

THE FLORIDA BAR BOARD OF GOVERNORS

Regular Minutes
December 10, 2004
The Ritz Carlton
Naples, 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, December 10, 2004 at The Ritz Carlton in Naples, Florida, with President Kelly Overstreet Johnson presiding.

1. Roll Call

Board members present:

Kelly Overstreet Johnson, President
Alan B. Bookman, President-elect
Ross M. Goodman, First Judicial Circuit
Lawrence E. Sellers, Jr., Second Judicial Circuit
Gregory S. Parker, Third Judicial Circuit
S. Grier Wells, Fourth Judicial Circuit
Henry M Coxe, III, Fourth Judicial Circuit
William H. Phelan, Jr., Fifth Judicial Circuit
Andrew B. Sasso, Sixth Judicial Circuit
Murray B. Silverstein, Sixth Judicial Circuit
Chobee Ebbets, Seventh Judicial Circuit
Robert A. Rush, Eighth Judicial Circuit
Mayanne Downs, Ninth Judicial Circuit
Russell W. Divine, 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
Ervin A. Gonzalez, Eleventh Judicial Circuit
Jennifer R. Coberly, Eleventh Judicial Circuit
Henry T. Courtney, Eleventh Judicial Circuit
Sharon L. Langer, Eleventh Judicial Circuit
Benedict P. Kuehne, Eleventh Judicial Circuit
Steven E. Chaykin, Eleventh Judicial Circuit
Kimberly A. Bald, Twelfth Judicial Circuit
Timon V. Sullivan, Thirteenth Judicial Circuit
John F. Rudy, II, Thirteenth Judicial Circuit
Gwynne A. Young, Thirteenth Judicial Circuit
Clifford W. Sanborn, Fourteenth Judicial Circuit
John G. White, III, Fifteenth Judicial Circuit
Jerald S. Beer, Fifteenth Judicial Circuit
Scott G. Hawkins, Fifteenth Judicial Circuit
James S. Lupino, Sixteenth Judicial Circuit
Nancy W. Gregoire, Seventeenth Judicial Circuit
Henry Latimer, Seventeenth Judicial Circuit
Jesse H. Diner, Seventeenth Judicial Circuit
Frank C. Walker, II, Seventeenth Judicial Circuit
Clifton A. McClelland, Jr., Eighteenth Judicial Circuit
Harold G. Melville, Jr., Nineteenth Judicial Circuit
J. Christopher Lombardo, Twentieth Judicial Circuit
A. Lawrence Ringers, Twentieth Judicial Circuit
Richard A. Tanner, Out of State

Ian Comisky, Out of State
Gary J. Leppla, Out of State
Brian D. Burgoon, Out of State
Michael J. Faehner, YLD President
Jamie Billotte Moses, YLD President-elect
Solomon L. Badger, III, Ed. D., Public Member
J. Blair Culpepper, Public Member

Board members absent:

Michael J. Glazer, Second Judicial Circuit
Amy L. Smith, Fifteenth Judicial Circuit
Alan C. Brandt, Seventeenth Judicial Circuit

Staff attending the meeting:

John F. Harkness, Jr., Executive Director
Tina Ruffin, Assistant to the President
Paul Hill, General Counsel
Dana Riggs, Secretary to the Board of Governors
Mike Tartaglia, Director of Programs Division
Elizabeth Tarbert, Director of Ethics and Advertising
Gary Blankenship, Senior Editor, Florida Bar News
Allen Martin, Division Director Finance and Accounting
Tony Boggs, Director Legal Division
Mary Ellen Bateman, Director, Ethics, Advertising and Professionalism Division
Ken Marvin, Director of Lawyer Regulation
Francine Walker, Director of Public Information

2. Guests

In addition to other individuals indicated hereafter, the following guests were present during the Board meeting:

Deborah Magid, President of Florida Association for Women Lawyers
Roddie Bailey, Citizens forum member
Barry Crown, Citizens forum member
Linda Osmanson, Citizens forum member
Rebecca Frank, Citizens forum member
John Biesinger, Citizens forum member
Dick Myers, Citizens forum member
John Cardillo, Past Board of Governors member
Jane Curran, Florida Bar Foundation, Executive Director
Laird Lile, Chair of the Real Property, Probate and Trust Law Section
George Cesterro, Past Chair of the Family Law Section
Evan Marks, Chair of the Family Law Section
Veronica Valdez, President, Virgil Hawkins, Florida Chapter of the American Bar Association
Terry Russell, President, Florida Bar Foundation
Scott Atwood, President of the Out of State Lawyers Division
Steve Metz, Chief Legislative Counsel
Jim Daughton, Legislative Counsel

3. Invocation and Pledge of Allegiance

Board member Larry Ringers offered the invocation and led the Board of Governors in the pledge of allegiance.

4. Non-roll Call Grievance Items

Board member Grier Wells reported that the non-roll call grievance items were numbers 6, 13, 18, 21, 23, 24, 25, and 26. Number 7 was withdrawn from consideration, and the client security fund items were numbers 1, 9, 12, 38 and 39.

5. Non-Roll call Advertising Appeal Items

Board member Gary Leppla reported that the non-roll call advertising appeal items were: Advertising Appeal 04-00243, 04-00244, 04-02399, 04-02400; and 04-01740, 04-01741, 04-01742, 04-01743, 04-01744. Advertising Appeal 05*-00001 was withdrawn from consideration.

6. APPROVAL OF MINUTES and EXECUTIVE COMMITTEE ACTION

- A. Regular Minutes October 15, 2004 meeting
- B. Grievance Minutes October 15, 2004 meeting
- C. Executive Committee action taken:

Monday, October 18, 2004

Immediate Executive Committee action was asked for by President Kelly Overstreet Johnson to correct an error in BoG action at the Board meeting on October 15, 2004. Although the Board's intentions were clear when it voted to direct funds in opposition to Amendment 3, the Board was misinformed as to the appropriate entity to receive those funds.

On Monday, October 18, 2004, President Johnson had been advised by the Academy of Florida Trial Lawyers that the BoG vote to send \$100,000 specifically to the Consumer Federation of the Southeast would not further the Board's wishes whatsoever.

Consequently, Executive Committee action was necessary to correct the October 15 BoG action, so that a contribution could be sent to the authorized advocacy group - "Floridians for Patient Protection" - the political committee that will be making the media buys urging a "no" vote on Amendment 3 with Academy assistance.

The Executive Committee voted in favor of the corrected action, with an 8-0 vote. The Executive Committee was polled via email and the following members responded: Kelly Overstreet Johnson, Alan Bookman, Mike Glazer, Mike Faehner, Jesse Diner, Jerry Beer, Hank Coxe and Ervin Gonzalez.

Wednesday, October 20, 2004

Two technical errors occurred in the board materials presented for approval at the August 2004 board meeting. The errors involved the recommendations of the Special Committee to Review the ABA Model Rules 2002. The rules that were presented in legislative format failed to reflect two changes that were recommended in the special committee's final report. Although the board had approved the changes, because the board voted to approve the recommendations of the special committee as amended by the Disciplinary Procedures Committee and Bob Brush, the Executive Committee was asked to review and approve the changes as a precaution.

