF funding increased. Thorton reported that Florida has the only IOTA program in the nation. He said that 88% of the funding goes to the Foundation and only 12% is used for administrative expenses. Thorton said that two-thirds of the board was already fellows of the Foundation and he challenged the other third to become fellows.

Thorton told the board that IOTA revenue is substantially higher this year due to high short term interest rates. TFBF has gone through the process of establishing a reserve base so when interest rates go back down, they will have a reserve.

14. Disciplinary Procedure Committee Report

Chair Andy Sasso reported that the committee recommends the approval of the following 6 rule amendments on second reading. The board concurred and approved the following items on second reading.

a. Items on **second reading (final action)**

- 1) Rule 1-3.6 Delinquent Members
Within subdivisions (e) and (f), changes the period of time for the effective date of delinquencies from 90 days to 30 days.
- 2) Rule 1-3.8 Right to Inventory
Within subdivision (e) re designation of an inventory attorney, adds exception for Florida practitioners who practice law as an employee of a governmental entity.
- 3) Rule 3-7.9 (d) and Rule 3-5.1 (e) Language in Court Orders Regarding Accepting New Business
Consistent with proposed changes within rule 3-5.1(e) and (f), adds language within subdivision (d) – re content of conditional pleas – to clarify that all such pleas agreeing to suspension or disbarment shall include, unless waived or modified by the court on motion of the respondent showing good cause, a prohibition on the lawyer accepting new business from the date of the order of discipline, effective 30 days thereafter and until such term of discipline has expired.
- 4) Rule 3-7.11 (i) and Rule 5-1.2 (e) Procedures after disbarment
Creates new subdivision (i), re proceedings after disbarment, authorizing by consent or court order: the audit of a respondent's trust, operating, or personal bank accounts; the respondent's provision of an affidavit re personal and business finances; or the respondent's maintenance of a current mailing address for a stated period of time.
- 5) Rule 5-1.2 (c) Minimum Trust Accounting Procedure (overdraft notice)
Within subdivision (c), adds clarifying edits to confirm that a lawyer or law firm's authorization that a bank or savings and loan association notify The Florida Bar of various trust account irregularities shall occur at the time the account is opened, and that such account irregularities include overdrawing an account and dishonoring a trust check.
- 6) Rule 14-4.1 Arbitration Proceedings
Within subdivisions (a) & (b) revises text for clarity; adds new subdivisions (c) – (e) authorizing referrals by intake counsel or bar counsel, grievance committees, and the board of governors, to conform fee arbitration procedures with those applicable to grievance mediation.

Sasso told the board that the Supreme Court approved amendments to the Florida Rules for Certified and Court-Appointed Mediators. The court was acting on a petition filed by the Committee on Alternative Dispute Resolution Rules and Policy in which the committee requested deleting that part of the qualifications for circuit court mediators which imposed requirements of Florida Bar membership or prior judicial service. The court did not agree with elimination of those portions of the qualifications and requested comments to be filed by August 9, 2006. Sasso said that the committee wants to maintain the dignity of mediation. The committee feels that mediation has been very successful and that the focus was to make sure that the mediations are done in a very efficient manner and are recognized by the court. The committee recommends that the mediator is a member of the Florida Bar, it was noted that an attorney who has years of experience in another state and then comes to Florida would need five years of membership with the Florida Bar. After discussion the committee modified that the attorney must be in good standing of the Bar, but might have been an attorney in another state Bar for the five years prior to coming to Florida. The board approved the motion on a voice vote with dissent.

b. Items on first reading

- 1) Rule 3-7.2 (j) Professional Misconduct in Foreign Jurisdiction
Within subdivision (l)(2), allows the Supreme Court of Florida to issue an order suspending a member who is the subject of a final disciplinary adjudication in another

court of disciplinary authority.

