

The Florida Bar
August 17, 2007
The Breakers
West Palm Beach, Florida

Pursuant to notice, the regular meeting of the Board of Governors of The Florida Bar was called to order at 8:30 A.M. on Friday, August 17, 2007, in West Palm Beach, Florida, with President Francisco R. Angones presiding.

1. Roll Call

Francisco R. Angones, President
John G. White, III, President-elect
Steve Ecshner, 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
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
Ervin A. Gonzalez, Eleventh Judicial Circuit
Dennis Kainen, Eleventh Judicial Circuit
Juliet Roulhac, Eleventh Judicial Circuit
Benedict P. Kuehne, Eleventh Judicial Circuit
Steven Chaykin, Eleventh 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
David Prather, 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
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
John M. Stewart, Nineteenth Judicial Circuit
Laird A. Lile, Twentieth Judicial Circuit
Richard Arthur Tanner, Out-of-State
Ian M. Comisky, Out-of-State
Eric Meeks, Out-of-State
Brian D. Burgoon, Out-of-State
Scott 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 Judicial Circuit
Denise A. Lyn, Fifth Judicial Circuit
Jennifer Coberly, Eleventh Judicial Circuit
Norman Vaughan-Birch, Twelfth Judicial Circuit
A. Lawrence (Larry) Ringers, Twentieth Judicial Circuit

Staff attending the meeting:

John F. Harkness, Jr., Executive Director
Paul F. Hill, General Counsel
John Berry, Director of Legal Division
Mary Ellen Bateman, Director, Ethics, Advertising and Special Projects Division
Ken Marvin, Director of Attorney Regulation
Elizabeth Tarbert, Director of Ethics and Advertising
Lori Holcomb, Director of Unlicensed Practice of Law
Allen Martin, Director Finance and Accounting
Rosalyn Scott, Assistant to the President
Dana Watson, Secretary to the Board of Governors
Gary Blankenship, Senior Editor, Florida Bar News
Francine Walker, Director of Public Information
Mustafa Mahdi, Program Administrator for Young Lawyers Division

2. Guests

Jane Curran, Executive Director Florida Bar Foundation
Bruce Blackwell, President, Florida Bar Foundation
Judge Morris Silberman, Chair of Florida Bar Election committee/JQC committee
Steve Brannock, Chair of Appellate Court Rules Committee
David Miller, Administrative Law Practices Subcommittee
Ronald Bornstein, vice chair Family Law Rules Committee
Marlene Quintana, President-elect designate of Cuban American Bar Association
Sherri Johnson, President of Florida Association of Women Lawyers
Kalinthia R. Dillard, President, Virgil Hawkins Florida Chapter of the National Bar Association
Steven Schwarzbarg, President, B'nai B'rith Justice Unit #5360
Bruce Reinhard, President, Federal Bar Association
Richard Kleid, President, Palm Beach Town Council
Meenu Sasser, President, Palm Beach County Bar Association
Jill Wise, South Palm Beach Florida Association of Women Lawyers
John Biesinger, Citizens Forum
Alvin V. Alsobrook, Citizens Forum
Marilyn Baldwin, Citizens Forum
Giselle Carson, Citizens Forum
Ricardo Gonzalez, Citizens Forum
Rebecca Frank, Citizens Forum
Charles Ronald Kalapp, Citizens Forum
Dia Kuykendall, Citizens Forum
Yvonne Loggins-Coleman, Citizens Forum
Arsenio Milian, Citizens Forum
Margaret J. Perry, Citizens Forum
Scott Phillip Chitoff, Young Lawyers Division Board
Kevin B. Cook, Young Lawyers Division Board
Sean T. Desmond, Young Lawyers Division Board

Nina Larae Ferraro Young Lawyers Division Board,
Paige A. Greenlee, Young Lawyers Division Board
Ward Patrick Griffin, Young Lawyers Division Board
Belinda B. Lazzara, Young Lawyers Division Board
Edward Robert McCarthy, Young Lawyers Division Board
Christina A. McKinnon, Young Lawyers Division Board
Cynthia Morales, Young Lawyers Division Board
Michael Fox Orr, Young Lawyers Division Board
Mathew T. Ramenda, Young Lawyers Division Board
Chelsie Joy Roberts, Young Lawyers Division Board
Heather P. Rodriguez, Young Lawyers Division Board
Elisha Roy, Young Lawyers Division Board
Peter Sartes, Young Lawyers Division Board
Marcy L. Shaw, Young Lawyers Division Board
Victor R. Smith, Young Lawyers Division Board
Reene Elise Thompson, Young Lawyers Division Board
Mathew S. Welch, Young Lawyers Division Board
Douglas Shane Woodward, Young Lawyers Division Board
Ginger Destin Barry, Young Lawyers Division Board
Timothy L. Beckwith, Young Lawyers Division Board
Kelly Ann O'Keefe, Young Lawyers Division Board
Curry Gary Pajcic, Young Lawyers Division Board
Clinton Payne, Young Lawyers Division Board
Kenneth Edward Walton II, Young Lawyers Division Board

3. Invocation and Pledge of Allegiance

The Invocation was given by Scott Hawkins and the Pledge of Allegiance was led by Greg Coleman.

4. Non-roll call Grievance Agenda Items

Co-chair David Rothman reported that the non-roll call discipline items were numbers 10 and 19.

5. Non-roll call Advertising Appeal Agenda Items

Vice chair Larry Sellers reported that agenda items 5b (1) and 5b (3) – issue (4), 5b (7) – issues (3-6) were removed from the consent calendar. Item 5b (5) was withdrawn from consideration and item 5b (2) was deferred to a later meeting.

6. Approval of Minutes- Approved

- a. Regular Minutes, June 1, 2007 meeting
- b. Grievance Minutes, June 1, 2007 meeting
- c. Summary of Executive Committee action taken

i) May 24, 2007

The Florida Bar received three member objections to Legislative Position #11 following its February 12, 2007 adoption. Under Rules Regulating The Florida Bar 2-9.3, May 31, 2007 is the deadline for determining whether these objecting members should be refunded the \$6.01 in Bar dues (plus applicable interest) presently escrowed, or whether these objections should be referred to arbitration. Two of the three objectors are new this biennium so the total refund is \$12.02.

The Executive Committee approved the request by a vote of 10-0.

ii) June 18, 2007

Three matters required Executive Committee consideration and were forwarded to members via email.

Item Numbers 1 and 2

The Juvenile Court Rules Committee was directed to review legislation passed during the 2007 session to determine if amendments to the rules were required. Pursuant to Fla.R.Jud.Admin. 2.140(f), the Committee submitted the following proposed fast-track

amendments to the Executive Committee for its review and approval to file these rules and amendments with the Supreme Court.

