

THE FLORIDA BAR BOARD OF GOVERNORS

Regular Minutes

June 3, 2005

The Four Seasons

West Palm 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, June 3, 2005, in West Palm Beach, Florida, with President Kelly Overstreet Johnson presiding.

1. Roll Call

Kelly Overstreet Johnson, President
Alan B. Bookman, President-elect
Ross M. Goodman, First Judicial Circuit
Lawrence E. Sellers, Jr., Second Judicial Circuit
Michael J. Glazer, 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
Charles Chobee Ebbets, Seventh Judicial Circuit
Robert A. Rush, Eighth Judicial Circuit
Mayanne Downs, 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
Henry T. Courtney, Eleventh Judicial Circuit
Sharon L. Langer, Eleventh Judicial Circuit
Steven Chaykin, Eleventh Judicial Circuit
Kimberly A. Bald, Twelfth Judicial Circuit
Timon V. Sullivan, Thirteenth Judicial Circuit
John F. Rudy, II, Thirteenth Judicial Circuit
Gwynne Alice Young, Thirteenth Judicial Circuit
John G. White, III, Fifteenth Judicial Circuit
Jerald S. Beer, Fifteenth Judicial Circuit
Amy Lee Smith, Fifteenth Judicial Circuit
James S. Lupino, Sixteenth Judicial Circuit
Alan C. Brandt, Jr., Seventeenth Judicial Circuit
Nancy W. Gregoire, Seventeenth Judicial Circuit
Jesse H. Diner, Seventeenth Judicial Circuit
Frank C. Walker, II, Seventeenth Judicial Circuit
Clifton A. McClelland, Jr., Eighteenth Judicial Circuit
Harold G. Melville, Nineteenth Judicial Circuit
J. Christopher Lombardo, Twentieth Judicial Circuit
A. Lawrence Ringers, Twentieth Judicial Circuit
Richard Arthur Tanner, Out-of-State
Ian M. Comisky, Out-of-State

Michael J. Faehner, YLD President
Jamie B. Moses, YLD President-elect
Solomon L. Badger, III, Ed.D, Public Member
J. Blair Culpepper, Public Member

Board members absent:

Russell Divine, Ninth Judicial Circuit
Ervin A. Gonzalez, Eleventh Judicial Circuit
Benedict P. Kuehne, Eleventh Judicial Circuit
Clifford W. Sanborn, Fourteenth Judicial Circuit
Scott G. Hawkins, Fifteenth Judicial Circuit
Eugene Pettis, Seventeenth Judicial Circuit
Gary J. Leppla, Out-of-State
Brian D. Burgoon, Out-of-State

Staff attending the meeting:

John F. Harkness, Jr., Executive Director
Tina Ruffin, Assistant to the President
Paul Hill, General Counsel
Dana Wood, Secretary to the Board of Governors
Elizabeth Tarbert, Director of Ethics and Advertising
Gary Blankenship, Senior Editor, Florida Bar News
Allen Martin, Director Finance and Accounting
Tony Boggs, Director Legal Division
Mary Ellen Bateman, Director, Ethics, Advertising and Professionalism Division
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:

Miles A. McGrane, III, Immediate Past President- presented with 2004-05 scrapbooks
Deborah Magid, President of Florida Association for Women Lawyers
Jane Curran, Florida Bar Foundation, Executive Director
Manny Morales, Chair of the 2004 Advertising Task Force
Marsha Rydberg, Chair of the Council of Sections
Laird Lile, Chair of the Real Property, Probate & Trust Law Section
Julius J. Zschau, Chair-elect of the Real Property, Probate & Trust Law Section
Mitchell Horowitz, Chair-elect of the Tax Law Section
Ramon Abadin, Past President of the Cuban American Bar Association
Steve Metz, Chief Bar Legislative Counsel
Jim Daughton, Bar Legislative Counsel
Barry Richard, Bar Counsel
Roddie Bailey, Citizens Forum
Linda Osmundson, Citizens Forum
Rudy Frei, Citizens Forum
Rebecca Frank, Citizens Forum
Ed Strongin, Citizens Forum
Barry Crown, PhD, Citizens Forum
John Stewart, President-elect designate of the Young Lawyers Division
Carl B. Schwait, incoming member of the board of governors, Eighth Judicial Circuit
William Kalish, incoming member of the board of governors, Thirteenth Judicial Circuit
Gregory W. Coleman, incoming member of the board of governors, Fifteenth Judicial Circuit

Lisa Small, incoming member of the board of governors, Fifteenth Judicial Circuit
Edwin A. Scales, incoming member of the board of governors, Sixteenth Judicial Circuit

3. Invocation and Pledge of Allegiance

Invocation and Pledge of Allegiance were led by Judge Amy Smith.