2) Standing Board Policy 15.65 Policy for Audits after Disbursement

Consistent with proposed amendments to rules 3-7.11(i) and 5-1.2(e), new policy to allow the bar to identify the full extent of a respondent's trust obligations, to confirm sources of available funds to satisfy respondent's trust obligations, and to obtain information necessary to satisfy the public policy of reporting criminal conduct to appropriate agencies.

c. Items under consideration

Sasso told the board that the committee had the following 4 rule amendments under consideration which will be voted on at a later date:

- 1) Rule 3-7.1(d) Confidentiality Protecting Private Data and Records in Disciplinary Cases
- 2) Rule 3-7.18 Designation of Vexatious Litigant and Limitation of Filings
- 3) Rule 4-1.5 Fees and Costs for Legal Services
- 4) Rule 4-8.4 (i) Sexual contact with clients

15. Article 5, Revision 7 Update

Board member Tim Sullivan introduced the Honorable Judge Menendez. Menendez greeted the board and went on to discuss the constitutional changes to Article 5, Revision 7. He reminded the board that Revision 7 went into effect on July 1, 2004. He told the board that prior to Revision 7, the courts had to depend on funding from the different county commissions. He said that the transition went relatively smoothly. Now the courts have to go to the state legislature for funding. He told the board that the courts system hired an outside consultant to study pay and classifications of court employees. The consultant determined that the judicial branch statewide was at a distinct competitive disadvantage compared to the other branches of government. He said that 54% of all entry level salaries of employees, excluding the judges, were below the market for the competition with other government entities, particularly with law trained staff, magistrates, hearing officers and clerks. He said that 72.7% of all state court positions salaries are lower than their equivalent counterparts in the executive branch by an average of 12.3%. Pay equity is a large priority of the trial court budget commission and the Supreme Court. He asked the board and the Bar to continue their support in the legislative arena.

16. Introduction of State Representative Dean Cannon

Legislation committee chair Warren Lindsey introduced State Representative Dean Cannon. Cannon told the board that in 2004 he was able to run for the Florida House of Representatives. He said that due to term limits, leadership races are occurring more and more rapidly. He said that if someone wants to be in leadership they have to begin working towards it from their first year. He said that the next three Speakers of the House are Marco Rubio from Miami, Ray Samson from Destin and then him. He told the board that during his first year in the legislature he was made aware of the tension and dispute over the court rulemaking process. He said that since that time he has developed a terrific friendship with Major Harding, who opposed the legislative attempts to move the rulemaking from the courts to the legislature. Cannon said that he believes that Florida has an exceptional government and that all three branches should be celebrated.

17. Young Lawyers Division Report

President John Stewart allowed the entire Young Lawyers Division (YLD) board to introduce themselves to the board of governors. The YLD board was meeting at the same time as the board of governors. Stewart told the board that the YLD had a few end of the year expenditures. He said that they had spent \$5,000 for the minority mentoring picnic; gave \$5,000 to the Supreme Court Historical Society; and funded a lapel pin project with pro bono coordinators. He went on to tell the board that they are monitoring the hotline for disasters and the FEMA fund. He said that they are working with the pro bono coordinators and the Florida Bar Foundation so that in the event of a disaster, the 1-800 calls can be forwarded to the legal aid offices around the state. Stewart told the board that the YLD hopes to have its first ever YLD day in Tallahassee during the legislative session so that they can better understand the process and become involved in issues that are important to their constituents.

18. President's Report

President Coxe told the board that the Florida Family Policy Council (FFPC) had mailed questionnaires to all sitting judges and the judicial candidates. He explained that the FFPC is a special interest group. He said that Judge Robert Benton, Chair of the Judicial Ethics Advisory Committee (JEAC) said that the JEAC was working on an opinion on whether they can answer the questions included in the questionnaire. Coxe told the board that he has offered the assistance of the Bar.

President Coxe reported that the Chief Justice Lewis requested that the Bar provide names for the judicial management council, which has been dormant but will be re-activated. The Chief Justice asked the Bar to provide 5 names, one of which must be a board member. At this time, President Coxe nominated Ben Kuehne. The other 4 nominations will be made at a later date.

19. Civil Procedures Rules Committee Report

Board member Greg Coleman introduced the chair of the Civil Procedure Rules Committee, Keith Park. Park told the board that the civil procedure rules committee had 20 rule amendments included in their 3-year cycle. The board approved the amendments 35-0.

20. Environmental and Land Use Law Section Report

Chair Robert Michio reported that the section is about 2,000 members strong composed of attorneys who practice environmental law and land use law and affiliates, which are usually law faculty, law students, and consultants who help them on technical issues. He said that the section has 13 committees and liaisons and they provide a host of services and CLE opportunities. When the section started this year there were five things the section wanted to address - membership, treatise on environmental law, dealing with the ability to provide CLE materials to smaller audiences. There was still a need in the section where things change fairly quickly to provide the members and small groups of members with these materials without the financial sacrifices of putting on a full CLE programs. The section also wants to continue to promote camaraderie within the section and finally, increasing communications and interactions with law school students. As far as the treatise, the section has a three volume treatise that is a comprehensive compendium on everything you would want to know about environmental law and land use law in Florida. The section decided to change last year from a written format to one that is on-line, it is now available on the section website, and available to section members with a password.