1) Form 8.978: This new form implements creation of section 743.044, Florida Statutes, by section 4 of HB 2114. The bill permits the court to remove the disabilities of nonage for a dependent child in foster care to allow the child to secure "depository financial services" such as a checking or savings account. The form creates an order for the court to use in removing the disabilities of nonage for this purpose.

2) Rule 8.165: As part of the committee's 2004 cycle report, an amendment was proposed to rule 8.165(a) to require that a child be required to confer with counsel before entering a waiver of counsel. The court declined to adopt the amendment, stating: "We thus decline to adopt at this time the portion of rule 8.165(a) regarding consultation with an attorney prior to a waiver.

There have been three legislative sessions (2005, 2006, and 2007) since the court issued this opinion in February 2005 and although legislation has been introduced, it has not passed. See, e.g., SB88, HB7 (2007). Per the court's directive, the committee believes that it is appropriate to resubmit this amendment to the court at this time. A minority view believes that the amendment was substantive rather than procedural. The amendment passed 14-5. The full text of the amended rule is attached.

The Executive Committee approved the requests by a vote of 10-0.

Item Number 3

UPL 10th, 13th and 15th Circuit Committee nominations

Bob Brush nominated Michelle Purcell to serve on the 10th circuit committee as a public member; Bill Kalish nominated Bill Bolton to serve on 13"A" committee as a public member; and Lisa Small nominated Rebecca Leigh Brock to serve on 15"A" committee as an attorney. The Executive Committee approved the nominations with a vote of 10-0.
iii) June 19, 2007

Two matters required Executive Committee consideration and were forwarded to members via email.

Item Number 1

Amendment to board resolution

At the June 1, 2007, board meeting the creation and funding of a trust for retiree health benefits was approved. Since that date Alton C. Ward our retirement attorney, decided he should not be a trustee. The resolution was amended accordingly.

The Executive Committee approved the amended resolution with a vote of 8-0.

Item Number 2

UPL 13th Circuit Committee nominations

Tim Sullivan nominated Sacha Froelich to serve on the 13B committee as a public member. The Executive Committee approved the nomination with a vote of 8-0.
iv) June 22, 2007

Three matters required Executive Committee consideration and were forwarded to members via email.

The Family Law Rules Committee was directed to review legislation passed during 2007 session to determine if amendments to the Florida Family Law Rules were required. Pursuant to Fla.R.Jud.Admin. 2.140(f), the committee submitted the following proposed fast-track amendments to the Executive Committee for its review and approval to file these amendments with the Supreme Court by July 1, 2007.

1) Form 12.905. SB 122 creates section 61.13002, Florida Statutes, which prohibits the court from ordering a change in custody during the period of time that a parent is "activated, deployed or temporarily assigned to military service and the parent's ability to continue as the primary caretaker of a minor child is materially affected as a result." § 61.13002(1), Fla. Stat. The Committee is proposing Fla.Fam.L.R.P. Form 12.905(d), Supplemental Petition for Temporary Modification/Amendment of Custody for Child(ren) of Custodial Parent Activated, Deployed, or Temporarily Assigned to Military Service. The form provides a petition to be used when a parent seeks a temporary modification of custody because the custodial parent is activated, deployed, or temporarily assigned to military service.

2) Rule 12.070 and Form 12.913(c). The Legislature enacted Chapter 2007-85, Laws of Florida at the request of the Department of Revenue to address issues raised by the Court in Dept. of Revenue v. Cummings, 930 So. 2d 604 (Fla. 2006). The legislation becomes effective July 1, 2007. Chapter 2007-85, Laws of Florida, amends section 49.011, Florida Statutes, to allow constructive service of process to “determine paternity, but only as to the legal father in a paternity action in which another man is alleged to be the biological father, in which case it is necessary to serve process on the legal father in order to establish paternity with regard to the alleged biological father.” § 49.011(15), Fla. Stat.

The proposed amendment to Fla.Fam.L.R.P. 12.070 is necessary to adopt the procedure required by section 409.257(3), Florida Statutes, and make it applicable to both the Department of Revenue and to other petitioners who file actions to establish paternity or child support when the proceedings may result in termination of the legal father’s parental rights. A new form, Form 12.913(c), is also proposed to provide an affidavit of diligent search meeting the requirements of section 63.088, Florida Statutes.

The Executive Committee approved the request by a vote of 8-0.

v) July 5, 2007

One matter required Executive Committee consideration and was forwarded to members via email.

The Probate Rules Committee was directed to review legislation passed during the 2007 session to determine if amendments to the rules were required. Four rules require amendment based on recent statutory changes, and must be submitted to the Court on an emergency basis. One rule is new. Pursuant to Fla.R.Jud.Admin. 2.140(f), the Committee submitted the following proposed amendments to the Executive Committee for its review and approval to file these rules and amendments with the Supreme Court. Rule 5.015 — General Definitions. References in subdivision (a) to the definitions and rules of construction in two new chapters in the Florida Statutes (Chapter 736, the new Trust Code, and Chapter 739, the new Disclaimer Act) have been added, and the reference to Chapter 737 (repealed July 1, 2007) has been deleted.

Rule 5.240 — Notice of Administration. The reference in (a)(3) to the term “beneficiary” and to repealed section 737.303(4)(b) has been replaced with a reference to its new counterpart, “qualified beneficiary,” in new section 736.0103(14).

Rule 5.241 — Notice to Creditors. A new subdivision (e) has been added to provide that, if service of the notice to creditors on the Agency for Health Care Administration is required, it must be accompanied by a death certificate.

Rule 5.648 Emergency Temporary Guardian. This is a new rule, which the rules committee is proposing to provide procedural guidance to petitioners and emergency temporary guardians.

The Executive Committee approved the requests by a vote of 8-0.

7. Consent Calendar – Approved except as noted

a. UPL committee nominations

i) Circuit Committee Nominations

Erin K. Grall, Attorney Member, Nineteenth Judicial Circuit
Pamela Stewart, Attorney Member, Nineteenth Judicial Circuit
Scott Leigh Glazier, Attorney Member, Fourth Judicial Circuit
Phyllis Elaine Moore Wiley, Attorney Member, Fourth Judicial Circuit
Leonard E. Clark, Attorney Member, Thirteenth Judicial Circuit

ii) Standing Committee Nominations

Henry Cuadra, Public Member

b. Board Review Committee on Professional Ethics

- i) Advertising Appeal 06-02527 – **removed from consent**
- ii) Advertising Appeal 07-02227- **deferred at the request of the filer**
- iii) Advertising Appeal 07-01588 and 07-01589 – **removed from consent**
- iv) Advertising Appeal 07-02181 – **removed from consent**
- v) Advertising Appeal 07-01606 – **time barred**

vi) Advertising Appeal 07-01765, 07-01772, 07-01773

Advertising Appeals 07-01765, 07-01772, and 07-01773 concerns application of Rule 4-7.5(b)(2)(B), requiring a spoken disclosure that a nonlawyer spokesperson's voice is being used, to a radio advertisement. Staff rendered an opinion on March 27, 2007, that radio advertisements appearing on public radio fail to comply with Rule 4-7.5(b)(2)(B), which requires an oral disclosure that a nonlawyer spokesperson is being used. The Standing Committee on Advertising upheld staff's opinion on May 15, 2007. The attorney subsequently requested Board of Governors review.