4. Non-Roll Call Grievance agenda items

Co-Chair Grier Wells reported that the following items were numbers: 5b, 5c, 21, 22, 23, 24, 25 and 26.

5. APPROVAL OF MINUTES and EXECUTIVE COMMITTEE ACTION

A. Regular Minutes April 8, 2005 meeting

B. Grievance Minutes April 8, 2005 meeting

C. Executive Committee action taken:

1) Wednesday, April 27, 2005

Seven items required Executive Committee approval. The Executive Committee was transmitted the information on the seven items via fax and the following members responded with their vote: Kelly Overstreet Johnson, Alan Bookman, Jerry Beer, Hank Coxe, Mayanne Downs, Mike Glazer, Sharon Langer and David Rothman.

Item 1

The Third Amendment to The Florida Bar Employees' Pension Plan provides for automatic rollovers of distributable account balances greater than \$1,000 and not more than \$5,000 when participants fail to provide The Florida Bar with directions regarding the distribution of their accounts. The Executive Committee approved the Third Amendment to The Florida Bar Employees' Pension Plan by a vote of 8-0.

Item 2

The Secretary's Certificate of the Board of Governors of The Florida Bar contains resolutions approving the adoption of the Third Amendment. The Executive Committee approved the Secretary's Certificate of the Board of Governors of The Florida Bar with a vote of 8-0.

Item 3

The Summary of Material Modifications (SMM) to The Florida Bar Employees' Pension Plan Summary Plan Description modifies Section 18 of the Plan's Summary Plan Description (SPD) as a result of the Third Amendment. In addition, the SMM corrects a scrivener's error in Paragraph D of Section 16 of the SPD. The Executive Committee approved the Summary of Material Modifications to The Florida Bar Employees' Pension Plan Summary Plan Description by a vote of 8-0.

Item 4

The Automatic Rollover Agreement allows for T. Rowe Price Trust Company to act as custodian for rollover Individual Retirement Accounts resulting from retirement plan force-out distributions. The Executive Committee approved the T. Rowe Price Automatic Rollover Agreement by a vote of 8-0.

Item 5

Two UPL circuit committees were improperly constituted and so Executive Committee approval was sought on the nominations to fill the vacancies. The following individuals were nominated to serve:

Ronald W. Flury, attorney member, committee 2

Michelle A. Smith, attorney member, committee 8

Barbara W. Lingis, public member, committee 8

Cheryl Jarvis, public member, committee 8

The Executive Committee approved the UPL circuit committee nominations with a vote of 8-0.

Item 6

Executive Committee action was necessary to formalize The Florida Bar's support for passage of HB 9075, the legislative resolution that honors the memory of Henry Latimer. Per Standing Board Policy 9.21, the Executive Committee was authorized to act on this matter instead of the board since the next regularly scheduled meeting of the board of governors occurs June 3, 2005, after the legislative session. The Executive Committee approved the Henry Latimer legislative resolution by a vote of 8-0.

Item 7

Formal action was sought from the Executive Committee on member objections to legislative position 12. The date of the next Board meeting would have been past the applicable deadline for action on these objections, so intervening Executive Committee action was required. This active position has drawn objections from 3 separate bar members, of which none are new objectors in this biennium. The Executive Committee acknowledged objections to the legislative objectors.

2) Friday, April 29, 2005

One item required Executive Committee approval involving a proposed Board of Legal Specialization and Education (BLSE) certification award entitled the Justice Harry Lee Anstead Award: The Florida Bar's Board-Certified Lawyer of the Year. Because it is a new and visible Bar product that uses Justice Anstead's name and is awarded annually, it was recommended that the proposal first go through the Program Evaluation Committee (PEC).

After electronic communication between PEC members, it was agreed that the entity responsible for selecting the award recipient should be the Executive Committee of the BLSE and not the BLSE chair. The proposal passed PEC unanimously with this one change. PEC Chair Richard Tanner contacted BLSE Chair Judge Ralph Artigliere who was in agreement the this change.