One provision was inadvertently omitted from Rule 4-1.8, imputing conflicts of interest under that rule. The rule covers conflicts of interest such as business transactions with a client, gifts to a lawyer by a client, acquiring literary or media rights of a client, and financial assistance to a client. The second error was the accidental omission of the word "only" in the comment to Rule 5-1.1, clarifying that fiduciary law applies to the lawyer's conduct as opposed to the bar's trust accounting rules when a lawyer serves as an escrow agent but not in any representative capacity.

All members of the Executive Committee approved the changes, with a vote of 11-0.

Wednesday, October 27, 2004

The Appellate Court Rules Committee requested action from the Executive Committee regarding their legislative fast-track proposed amendment to Rule 9.140(c)(1), Fla.R.App.P., under Fla.R.Jud.Admin 2.130(f).

The proposed amendment creates a new subdivision (L) to conform to the creation of section 775.08435 (3), Florida Statutes, by Chapter 2004-2006, Laws of Florida, which allows for state appeals from orders withholding adjudication in criminal cases. The proposed amendment also re-letters subsequent subdivision to reflect new subdivision.

The proposed amendment to Rule 9.140(c)(1) conforms to the new subsection by permitting appeals by the State from orders withholding adjudication of guilt in violation of general law. The new subdivision does not broaden the rule beyond the statute, and was added in response to subsection 775.08435 (3). Because only the Florida Supreme Court, through the Rules of Appellate Procedure, can dictate jurisdiction in a district court of appeal, the proposed amendment is desirable and harmonized the rule with general law.

The Executive Committee voted in favor of the proposed amendment, with a vote of 8-0. The Executive Committee was polled via email and the following members responded: Alan Bookman, Jerry Beer, Hank Coxe, Mayanne Downs, Mike Faehner, Mike Glazer, Ervin Gonzalez and David Rothman.

7. Consent Calendar

The board of governors **approved** the following items:

- a. Rules, Bylaws & Policies
 - 1) Rule 4-8.6 Authorized Business Entities
Within subdivisions (b) - (g) and comment, adds "proprietor" and "proprietor of a solo practice" to those business entities in which lawyers are authorized to practice law.
glitch bill - "proprietor" and "proprietorship" omitted from prior amendments designed to reflect all entities in which lawyers may practice law.
 - 2) SBP 15.55 Deferral of Disciplinary Investigation during Civil or Criminal Proceedings
Adds new language to clarify that bar counsel, with concurrence of the chief branch discipline counsel, may close a civil or criminal discipline file and may decline to reopen the file.
- b. Board Review Committee on Professional Ethics
 - 1) Advertising Appeal 04-02583 and 04-02584
Advertising Appeals 04-02583 and 04-02584 concern application of Rule 4-7.2(c)(11), which states that all information required to be in advertisements be clearly legible. Staff rendered an opinion on June 21, 2004, that two yellow pages advertisements did not comply with Rules 4-7.2(c)(11) and 4-7.3(b) unless the yellow pages directory published the hiring disclosure on the same page as the advertisement in sufficient type size that is clearly legible. The copies of the advertisements enclosed with the original submission contained no hiring disclosure. The attorney requested Standing Committee on Advertising review, enclosing the advertisements as they were published in the yellow pages directory, in which the hiring disclosure as printed vertically up the side of the page. The Standing Committee on Advertising determined on August 3, 2004, that the advertisements did not comply because the hiring disclosure is printed vertically up the side of the page and is therefore not clearly legible. The Standing Committee on Advertising also determined that the filer could not rely on the appearance of the appropriate hiring disclosure in another attorney's advertisement on the same page to comply with the filer's disclosure requirement. 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. The board concurred, voting to affirm the Standing Committee on Advertising decision as part of the board's consent calendar.
 - 2) Advertising Appeal 04-02510

- Advertising Appeal 04-02510 concerns application of the Rule 4-7.2(b)(4), which prohibits visual or verbal depictions that are false, misleading or manipulative and Rule 4-7.2(b)(1)(B), which prohibits statements that create unjustified expectations. At the direction of the Standing Committee on Advertising, staff issue an opinion on August 10, 2004, stating that the direct mail advertisement contained the following two violations:
1. a picture of dice with the language "Why gamble with your future?" and "Don't take the risk" constituted a visual or verbal depiction that is false, misleading or manipulative in violation of Rule 4-7.2(b)(4); and
 2. the language "Why gamble with your future?" and "Don't take the risk" created unjustified expectations in violation of Rule 4-7.2(b)(1)(B).
- The Standing Committee on Advertising upheld staff's opinion on August 3, 2004. 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. The board concurred, voting to affirm the Standing Committee on Advertising decision.
- c. Legislation Committee review
- 1) New Section legislative position requests for the 2004-2006 biennium
 - a. Public Interest Law Section
 - i. Supports the repeal or amendment of 775.0837 F. S. Habitual Misdemeanor offenders to the extent that it affects Florida's homeless population.
 - b. International Law Section
 - i. Supports amending 685.101 F.S. and 685.102 F.S. to give Florida courts jurisdiction to hear contractual disputes involving parties choosing Florida as governing law as a forum for dispute resolution, even where no other contacts may exist with Florida.
 - c. Real Property, Probate and Trust Law Section
 - i. Supports amending 744.107 F. S. to expand the court's power to appoint a court monitor in guardianships of minors or other incapacitated persons and creates 744.1075 F.S. allowing an emergency court monitor to investigate allegations of financial or physical abuse or neglect of wards under the jurisdiction of the court.
 - ii. Supports technical corrections to sections 655.935 F. S., 655.936 F. S., 655.937 F.S., and 73.6065 F.S. to clarify access to safe deposit boxes following the death of the lessee and creating a procedure allowing for an optional inventory by someone other than the personal representative if a safe deposit box is co-leased.
 - iii. Supports amending 718.117 F. S. to provides owners of parcels within a community a practical method to terminate outdated condominium concept.
 - iv. Supports amending 29.007 F. S. to provide authority to appoint and compensate attorneys and professional guardians to serve as guardian advocates and guardian ad litem for indigents in civil commitment and treatment proceedings in proceedings under the mental retardation statutes (ch. 393), Baker Act (ch. 394) and Marchman Act (ch. 397).
- e. The Florida Bar Deferred Compensation Plan
- 1) Secretary's Certificate of the Executive Committee of the Board of Governors of The Florida Bar
 - 2) The Florida Bar Deferred Compensation Plan
- f. General Practice, Solo & Small Firm Practitioners Section Bylaw Changes Within Article II, (Membership), adds the definition and term of office for law

Professor, affiliate members.

8. Young Lawyer Division Report

Michael Faehner, President of the Young Lawyers Division reported that the 1-(800)- number that the YLD and The Florida Bar set up to help hurricane victims, will be phased out. The number received close to 10,000 calls since August 15, 2004. Faehner went on to thank the staff of the Florida Bar for making the program such a success. Faehner thanked the members of local bars and legal aid organizations.