The Board Review Committee on Professional Ethics voted 5-0 to recommend that the board affirm the Standing Committee on Advertising decision, determining that radio advertisements on public television in which an employee of public radio is the voice for the advertisement must have the oral disclosure that a nonlawyer spokesperson is being used under Rule 4-7.5(b)(2)(B).

The board voted to affirm the Standing Committee on Advertising decision.

Mr. Sellers abstained from participation in the discussion and vote on this item in the Board Review Committee on Professional Ethics and Board of Governors meetings.

vii) Advertising Appeal 06-02726

Advertising Appeal 06-02726 concerns application of Rule 4-7.2(c)(1)(G), prohibiting statements that promise results to a yellow pages advertisement.

Staff rendered an opinion on July 12, 2006, that a yellow pages advertisement contained statements that are likely to create an unjustified expectation about results the lawyer can achieve, in violation of Rule 4-7.2(b)(1)(B). The Standing Committee on Advertising upheld staff's opinion on September 15, 2006 as to one issue and requested more information from the filer in order to determine the remaining issues. The new advertising rules were adopted by the Supreme Court of Florida in November 2006, to be effective January 1, 2007. The Standing Committee on Advertising upheld staff's opinion as to the remaining issues on January 16, 2007, and a majority of committee members also commented that the statements promised results, in violation of new Rule 4-7.2(c)(1)(G). The filer timely requested Board of Governors review, but agreed to defer board consideration to get staff and Standing Committee on Advertising opinions regarding the compliance with the new advertising rules.

In light of the Standing Committee on Advertising's comments, staff rendered an opinion on March 6, 2007 that the statements promise results in violation of new Rule 4-7.2(c)(1)(G). The Standing Committee on Advertising upheld the staff opinion on May 15, 2007.

The attorney subsequently requested Board of Governors review, which was sent more than 30 days after the notice of the Standing Committee on Advertising decision on the new rules.

The Board Review Committee on Professional Ethics voted 6-0 that the request for review is timely under Procedures 4(h) and 7, Florida Bar Procedures for Issuing Advisory Opinions Relating to Lawyer Advertising or Solicitation.

The Board Review Committee on Professional Ethics voted 6-0 to recommend that the board affirm the Standing Committee on Advertising decision that the statement "Attorneys Righting Wrongs" promises results in violation of Rule 4-7.2(c)(1)(G).

The board voted to affirm the Standing Committee on Advertising decision.

The Board Review Committee on Professional Ethics voted 6-0 to recommend that the board reverse the Standing Committee on Advertising decisions as to the other issues, determining that the following statements do not promise results under Rule 4-7.2(c)(1)(G) and are therefore permissible because they are titles of informational brochures the firm is offering to provide on request at no expense, some of which do not even involve the provision of legal services:

- How to Pick a Safe Nursing Home and What to do if your Loved One is Neglected or Abused
- Protect Yourself Before and After an Accident

- Protect Your Family's Future With Estate/Tax Planning and Control your Medical Decisions With Living Wills
 - Finding Safe Medical Care and How to Protect Yourself After a Medical Mistake
- The board voted to approve the Board Review Committee on Professional Ethics recommendation.
- c. Rules, Bylaws & Policies
 - i) 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.
 - d. Legal Services of North Florida's Board of Directors nominations
Michael Guttman for a three-year term expiring March 1, 2010.
 - e. Legislative Committee
 - i) Section & division legislative position requests
 - (1) Real Property, Probate and Trust Law Section
 - (a) Supports legislation to amend §736.0802(10) F. S., to permit a trustee to use trust assets to pay attorneys' fees and costs to defend litigation involving an allegation of breach of trust unless a party obtains an order prohibiting the use of trust assets by showing a reasonable basis for the court to conclude that a breach of trust occurred.
 - (2) Family Law Section
 - (a) Supports legislation intended to clarify the nature of marital and non-marital assets in Florida Statutes Chapter 61 proceedings.
 - (b) Supports legislation intended to end the confusion caused by conflicting case law involving the manner and methodology for asserting and calculating special equity in property in Florida Statutes Chapter 61 proceedings.
 - ii) Florida Section Legislative Consultant Contracts
 - (1) Business Law Section – Bill Wiley
 - (2) Family Law Section – Nelson Diaz, Bernie Friedman, Yolanda Cash Jackson, Cedric McMinn, Neil Schiller
 - (3) Real Property, Probate and Trust Law Section – Pete Dunbar

8. Young Lawyers Division Report

President Scott Atwood reported that the 45 members of the Young Lawyers Division board represented over 23,000 young lawyers. He told the board that the YLD put on the Practicing with Professionalism courses as well as other Continuing Legal Education courses. Atwood said that the Affiliate Outreach Program would be held in January 2008 at The Vinoy in St. Petersburg Florida and he expected the number of affiliates and volunteers to exceed the 25 affiliates and volunteers who attended the 2007 program.

9. Florida Bar Elections Committee Report

Judge Morris Silberman reported that the elections committee has finalized suggested changes to bar rules and board policies relating to campaigns for president-elect. Silberman advised the board that the proposals will be agendaed for final approval at the October meeting.

10. Judicial Qualifications Commission Report

Judge Morris Silberman gave the board a brief report on the Judicial Qualifications Commission (JQC).

11. The Florida Bar Foundation Report

President Bruce Blackwell gave the board a report on the multiple grants that The Florida Bar Foundation funds and the several projects throughout the state that it helps support.

12. Unlicensed Practice of Law Report

Lori Holcomb, Director of Unlicensed Practice of Law reported that the local UPL committee had considered the case of The Florida Bar v. Silvestro. The committee voted to prosecute Mr. Silvestro, a paralegal for Glenda Miller, the complainant, for unlicensed practice of law and to seek \$5,000 in restitution. Board member Chobee Ebbets is the designated reviewer and he feels that the Bar should allow the case to move forward, but not to seek restitution since money went to a lawyer who did provide services. **The board concurred with Mr. Ebbets and voted to allow the UPL case to move forward against Mr. Silvestro, but to not seek restitution.**

13. Budget Committee Report

Chair Mayanne Downs reported that the budget committee recommended that the board approved the following amendments to re-appropriate unspent 2006-07 budget items into the 2007-08 budget:

- Professionalism furniture - \$21,165 from Equipment Reserve
- Building Reserve - \$491,650 from Building Reserve
- Building & Grounds/ Carpet Renovation - \$95,216 from the General Fund
- Information Systems Operations. Computer Equipment - \$19,500 from Equipment Reserves

The board concurred and approved the amendments.