Michio went on to say that the section is looking at "webinars" which would provide a way to have a session during lunch where the attorney is connected over the Web and there is interaction between the various computers. The fourth item, on camaraderie, also originated with affiliates, they have social mixers. These are primarily sponsored by the section's affiliates. After a day of sitting in a CLE seminar various folks are able to meet in a location afterwards and discuss things of a mutual interest. The section has had about four of those around the state. The final item in terms of dealing with law students is two-fold, we have a law school liaison, which this year has expanded in to a very large committee to reflect all of the law schools that are scattered all over the state. The section is trying to get more on board with law students to educate them on what environmental and land use law is.

21. Small Claims Rules Committee Report

Committee liaison Scott Atwood reported on one rule amendment included in the small claims rules committee 3-year amendment cycle. The submission is a new form for satisfaction of judgment. The board approved the amendment 38-0.

22. Audit Committee Report

Chair William Kalish reported that the audit committee met and discussed The Bar's auditors. The committee unanimously agreed to continue to use of The Bar's current auditors, who have increased their proposal to \$34,500 to \$36,500 for each of the next two years. There was no vote taken.

23. Legislation Committee Report

Chair Warren Lindsey reported that at the beginning of each legislative biennium the Bar sunsets all of its legislative positions. He told the board that the sections are given an opportunity to roll-over any of their legislative positions that have been allowed by the board previously. He shared that the masterlist included in the material listed all of the requested roll-over positions of the sections. Lindsey told the board that the big Bar would not roll-over any of its positions, but rather the positions will be brought to the board at a later date. Lindsey stated that the committee recommendation is that the board allow all of the section positions to roll-over. Many of the Out of State board members expressed their desire to table the Real Property, Probate and Trust Law (RPPTL) section position dealing with non-resident personal representatives. After a lengthy discussion, the RPPTL position was tabled and the board liaisons from the Out of State division and the RPPTL vowed to discuss the issue before the board meeting in September in Ponte Vedra, FL. The board voted 32-4 to waive SBP 9.50 (d) to eliminate the deadline for Bar Response. President Coxe then called for a vote on the motion, minus the RPPTL position. The board voted unanimously to allow the sections to roll-over their legislative positions. Lindsey went on to tell the board that an interest group called the Florida Family Policy Council had sent a questionnaire to the judicial candidates. He said that the Bar had contacted Judge Benton, chair of the judicial ethics advisory committee. Benton said that the committee had received many inquiries about whether it is appropriate for the candidates to answer the questions and were planning a response.

24. Probate Rules Committee

Board liaison Laird Lile reported that the Probate Rules committee has included 18 rule amendments in its 3-year amendment cycle. He said that many of the changes are editorial and that some are substantive in response to judicial decisions. The board approved the rule amendments 37-0.

25. Program Evaluation Committee Report

Chair Gwynne Young reported that the BLSE presented 21 rule amendments. Eight were approved and 13 were deferred pending section input. On the 8 of these rules that PEC approved, 2 are on first reading.

Young said that PEC also considered a proposal by the quality of life and career committee. That the committee would provide an email list free of charge of all Bar members with e-mail addresses. The PEC declined to approve this for many reason, 1) no reason to provide free of charge to a commercial enterprise the Florida Bar's e-mail list, and 2) there were some things in the agreement and the materials they didn't agree with.

PEC received a request from the military affairs committee to do a survey, which PEC approved. The survey will be online and will allow the bar to compile a list of bar members who have served or who currently serve in the military. It will also update the military affairs committee operations standby list to reach attorneys who are surveying.

The PEC determined that it would hold evaluations for the Practice Management & Development Section, the Quality of Life and Career committee and the Legal Needs of Children committee, which are due for review every three years.

The final item that PEC considered is a request that came from Supreme Court for a Florida Bar/Florida Supreme Court Joint Committee to Consider a New and Formal Judicial Evaluation Program for Appellate and Trial Judges. PEC approved the concept to establish the committee to provide information to the public and provide judicial accountability. The make up of the committee would be 8 judges and 8 lawyers and 3 nonlawyers. The PEC recommendation is that president Hank Coxe suggest to the chief justice to add 2 more lay persons, so the makeup would be 8 judges, 8 lawyers and 5 lay persons. The recommendation was approved by the board.

