

THE FLORIDA BAR BOARD OF GOVERNORS

Regular Minutes

August 26, 2005

The Don CeSar

St. Petersburg Beach, 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, August 26, 2005, in St. Petersburg Beach, Florida, with President Alan B. Bookman presiding.

1. Roll Call

Alan B. Bookman, President
Henry M. Coxe, III, 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, Fifth 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
Francisco R. Angones, Eleventh Judicial Circuit
David Rothman, Eleventh Judicial Circuit
Jennifer Coberly, 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
Lisa S. Small, Fifteenth Judicial Circuit
Edwin Scales, Sixteenth 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
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
Jamie B. Moses, YLD President
John M. Stewart, YLD President-elect
Solomon L. Badger, III, Ed.D, Public Member

J. Blair Culpepper, Public Member

Board members absent:

Ervin A. Gonzalez, Eleventh Judicial Circuit
Henry T. Courtney, Eleventh Judicial Circuit
Sharon L. Langer, Eleventh Judicial Circuit
Benedict P. Kuehne, Eleventh Judicial Circuit
Steven Chaykin, Eleventh Judicial Circuit
Gregory Coleman, Fifteenth Judicial Circuit
Scott G. Hawkins, Fifteenth Judicial Circuit
Alan C. Brandt, Jr., Seventeenth Judicial Circuit
Nancy W. Gregoire, Seventeenth Judicial Circuit
Eugene K. Pettis, Seventeenth Judicial Circuit
J. Christopher Lombardo, Twentieth Judicial Circuit

Bar Staff in attendance:

John F. Harkness, Jr., Executive Director
Tina Ruffin, Assistant to the President
Paul Hill, General Counsel
Dana Watson, Secretary to the Board of Governors
Elizabeth Tarbert, Director of Ethics and Advertising
Lori Holcolm, Director of Unlicensed Practice of Law
Gary Blankenship, Senior Editor, Florida Bar News
Tony Boggs, Director Legal Division
Francine Walker, Director of Public Information

2. Guests

Bill Davis, Florida Bar Foundation
Jane Curan, Florida Bar Foundation
June McKinney Bartelle, President, Florida Association of Women Lawyers
Ben Crump, Immediate Past-President of the National Bar Association
Jenine Williams, Pinellas County Bar Association
Cassandra L. Denmark, Polk County Bar Association
Rebecca Frank, Citizens Forum member
Linda Osmundson, Citizens Forum member
Fred Hamblin, Citizens Forum member
Rudy Frei, M.D., Citizens Forum member
Richard Myers, Citizens Forum member
Ivan F. Ford, Citizens Forum member

3. Swearing-in of Board members not present at General Assembly

The following Board of Governor's members were sworn in by President Bookman:

Robert M. Brush, Tenth Judicial Circuit
Charles Chobee Ebbets, Seventh Judicial Circuit
Harold G. Melville, Nineteenth Judicial Circuit
Kimberly A. Bald, Twelfth Judicial Circuit
S. Grier Wells, Fourth Judicial Circuit
Gregory S. Parker, Third Judicial Circuit

4. Introduction of New Board Members not present at June meeting

The following new Board of Governor's members were introduced:

Dominic M. Caparello, Second Judicial Circuit

John J. Schickel, Fifth Judicial Circuit
Denise A. Lyn, Fifth Judicial Circuit
Daniel L. DeCubellis, Ninth Judicial Circuit

5. Non-Roll Call Grievance Items

Co-chair David Rotham reported that the only non-roll call grievance item is number 13.

6. Non-Roll Call advertising appeal agenda items

Board member Larry Ringers announced that the advertising appeal agenda item 5b (1) is removed from the consent calendar.

7. APPROVAL OF MINUTES and EXECUTIVE COMMITTEE ACTION

- A. Regular Minutes June 3, 2005 meeting
- B. Grievance Minutes June 3, 2005 meeting
- C. Executive Committee action taken:

Thursday, June 2, 2005

Pursuant to Standing Board Policy 9.21(d) President Kelly Overstreet considered emergency action as to a proposed legislative position of the Real Property, Probate & Trust Law Section, relating to opposition to SB 1520 (Consumer Protection) and seeking a gubernatorial veto of that passed legislation.

Section 9 of the bill contains a new definition of "travel club" which would remove one type of timeshare program from the traditional regulatory framework administered by the Department of Business and Professional Regulation. According to the section, by changing the definition and removing it from DBPR oversight, the effect would be to permit this type of transient occupancy to take place in traditional residential settings that would otherwise restrict or prohibit such activity. The change would apply to both condominium and single-family residential communities, and would have the effect of impairing contract rights that unit owners and homeowners relied upon in community documents when they purchased their homes and condominium units.

Emergency action was deemed necessary because Section 9 of the bill had not been known to the section until after the measure was presented to the Governor on May 24, 2005. The Governor had to act on the legislation by June 8 and the section considered time to be of the essence.

President Johnson determined that, pursuant to Standing Board Policy 9.21(d), the issue could not have been reasonably submitted for consideration to the board of governors or the executive committee. Policy states that when an emergency exists, and it is not feasible for the executive committee to act, the president, upon consultation with the president-elect and the Legislation Committee chair, if possible, may act upon a request for action on a pending or proposed legislative issue.

After consideration of the request, President Johnson determined the proposal complied with applicable policies regarding section lobbying, and agreed to not prohibit the section's advocacy of this matter. Subsequent notice of this determination was shared with President-elect Alan Bookman and Legislation chair Sharon Langer – and both concurred in the action later that same day.