Downs told the board that the committee recommended the approval of the following new amendments to the 2007-08 budget:

- Lawyer Regulation / Orlando office - \$11,600 from the General Fund
- Information Systems / Deputy Director - \$129,169/ \$126,332 from the General Fund and \$2,837 from the Equipment Reserves.

The board concurred and approved the amendments.

Downs gave the board a brief update on the issue of the section split of the CLE revenues, reporting that overall, the sections received more revenue since the implementation of changes in 2006.

14. Investment Committee Report

Chair Ian Comisky gave the board a brief history of the investments that The Florida Bar has made over the last decade. He went on to report that the global market was down by 5% since the June board meeting, but the Bar portfolio was only down by 2.5%.

15. Audit Committee Report

Chair Bill Kalish reported that the audit committee was in the process of reviewing the Bar's emergency response plan.

16. Board Review Committee on Professional Ethics Report

Vice Chair Larry Sellers reported on the following items discussed at the board review committee on professional ethics meeting:

- a. ADVERTISING APPEAL 06-02527
Advertising Appeal 06-02427 concerns application of the lawyer advertising rules to a DVD produced by an attorney providing estate planning information. A member of The Florida Bar filed a DVD that the attorney described as a 30 minute lecture on estate planning, indicating that the attorney proposed to provide copies of the DVD to a health systems foundation for whom the filer was a guest speaker, a local chapter of the Free Masons of whom the filer is a member, a homeowners association that is represented by the filer, and others. The Standing Committee on Advertising commented that the DVD should be filed and reviewed as a television advertisement. Staff rendered an opinion on August 25, 2006, that: 1) numerous statements in the DVD were likely to create an unjustified expectation about results the lawyer is likely to

achieve, in violation of Rule 4-7.2(b)(1)(B); 2) the visual images of a cartoon document nodding and flexing his muscles as the lawyer stated that trusts are never incapacitate was an impermissible portrayal in violation of Rule 4-7.2(b)(4); and 3) the sound of footsteps and squeaking of the cartoon document were impermissible background sounds, in violation of Rule 4-7.2(b)(1)(C). The Standing Committee on Advertising reversed staff's opinion as to some of the statements contained in the DVD, but upheld staff's opinion as to other statements, the visual portrayal, the background sounds, and that the advertisement must be filed for review and comply with the attorney advertising rules on October 20, 2006. The attorney subsequently requested Board of Governors review, narrowing the issues to whether the advertising rules apply to the DVD, whether the DVD has to be filed for review, and whether specific statements are likely to create an unjustified expectation about results the lawyer is likely to achieve.

The new advertising rules were adopted by the Supreme Court of Florida in November 2006, to be effective January 1, 2007. The filer agreed to defer board consideration to get staff and Standing Committee on Advertising opinions regarding the compliance with the new advertising rules. Staff therefore rendered an opinion on March 14, 2007 that numerous statements in the DVD promise results, in violation of new Rule 4-7.2(c)(1)(G). The Standing Committee on Advertising affirmed in part and reversed in part the staff opinion as to the statements that staff opined promises results. The Standing Committee on Advertising did not re-address the issue of whether the advertising rules apply and whether the DVD had to be filed for review.

The Board Review Committee on Professional Ethics voted 6-0 to recommend that the board determine that the advertising rules do not apply to copies of the DVD that the advertising attorney provides to seminar participants at the participants' request when the advertising attorney is appearing as a guest speaker.

The Board Review Committee on Professional Ethics voted 4-2 to recommend that the board determine that the advertising rules apply to copies of the DVD that the advertising attorney provides to organizations for whom the advertising attorney has been a guest speaker, even where organization agrees to provide copies of the DVD only to persons who request the DVD.

The Board Review Committee on Professional Ethics voted 4-2 to recommend that the board determine that the advertising rules apply to copies of the DVD that the advertising attorney provides to the Free Masons Organization at the request of that organization, of which the advertising attorney is a member.

The Board Review Committee on Professional Ethics voted 4-2 to recommend that the board determine that the advertising rules apply to copies of the DVD that the advertising attorney provides to a homeowners association, which is a client of the advertising attorney, that the homeowners association plans to air on a private cable channel accessible to all of the association's individual homeowners, including homeowners who are not clients of the advertising attorney.

The Board Review Committee on Professional Ethics voted 6-0 to recommend that the board determine that Rule 4-7.5 on electronic media apply to the DVD that is aired on the private cable channel above, but not any other situation described above.

The Board Review Committee on Professional Ethics voted 6-0 to recommend that the board reverse the Standing Committee on Advertising, determining that the statements do not promise results under Rule 4-7.2(c)(1)(G) and are therefore permissible in the context of a 30 minute DVD designed to provide general information on estate planning and trusts in which statements are made to generally describe estate planning, trusts, and living wills.

The Board Review Committee on Professional Ethics voted 5-1 to recommend that the board reverse the Standing Committee on Advertising, determining that the following statement does not promise results under Rule 4-7.2(c)(1)(G) and are therefore permissible in the context of a 30 minute DVD designed to provide general information on estate planning and trusts in which statements are made to generally describe estate planning, trusts, and living wills:

There's no probate, there's no guardianships. This is a great way of helping your family in the future through what will surely be some very difficult times.

The board voted to approve all the recommendations of the Board Review Committee on Professional Ethics.