The YLD started the "One Day Can Make a Difference" program and placed close to 100 lawyers in FEMA centers in all three disaster areas. Florida's law schools also stepped up to the challenge and raised nearly \$5,000.

The YLD is now focusing on clothing and book drives, adopting families for the holiday season, and offering counseling services for lawyers who might need it and offering services for mediation programs if the circuits need it.

Approximately 2 weeks ago, the YLD held the first hurricane summit ever with the Florida Bar Foundation in which all the members sat down together and shared their experiences and suggestions.

Faehner told the committee that the YLD will take part in oral arguments on January 11, 2005 concerning Practicing with Professionalism. There have been additional filings from criminal law section and from the public defenders.

Faehner told the board that the YLD would most likely be asking the board for permission to lobby in support of Senator Skip Campbell's bill relating to student loan repayment.

The YLD donated \$6,000 to local bar chapters for a "Christmas in January" program, and \$1,000 for pro bono lapel pin project. It also donated \$3,000 to the center for professionalism to help sponsor their awards. The YLD is working with annual meeting committee to make Annual more family friendly. In addition, the YLD has recently given \$1,500 to the Florida skin cancer foundation for skin cancer awareness.

Finally, Faehner told the board that the YLD established a high school moot court competition in all five DCA,s pursuant to a request form Chief Justice Pairente.

9. Budget Committee Report

a. 2004-2005 Budget Amendments

Chair Jerry Beer reported on the following budget amendments that the budget committee recommended that the board adopt. The board concurred and approved the following budget amendments:

- | | | |
|----|---------------------------------|---------------------|
| 1) | Tax Law Section | \$65,000 |
| 2) | Health Law Section | |
| 3) | Course Approval | \$31,346 fund shift |
| 4) | Web Security Enhancements | \$76,348 |
| 5) | Advertising Survey | \$52,700 |
| 6) | Diversity Symposium | \$10,000 |
| 7) | Judicial Independence Committee | \$6,470 |
| 8) | Membership Outreach | \$10,000 |

b. Items on **second reading -Approved**

- 1) SBP 6.21 CLE - Authority for CLE Courses - Division, Section and Committee Programs
Deletes subdivision (d), "Section Certification Review Programs," which allows sections to provide certification review programs independent of CLE Committee control; reformats remainder of existing policy as necessary to accommodate these proposed changes.
- 2) SBP 6.30 CLE - Fees for CLE Courses
Increases the base CLE course fee to not less than \$105.00 per day, from the current \$85.00 amount; amends the surcharge for non-members of sponsoring section attending Bar CLE courses to \$25.00, from the current \$15.00 amount.

- 3) SBP 6.31 (b) Distribution of Proceeds - YLD course fees
Adds new subdivision (a)(1)(B), to allow for the capping of proceeds if the total gross fees for a CLE course, after subtraction of allowable expenses, are less than the percentage share specified in subdivision (a)(1)(A).

10. Communications Committee Report

Vice Chair Kimberly Bald reported that the committee met on Thursday, December 9, 2004, with the Citizens Forum. The committee reviewed the written report on the forum's study of the legal needs of children, particularly children who are victims or witnesses of domestic violence, from the October 2004 Citizens Forum meeting and referred the report to the Committee on the Legal Needs of Children. The committee saw a PowerPoint presentation on the public relations efforts being accomplished on behalf of the Board of Legal Specialization and Education (BLSE). Bald said that the marketing consultant working on the project has done an excellent job of identifying BLSE's targeted audience.

Bald updated the board about the Florida Bar web site redesign project. The search resulted in the selection of 3W Studios which will begin working with Bar staff on Monday, December 13, 2004. The project is anticipated to last 16 weeks. The committee discussed forming a test group of Bar members and web site users to review proposed web site changes and to make sure the redesign and reorganization are successful. The committee also discussed the feasibility of including a link from the Bar web site to members' own web sites, including whether there should be a fee for providing the links and questions about complying with attorney advertising rules. Bald reported that the Reporters' Workshop, held December 2-3, 2004, was successful. There were 18 reporters in attendance, a lower number than usual due to limited media resources as a result of the hurricanes that hit Florida this fall.

11. Advertising Task Force Report

Chair Manny Morales reported to the board that the Advertising Task Force 2004 is charged with reviewing the attorney advertising rules and recommending changes to the rules if deemed necessary, including any changes to clarify the meaning of the rules and provide notice to Florida Bar members of the rules' requirements. Included within this charge is an analysis of the advertising filing and review requirement, including consideration of mandatory review prior to dissemination of advertisements. Morales reviewed the following proposed changes with the board:

4-7.1

Adds that subchapter 4-7 applies to Florida bar members who advertise in Florida [subdivision (b)]

Adds that subchapter 4-7 applies to out of state lawyers who advertise to provide authorized services on a regular or permanent basis in Florida [subdivision (c)]

Adds that subchapter 4-7 does not apply to communications between lawyers [subdivision (e)]

Adds that subchapter 4-7 does not apply to communications between a lawyer and the lawyer's own family members [subdivision (f)]

Adds that subchapter 4-7 does not apply to communications between a lawyer and the lawyer's own current and former clients [subdivision (g)]

Adds that subchapter 4-7 does not apply to communications at a prospective client's request [subdivision (h)]

Adds that the general prohibition against conduct involving dishonesty or misrepresentation applies to all communications by a lawyer [subdivision (i)]

Adds commentary that the lawyer advertising rules do not apply in situations addressed by subdivisions (e) through (i) above [comment]

4-7.2

Reorganizes rule to first set forth required information in subdivision (a), then permissible content in subdivision (b), then general regulations in subdivision (c)

Deletes the requirement that qualifying language appear with a local telephone number where the lawyer does not have a local bona fide office [subdivision (a)(2)]

Divides permissible content into two subdivisions to address permissible content for lawyers [subdivision (b)(1)] and lawyer referral services [subdivision (b)(2)]
Adds to permissible content of advertisements military service [subdivision (b)(1)(D)], punctuation marks and common typographical marks [subdivision (b)(1)(L)], the statute of liberty, the American flag, the American eagle, the State of Florida flag, an unadorned set of law books, the inside or outside of a courthouse, column(s), and diploma(s) [subdivision (b)(1)(M)]
Consolidates and deletes redundant information in the prohibition against misleading information [subdivision (c)(1)]
Deletes references to “unfair” advertising [subdivision (c)(1) and comment]
Deletes references to statements that are “likely to create an unjustified expectation about results the lawyer can achieve” [current subdivision (c)(1)(G); former subdivision (b)(1)(B)]
Adds prohibition against statements that “guarantee results” [subdivision (c)(1)(H)]
Consolidates the prohibition against misleading illustrations and against misleading visual and verbal portrayals [subdivision (c)(3)]
Deletes the prohibition against advertising for cases in an area of practice that the lawyer does not currently practice in [former subdivision (b)(5)]
Deletes as redundant the prohibition against requiring all ads to conform to the requirements of advertising areas of practice [former subdivision (c)(2)]
Adds prohibition against using terms such as “expert” or “expertise” unless the lawyer is board certified [subdivision (c)(5) and comment]
Deletes requirement of a disclosure that the lawyer intends to refer cases to another lawyer [former subdivision (c)(8)]
Deletes requirement that required information appear in type size at least one quarter the size of the largest type used in the advertisement, leaving the requirement that all required information be clearly legible [subdivision (c)(10) (former subdivision (c)(11))]
Reorganizes general regulations to move all issues regarding content to the beginning of the rule and other prohibitions to the end of the rule [subdivision (c)]