The Real Property, Probate & Trust Law Section position will be officially published as follows:

- 59. Opposes SB 1520's definition of "travel club" which would remove one type of timeshare program from the traditional regulatory supervision of the Department of Business and Professional Regulation.

Wednesday, June 15, 2005

One matter needing Executive Committee consideration was forwarded to committee members by e-mail on June 10, 2005 for review and vote by return facsimile / e-mail ballot.

Tampa lawyer Susan W. Fox sought amicus involvement by The Florida Bar in a First District Court of Appeal case – *Forrest Bostick v. Noah's Place*, Appeal No. 1 D05-2243 – concerning whether judges of compensation claims (JCCs) may regulate costs charged by attorneys in workers' comp matters. At issue

was a JCC order stating that any cost with an overhead component must be treated as a fee – not as a cost – and thus denied approval of a settlement because the claimant’s attorney refused to disclose cost information as to costs borne by the client. JCCs only have jurisdiction to approve fees when a case is settled; they have no jurisdiction over costs. In the case at issue, the JCC determined that paralegal costs would be part of fees – not costs – which Ms. Fox contended was contrary to RRTFB 4-1.5, which specifically allows recovery of reasonable in-house costs, including paralegal fees as a separate cost item.

According to staff commentary, The Florida Bar generally does not speak on questions regarding a court’s jurisdiction. Whether a lawyer is subject to discipline for charging particular fees and costs – as an ethics matter – is a separate question from whether a lawyer is permitted to charge certain fees and/or costs under Florida statutory law. Further, the Bar does not typically get involved in the interpretation of state statutes even though they may have an effect on the practice of law. Nor has the Bar seemingly taken a position that a court cannot interpret the Rules Regulating The Florida Bar.

The case was further complicated by references to the claimant’s attorney having obtained an opinion from The Florida Bar on charging paralegal costs. Bar records did not reflect the same understanding as the attorney on this issue, at least in correspondence between him and Bar ethics staff. The attorney sent a copy of his fee contract to the Bar, including references to costs, for review. As is usual, ethics staff responded by stating that pursuant to Professional Ethics Committee policy the Bar does not give opinions on particular documents such as fee contracts, but would try to provide some helpful information. The Bar’s response further indicated that a failure to comment on a particular clause in the document did not mean that the provision was sound. That letter specifically stated that the Bar could not determine if the fee contract comported with appropriate Florida statutes regarding fees and costs. If the Bar were to make an amicus appearance in the appeal to address any jurisdictional question, ethics counsel advised that the Bar would be compelled to also provide the court with copies of that prior correspondence with claimant’s counsel.

After review and consideration, the Executive Committee voted 11-0 against Florida Bar amicus involvement in this appeal.

Monday, July 11, 2005

Two items required Executive Committee approval. The Executive Committee was transmitted the information on the two items via email

Item 1

The Media and Communications Law committee requested that they be allowed to adopt the following legislative position: The Media and Communications Law committee supports the ABA Section of Litigation’s recommendation that the ABA endorse the “Free Flow of Information Act of 2005.” The Executive Committee approved the position by a vote of 9-0.

Item 2

Two issues arose regarding the proposed changes to the lawyer advertising rules recommended by the Advertising Task Force 2004 and adopted by the Board of Governors at its April 8, 2005 meeting, with minor changes at the board’s June 3, 2005 meeting. These were relatively minor changes and were not technically required for inclusion in the petition, but it was preferable to make all the changes to the lawyer advertising rules in one petition rather than piece-meal. The two issues arose from the difference between the task force’s recommendation and the board’s final action on websites. Although some changes were made to the rules to accommodate the board’s final action on websites, these two issues were not addressed in the final rules package that went to the board on April 8 and June 3, 2005. Staff recommended the following changes to the lawyer advertising rules:

- 1) that proposed Rule 4-7.7 (a)(2)(C) be amended to include a provision in the filing rule that exempts voluntarily filed advertisements from the 15 day rule; and
- 2) that proposed Rule 4-7.6 (d) (computer-accessed communications) provide that all unsolicited computer-accessed communications concerning a lawyer’s or law firm’s services not addressed by other provisions of Rule 4-7.6 are subject to the requirements of rule 4-7.2.

The Executive Committee approved the proposed changes by a vote of 9-0.

Elizabeth Glover, Public Member, Eighteenth Judicial Circuit
Carl Joseph Coleman, Attorney Member, Twentieth Judicial Circuit
Board Review Committee on Professional Ethics

b.

1) Advertising Inquiry 25958 – **removed from consent**

2) Advertising Appeal 05-02252

Advertising Appeal 05-02252 concerns application of the rule prohibiting statements that create unjustified expectations to a firm brochure to be provided to prospective clients at their request. Staff rendered an opinion on April 12, 2005, that the firm's website name, www.AVOIDACCIDENTFRAUD.com, creates unjustified expectations, in violation of Rule 4-7.2(b)(1)(B). The website name had previously been included in 21 radio advertisement initial filings and revisions without adverse comment by bar staff. The Standing Committee on Advertising upheld staff's opinion on May 11, 2005. The attorney subsequently requested Board of Governors review. The filer argued that the bar is estopped from finding that the website name violates any rule because the website name had been previously approved in other advertisements. The BRC voted 4-1 to affirm the SCA decision that the name "www.AVOIDACCIDENTFRAUD.com" creates unjustified expectations.

The board voted to approve the BRC recommendation.