- b. ADVERTISING APPEALS 07-01588 and 07-01589
Advertising Appeals 07-01588 and 07-01589 concern application of Rule 4-7.2(c)(1)(D), prohibiting statements unless they can be factually substantiated, and Rule 4-7.2(c)(1)(G), prohibiting statements that promise results, to television advertisements. Staff rendered an opinion on February 8, 2007, that statements in file 07-01588 were unsubstantiated in fact, in violation of Rule 4-7.2(c)(1)(D) and that a statement in file 07-01589 promised results, in violation of Rule 4-7.2(c)(1)(G). The Standing Committee on Advertising upheld staff's opinion on April 17, 2007. The attorney subsequently requested Board of Governors review.
The Board Review Committee on Professional Ethics voted 6-0 to recommend that the board affirm the Standing Committee on Advertising decision, determining that the statement "Insurance companies love to collect your premiums but when it comes time to pay your claims they often do whatever they can to avoid their responsibility" is prohibited unless the filer can factually substantiate it under Rule 4-7.2(c)(1)(D).
The Board Review Committee on Professional Ethics voted 6-0 to recommend that the board affirm the Standing Committee on Advertising decision, determining that the statement "Florida has one of the worst workers compensation systems in the nation" is prohibited unless the filer can factually substantiate it under Rule 4-7.2(c)(1)(D).
The Board Review Committee on Professional Ethics voted 6-0 to recommend that the board affirm the Standing Committee on Advertising decision, determining that the statement "In 2003, our politicians sided with the insurance companies and passed a law that hurts injured workers" is prohibited unless the filer can factually substantiate it under Rule 4-7.2(c)(1)(D).
The board voted to affirm the Standing Committee on Advertising decisions in the three issues above.
The Board Review Committee on Professional Ethics voted 6-0 to recommend that the board reverse the Standing Committee on Advertising decision, determining that the statement "If an accident has put your dreams on hold we are here to help you get back on track" does not promise results under Rule 4-7.2(c)(1)(G) and is therefore permissible.
The board voted to approve all the recommendations of the Board Review Committee on Professional Ethics.
- c. ADVERTISING APPEAL 07-02181
Advertising Appeal 07-02181 concerns application of Rule 4-7.2(c)(1)(G), prohibiting statement that promise results to a television advertisement. Based on prior Standing Committee on Advertising decisions, staff rendered an opinion on April 2, 2007, that statement "We stand up to the insurance companies to protect your rights" promises results, in violation of Rule 4-7.2(c)(1)(G). The Standing Committee on Advertising upheld staff's opinion on May 15, 2007. The attorney subsequently requested Board of Governors review.
The Board Review Committee on Professional Ethics voted 4-1 to recommend that the board reverse the Standing Committee on Advertising decision, determining that the statement "We stand up to the insurance companies to protect your rights" does not promise results under Rule 4-7.2(c)(1)(G) and is therefore permissible.
The board voted to approve the recommendation of the Board Review Committee on Professional Ethics.
Mr. Prather abstained from participation in the discussion and vote on this item in the Board Review Committee on Professional Ethics and Board of Governors meetings.
- d. REQUEST FOR REVIEW OF ADVERTISING 07-01595 BY BOARD LIAISON DOMINIC CAPARELLO
Review of Advertising File 07-01595 concerns application of the attorney advertising rules to communications sent only to other lawyers. The Supreme Court amended the attorney advertising rules, effective January 1, 2007. Amendments to Rules Regulating

The Florida Bar - Advertising, 31 Fla. L. Weekly S767 (Fla. Nov. 2, 2006). In its order the court declined to adopt a specific rule stating that communications between attorneys were not subject to the attorney advertising rules. Prior to January 1, 2007 communications between attorneys had not been treated as advertisements subject to the attorney advertising rules. This interpretation was based upon the comment to Rule 4-7.1 which stated that the advertising rules did not apply to communications between attorneys. However, in its order, the court amended the comment to Rule 4-7.1, so that the comment no longer states that the advertising rules do not apply to communications between attorneys. The court invited the bar to provide further support for the bar's position at a later time, which the bar will do at the appropriate time.

Based on the Supreme Court's ruling, staff rendered an opinion on February 2, 2007, that the attorney advertising rules apply to a letter filed by a member of The Florida Bar that is sent only to other lawyers, offering to provide legal services to other lawyers' clients. The Standing Committee on Advertising reversed staff's opinion on March 20, 2007. The Standing Committee on Advertising Board Liaison, Dominic Caparello requested that the committee reconsider its decision. The Standing Committee on Advertising declined to do so on May 15, 2007. Board Liaison, Dominic Caparello subsequently requested Board of Governors review of the issue.

The Board Review Committee on Professional Ethics voted 6-0 to recommend that the board reverse the Standing Committee on Advertising decision, determining that, based on the Supreme Court of Florida's actions in the case In re: Amendments to the Rules Regulating The Florida Bar - Advertising, 31 Fla. L. Weekly S767 (Fla. Nov. 2, 2006), the attorney advertising rules apply to lawyer-to-lawyer communications.

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

Mr. Kuehne moved that the board suspend enforcement of the rules through the disciplinary process on lawyer-to-lawyer communications at this time, in light of the lack of bar members' knowledge regarding this issue and in light of the court's invitation to the bar to provide further information regarding the bar's prior proposal to adopt a rule which would specifically exempt lawyer-to-lawyer communications from application of the attorney advertising rules, until the Supreme Court of Florida rules after the bar re-files its request to amend the rules with additional information. The motion was seconded by Mr. Coleman and passed.

e. **REQUEST FOR REVIEW OF ADVERTISING 07-01637 BY BOARD LIAISON
DOMINIC CAPARELLO**

Review of Advertising File 07-01637 concerns application of the attorney advertising rules to communications sent only to other lawyers. The Supreme Court amended the attorney advertising rules, effective January 1, 2007. Amendments to Rules Regulating The Florida Bar - Advertising, 31 Fla. L. Weekly S767 (Fla. Nov. 2, 2006). In its order the court declined to adopt a specific rule stating that communications between attorneys were not subject to the attorney advertising rules. Prior to January 1, 2007 communications between attorneys had not been treated as advertisements subject to the attorney advertising rules. This interpretation was based upon the comment to Rule 4-7.1 which stated that the advertising rules did not apply to communications between attorneys. However, in its order, the court sua sponte amended the comment to Rule 4-7.1, so that the comment no longer states that the advertising rules do not apply to communications between attorneys. The court invited the bar to provide further support for the bar's position at a later time, which the bar will do at the appropriate time.

Based on the Supreme Court's ruling, staff rendered an opinion on February 7, 2007, that the attorney advertising rules apply to a letter filed by a member of The Florida Bar that is sent only to other lawyers, offering to provide legal services to other lawyers' clients. The Standing Committee on Advertising reversed staff's opinion on March 20, 2007. The Standing Committee on Advertising Board Liaison, Dominic Caparello requested that the committee reconsider its decision. The Standing Committee on Advertising declined to do so on May 15, 2007. Board Liaison, Dominic Caparello subsequently requested Board of Governors review of the issue.

The Board Review Committee on Professional Ethics voted 6-0 to recommend that the board reverse the Standing Committee on Advertising decision, determining that, based on the Supreme Court of Florida's actions in the case In re: Amendments to the Rules Regulating The Florida Bar - Advertising, 31 Fla. L. Weekly S767 (Fla. Nov. 2, 2006), the attorney advertising rules apply to lawyer-to-lawyer communications.