4-7.3

Deletes the required hiring disclosure [former subdivision (b) and comment]

4-7.4

Provides 3 alternatives for the 30 day rule: (1) leave as is, applying 30 day rule to personal injury/wrongful death type cases only; (2) extend 30 day rule to criminal cases; and (3) extend 30 day rule to criminal cases and civil traffic infractions [subdivision (b)(1)(A) and comment]

Deletes prohibition against “unfair” statements or claims [subdivision (b)(1)(E)]

Moves direct mail ad retention provision from subdivision (b)(2)(C) to Rule 4-7.7(h)

Adds definition of “prior professional relationship” [comment]

Adds that terms such as “public records” and “court records” do not sufficiently disclose where the lawyer obtained the information prompting the direct mail communication

[comment]

4-7.5

Deletes requirement that a nonlawyer spokesperson provide an affirmative disclosure that the person is not a lawyer and not a member of the firm except in ads where it is unclear from the context that the spokesperson is not a lawyer [subdivision (b)(2)(B) and comment]

Deletes provision defining “member” of a law firm as obsolete in light of Supreme Court changes to Rule 4-7.5 from May 2004 [comment]

4-7.6

Deletes requirement that websites sponsored by a lawyer disclose all jurisdictions where the lawyer is licensed to practice [former subdivision (b)(1)]

Deletes requirement that websites sponsored by a lawyer disclose 1 or more bona fide offices [subdivision (b)(2)]

Adds that direct mail sent electronically is subject to rule 4-7.2 [subdivision (c)(1)]

Adds that examples of computer-accessed communications include pop-up ads and

banner ads [comment]

4-7.7

Adds that filings must be made to Florida Bar Headquarters address [subdivision (a)]

Adds that a complete filing must include an accurate English translation if the ad appears in another language [subdivision (b)(3)]

Makes findings of compliance by The Florida Bar binding on The Florida Bar in grievance proceedings, except where misrepresentations are not apparent on the face of the ad [subdivision (f)]

Adds commentary regarding a safe harbor to encourage lawyers to file their ads and receive approval in advance of using the ads [comment]

At the request of the Board of Governors and by vote of 8-7 of the task force members, two draft alternatives for prior review are also posted for comment by bar members

4-7.8

Adds that a public service announcement may contain any permissible content of advertising [subdivision (b)]

Deletes as redundant that communications sent only to existing clients, former clients or other lawyers are exempt from filing [former subdivision (d)]

Deletes as redundant that communications at a prospective client's request are exempt from filing [former subdivision (e)]

Deletes as redundant that websites sponsored by a lawyer or law firm are exempt [former subdivision (g)]

4-7.9

Deletes rule in its entirety as redundant in light of new Rule 4-7.1(h)

4-7.10

Renumbers rule to 4-7.9, but no substantive changes

4-7.11

Renumbers rule to 4-7.10

Adds that lawyer referral services must affirmatively state that they are lawyer referral services [subdivision (a)(10)]

Morales stated that he had attended a meeting of the Citizens Forum the previous day to discuss these changes. Concerns expressed by the Citizens Forum included:

- the advertising rules should be simplified;
- the advertising rules should focus on protection of the public from misleading information and protection of the integrity of the profession;
- violations of the rules should have swift and severe consequences; and
- websites should be regulated in the same manner as other advertisements.

Board member Comisky stated that the task force should review the advertising rules in light of the First Amendment.

Board member Lindsey expressed concern about extending the 30 day rule to criminal cases, but suggested the task force consider requiring criminal defense lawyers to determine whether a person is represented before sending a direct mail communication.

In response to a question by board member Leppla, Morales stated that the issue of the constitutionality of the advertising rules has been discussed at length by the task force.

Board member Gregoire stated that she shared the concerns of the Citizens Forum that websites should be regulated in the same manner as other forms of advertising.

In response to a question by President-elect Bookman, Ethics Counsel responded that the task force discussed the definition of lawyer referral service in current Rule 4-1.11, but decided against recommending any changes to the rule.

In response to a question by board member Tanner concerning the violators of the old rules, vice-chair Ebbets responded that the task force has not discussed that, because it is the board's responsibility to determine policy and enforcement issues.

The task force expects to make a final report to The Florida Bar Board of Governors for first reading at its January 2005 meeting and for final action in April 2005.

12. Citizens Forum Report

Chair Jim Lupino reported that the Citizens Forum met and discussed the task of the Advertising Task Force. After reviewing the rules regarding attorney advertising, the forum concluded that there are too many rules and regulations for the Bar to effectively enforce. The forum believes that the rules should be more simplistic, and when an attorney violates the rules, the enforcement and punishment should be swift. The forum believes that advertising on the internet should be treated the same as advertising with all other forms of media. Morales answered questions from many of the board members concerning topics such as: rules for referral and certification services, how to handle the transition and the violators of the old rules and when the new rules would take effect, and finally elimination of the disclosure language. President Johnson encouraged the board to take any other questions directly to Lupino for him to take back to the Citizens forum.

13. Investment Committee Report

Jay White, chair of the Investment committee, reported that the bar's long term investments are up by \$812,000 for the third quarter which is up 5.26% from the last quarter. Year to date the long term account has \$16,835,000, which is a \$1,200,000 or 7.7% increase from the last quarter. The bar's short term investments are up by \$307,000 for the third quarter, increasing those funds to over \$20,000,000. The committee will be rebalancing some of the short term funds to stay within Bar policy.

White made a motion to terminate the TCW midcap growth fund. The motion carried and the board voted not to terminate until a replacement had been found.

14. Program Evaluation Committee

Chair Richard Tanner reported that the Program Evaluation committee met and discussed the following items. The committee recommended and the board concurred with the following actions.

- A. Review of BLSE amendment to Rule 6-3.5(c)(1) – **on first reading- waiver of 2nd reading and final action- Approved**
Within subdivision (c) adds new language to allow lawyers who have been practicing abroad and are applying or law certification to count that practice toward the 5-year practice requirement within the state of Florida, if provided for elsewhere within these rules.
- B. Consideration of a proposed Special Committee to Study the Constitutional Amendment Process – **Approved**
- C. Consideration of a proposed Committee on Judicial Independence – **Approved**
- D. Continuation of review of Certification Standards and Requirements of Various Committees – **still under review.**
- E. Review of The Florida Bar meeting structure – **still under review**
- F. Reexamination of September 2003 PEC decision on Voluntary Bar Underwriting Grant Program – **Temporarily Postponed**

15. Special Appointments

The board elected the following people to be appointed to the following:

- a. Florida Realtor-Attorney Joint Committee
William J. Haley
Raymond J. Bowie
Thomas D. Wright
Gary J. Nagle
G. Thomas Ball
- b. Florida Rural Legal Services, Inc. Board of Directors

- c. Elizabeth Ricci
Eleventh Circuit Judicial Conference
Michael S. Olin
- d. Florida Judicial Qualifications Commission
John P. Cardillo

16. President-elect Report

President-elect Alan B. Bookman reported that the Special Committee to Study the Constitutional Revision Process was approved by the Program Evaluation committee and the Budget committee, as well as the board. Bookman appointed the following board members to the committee: Hal Melville, Chair; J. Blair Culpepper; Ross M. Goodman; Nancy W. Gregoire; Scott G. Hawkins; J. Christopher Lombardo; Lawrence E. Sellers, Jr.; and S. Grier Wells. Bookman anticipates that the committee will have a report for the board by late August 2005.