3) Advertising Appeal 05-01924

Advertising Appeal 05-01924, a direct mail advertisement, concerns application of Rule 4-7.2(c)(11), which states that required information must be clearly legible and at least one-quarter the size of the largest type used anywhere in the advertisement. A draft direct mail brochure and several revisions to that brochure were filed. Staff rendered opinions in response to the original draft and subsequent revisions. None of the filed drafts complied with the rules, but staff failed to indicate in some of the drafts that required information in the direct mail advertisement (the geographic disclosure, the "advertisement" mark in red ink on the envelope and enclosed advertisement, and the statement of qualifications) was smaller than one-quarter the type size of the largest type used in the advertisement (the word "GONE" in the brochure). The Standing Committee on Advertising upheld staff's opinion on June 24, 2005. The attorney subsequently requested Board of Governors review.

The BRC voted 5-0 to affirm the SCA decision that the following required information in the direct mail advertisement be at least one-quarter the type size of the word "GONE" used in the direct mail advertisement in accordance with Rule 4-7.2(c)(11):

- a) the geographic disclosure "Maitland" required by rule 4-7.2(a)(2);
- b) the word "Advertisement" in red in on the outside and first page of the enclosure of the direct mail required by Rule 4-7.4(b)(2)(B); and
- c) the statement of qualifications required by Rule 4-7.4(b)(2)(E).

The board voted to approve the BRC recommendation.

4) Advertising Appeals 05-01882 and 05-01883

Advertising Appeals 05-01882 and 05-01883 concern application of Rules , regarding use of the term "board certified," to two television advertisements. The advertisements state that: "We are board certified in civil trial law by The Florida Bar" [file number 05-01882] and "We are board certified by The Florida Bar" [file number 05-01883]. The firm name is "Panter, Panter & Sampedro, P.A.," the firm has four lawyers, and two of the four firm lawyers are board certified in civil trial. Staff rendered an opinion on March 8, 2005, that the television advertisements did not comply with Rules 4-7.2(c)(3) and 6-3.4(c), because certification is specific to individual lawyers; a law firm cannot be certified, and cannot claim specialization or expertise in an area of practice. The Standing Committee on Advertising upheld staff's opinion on May 11, 2005. The attorney subsequently requested Board of Governors review.

The BRC voted 5-0 to affirm the SCA decision that the following language is precluded by Rules 4-7.2(c)(3) and 6-3.4(c) because it implies that the firm is board certified or that all the lawyers in the firm are board certified:

We are board certified in civil trial law by The Florida Bar [file number 05-01882] and
We are board certified by The Florida Bar [file number 05-01883].

The board voted to approve the BRC recommendation.

5) Advertising Appeal 05-01633 and 05-01634

Advertising Appeals 05-01633 & 05-01634 concern two websites. Staff rendered an opinion on February 3, 2005, that the websites did not comply with rules regarding use of the terms "specialize" or "expert" because the use implied the firm is board certified, regarding use of visual images that are false, misleading or manipulative, regarding statements that create unjustified expectations, and regarding statements that improperly compare legal services in a way that cannot be factually substantiated. The Standing Committee on Advertising upheld staff's opinion on May 11, 2005. The attorney subsequently requested Board of Governors review.

The BRC recommended the board approve the SCA decision that:

1. The following language improperly implies that the attorney or law firm is board certified in violation of Rules 4-7.2(c)(3) and 6-3.4(c):

The Personal Injury Law Firm of Harrell & Johnson *Specializes* in Vehicular Accidents file number 05-01633].

The Personal Injury Law Firm of Harrell & Harrell *Specializes* in Vehicular Accidents [file number 05-01634].

The Personal Injury Law Firm of Harrell & Johnson *Specializes* in Traumatic Brain Injury... [file number 05-01633].

The Personal Injury Law Firm of Harrell & Harrell *Specializes* in Traumatic Brain Injury Cases [file number 05-01634].

Dianne Weaver is recognized internationally as an *expert* in the field of Traumatic Brain Injury [file number 05-01633].

Medical Malpractice is a *Specialty* of the Law Firm of Harrell & Johnson P.A. [file number 05-01633].

Medical Malpractice is a *Specialty* of the Law Firm of Harrell & Harrell P.A. [file number 05-01634].

Cases require both *expertise* and economic strength [both files].

This is the primary reason we strongly encourage accident victims to seek the *expert* assistance of an attorney who limits their practice to injury law [both files].

2. The following language creates unjustified expectations about results the lawyer can achieve in violation of Rule 4-7.2(b)(1)(B):

These cases require significant financial resources to pursue them effectively, and *at Harrell and Johnson we have the resources to vigorously do all that is necessary to be successful* [file number 05-01633].

These cases require significant financial resources to pursue them effectively, and *at Harrell and Harrell we have the resources to vigorously do all that is necessary to be successful* [file number 05-01634].

3. The following language constitutes an improper comparison which cannot be factually substantiated in violation of Rule 4-7.2(b)(1)(D):

Only a handful of area law firms have the financial resources and litigation experience necessary to pursue these claims [both files].

The BRC voted 4-1 to affirm the SCA decision that the following visual portrayals are deceptive, misleading, or manipulative in violation of Rules 4-7.2(b)(4):

Two photos of crashed cars on "Vehicular Accident" page [both files]

Three photos of crashed cars and legs in braces accompanying newspaper articles on "Recent Significant Cases" page [both files]

The board voted to approve the BRC recommendations.

c. Legislative Committee Review

1) The board approved the following new section legislative position requests for the 2004-2006 biennium.

a) International Law Section

Supports enabling the Secretary of State to accept service as an agent of a Florida corporation where no other agents are present in this state.