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

Mr. Kuehne moved that the board suspend enforcement of the rules through the disciplinary process on lawyer-to-lawyer communications at this time, in light of the lack of bar members' knowledge regarding this issue and in light of the court's invitation to the bar to provide further information regarding the bar's prior proposal to adopt a rule which would specifically exempt lawyer-to-lawyer communications from application of the attorney advertising rules, until the Supreme Court of Florida rules after the bar re-files its request to amend the rules with additional information. The motion was seconded by Mr. Coleman and passed on voice vote.

f. **PROPOSED CHANGES TO ATTORNEY ADVERTISING RULES**

This item was deferred pending further proposals for rules amendments.

g. **PROPOSED CHANGES TO FLORIDA BAR PROCEDURES FOR RULING ON QUESTIONS OF ETHICS AND FLORIDA BAR PROCEDURES FOR ISSUING ADVISORY OPINIONS RELATING TO LAWYER ADVERTISING OR SOLICITATION**

At the request of the Executive Director, attached are proposed changes to the Florida Bar Procedures for Ruling on Questions of Ethics and Florida Bar Procedures of Issuing Advisory Opinions Relating to Lawyer Advertising or Solicitation that would require that The Florida Bar give office notice inviting member comment at least 30 days before a meeting at which an existing formal advisory ethics or advertising opinion may be withdrawn

The Board Review Committee on Professional Ethics voted 6-0 to recommend that the Florida Bar Procedures for Ruling on Questions of Ethics and Florida Bar Procedures of Issuing Advisory Opinions Relating to Lawyer Advertising or Solicitation be amended to require that The Florida Bar give office notice inviting member comment at least 30 days before a meeting at which an existing formal advisory ethics or advertising opinion may be withdrawn as provided in item 20d with the addition of ", or official notice that the SCA intends to withdraw an advisory advertising opinion" at the end of line 118 in the advertising procedures.

The board voted to accept the Board Review Committee on Professional Ethics recommendation as a first reading of the proposed changes to the procedures.

h. **REQUEST FOR BOARD CONSIDERATION OF POSSIBLE REFERRAL TO PROFESSIONAL ETHICS COMMITTEE TO ISSUE A PROPOSED ADVISORY OPINION ON CONFIDENTIALITY OF INFORMATION UNILATERALLY PROVIDED BY A PROSPECTIVE CLIENT**

The executive director suggests that the Board of Governors consider referring an ethics issue to the Professional Ethics Committee for adoption of a proposed advisory ethics opinion. Procedure 2(b)(2) permits the Professional Ethics Committee to render an opinion at the request of the Board of Governors.

The issue is what duties, if any, a lawyer owes a prospective client who contacts a lawyer or law firm unilaterally, unsolicited by the lawyer or law firm. If the lawyer owes a duty of confidentiality regardless of whether the lawyer accepts the representation, the lawyer may have a conflict of interest in future representation of that prospective clients opponent(s). If the lawyer has already been hired by another party in the matter, it may disqualify the lawyer from continued representation. This issue is becoming of more interest with technology, because prospective clients are easily able to e-mail lawyers and leave telephonic messages providing large amounts of information, regardless of whether the lawyer requested the information or even agreed to consider representing the prospective client.

The few other state bars that have looked at this issue recently have concluded that the lawyer did not have a confidentiality obligation to the prospective client on the facts

presented, but may under other circumstances. For example, if the lawyer's website invites prospective clients to contact the lawyer, the lawyer may have a duty of confidentiality to prospective clients who contact the lawyer, particularly if the lawyer did not have prominent disclaimers that the lawyer did not intend to treat information so provided as confidential.

Florida Ethics Opinion 66-23 concludes that a lawyer must treat as confidential information from a prospective client even if unsolicited, unless it is clear from the circumstances that the client had no expectation of confidentiality.

This issue appears to be one that is of interest to a large number of Florida Bar members, and would provide guidance to both staff and bar members on the issue.

The Board Review Committee on Professional Ethics voted to recommend that the Board of Governors refer the issue of confidentiality of unilateral contact from a prospective client to the Professional Ethics Committee to draft a proposed advisory opinion. The board voted to approve the Board Review Committee on Professional Ethics recommendation.

The Board Review Committee on Professional Ethics voted to recommend that the Board of Governors refer Florida Ethics Opinion 66-23 to the Professional Ethics Committee for review and consideration of possible modification or withdrawal.

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

17. Appellate Court Rules Committee Report

Chair Steve Brannock and David Miller reported that the Appellate Court Rules Committee recommended amendments to the following rules:

- 9.010 – Scrivener's change to correct cross-reference.
- 9.050 – New rule protecting privacy of personal data by excluding or redacting certain information from briefs, petitions, replies, motions and responses.
- 9.130(a)(3)(C)(iv)- Provides for nonfinal appeal of an order determining a party's entitlement to an appraisal under an insurance policy.
- 9.130(a)(5) – Clarifies that motions for rehearing directed to orders under the rule will not toll the time for filing a notice of appeal
- 9.200(a)(3) – Scrivener's change to correct cross-reference.
- 9.210(a)(5) – Clarifies that tables of citations and certificates of service and compliance are excluded from brief page computation.
- 9.310(b)(2) – Eliminates an inconsistency with *F.S. Chapter 120*, and clarifies that no automatic stay may be had when a notice for stay is filed in administrative actions under the Administrative Procedure Act, when public bodies or public officers seek review.
- 9.330(d) – Prohibits motions for clarification addressing three specified circumstances to reflect the holding in *Jackson v. State*, 926 So.2d 1262 (Fla. 2006)
- 9.430 – Changes to reflect different treatment of original proceedings from appeals under this rule and changes to conform rule to statutory and Supreme Court forms changes. Scrivener's change to correct cross-reference.
- 9.600 - Scrivener's change to correct cross-reference.
- 9.900(j) – Changes to conform to Supreme Court forms changes.

The board voted to approve the rule amendments 35-0. Board member Larry Sellers was recused.

18. Rules of Judicial Administration Report

Board liaison Tim Sullivan reported that the Rules of Judicial Administration Committee recommended amendments to the following rules:

- 2.140 – Subdivision (a)(5) amended to require that rules committees provide copies of final proposed rule changes to Rules of Judicial Administration Committee within 30 days of passage of proposal rather than by June 15 of the rules cycle.
- 2.215 – Subdivision (g) amended to add challenges involving elections and proposed constitutional amendments to list of priority cases requiring expedited action by judges.

2.330 – Subdivision 9(c) amended to require that a motion to disqualify a judge include the dates of all previously granted motions to disqualify filed under the rule in the case and the dates of the orders granting those motions.