The Executive Committee voted 10-0 to approve the proposed award, with the following members participating: President Kelly Overstreet Johnson, President-elect Alan Bookman, President-elect Designate Hank Coxe, Jerry Beer, Jesse Diner, Mayanne Downs, Mike Faehner, Mike Glazer, Ervin Gonzalez and David Rothman.

6. Consent Calendar

The board approved the following items on a voice vote:

a. UPL Standing and Circuit committee appointments

UPL Circuit Committee Nominations

Joann Chavis, Public Member, First Judicial Circuit

Doris Lovering, Public Member, Sixth Judicial Circuit

James W. Sears, Attorney Member, Ninth Judicial Circuit

Luis Cabassa, Attorney Member, Thirteenth Judicial Circuit

UPL Standing Committee Nominations

Dale Clemens, Attorney Member

Brian Lee Fernandes, Attorney Member

Helen Holloway, Public Member

Carin Maurins Gordon, Attorney Member

Johnette Louise Hardiman, Attorney Member

Charles Hudson, Public Member

Harry Vordemeier, Public Member

Graham Watt, Public Member

Dennis Williams, Public Member

Scherry M. Elson, Public Member

Gary Faysash, Public Member

Pamela Lutton-Shields, Attorney Member

Avonelle R. MacKerell, Attorney Member

Denise Wilkerson, Public Member

Removed from the UPL Standing Committee

Stanton T. Cooper, Public Member

Aron Moshe Mandl, Attorney Member

- b. Rules, Bylaws & Policies
- 1) Rule 10-3.1 Rules Governing the Investigation & Prosecution of the Unlicensed Practice of Law – Generally
Adds recusal provision as new subdivision (b), consistent with current practices and similar revisions proposed for rule 10-4.1 and circuit UPL committee members; adds new subdivision titles for existing text due to insertion of these proposed changes.
 - 2) Rule 10-4.1 Rules Governing the Investigation & Prosecution of the Unlicensed Practice of Law – Generally
Adds recusal provision as new subdivision (g), consistent with current practices and similar revisions proposed for rule 10-3.1 and standing UPL committee members.
 - 3) Rule 14-6.1 Fee Arbitration Rule – Binding Nature
Adds, as new subdivision (c), provisions to confirm that a member's failure to timely pay a fee arbitration award without just cause shall result in the member being delinquent and unauthorized to practice law pursuant to rule 1-3.6; amends subchapter and rule title to reflect this new matter.
 - 4) Rule 17-1.3 Authorized House Counsel Rule – Activities
Within subdivision (b), clarifies that authorized house counsel must disclose their status as such in communications with individuals outside the corporation with which the authorized house counsel is registered and certified; provides examples of acceptable disclosure language.
 - 5) Workers' Compensation Section Bylaws
Within Article III (Officers) increases the size of the executive council, from 27, to 30 members; revises executive council membership to require at least 15 claimants' and 15 employers'/carriers' attorneys; revises the annual terms of office for all officers, to commence on July 1 of each year rather than at the conclusion of the council's annual meeting; within Article V (Nomination and Election of Officers and Executive Council) increases the number of council members separately nominated by both the council and membership, from 4 to 5; includes other non-substantive editorial or conforming changes throughout; within Article VI (Committees) revises names of "specialization" committee, to "board certification" committee, and "planning" committee to "long range planning" committee.

7. Presentation of Resolution

President Johnson presented Ike Iaconis with a resolution from the Florida Bar Board of Governors to thank him for his work chairing the Member Benefits committee's legal research subcommittee. Iaconis helped with the request for proposal (RFP) that went out to find a company to provide legal research. The Bar will be providing free legal research to its members. Iaconis also helped sample the 7 products that were submitted to The Bar and wrote a detailed report on the strengths and weaknesses of each. In addition he helped negotiate the contract with Fastcase, the provider that was selected to provide the legal research.

8. Report on the Section Splits

Jerry Beer, chair of the special budget task force appointed to study the section splits reported that the budget committee recommended that the board adopt the proposal submitted to the board in April 2005 with a few minor changes. The changes were brought to the committee by the council of sections. The sections' requested changes and the budget committee recommendations are:

The sections requested that they be given a years notice to any increase in the \$17.50 Administrative Fee which replaces the old half dues concept. The inflation increase will be administered in whole dollar increments.