- b) Family Law Section
Supports amending §61.30(2)(d) to create a statutory framework which requires that any parent, or other individual who is not parent seeking to relocate with a minor child, must first provide written notice no later than 60 days before the date of the relocation of the child.
- d. The board approved the transfer of Okaloosa and Walton counties lawyer referral services to The Florida Bar.
- e. The board approved the following Florida Bar Citizens Forum appointments:
Jennifer R. Coberly, Chair; Ivan "Marty" Ford, Vice Chair; Anthony J. Abate; John W. Biesinger III; Barry M. Crown, Ph.D.; Rebecca Frank; Rudolph J. Frei, M. D.; Michael H. Greenhill; Fredrick A. Hamblin; Gail E. Honea; Belinda Keiser; Richard C. Myers; Beth Rominger; Linda A. Osmundson; Edwin A. Scales, III; Dan Simmons; Edward A. Strongin.
- f. The board approved the following rules, bylaws & policies:
 - 1) Rule 6-1.2 Public Notice
Consistent with court opinions and Bar committee determinations, updates the explanation of board certification for public notices in telephone directory yellow pages.
 - 2) Rule 6-22.4 Recertification, Antitrust & Trade Regulation Certification
Within subdivision (a), adds "or trade regulation law" to certification area name consistent with headings and references elsewhere in subchapter; within subdivision (b), allows certification committee discretion whether to request samples of administrative, trial, or appellate memoranda or briefs from an applicant rather than mandating the submission of such materials.
 - 3) Rule 6-23.3 Minimum Standards, Labor & Employment Law Certification
Within subdivision (c), expands qualifying experience to include service as a judge, hearing officer, arbitrator, or mediator in the 30 days' minimum involvement in litigation and/or administrative proceedings; within subdivision (e) provides authority for the board of legal specialization and education or the labor and employment law certification committee to establish policies applicable to this rule.
 - 4) Rule 6-23.4 Recertification, Labor, & Employment Law Certification
Within subdivision (a), removes reference to language in 6-23.3(b) and restates that subdivision language verbatim; within subdivision (b) removes reference to rule 6-23.3(c) and restates that subdivision language verbatim, with proposed changes; within subdivision (c), adds authority for the board of legal specialization and education or the labor and employment law certification committee to establish policies applicable to this rule; also within subdivision (c), eliminates reference to rule 6-23.3(e) and restates subdivision language verbatim regarding how the education requirement may be satisfied.
 - 5) BLSE Policy 2.11 Exam Preparation and Administration, Applicant Misconduct
Adds new subdivision (f) re applicant misconduct, stating that failure to follow staff or administrator instructions pertaining to the examination or its administration shall disqualify an applicant's exam and application; redesignates subsequent subdivisions appropriately.
 - 6) BLSE Policy 2.13 Applicant Review Process for Certification or Recertification
Within subdivision (a), adds language to authorize area committee review and investigation of an application for certification in an area other than that overseen by the committee; also within subdivision (a), adds new language allowing applicant review by other members of the area committee or other committees in situations where a fair judgment cannot or might not be rendered due to actual or perceived conflict.
 - 7) BLSE Policies – 300 Series – Certification Program Accreditation
New proposed series of policies, to establish procedures and criteria to guide BLSE in its review and evaluation of programs and organizations that issue various board certifications to members of The Florida Bar.

9. The Florida Bar Foundation Report

The Florida Bar Foundation President Bill Davis reported that one of the functions of the Foundation is to administer the interest on lawyers trust accounts (IOTA). The money from IOTA is used to fund grants

and legal assistance for the poor. The Foundation places fellows – who are still law students into legal aid offices over the summer. The student receives a small stipend and it is the hope of the Foundation that the student will learn the non-monetary benefits of working for the poor and will want to work in a legal aid office when he/she graduates from law school. The Foundation also funds a 2-year fellowship for law school graduates in legal services programs.

Last year, the Foundation distributed over \$700,000 on special programs for children. Over \$300,000 went toward special education assistance, specifically for the testing and special instruction that the children need. The rest of the money was spent to help children in foster care and to help pay for healthcare coverage for the children. Davis told the board that while a lot of the money comes from IOTA, money is also raised by individual lawyers who check on their Bar renewal card that they want to contribute to the foundation. Also, the foundation is receiving money from the proceeds of the “Kids Deserve Justice” specialty license plate.

A challenge that the Foundation has faced is the fact that banks are paying less interest on IOTA, and the banks are raising their fees. To deal with this, the foundation requested a Rules change to limit the fees a bank can charge. The rules prohibit negative netting, which is when a bank charges large accounts fees that they don't charge smaller accounts.