Bookman reported that the bar's membership outreach is having a positive effect. The goal is to create a more inclusive Bar. He reported that the board members had gone to many voluntary bar association events and their presence is being felt. Bookman went on to encourage all members of the board to engage in Bar activities.

Bookman reported that about in mid-November the executive committee, sitting as strategic planning committee, reviewed what was adopted last year. He said that the Bar has made a lot of strides as far as our strategic plan is concerned.

Bookman told the board that the dates and locations of the 2005-06 board meetings had been set and they are as follows: August 24-28, 2005 in St. Petersburg, FL; October 19-23, 2005 in Palm Coast, FL; December 13-18, 2005 in New Orleans, LA; February 16-17, 2006 in Tallahassee, FL; April 5-9, 2006 in Coral Gables, FL; May 31-June 4, 2006 in Key West, FL.

Bookman noted that President-elect designate Hank Coxe received the Equal Justice award from the Jacksonville Legal Aid, and the 2004 Presidential Award from the Jacksonville chamber of trial advocates.

Bookman told the board that United States Supreme Court Justice Anthony Kennedy will be the keynote speaker at the general assembly during the 2005 General Assembly.

17. The Florida Bar Foundation Report

Terry Russell, President of the Florida Bar Foundation reported that the board of the Florida Bar Foundation was made up of 31 members, including the Bar's past president, Miles A. McGrane, III, the Bar President, Kelly Overstreet Johnson, and the Bar President-elect, Alan B. Bookman. He told the board that there were many past BoG members on the Foundation board.

Russell told the board that the Foundation had distributed approximately \$7,900,000 in grants in the prior week. The Foundation gave \$697,000 to help with the legal needs of children and \$74,375 to 28 staff attorneys to help pay back the attorney's student loans. They also gave three grants for administration of justice, including \$20,000 for a disability independence group; will contribute \$25,000 towards the second phase of tax watch research and \$5,000 for annual workshop for journalists.

In June, the Foundation will have contributed \$40,000 to local bars for their community service programs.

Russell also reported on long range planning including plans for hurricane relief. As additional sources for support the Foundation wants a \$250,000 reserve for legal services for hurricane and disaster victims and money for legal aid offices that are damaged or destroyed.

Russell spoke to the board about the Foundation annual report. He said that although bank interest rates remain low, IOTA interest rates increased by more than \$2.1 million as a result of policy changes last June. The Foundation worked with banks and ended the practice of allowing deductions that exceeded interest earned on IOTA accounts.

The net result of that was an additional \$2.1 million for the Foundation. This was accomplished with the cooperation of the Florida Bankers Association.

The Foundation is looking at how banks set interest rates on IOTA accounts. There are currently 23,000 IOTA accounts worth \$3.61 billion. The average interest rate is less than one half of one percent, after expenses its 40 basis points. It's clear that banks annually earn hundreds of

millions of dollars in interest on iota accounts. Additionally, a source of future revenue which the Foundation is truly excited is the "Kids Deserve Justice" license plate. Representatives from the Foundations were present at the Florida cabinet meeting when the plate was approved. The Foundation is grateful that the plate was approved. There needs to be 8,000 plates sold over five years to keep it going and the Foundation is optimistic.

Russell reported on the Civil Legal Assistance Act. Over the past three years, it has received \$4.5 million from the state of Florida. This year the Foundation is optimistic that it can finally expand the program on a statewide basis so that all legal aid agencies in Florida will be able to benefit from it. The Foundation is recommending that the Attorney General's office include Civil Legal Assistance in its budget. Attorney General Crist has reacted positively when approached with the idea.

18. Audit Committee Report

Chair Russ Divine reported that the Audit committee met and reviewed the audit report by Carr, Riggs and Ingram. Rick Weidner, from Carr, Riggs and Ingram attended the meeting and went through the Bar's financial statements with the committee. Divine told the board that the report was clean and that the Bar is on solid financial ground. Divine reported that revenues were up compared to last year because the Client Security Fund is back to its normal level, where it had been below average the prior year.

In May, the Bar retained the firm of Thomas, Howell and Ferguson to conduct a review of the Bar's internal controls. It was a very good report. It was very complimentary of Bar management; the Bar has a high level of control in its system, and has strong board involvement in its budget process. They suggested: the Bar create a process of ongoing review of its internal controls; create a charter controls succession plan for senior management; strategic planning for senior management; and a benchmarking system to compare results to previous years or other bar associations.

21. Disciplinary Procedure Committee Report

Chair Greg Parker reported on the following items:

a. Items on **second reading** -

- 1) Rule 4-1.5(i) Fees & Costs **referred back to disciplinary procedure committee**
Creates new subdivision (i) – "Arbitration Clauses" – that would add language permitting lawyers to contract with clients to resolve any fee dispute that may arise, through mandatory arbitration; prohibits such arrangements unless the lawyer first advises the affected person in writing of the opportunities of independent representation; sets forth required language for any such attorney-client agreement; proposed as companion to suggested amendments in rule 4-1.8(h).
- 2) Rule 4-1.8(h) Conflict of Interest; Prohibited and Other Transactions (Limiting Liability for a Malpractice) – **referred back to disciplinary procedure committee**
Within subdivision (h), adds new language that would permit lawyers to contract with clients to resolve any fee dispute that may arise, through mandatory arbitration; prohibits such arrangements unless the lawyer first advises the affected person in writing of the opportunities of independent representation; sets forth required language for any such attorney-client agreement; proposed as companion to suggested amendments creating new rule 4-1.5(i).
- 3) SBP 15.75 Lawyer Regulation Policies - Disciplinary Action on Malpractice/Incompetence - Policy on Review of Continuing Complaints
New policy, codifying procedures and policies regarding the review of closed inquiries and disciplinary files when further action is requested by a complaining witness or other individual. **Approved**

b. Items on **first reading** -

- 1) Rule 1-3.5 Retirement **waiver of 2nd reading and final action- Approved**

Deletes requirement of board review and approval of petitions for retirement and for reinstatement there from; authorizes executive director to individually act on such matters instead but still allows for board action in cases of doubt; clarifies that denial of a petition for retirement or reinstatement by either authority may be reviewed by petition to the Supreme Court of Florida.