2.510 – Subdivision (a) amended to allow an attorney who is a Florida resident but who is not licensed to practice in Florida to move to appear pro hac vice in a Florida court proceeding if the attorney has an application pending for admission to The Florida Bar and has not previously been denied admission to The Florida Bar.

2.545 – Committee note change only.

The board voted to approve the amendments 38-0.

19. Family Law Rules Committee Report

Vice Chair Ronald Bornstein reported that the Family Law Rules Committee recommended amendments to the following rules:

12.015 – Editorial change to add two new forms to list of those considered part of the Family Law Rules; correction to conform to renumbering of Florida Rules of Judicial Administration in 2006; amendment to conform to West's *Florida Rules of Court*.

12.040 – In response to a request from the Court, creates new subdivision (c)(2) to require that an attorney representing the Department of Revenue in a child support enforcement case file a notice defining the attorney's relationship with the custodial parent and the issues the attorney is authorized to address in the proceedings.

Grammatical corrections.

12.310 – In response to a proposed amendment of *Fla.R.Civ.P.* 1.310(b)(8), regarding protections for children being deposed, adds a Committee Note reminding practitioners of the requirements of *Fla.Fam.L.R.P.* 12.407, to obtain prior court approval before a minor child is deposed or brought to a deposition.

12.400 – Corrects cross-references to the Florida Rules of Judicial Administration to conform to renumbering of rules in 2006. Style corrections.

12.410 – In response to proposed amendment of *Fla.R.Civ.P.* 1.410(h), regarding protections for children being subpoenaed, adds a Committee Note reminding practitioners of the requirements of *Fla.Fam.L.R.P.* 12.407, to obtain prior court approval before a minor child is subpoenaed to appear at a hearing.

12.490 – Corrects cross-references to the Florida Rules of Judicial Administration to conform to renumbering of rules in 2006. Amends subdivision (f) to clarify that exceptions to the general magistrate's report should be filed within 10 days of service of the report.

12.491 – Corrects cross-reference to the Florida Rules of Judicial Administration to conform to renumbering of the rules in 2006.

12.492 – Amends subdivision (g) to clarify that exceptions to the special magistrate's report should be filed within 10 days of service. Corrects cross-reference to the Florida Rules of Judicial Administration to conform to renumbering of the rules in 2006.

Grammatical correction.

12.610 - Corrects cross-reference to the Florida Rules of Judicial Administration to conform to renumbering of the rules in 2006.

12.650 – Corrects cross-references to the Florida Rules of Judicial Administration to conform to renumbering of the rules in 2006; style and grammar corrections.

12.750 – Corrects cross-references to the Florida Rules of Judicial Administration to conform to renumbering of the rules in 2006.

12.900(g) - As recommended by the Unbundled Legal Services Monitoring Committee creates supplemental agreement to a standard attorney-client retainer agreement to be used in cases in which representation has been limited by agreement of the attorney and client.

12.900 (h) – In conformity with the requirements of *Fla.R.Jud.Admin.* 2.545(d) creates a new form for a notice of related cases in a family law matter.

12.930(c) – Amends item 4.d.(4) to add the “present” in the first sentence and deletes items 4.d.(4)(a) – 4.d.(4)(c). Because these interrogatories are for use in modification proceedings, the only relevant information is the value of the party’s present interest in the pension.

12.982(c) – Amends instructions and petition for change of name to delete requirement of filing set of child’s fingerprints, to conform to section 68.07(2), Florida Statutes.

12.982(f) – Amends instructions and petition for change of name to delete requirement of filing set of child’s fingerprints, to conform to section 68.07(2), Florida Statutes.

The board voted to approve the amendments 38- 0.

20. Communications Committee Report

Chair Richard Tanner reported that the communications committee recommended that the Board of Governors approve the Strategic Communication Plan of the Board of Legal Specialization and Education for 2007-08. **The board voted to approve the plan.**

Tanner told the board that the committee also recommended that they prohibit all advertising on the Find a Lawyer page on the Bar’s Web site. **The board concurred with the committee’s recommendation.** Tanner went on to tell the board that the committee established a subcommittee to review additions requested by members to the Expanded Member Profile in the practice areas, federal courts and law degrees sections. The committee agreed that the Web site listings of judges indicate that they are a “Member of the Judiciary” rather than indicating they are not eligible to practice law in Florida. The committee also agreed to develop a budget amendment for submission in October for the purchase of additional video equipment for day-to-day use and to be maintained in the Headquarters office and made available for informal taping and/or discretionary use of the president (generally other than taping CLE programs). Finally, the committee heard informational reports from the board liaisons to the Voluntary Bar Liaison Committee and the Media and Communications Law Committee regarding the Voluntary Bar Leaders Conference held in July, the Media Law Conference held in June, and the Reporters Workshop scheduled for October.

21. Legislation Committee Report

Chair Jesse Diner reported that the legislation committee recommended that the board approve legislative consultant contracts for Steve Metz, Herb Sheheane, Pamela Burch Fort, Matt Bryan and Michelle Lorenzo Palicio. **The board concurred and approved the contracts.**

Diner told the board that the committee was anticipating a response from Barry Richard to a request for his opinion as to the propriety of elevating the Out of State Division’s current position in support of amendments to § 733.302 FS & § 733.304 FS, to allow nonresident Bar members to serve as personal representatives, which the division now seeks. The committee expects to bring a recommendation to the board at the October board meeting

22. Disciplinary Procedures Committee Report

Chair Andy Sasso reported that the Disciplinary Procedures Committee recommended that the board approve the following rule amendments on 2nd reading:

- i) Rule 4-1.5 Fees and Costs for Legal Services
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.
- ii) 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 consistent with controlling editorial protocols.

The board concurred with the committee recommendations and approved the amendments.

Sasso reported on the following items on first reading:

- i) Rule 1-3.10 Appearance by Non-Florida Lawyer and a Florida Court **-withdrawn**
Within subdivision (b), allows a Florida resident who has a pending application for admission to The Florida Bar and who has not previously been denied admission to The Florida Bar to appear pro hac vice.
- ii) Rule 3-3.2 Board of Governors of The Florida Bar
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.
- iii) Rule 3-5.1 Generally
Within subdivision (d), adds language stating the bar's preference that all public reprimands should be administered by personal appearance of the respondent before the Board of Governors and adds language defining when a file is considered a disciplinary case.
- iv) Rule 3-7.2 Procedures Upon Criminal or Professional Misconduct; Discipline Upon Determination or Judgment of Guilt of Criminal Misconduct
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.
- v) Rule 3-7.6 Procedures Before a Referee
Within subdivision (m), adds provision that the referee's report and the records shall not be filed until disposition of a motion to assess costs or expiration of the time for filing such motion; within subdivision (q), adds 15-day timeframe from entry of referee's report for the filing of a motion to assess costs if the report does not address the issue; clarifies that failure to move to assess costs when necessary, without good cause, constitutes a waiver; adds comment clarifying that provisions for the assessment of disciplinary costs before the Supreme Court are addressed in rule 3-7.7.
- vi) Rule 3-7.7 Procedures Before Supreme Court of Florida
Within subdivision (c), adds new procedures re motions to tax costs, creating a 10-day timeframe from entry of the court's order for filing such motion if costs were not otherwise addressed; allows 10 days for objection by the party from whom costs are sought; states that failure to timely object, without good cause, constitutes a waiver; upon timely objection or court direction allows for remand to the referee for supplemental report re costs and assessment; further allows a party to seek review of any supplemental report in the same manner as any other report.
- vii) Rule 3-7.11 General Rules of Procedure
Within subdivision (d) and (f), eliminates redundancy between the 2 rules and clarifies procedure for confronting failure to comply with subpoenas for trust account records.
- viii) Rule 5-1.2 Trust Accounting Records and Procedures
Within subdivision (g), deletes existing language and adds provision clarifying that a failure to comply with a subpoena for trust account records shall be considered as a matter of contempt, processed pursuant to rule 3-7.11(d) & (f).
- ix) SBP 15.77 Access to Designated Reviewer
New policy, to formalize the manner in which access to a designated reviewer may be obtained and to clarify the role of bar counsel in such contact.

- x) SBP 15.92 Administration of Public Reprimands
New policy, stating the bar's preference that all public reprimands should be administered by personal appearance of the respondent before the board of governors - companion policy to rule 3-5.1.

23. Program Evaluation Committee Report

Chair Ervin Gonzalez reported that the Program Evaluation committee recommended that the board approve the following items on second reading:

- i) Standing Board Policy 5.10 Standing Committees
Conforms name changes, additions, or deletions of various committees as necessary.
- ii) Standing Board Policy 1.60 Board Action on Proposed Rule of 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 such committees to report their findings to the board.

The board concurred and approved the amendments.

Gonzalez reported on the following items on first reading:

- i) Rule 2-7.3 Creation of Sections and Divisions
Conforms list of section titles due to a merge between the Practice Management and Development Section and the General Practice, Solo and Small Firm Section, reletters accordingly.
- ii) International Law Section Bylaws
Within Article I, Section 1 (Name and Purpose – Name), revises official section name, as “The Florida Bar International Law Section” rather than the International Law Section of The Florida Bar; within Article VI, Section 1 (Committees – Standing Committees) streamlines and identifies the responsibilities of various standing committees.

24. Special Committee on Diversity Report

Chair Eugene Pettis reported that the Bar's Member Outreach Committee had formed the Special Committee on Diversity to look at ways to revamp the bar's Diversity Symposium. Pettis said that the committee was looking at ways to encourage law firms to participate in the symposium. Pettis closed by reporting that another suggestion of the committee was to hold the symposium during the bar's 2008 Annual Convention in Boca Raton.

25. Certification Plan Appeals Committee Report

Chair Tim Sullivan reported that the committee had a great review appeal in health law. The person failed by 2 points. The model answers to a question were wrong and names of two doctors had been transposed which made it difficult to answer correctly. The committee recommended that the appeal be remanded back to a new appeal panel with a fresh set of eyes looking at it.

26. Board of Legal Specialization and Education Report

Board liaison Ben Kuehne reported that the BLSE recommended that the board approve the following items on second reading:

- i) Rule 6-8.1 Standards for Certification of a Board Certified Criminal Lawyer
Adds new language to incorporate criteria of “character ethics and reputation for professionalism.”
- ii) Rule 6-8.2 Definitions and Committee; Criminal
Within subdivision (c), adjusts language to allow for “at least” 2 certified criminal appellate lawyers to serve on Criminal Law Certification Committee rather than the current maximum of 2 members with such experience; also revises language to require at least 5 members certified in criminal trial law, 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).

- iii) 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.
- iv) 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.
- v) 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.
- vi) 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.

- vii) Rule 6-13.1 Standards for Certification of a Board Certified Appellate Lawyer
Adds new language to incorporate criteria of "character, ethics and reputation for professionalism."
- viii) Rule 6-13.2 Definitions; Appellate Practice
Adds new subdivision (b), to define "appellate action" and updates other subdivision entries.
- ix) 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 lawyer 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.
- x) 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;); re-designates other subdivision entries to accommodate proposed changes and includes other non-substantive edits consistent with controlling editorial protocols.
- xi) 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).

The board concurred and approved the amendments.

Kuehne reported that the BLSE had discussed the following items under consideration:

- i) BLSE Policy 2.03 New Area Requests
Within subdivision (a), adds The Florida Bar's website as a medium for publication of new certification area requests; within subsection (b), provides that in order to be eligible for consideration, proposed areas of certification must benefit the profession, as well as the public; requires signed petitions demonstrating a commitment by no fewer than 25 members to apply for certification in the new area within 3 years of implementation; further requires the procedures followed in setting up new areas of certification be consistent with the Rules Regulating The Florida Bar and BLSE Polices; within subsection (c), requires BLSE to review and approve any new certification area

- standards before submission to the Program Evaluation Committee and Board of Governors for approval and submission to the Supreme Court of Florida.
- ii) BLSE Policy 2.02 Areas of Certification
Within subdivision (b) adds state and federal government and administrative practice and intellectual property to the approved areas of certification; adds new subdivision (c), to ensure bar sections, divisions, and related substantive committees are afforded the opportunity to offer comment on proposed amendments to certification standards before referral to the BLSE, Program Evaluation Committee, and the Board of Governors.
 - iii) BLSE Policy 2.05 Applications for Certification
Within subdivision (e), assigns intellectual property law and state and federal government and administrative practice to the second application filing cycle.
 - iv) BLSE 2.08 Peer Review
Within subdivision (3), codifies practice of excluding members of the Supreme Court from the solicitation of peer review for certification applicants.
 - v) BLSE 2.10 Approved Continuing Legal Education
Within new subdivision (b), codifies practice of awarding CLE credit for grade review panel service, up to 5 hours of credit; re-designates other affected entries as necessary.
 - vi) BLSE Policy 2.13 Applicant Review Process for Certification or Recertification
Within subdivision (e), modifies language to allow certification committees discretion in determining if supplemental documentation submitted by an applicant warrants or makes appropriate further investigation of the applicant's qualifications for certification or recertification.

27. Time and Place of Next Meeting

The board will next meet October 3-6, 2007 at the Ritz-Carlton Coconut Grove in Miami.

There being no further business to discuss the board adjourned at 3:45 PM.

Respectfully submitted,

Dana M. Watson
Secretary to the Board of Governors

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