10. Disciplinary Procedures Committee Report

Chair Murray Silverstein reported on the following items:

1) Items on **second reading**

- a. Rule 3-7.2 Procedures upon Criminal or Professional Misconduct; Discipline Upon Determination or Judgment of Guilt of Criminal Misconduct
Substantial revision of existing rule: within subdivision (a), expands definition of “determination of guilt”; within subdivision (b), extends the conclusive proof of guilt provisions regarding felony cases to all criminal cases; within subdivision (c), requires a member of the bar who is arrested on felony charges to give notice of such arrest to the executive director within 10 instead of 30 days; within subdivisions (c) – (e), provides notice requirements for members, court clerks, and state attorneys regarding institution of felony charges against the member, and regarding determination or judgment of guilt of any crimes; within newly proposed subdivision (f) – current (e) – streamlines and conforms text to proposed amendments elsewhere; within newly proposed subdivision (g) – current (f) – deletes subdivisions (2) & (3) and adds that a petition to modify or terminate suspension shall not stay any suspension under this rule; deletes current subdivision (g); within newly proposed subdivision (h), adds new provisions for appointment of referee upon entry of a suspension 102order, and includes procedures and timelines for separate hearings on petitions to modify or terminate and petitions on sanctions; within newly proposed subdivision (i) – portions of current (h) and all of current (i) are deleted – revises current (h)(3) to clarify that a suspension remains in effect during any appeal of a criminal conviction; within newly proposed subdivision (j), revises existing provisions regarding expunction to include any disciplinary action under this rule, and to encompass criminal matters disposed by dismissal as well as acquittal; within newly proposed subdivision (k), adds that a respondent may waive the time requirements of this rule by written request and judicial approval; revises affected subdivision titles and other entries appropriately.
The board concurred with the committee's recommendation and approved the amendments, without dissent.
- b. Rule 4-1.8 (h) Conflicts of Interest; Prohibited and Other Transactions; Limiting Liability for Malpractice
Within subdivision (h), adds new language that would permit a lawyer – upon request of a potential client – to contract with the client to resolve through mandatory arbitration any malpractice claim by the client against the lawyer that may arise; sets forth required

language for any such attorney-client agreement; proposed as companion to suggested amendments creating new rule 4-1.5(i).

The recommendation of the DPC was not to adopt this language. The board concurred with the committee recommendation to not approve the amendment, without dissent.

2) Items on **first reading**

- a. Rule 3-6.1 Employment of Certain Attorneys or Former Attorneys – General
Throughout entire rule, clarifies the limitations imposed on suspended, disbarred, or disciplinary resigned attorneys when they are employed by lawyers and law firms.
- b. Rule 10-2.1 Generally
Within subdivision (a)(2), clarifies language regarding a person's use of the title "paralegal" or "legal assistant."
- c. Rule 17-1.2 Definitions
Within subdivision (a)(6), rearranges wording of rule to clarify that an authorized house counsel must reside in Florida or soon relocate to Florida.

11. Multijurisdictional Practice of Law Report

Lori Holcomb, Director of Unlicensed Practice of Law, reported that the Florida Supreme court had approved of the multijurisdictional practice (MJP) of law rule amendments that the board had approved last year. The rules will become effective on January 1, 2006. She reported that one of the changes was a \$250 fee in arbitrations and in cases where the person is seeking to be admitted pro hac vice. The fee was proposed, in part, to defer disciplinary costs. The MJP Commission in its report recommend that \$25 of the fee be earmarked for the Client Security fund (CSF). This allocation is not part of the rule. The question for the board is whether to so earmark the funds. She told the board that the MJP committee had no idea how much money this would raise for the client security fund, but that they expect it would raise about \$50,000.00 for the client security fund. Holcomb told the board that the CSF rules say that the CSF is for clients who have been harmed by members of the Florida Bar. She told the board that the rules would need to be amended to include out-of-state attorneys. President Bookman referred the rule issue to the Disciplinary Procedures committee and the budget committee.

12. Board Review Committee on Professional Ethics Report

Vice- Chair Larry Ringers reported on the following items:

- 1) Ethics Appeal 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.
The BRC voted 5-0 to recommend that the board refer the issue to the City, County, and Local Government Law Section for input and recommendations as to the inquiry and, if the section recommends that the board adopt an opinion, the section should provide an appropriate set of facts on which to base that opinion.
The board approved the BRC recommendation.
- 2) Advertising Inquiry 25958
On January 19, 2005, the inquiring attorney requested a written staff opinion regarding the use of news articles and tape recordings of television news stories about a lawyer in information provided to a prospective client at that prospective client's request. The news articles and television news stories contain statements from clients, state attorneys, and others on the advertising lawyer's abilities and successes. After seeking guidance from the Standing Committee on Advertising, in which the committee was divided, staff responded that the articles

and television news programs the attorney proposed to provide to prospective clients contained testimonials, and the attorney was therefore prohibited from providing them. The Standing Committee on Advertising affirmed the staff opinion at its meeting of June 24, 2005. The attorney subsequently requested Board of Governors review.

Key Issues:

1. Do newspaper articles and television shows profiling the attorney and his practice contain testimonials prohibited by Rule 4-7.2(b)(1)(E)?

The BRC voted 3-2 to recommend that the board affirm the SCA decision that the newspaper articles and television shows contained testimonials, but reverse the SCA decision that the newspaper articles and television shows could not be provided to prospective clients at their request.

The board voted to defer the matter until a later meeting.

13. Citizens Forum Report

Chair Jennifer Coberly reported that the Citizens Forum met and focused on two main topics: whether members' disciplinary history should be available on the web; and ways to identify opportunities to educate the public about the separation of powers and importance of judicial independence. Regarding the proposed online discipline records, members of the forum felt that if a grievance committee had found probable cause then all information concerning the complaint should be accessible on the web. However, there was concern that presently too much pre-probable cause information in a disciplinary case is available over the phone. A proposal for public education was discussed and the feasibility of making a presentation to school superintendents on the importance of civics classes is being studied.

14. Communications Committee Report

Chair Kim Bald reported that the committee met with the Citizens Forum and voted to revise the group's charter to allow current and former Citizens Forum members to nominate potential new members. The action is intended to help increase the diversity of the citizens serving on the forum. Member of the forum also offered to assist members of the Board of Governors in identifying individuals in their communities to consider for non-lawyer appointments to Bar committees. The board concurred with the committee recommendation to accept the charter revision.