- 2) Rule 1-3.6 Delinquent Members **Board member Cliff McClelland made a motion to send this rule back to the rules committee. The motion carried and the amendment to Rule 1-3.6 will go back to Rules.**
Reorganized and rewritten to more clearly specify those instances in which a member shall be deemed delinquent; includes delinquency language moved from rule 1-7.3(a) and adds failure to pay fees associated with diversion or a fee arbitration award as specific bases for delinquency.
 - 3) Rule 1-7.3 Membership Fees; Membership Fee Requirement - **2nd reading and final action- Approved**
Consistent with proposed changes in rule 1-3.6, deletes language in subdivision (a) relating to membership delinquencies, now relocated in rule 1-3.6; deletes other verbiage in (a), to effectively allow the Bar to accept membership fees from delinquent members.
- c. Items on **first reading**
- 1) SBP 15.10 Waiver of Disqualification as Attorney for Respondent
Adds new subdivision (c), to revise current prohibitions and allow a member of a board member's firm to represent a disciplinary respondent in limited instances – if the respondent is a member of the board member's firm, if representation of the respondent predated the board member's initial date of board service and refusal to allow continued representation would work a substantial hardship on the respondent, or if representation of the respondent predated the time when the board member and respondent's counsel became members of the same firm and refusal to allow continued representation would work a substantial hardship on the respondent; adds new subdivision (h), to clarify that if a waiver is granted hereunder the affected board member shall be recused from additional Bar participation in the matter per policy 15.20 and further screened from the law firm's files and representation; adds new subdivision (k), specifying procedures for review of and action on any request for waiver hereunder; other edits attempt to clarify current subdivision titles or reformat remainder of existing rule to accommodate these proposed changes.
 - 2) SBP 15.20 Recusal of Board Members
Consistent with proposed changes in policy 15.10, adds language within subdivision (a) to clarify that the president or presiding officer may order recusal of a board member in a disciplinary matter upon concurrence of a majority of the board; further clarifies that a recused member may not participate in any manner of discussions with any member or group of members of the board concerning the matter; adds new language stating that a recused member should not be present when the matter is being debated by the board.
 - 3) Rule 3-5.1 Generally
Within subdivision (b) (3), adds language to clarify that respondent is responsible for \$1250 administrative fee if guilty of minor misconduct.
 - 4) Rule 3-5.2 Emergency Suspension and Probation
Revises subdivision (a) and creates new subdivision (b), to allow for separate criteria for petitions for emergency suspension and for interim probation; amends rule title and subtitles accordingly and reformats remainder of existing rule as necessary to accommodate these proposed changes; within former subdivision (d) – new (e) – deletes confusing language that suggests the bar must proceed to trial within 60 days of any emergency order.
 - 5) Rule 3-7.16 Limitation on Time to Bring Complaint

The current maximum time to bring a disciplinary complaint is 6 years. That time was adopted as it is consistent with IRS record retention requirements and the 6-year requirement in the RRTFB for maintaining trust accounting records.

President Johnson asked the DPC to review the rule against the statute for professional malpractice claims and determine if any amendment to the rule is needed. President Johnson suggested the 6 year time is too long and the statutory time requirement provides more reasonable times.

The DPC declined to recommend any change to the length of the current time limit, but is reviewing amendments to (a) to address the issue of reopening previously timely initiated investigations, including reopening investigations closed by deferral to other authorities.

6) Rule 3-7.5 Procedures before the Board

Within subdivision (a), clarifies that a request by a designated reviewer for grievance committee reconsideration or referral to the disciplinary review committee shall be submitted to bar counsel; defines "in writing" for purposes of this subdivision; clarifies how bar counsel processes requests for reconsideration, to include notice to respondent and complainant; confirms that procedures in rule 3-7.4 apply to reconsideration, and that the bar – as a part in disciplinary matters – has no authority to adjudicate rights; other edits attempt to clarify current verbiage or reformat remainder of existing rule to accommodate these proposed changes.

20. Unlicensed Practice of Law Report

Mary Ellen Bateman, Director, Ethics, Advertising and Professionalism Division reported on the following item:

a. Items on **first reading** -

1) Rule 10-7.2 Proceeding for Indirect Criminal Contempt- **waiver of 2nd reading and final action- Approved**

Within subdivision (b), conforms requirements and determination of indigent status to new statutory criteria in §27.52, F.S.; replaces "accused" with "respondent" to make rule verbiage consistent with other language used throughout the remainder of the rule.

21. Report of Board Review Committee on Professional Ethics

Chair Gary Leppla reported on the following items:

a. Ethics Appeal 25457

On May 19, 2004, the inquiring attorney requested a written staff opinion regarding listing a retired member of The Florida Bar as "of counsel" on a law firm's letterhead. Florida Bar Staff Opinion 25457 concludes that a retired member of The Florida Bar may not be listed on his sons' letterhead as "of counsel" because the retired attorney is ineligible to practice law and has never practiced law with his sons. The sons became members of The Florida Bar after the father retired from the practice of law. On June 29, 2004, the attorney requested Professional Ethics Committee review of the staff opinion. The Professional Ethics Committee affirmed the staff opinion at its meeting of October 1, 2004. The attorney subsequently requested Board of Governors review.

The Board Review Committee voted 6-0 to affirm the staff opinion concluding that the retired lawyer cannot be "of counsel" to his sons' law firm, because the retired attorney is ineligible to practice law.

The board concurred in the recommendation of the committee.

b. Ethics Appeal 25570

On July 19, 2004, the inquiring attorney requested a written staff opinion concerning charging hourly fees in personal injury cases. Florida Bar Staff Opinion 25570 concludes that the inquirer's proposal, which contemplates deferring payment until the conclusion of the case and waiving fees where there is no recovery, is a contingent fee subject to Rule

4-1.5(f). On August 10, 2004, the attorney requested Professional Ethics Committee review of the staff opinion. The Professional Ethics Committee affirmed the staff opinion with modification at its meeting of October 1, 2004. The Professional Ethics Committee modified paragraph 1 of the conclusion of the opinion by deleting the phrase "where there is clear certainty of recovery (e.g. policy limits have been offered)" and stating that the contingent fee schedule applies to employment cases only where there is an element of personal injury. The attorney subsequently requested Board of Governors review. The Board Review Committee on Professional Ethics voted 5-1 to affirm the staff opinion. The board concurred in the recommendation of the Board Review Committee on Professional Ethics.