26. Board of Legal Specialization and Education

Board member Allison Bethel reported that the following two rule amendments were on first reading.

a. Items on **first reading**

- 1) **BLSE Policy 1.01 Administration**
Within subdivision (a)(3), adds "character, ethics, and reputation for professionalism" to update qualifications for certification in language pertaining to BLSE responsibility in the promulgation of rules and policies; within subdivision (b), adds provision for waiver of policy by two-thirds vote of BLSE members present during a regularly scheduled meeting.
- 2) **Rule Regulating The Florida Bar 6-10.3 Minimum CLE Standards**
Within subdivision (b), adds "unlawful bias elimination" to the list of approved CLE topics; within subdivision (e), clarifies that approved courses of other bars must still meet criteria for accreditation per policies pursuant to this rule; also within subdivisions (a), (b), and (d) re applicability, required CLE, and course approval, changes verbiage to read "must" rather than "shall"; includes other edits consistent with controlling editorial protocols without substantive effect.

27. Appellate Practice Section Bylaws (first reading)

Within Article III (Officers and Executive Council) and Article VII (Elections), revises various provisions to allow for past chairs to serve on the executive council upon request, or to address that change; within Article IV (Duties and Power of Officers), Article V (Duties and Power of Executive Council), Article VI (Meetings of the Section), Article VIII (Succession of Officers and Vacancies), Article X (Legislative Policies), and Article XI (Miscellaneous Provisions), revises various provisions to combine the positions of secretary and treasurer, or to address that change; within Article VI (Meetings of the Section), authorizes the use of e-mail for communications and voting; and within Article I (Name and Purpose), Article II (Membership and Dues), and Article IX (Committees), makes various stylistic or non-substantive refinements.

28. City, County and Local Government Law Section Bylaws (first reading)

Within Article IV, Section 1 (Executive Council – Governing Body) clarifies that the council members from each Florida appellate district must be residents of the district as determined by the individual's official bar address or actual residency.

29. Communications Committee Report

Chair Tim Sullivan reported that the Citizens Forum (CF) met on July 27, 2006, and he asked Ed Scales, CF chair, to give a report on the activities of the CF. Scales told the board that the CF looked at the sexual conduct with clients rule and felt that the current rule - which says that the relationship must not be exploitative - doesn't go far enough. Eight of the 12 CF members felt that a lawyer should only have sexual relations with a client if the relationship pre-exists and it would not adversely affect the client. The other four members wanted a complete ban on sexual relations between a client and attorney. Scales told the board that the CF also looked at the report of the Special Commission on Lawyer Regulation concerning the administration of reprimands and admonishments. The commission's recommendation is that all public reprimands to be done at the Board of Governors meetings, and the CF concurred. Scales said that the CF is concerned with the growing problem of domestic violence and will ask the BLSE to include a course on domestic violence in its family law certification requirements.

Sullivan reported that the Bar has been charged by Chief Justice Lewis of the Florida Supreme Court to help develop, support and promote the new Justice Teaching initiative. The program is to include lessons for school-aged children on the structure, job and function of the judicial branch. He also told the board that in the near future there would be a call for volunteers. The program is set to have at least one legal professional paired with every school in Florida. All volunteers will be trained in November/December and in the schools beginning in January.

Sullivan told the board that the committee also discussed putting discipline records on the Web site, specifically reprimands, suspension and disbarments. Last year this would have affected only 278 out of the almost 80,000 members of the Bar. The committee initially agreed that it should be on the biographic page of the attorney and the history should remain on the webpage for 10 years but will continue to discuss implementation steps.

30. Council of Sections Report

Council of Section board liaison Mayanne Downs reported that she and President Coxe attended the Section Leadership conference in Boca Raton during the Bar Annual meeting. She said that Coxe committed to the council that any section chair would be given the board agenda and committee agendas ahead of time so that they could determine if they needed to attend. Downs reported that the section leader retreat had the best attendance in 10 years.

31. Time and Place of Next Meeting

The next meeting of The Florida Bar Board of Governors will be September 27-30, 2006 at the Ponte Vedra Inn & Club in Ponte Vedra, Florida.

There being no further business to discuss the board of governors adjourned at 3:26 PM.

Respectfully submitted

Dana M. Watson

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