Bald told the board that the budget committee had asked the Florida Bar *Journal* and *News* Editorial Board to find ways to save money and, as a result it was recommended that editorial guidelines be modified to delete theme issues and limit special issues to 48 pages.

A proposal to reprint The Florida Bar brochure was discussed by the committee, and with the Citizens Forum, and a recommendation was presented to reprint 5,000 copies at a cost of \$25,000. The board concurred with the committee recommendation.

Another item the committee considered and voted to recommend was a Media Law Conference proposal by the Media and Communications Law Committee. The conference will be held March 3, 2006, in partnership with the Stetson College of Law. It is targeted at attorneys, judges, journalists and the public. The final issue the committee considered was submitted by Melanie Hines, chair of the Voluntary Bar Liaison Committee. She requested funds to conduct conference calls of the working subcommittees to accomplish the work of the full committee. The funding was approved and recommended at a total of \$1,500. The board concurred with the committee recommendations.

15. Program Evaluation Committee Report

Chair Frank Walker reported that Jane Curran told the PEC that a full-time statewide director of pro bono is needed to work with the Pro Bono Legal Services Committee, Florida Bar sections, large law firms, local bar associations and corporate counsel. She told them that this proposal requests \$50,000 from The Florida Bar and is a joint effort with the Foundation to fund a revised statewide pro bono project, which includes a director's position. She added that this will be an ongoing request for several years and,

while the vision has been slightly altered from that of the past, this new initiative will build upon past successes while significantly expanding opportunities for pro bono services.

She explained how this initiative will a) improve web site communications for pro bono activities; b) provide more referrals for pro bono work; and c) increase promotion of the good work that lawyers perform for the community. Walker told the board that Kent Spuhler told the committee that the Pro Bono Legal Services Committee is currently conducting a thorough review of the entire pro bono system. He stated how our pro bono efforts have fallen behind in regards to the use of the World Wide Web and stressed how this proposed pro bono initiative would enable the Bar to have a constantly updated and continuous flow of content on its website. He reasoned that this initiative would be great for marketing and would significantly increase awareness of opportunities that would eventually lead to more individuals and law firms tapping into the pro bono system. The board referred the initiative to the budget Committee.

Walker told the board that a request was received from the Out-of-State Practitioners Division to remove the word "Practitioners" from the official name of the division. The request requires the following rule amendments:

- a. Rule 2-7.3 Creation of Sections and Divisions
Changes the name of the Out-Of-State Practitioners Division to the Out-Of-State Division.
- b. Rule 4-6.5 Voluntary Pro Bono Plan
Consistent with proposed changes in rule 2-7.3, changes the name of the Out-Of-State Practitioners Division to the Out-Of-State Division.

The committee approved the request and the board concurred with the committee recommendation.

Walker told the board that the committee had reviewed the list of standing committee name changes, additions and deletions that have occurred during the past year. The changes require the following rule amendment:

- a. SPB 5.10 Standing Committees
Conforms name changes, additions, or deletions of various committees as necessary.

Walker told the board that, due to financial reasons, the Escambia/Santa Rosa Bar Association recently requested the transfer of the Lawyer Referral Service in both Okaloosa and Santa Rosa Counties back to The Florida Bar. The committee approved the request and the board concurred with the committee recommendation.

Walker told the board the Animal Law committee was approved on an interim basis for one year and must now be reviewed again to determine whether they should continue to exist as a standing committee. He told the board that after discussion, the PEC agreed on the following approach to the Animal Law Committee evaluation: The evaluation will commence at the October 20 PEC meeting in Palm Coast; the Animal Law Committee will be asked to submit a revised application, complete with a three-year proposed budget, goals and objectives. Representatives of the ALC will be asked to attend the 10/20 meeting in order to make a brief presentation and respond to questions from the PEC. Debate will be allowed on both sides (those in favor of an Animal Law Committee and, if any, those opposed to an Animal Law Committee). This evaluation will be treated in the same manner as any other program evaluation, using the same procedures.

Finally, Walker shared with the board that he had asked PEC members whether they had any suggestions for additional Bar programs to be reviewed during the 2005-06 Bar year. Walker said that Grier Wells discussed the Bar's Committee on Relations with Certified Public Accountants, which strives to create a forum to develop and exchange ideas concerning issues affecting both professions and functions as a source of information to members of The Florida Bar in matters related to certified public accountants. He asked the PEC whether the Bar should study the need for a committee that would deal with relations to medical doctors or other professions. Walker told the board the Real Property Section has a committee that deals with relationships with real estate brokers and that while we work with the Florida Medical Association on wills and other important issues, we have never had an official committee in regards to relations with medical doctors. Walker said that Grier Wells stated that he is concerned at the rising number of issues that occur between doctors and lawyers and stated that the creation of such a committee would be a great opportunity to help improve the image of lawyers

16. Budget Committee Report

Chair Mayanne Downs reported on the following items:

1) Items on **first reading**

- a. SBP 5.60 Section Budget Policies
 Based on suggested revisions within newly proposed SBP 5.63, deletes subdivision (f) regarding distribution of dues proceeds and redesignates subsequent subdivisions appropriately.
- b. SBP 5.63 NEW Administrative Support Policy
 New proposed policy for calculating the amount each section is to reimburse The Florida Bar for support services, including 80 percent of general and administrative allocation. Section charges range from \$12.50 per paying member to \$17.50, effective July 1, 2006. Allows in certain circumstances for support in excess of the amount collected, and for return of any excess paid if support costs are less.
- c. SBP 6.31 Distribution of Proceeds
 Changes codify the recently approved formula for distribution of CLE proceeds or losses between The Florida Bar and either co-sponsoring sections or the Out of State Practitioners Division. Effective July 1, 2005 distribution will be on a net basis after all costs, direct and indirect, have been paid.