- c. ADVERTISING APPEALS 04-00243, 04-00244, 04-02399, and 04-02400
Advertising Appeals 04-00243, 04-00244, 04-02399, and 04-02400 concern application of Rule 4-7.2(b)(4), which prohibits visual depictions that are false, misleading or manipulative. Advertising Appeals 04-02399 and 04-02400 also concern application of Rule 4-7.5(b)(1)(A), which prohibits features in television advertisements that are deceptive, misleading, manipulative, or likely to confuse the viewer. Advertising Appeal 04-02400 also concerns application of Rule 4-7.5(b)(1)(C), which prohibits the use of background sound other than instrumental music, and Rule 4-7.2(b)(1)(B), which prohibits statements creating unjustified expectations.
- Staff rendered an opinion on August 13, 2003, that two television advertisements filed by a lawyer referral service contained visual images of a father and child in a wheelchair and children on a playground (file number 04-00243) and a mother and infant in a stroller and children on a playground (file number 04-00244), in violation of Rule 4-7.5(b), among other violations. The Standing Committee on Advertising upheld staff's opinion on October 15, 2003, but declined to address the issue of whether the images violated Rule 4-7.2(b)(4), because the issue was moot in light of Rule 4-7.5(b). At that time, Rule 4-7.5(b) prohibited any visual images in a lawyer referral service advertisement other than a lawyer or nonlawyer spokesperson in front of a single solid color, or a plain, unadorned set of law books. The filer subsequently requested Board of Governors review, limiting the request for review to the issue of whether the visual images in the television advertisements violate any Florida Bar rules and whether enforcement of the rule should be suspended. At its April 2, 2004 meeting, the board voted to petition the Supreme Court for an administrative order allowing The Florida Bar to suspend enforcement of the portion of Rule 4-7.5 restricting visual images to the lawyer pending the Supreme Court's order on the amendments to Rule 4-7.5 that were before the court in case number SC03-705. The board further voted to refer back to the Standing Committee on Advertising the issue of whether the visual images in the television advertisements comply with Rule 4-7.2(b)(4). In the interim, the Supreme Court of Florida adopted new rules on May 20, 2004. Rule 4-7.5 was amended to allow any visual images in television advertisements that are otherwise in compliance with the rules, mooting the board's request regarding enforcement of the rule. On June 24, 2004, the Standing Committee on Advertising voted to affirm the staff opinion that the two advertisements violated Rule 4-7.2(b)(4) in response to the board's referral.
- At the Standing Committee on Advertising's direction, staff issued an opinion on August 3, 2004, that the television advertisements in file numbers 04-02399 and 04-02400 contained visual images that violated Rules 4-7.2(b)(4) and 4-7.5(b)(1)(A), which prohibit visual portrayals that are manipulative. The committee also directed that the staff opinion conclude that file number 04-02400 contained background sounds other than instrumental music, in violation of Rule 4-7.5(b)(1)(C) and contained language that creates unjustified expectations.
- On October 13, 2004, the Standing Committee on Advertising affirmed the staff opinion in file numbers 04-02399 and 04-02400.
- The filer subsequently requested Board of Governors review of the committee's decision regarding all the advertisements.

Key Issues:

- 1) Are the following visual portrayals manipulative in violation of Rules 4-7.2(b)(4):
 - a) father with child in wheelchair (file no. 04-00243)
 - b) distressed mother with child in stroller (file no. 04-00244).
- 2) Are the following visual portrayals manipulative in violation of Rules 4-7.2(b)(4) and 4-7.5(b)(1)(A):
 - a) Elderly person with head down in wheelchair with oxygen (file no. 04-02399)
 - b) Elderly person in hospital bed (file no. 04-02399)
 - c) Elderly person looking out of hospital or nursing home window (file no. 04-02399)
 - d) Flashing, swirling light from police car or ambulance (file number 04-02400)
 - e) Crashed car and ambulance at accident scene with yellow tape and flashing light (file number 04-02400)
 - f) Victim being loaded for transport by helicopter to hospital (file number 04-02400).
- 3) Are the following (from file number 04-02400) sounds other than instrumental music in violation of TV Rule 4-7.5(b)(1)(C):
 - a) heartbeat
 - b) siren.
- 4) Does the following language from file number 04-02400 create unjustified expectations in violation of Rule 4-7.2(b)(1)(B):
 - a) You have the right to be compensated.
 - b) You have the right to be compensated. It's the law.
 - c) Get the legal advice you need, free.

The Board Review Committee on Professional Ethics voted 6-0 recommend that the board affirm the Standing Committee on Advertising's decisions as to all issues. The board concurred in the committee's recommendation.

- d. ADVERTISING APPEALS 04-01740, 04-01741, 04-01742, 04-01743, 04-01744 Advertising Appeals 04-01740, 04-01741, 04-01742, 04-01743, 04-01744 concern application of Rule 4-7.5(b), which prohibits background sounds other than instrumental music. Staff rendered an opinion on May 3, 2004, that the television advertisements contained the sound of human voices vocalizing, in violation of Rule 4-7.5(b), which prohibits all background sound other than instrumental music. The Standing Committee on Advertising upheld staff's opinion on June 24, 2004. 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 and refer the issue to the Advertising Task Force 2004 to consider addressing the issue of human vocalization without words in Rule 4-7.5. The motion failed.

A motion was made, seconded, and passed to reverse the Standing Committee on Advertising decision and to refer the issue to the Advertising Task Force 2004 to consider addressing the issue of human vocalization without words in Rule 4-7.5. The board determined that the sound of human voices vocalizing without words is instrumental music, in compliance with Rule 4-7.5(b).

22. Report of Probate Rules Committee

Tami Foley Conetta reported on the proposed two-year cycle amendments to Florida Probate Rules. She reported that there were a number of rule changes and a couple of new rules. The committee is still correcting some glitches from the rewrite of the probate code a couple years ago. The board voted 35-0 to approve the changes.

23. Legislation Committee Report

Chair Sharon Langer reported to the board that the committee recommended the board deny the requests of the Family Law Section, the Public Interest Law Section and the Equal Opportunities

Law Section to lobby the legislature to repeal 63.042(3) F.S. Florida Statute 63.042 (3) is the statutory ban on homosexual adoptions. Many board members spoke on the issue during a two hours of debate. The board thereafter concurred with the committee recommendation and voted 31-13 to prohibit the sections from lobbying to repeal 63.042(3) F. S. because the issue is one that carries the potential of deep philosophical or emotional division among a substantial segment of the membership of the bar.

Langer told the board that the committee recommended the approval of the following legislative position requests for the 2004-2006 biennium. The board concurred with the committee recommendation.

2. Opposes amendments to the Florida Constitution that would alter the authority of the Supreme Court of Florida to regulate the admission of persons to the practice of law or the discipline of persons admitted.
3. Opposes amendment of Article V, Section 2(a) of the Florida Constitution which would alter the Supreme Court's authority to adopt rules for practice and procedure in all courts, or which would change the manner by which such rules may be repealed by the legislature.
4. Supports the most restrictive limitations on lawyer advertising consistent with constitutional requirements.
5. Supports adequate funding of the state courts system, state attorneys' offices, public defenders' offices, and court-appointed counsel.
6. Supports adequate funding for civil legal assistance to indigent persons through the Florida Access to Civil Legal Assistance Act.
7. Supports language in the Legislative Appropriations Act to permit the payment of government attorneys' Florida Bar membership fees and continuing legal education costs from funds within budget entities.
8. Supports federal legislation to amend §120 of the Internal Revenue Code to restore, increase and make permanent the exclusion from an employee's gross income of employer contributions to group legal service plans.
9. Supports adequate funding of the Legal Services Corporation by the federal government, and opposes any funding cuts.
10. Opposes the Federal Trade Commission's interpretation that law firms and attorneys who are "significantly engaged in financial activities" are subject to the customer notice provisions of the Gramm-Leach-Bliley Act of 1999 (also known as the Financial Industries Modernization Act) regarding the protection and disclosure of individually identifiable personal client information.
11. Supports legislation consistent with the Supreme Court of Florida's November 30, 2004 certification of need for additional judges.