Next, the sections asked the bar to remove all caps. Beer told the board that the budget committee voted unanimously not to remove the caps. The budget committee's recommend

compromise is to leave the cap at \$10 per member for the first 1,000 members and at \$5 for all memberships over 1,000. This will increase the potential subsidy by \$61,000.

The third issue relates to the calculation of the G & A allocations. The council wanted to remove accounts from the G & A calculation for scholarships, sponsorships and lobbying fees. Those items are about 18 percent of G&A for the sections. The budget committee decided to give them a 20 percent reduction in the allocation of G & A,

Finally, some sections will frequently be receiving a refund in unspent Administrative fees. The budget committee agreed to provisionally reduce the \$5 increase in the Administrative fee for sections that consistently do not cost the Bar money. Beer said the Bar will provisionally reduce the fee by \$5 for sections with a three year average administrative cost of less than \$12.50 and for sections with a three year average greater than \$12.50 but less than \$15.00 it will provisionally reduce the fee by \$2.50. At the end of the fiscal year, if a section with a provisional fee reduction incurs administrative costs that exceed the provisional rate, the section will be responsible to pay the underpayment, up to \$17.50 (or higher inflation adjusted amount.) The board concurred with the committee motion to approve the changes as well as the proposal.

9. Budget Committee Report

Chair-elect Mayanne Downs reported that the budget committee met and discussed the Bar Directory. The committee recommends to the board that it restore the section of the directory that includes the contact information for Florida courts. To restore the section to the directory will cost \$8,600. The board concurred with the committee recommendation and approved the budget amendment. The board also concurred with a committee motion to provide a \$9,000 expense account for the president-elect designate.

10. Investment Committee Report

Chair Jay White reported that the Bar earned \$305,000 since the end of the first quarter. However the Bar is still down .4 percent for the year. The Bar short term investments account has \$13 million and its long term account has \$17 million, for a total of around \$30 million.

11. Young Lawyer Division Report

President Michael Faehner reported that two and a half years ago, the Program Evaluation Committee took up the issue of Practicing With Professionalism (PWP) and getting rid of the governmental deferral. On May 12, 2005 the Supreme Court came back and approved the rule amendments that included the changes to PWP. Faehner told the board that PWP is a one day course. The rule amendment that the Supreme Court approved deleted the government lawyer deferral and increase basic skill courses from 2 days to 3 days.

Faehner reported that the YLD had been busy preparing for the 2005 hurricane season. They have instituted a hurricane preparedness program for voluntary bar associations to encourage readiness. Another project that the YLD successfully completed this year was the implementation of the first ever high school moot court competition. Faehner told the board that the YLD has been working on diversity and it has committed to participate in the following three projects. First, the YLD gave \$10,000 to the Henry Latimer scholarship fund, second, the YLD gave \$5,000 to minority bars to help them develop young lawyers committees, and third, the YLD pledged \$10,000 to help the center for professionalisms with their diversity video.

12. Legislation Committee Report

Chair Sharon Langer reported that the Legislation Committee had met and recommended that the board approve a request from the Legal Needs of Children Committee to send a letter of endorsement from President Johnson to the ABA's National Juvenile Defender Center in support of its plans to conduct an assessment of access to counsel and quality of representation in Florida delinquency proceedings. The board concurred with the committee motion and approved the letter of endorsement included in board materials.

Steve Metz, chief legislative counsel reported that overall, the Bar had a good legislative year. He thanked Representatives Negron and Goodlette and Senator Fasano for their help in securing

\$5 million in the budget for civil legal assistance; however Governor Bush vetoed the appropriation. Metz told the board that due to the Bar's grassroots efforts and its friends in the legislature, proposed resolutions to revise the Supreme Court's rulemaking powers had been defeated. However, he told the board that he anticipated next year's legislative session would be a very difficult one. 2006 is Governor Bush's last year in office and one of his main priorities is to remove court rulemaking authority from the Supreme Court and place such powers with the Legislature. Metz said that he and others on The Florida Bar legislative team will be spending the summer meeting with lawmakers on those legislative committees that will most likely consider any future rulemaking bill, to try to educate them on the rulemaking process.