2) Budget amendments--**Approved**

- a. Rollover amendments from 2004-2005
 - i. Fiber Remote Switch \$16,500 \$16,500 Equipment reserve
- b. Budget amendments for 2005-2006
 - 1. i. MJP operations \$67,475 (245,625) Net Profit increas
 \$250,000 Revenue
 \$63,100 Redistributions
 - ii. MJP equipment \$4,000 \$4,000 Equipment reserve
 - 2. Second Minority Mentoring Picnic \$1,000 \$1,000 Operating Reserve
 - 3. Paralegal Committee \$17,597 \$6,807 Operating Reserve
 \$10,790 Redistributions
 - 4. Annual Meeting Entertainment cost \$84,496 \$84,496 Operating Reserve
 - 5. Animal Law Committee \$3,670 \$3,670 General fund—**TABLED**
 - 6. Public Information & Bar Services \$25,000 \$25,000 Operating Reserve
 - 7. Lawyer Referral Service \$7,675 \$7,675 Operating Reserve
 - 8. Voluntary Bar Liaison committee \$1,500 \$1,500 Operating Reserve
 - 9. Statewide Pro Bono Coordinator \$50,000 \$50,000 new program reserve

17. Investment Committee Report

Chair Ian Comiski gave the board a brief description of the types of accounts that The Florida Bar uses to invest its money. He told the board that the Florida Bar funds are segregated in two different categories. One group is investment and try to have the fund grow the other part is for short term, those are in liquid investment accounts or money market accounts.

The funds in the long term account, as of June 30, 2005 had \$17.198 million and as of August 18, 2005 its balance was \$17.66 million, a difference of \$484,326 which is a 2.6 percent increase since the end of the second quarter. On the long term funds, there is an investment policy that lays out parameters for bar investments. The Bar has large cap, mid cap, small cap and international bond funds. The discipline is trying to ensure we keep sufficient diversification, which protects the investment portfolio as a whole. If any of the accounts reach their maximum percentage, we reallocate and stay within the bar parameters. The committee recommended that the board vote to take one percent of the money in the international fund off of the table because otherwise would go over the maximum percentage we wanted. The board concurred with the committee recommendation. In short term accounts we have about another 18 million. If we deem that fund to have excess funds, then we move the funds into long term accounts.

The only other information was the contract with our investment advisor which was Jim Bagwell from Morgan Stanley is up for renewal. There will be some technical changes, but we expect the contract to be renewed.

18. President-elect's Report

President-elect Hank Coxe reported that as President-elect, one of his jobs is to select the locations for the next year's board of governor's meetings. He told the board that there may not be an out of state meeting during his year as president.

19. President's Report

President Alan B. Bookman told the board that one of his primary goals is to engage the membership of the bar and work with the voluntary bars. Voluntary bars are the mainstay for the bar and he wants to encourage them.

He told board that the Bar received more minority applications for committee appointments. He reminded the board that there will be appointments on grievance, UPL and JNC committees. He told the board that they need to encourage minority lawyers to get involved and be members of these committees.

Bookman also told that board that he wants them to attend as many section executive councils as possible. Bookman said that he was at RPPTL executive council last week and that Gwen Young has done well with the section. There were a lot of compliments on the council for the bar and the board of governors. 100 percent of the sections are going to be represented at the retreat tomorrow and he wants the board to be represented as much as possible.

Bookman told the board that the special committee to study paralegal regulation is up and running. Ross Goodman has graciously agreed to chair that committee. He said that it's a well balanced committee and if this is any evidence of the good work that going to come out of the committee, they had Representative Zapata and 100 percent of the committee on the conference.

Bookman told the board that the Bar has been asked to take an amicus position on a piece of District of Columbia Bar litigation. Board member David Rothman moved to file the amicus, the board concurred and the motion was approved, with no dissent.

Bookman introduced Ben Crump, immediate past chair of the Virgil Hawkins Florida Chapter of the National Bar Association; he told the board that he had asked him to chair this year's diversity seminary.

20. Legislation Committee Report

Chair Frank Angones reported that the committee had voted to recommend that The Florida Bar adopt the following legislative position:

Supports making DNA testing a permanent and meaningful component of Florida's criminal justice system - to help ensure that the real perpetrators of crimes are punished, that the freedom of innocent people is protected, and that the public's trust and confidence in the judicial process are not diminished.

He told the board that the position came after a recent meeting that he, President-elect Coxe and President Bookman had with Raquel Rodriguez, General Counsel to Governor Bush. Ms. Rodriguez shared with the three that the Governor was preparing to release an executive order prohibiting the destruction of DNA evidence, with certain stipulations, and that neither she nor the Governor favored the incarceration of innocent people. Angones told the board that Steve Metz, the Bar's chief legislative counsel, also advised the committee that Senator Alex Villalobos intended to file a bill to eliminate the deadline for testing DNA, and that there were already 2 similar pieces of legislation filed in the House of Representatives. The board concurred with the committee recommendation and approved the adoption of the legislative position.