24. Board of Legal Specialization and Education Policies

Board liaison Ben Kuehne reported to the board on the following items:

- a. Items on **second reading - Approved**
 - 1) Rule 6-3.5 Legal Specialization and Education Programs - Florida Certification Plan - Standards for Certification
Within subdivision (d), adds language in (1) to require substantial involvement in a "particular area" of law instead of the general term "practice" of law; adds new language in new subdivision within (5) to allow certification without examination in limited circumstances as permitted by individual area standards.
 - 2) BLSE Policies - 500 Series - Course Approval
 - a) Policy 5.01 Course Approval Administration
 - b) Policy 5.02 Member Submissions for Course Evaluation and Credit
 - c) Policy 5.03 Course Approval Standards
 - d) Policy 5.04 Credit Approval
 - e) Policy 5.05 Credit for Other CLE Activities
 - f) Policy 5.06 Complimentary Audiotapes

Throughout the 500 series, proposes new fee structure for course evaluation; adds other minor adjustments to various policy provisions to specify credit assignments for particular educational activities.

The board approved the rule amendment and the BLSE policy changes 37-0

25. Rules of Judicial Administration Committee

Board liaison Timon Sullivan reported on the proposed two-year cycle amendments to the Rules of Judicial Administration. The board approved the amendments 30-0.

26. Report of Family Law Rules Committee

Board liaison Nancy Gregoire reported on the proposed two-year cycle amendments to Florida Family Law Rules. The board approved the amendments 30-0.

27. Report of Civil Procedure Rules Committee

Board liaison Ervin Gonzalez reported on the proposed two-year cycle amendments to Florida Rules of Civil Procedure. The board approved the amendments 33-0

28. Report of Small Claims Rules Committee

Board liaison Jamie Moses proposed two-year cycle amendments to Florida Small Claims Rules. The board approved the amendments 34-0.

29. Member Benefits Committee

Frank Walker, chair of the Member Benefits Committee, reported that the committee has sent inquiries to private companies and received several proposals to make free basic legal research available to all bar members. Those proposals are being evaluated and a detailed report should be ready by the board's January 28, 2005 meeting in Key West, Florida.

Walker told the board that Bar President Kelly Overstreet Johnson approached the committee and asked it to explore if there was some way the Bar could make online basic legal research available to members at no charge. The committee responded by sending out several requests for proposals to companies that provide research services.

30. Special Commission on Lawyer Regulation Report

Chair Hank Coxe reported to the board that he expects that the commission will be finished by the end of the bar year. The next meeting is at midyear meeting. The commission will have two sets of recommendations. One that requires rule changes by the court and the other that requires policy changes by the court.

Coxe informed the board of Justice Cantero's remarks and shared a directive from the court to look at a few specific issues. One is emergency suspension, a 60 day time for the bar to file, when a lawyer files to dissolve, that tolls the time and that concerns the court. Upon conviction of a felony, there is an automatic suspension, when a lawyer petitions to modify, time standards are also tolled. The court is concerned about a lawyer who is convicted and continues to practice for an extended period of time. Coxe reported that there has been discussion on where and when reprimands should be administered; it could be by chief judge of the circuit with public notice.

The commission has heard a great deal of complaints from the judiciary that there is no point in referring a complaint to the Florida Bar because nothing happens or they never heard back from the Bar. One solution that the commission discussed is giving judges more powers and the choice to give a sanction or refer a complaint to the bar. The commission must also consider if lawyers have a right to a hearing before the grievance committee or resolve only on paper.

Coxe reported that communications between the Bar and the public is an issue of concern. For some reason there seems to be a gap there, the public does not seem to understand.

Coxe told the board that the court is troubled that disbarments are not preceded by emergency suspension in cases of egregious conduct.

Finally, the commission discussed the six year statute of limitations within the disciplinary process. Some think that is too much, but there is also concern to keep it for trust violations.

31. Presidents Report

President Overstreet Johnson asked the board for permission to present a resolution recognizing Charles Hagen, founder of Florida Lawyers Action, Inc., at the Supreme Court in December 2004. The board approved a motion to allow the presentation of the resolution.

Johnson shared topics for the board retreat would include professionalism and ethics, as well as discussions concerning restructuring the Bar's Annual and Midyear meetings.

Johnson reported on an information item from board member Robert Rush's Committee to discuss law school practice. Florida Supreme Court Justice Lewis expressed some concerns about background checks on people in the program. The committee met with Paul Hill and Eleanor Hunter and is preparing a draft rule which they hope to have ready at the next meeting. Lastly, Johnson reported that the Equal Opportunities Law section has a statement of principles, that the section wants the board members to sign individually and on behalf of their firms.

32. Time and Place of Next meeting

The next Board of Governors meeting will be held in Key West, Florida at the Wyndham Casa Marina Resort, January 26-29, 2005.

There being no other business, the board adjourned at 4:23 PM.

Respectfully submitted,

Dana M. Wood
Secretary to the Board of Governors

SUBJECT INDEX

APPROVAL OF MINUTES.....	3
Regular.....	3
Executive.....	3
AUDIT COMMITTEE REPORT.....	12
ADVERTISING TASK FORCE REPORT.....	7
BOARD OF LEGAL SPECIALIZATION AND EDUCATION POLICIES REPORT.....	17
BOARD REVIEW COMMITTEE ON PROFESSIONAL ETHICS.....	14
BUDGET COMMITTEE REPORT.....	6
CITIZENS FORUM REPORT.....	10
CIVIL RULES OF PROCEDURE COMMITTEE REPORT.....	18
COMMUNICATIONS COMMITTEE REPORT.....	7
CONSENT CALENDAR.....	4
DISCIPLINARY PROCEDURE COMMITTEE REPORT.....	12
FAMILY LAW RULES COMMITTEE REPORT.....	18
FLORIDA BAR FOUNDATION REPORT.....	11
GUESTS.....	2
GREETING AND OTHER GUEST APPEARANCES.....	2
INVESTMENT COMMITTEE REPORT.....	10
INVOCATION.....	2
JUDICIAL ADMINISTRATION RULES COMMITTEE REPORT.....	18
LEGISLATION COMMITTEE REPORT.....	16
MEMBER BENEFITS COMMITTEE REPORT.....	18
NON ROLL CALL ADVERTISING APPEAL ITEMS.....	3
PRESIDENT'S REPORT.....	19
PRESIDENT-ELECT'S REPORT.....	11
PROBATE RULES COMMITTEE REPORT.....	16
PROGRAM EVALUATION COMMITTEE REPORT.....	10
ROLL CALL.....	1
SMALL CLAIMS RULES COMMITTEE REPORT.....	18
SPECIAL APPOINTMENTS.....	10
SPECIAL COMMISSION ON LAWYER REGULATION.....	18
TIME AND PLACE OF NEXT MEETING.....	19
UNLICENSED PRACTICE OF LAW.....	14
YOUNG LAWYERS DIVISION REPORT.....	6