President Bookman noted that Rodriguez conveyed that one of the Governor's concerns is that the Bar has not sent many minority applicants for judicial nominating commission positions in the past couple of years. He reported he told Rodriguez the Bar would make its best effort to reach out into the African American community for JNC nominations. Bookman said that he asked that Ben Crump, Immediate

Past-President of the National Bar Association, and June McKinney Bartelle, President of the Florida Association for Women Lawyers, to talk to other minority bars to try to encourage their members to apply. Angones told the board that the committee also discussed the key contact program. He said that it is going to be more pro-active and aggressive than before. Angones also reported that the committee recommended that The Florida Bar News regularly profile a state legislator in the paper, as has been done recently with new House and Senate leadership.

21. Young Lawyer Division Report

President Jamie Moses reported that the YLD Out-of-state meeting will be held in Washington D.C., and the YLD will have a private tour of White House and Capitol.

On March 12, 2005 the Florida Supreme Court modified the PWP rules, and the government deferment has been lifted for anyone who is a government lawyer after 3/12/2005. The YLD board has received quite a bit of resistance. The YLD is having a half day retreat on October 22, 2005 in Tampa, and anyone who has voiced an objection to this process, is invited. We have asked them to attend a PWP first, so they can legitimately comment on it.

In March the Young lawyers are putting on a government symposia at University of Florida on the independence of the judiciary. We will have speakers from the three branches and the discussion will be moderated by one of the University of Florida professors.

Moses told the board that she has appointed four young lawyers to serve as membership outreach. They have one conference call per week on getting people involved in the Florida Bar, minority lawyer, women, men, public sector and private sectors.

The YLD is working on a pamphlet on getting involved in the Florida Bar, a guide to sections and committees and sections. The pamphlet will include information about the Bar, committee appt. process, how to get involved in sections, dues, bar contact person, how to get involved in the big board of governors and on specialty bars. We will try to highlight prominent leaders in the bar and do a biography on them and other prominent leaders in the bar and ask them how they got to where they were and where are they going. We want to give time and pictures and faces of people who have worked their way through the Florida bar. We hope to have done by October board meeting, and will give out to law schools. Moses said that she is speaking at every law school in the state, there are 10 now. She said that the American Bar Association recruit new members at the law schools and a lot of the law students do not even realize that there is a Florida Bar beyond the bar exam.

22. Health Law Section Bylaws– first reading

Within Article II (Purposes), adds a mission statement for the section; within Article IV (Executive Council) deletes outdated provisions dealing with terms of office during the section's first year of existence after adoption of its bylaws; within Article IX (Committees) adds a Communications and Technology Committee, deletes the Substantive Law Committee, renames the Education Committee as the Education, Training and Information Committee, deletes the Nominating and Legislative Committees as full committees, and renames and reconfigures the Section Administration Committee as the Section Effectiveness Committee, to now include Nominating and Legislative Subcommittees; and within Article X (Miscellaneous) revises effective date of bylaws.

23. Tax Law Section Bylaws– first reading

Within Article VI, Section 4, changes the structure of the Federal Tax Division into five separate subdivisions and designated committees, with assistant directors who report to the division director; within Article VIII, Section 3, adds requirement that a proposed legislative position be within the scope of both Articles I and Section I of Article VIII of the section bylaws rather than one or the other.

24. Client's Security Fund Committee– first reading

1) CFS Regulation #14 Definition of Useful Services

Revises regulation that states CSF claims "will be denied" if useful services were performed to a claimant, to read that claims "may be denied" in such instances; adds a definition of useful services.

25. Board of Legal Specialization and Education– first reading

1) Subchapter 6-25 State and Federal Government and Administrative Practice

New subchapter 6-25 setting forth standards to establish new certification standards in state and federal government and administrative practice.

26. Government Law Section Report

Pamela Cichon, Chair of the Government Lawyer section reported that the government lawyer section is probably the most diverse of all of the sections; they have people who practice in all areas of the law, general counsels, county attorneys, city attorneys, prosecutors, public defenders, and others. Cichon stated that all government attorneys basically have the same client, the government is their client, the taxpayers are their client, and everyone is their client.

One thing that the section is very proud of is that they are working to develop a certification. The section is working with administrative section and environmental and land use law section to create a certification for government lawyers. All three sections worked jointly on the content, which has been submitted to BLSE and will be coming to the board soon.

The other thing that the government lawyer section is doing is holding their federal seminar. The last time they held this was two years ago in Washington D.C. where they were able to hear oral arguments at Supreme Court in the Guantanamo case, and some members were sworn in to practice before the court. Cichon said that she has a tentative schedule for the seminar. It will be held from April 19-22, again with arguments before the court and ending with a tour of the capitol building. Everyone, not just government lawyers are invited to attend. Each year, the government lawyers give out the Claude Pepper award to the outstanding government attorney award.

Finally, the government in the sunshine and public records seminar is scheduled for February 2006 and another in June 2006 is on of practicing before the Supreme Court.

27. Special Appointments

- 1) The Florida Bar Foundation – Board of Directors
The board unanimously appointed Michael Faehner to serve remainder of term beginning immediately ending 6/30/06.
- 2) State Wide Nominating Commission for Judges of Compensation Claims
The board unanimously appointed Melanie Jacobson from 4th DCA to serve a 4-year term beginning immediately upon appointment.

28. Time and Place of Next Meeting

The Board of Governors will meet on October 19-23, 2006 at The Club at Hammock Beach in Palm Coast, Florida.

There being no further business the board adjourned at 2:10 PM.

Respectfully submitted,

Dana M. Watson

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