Metz went on to tell the board that HB 1935 – the Article V / Revision 7 glitch bill – passed, and included in the legislation was language that clarifies the powers of a chief judge in determining the priority of services provided by the clerk of court to the trial court, and of the clerk of court in managing the performance of such services consistent with statute, rule, or administrative order. He also told the board that SB 2048, the judicial certification bill, passed and provides for 55 new judges – all to be appointed. Metz added that he had the word of legislators in leadership positions that they would be funding another 55 new judges during the 2006 legislative session. He spoke to the board about the 2006 elections, noting that the legislature passed HB 1723 which is a ballot measure to increase the voter threshold to 60% for all constitutional amendments. He said that HB 1727 – the so-called filter bill for constitutional amendments – which the Bar supported, died on the Senate floor but that if the legislature passes this bill next session, it would still be on the 2006 ballot. Metz further told the board that the issue of term limits will be on the ballot in 2006, extending current 8-year legislative terms to 12 years. He noted that due to current term limits, in 2006 there will be 30 open seats in the legislature; in 2008 there would be 45 open seats. He told the board that in 2006 Chief Justice Pariente, Justice Wells and Justice Quince would all be up for merit retention votes, and that he expected opposition to these justices from more conservative groups. Because of all of the upcoming legislative vacancies and the merit retention votes on these three justices, Metz encouraged the board to get politically involved on a personal level. He reminded governors of various law-related political action committees outside the unified bar that are allowed to raise and contribute money to the different races and issues throughout the state.

13. Communication Committee Report

Chair Michael Glazer reported that the committee met with the Citizens Forum and discussed how the group might function better. He told the board that traditionally, the committee would bring topics and issues of discussion to the forum and then bring the feedback from the forum to the board of governors. During this meeting, they discussed having the forum members also recommend topics for discussion. Forum members also indicated that they would be willing to assist members of the board in identifying non-lawyer candidates for appointments to committees as needed.

Glazer told the board that the Bar's new Web site is still being tested but would be available before the Bar's Annual meeting in June. An exhibit booth and other promotions will also be in place for the meeting.

Glazer brought one action item to the board. The committee recommended that the Bar provide grant funding in the amount of \$1,483 for a "Media Communications Law" program by the Collier County Bar Association to be held on September 30, 2005. The board concurred with the committee motion.

14. Judicial Independence Committee Report

Chair Jesse Diner told the board that he had met with the Citizens Forum to discuss the independence of the judiciary. He told the board that the feedback given was very helpful, much like what he expects the committee will hear when it holds its information gathering meeting in June. He said that they began the discussion with a case study of the Terri Schiavo case. The Citizen's Forum members felt that the case showed that the process worked the way it is supposed to, but that they felt that the state legislature, the President, and Congress were wrong

to try to intervene. Diner reported that the Citizen's Forum believes that the separation of powers is very important and should be preserved. They felt that the schools are not spending enough time educating the children in subjects such as history, civics and government. The schools are not teaching enough about the separation of powers and the checks and balances that the forefathers put into place, which is leading to the erosion of both.

Diner reported that the Judicial Independence committee met in April at Gwynne Young's office at Carlton Fields in Tampa. The committee decided to hold information gathering sessions statewide to determine if the current judicial selection processes were working as well as they should be. Diner told the board that the committee would be meeting on Wednesday, June 22, 2005 at The Bar's Annual meeting. The committee sent out letters to people who have dealt with the judicial nominating commissions in any capacity. The letters invited these people to come to the meeting at Annual to share their experiences with the committee. He told the board that the committee expected to have about 20 people attend to speak to the committee.

15. Program Evaluation Committee Report

Chair Richard Tanner reported that the committee met and discussed the proposal for a Standing Committee on Member Outreach. He told the board that there were some concerns that the committee would overlap with the Equal Opportunities Law section. PEC determined that the EOLS and the Member Outreach committee could work together on like goals. The committee recommendation is to approve the request and create a standing committee on Member Outreach.

Tanner told the board that the committee also reviewed a proposed rule amendment by the Military Affairs Committee. The rule amendment would allow military basic lawyer courses to substitute for the current Practicing with Professionalism (PWP) course. The committee decided that although the courses that the MAC provides to new lawyers are quite comprehensive, they felt that all new lawyers in Florida should take the PWP course. Tanner told the board that PEC tabled the amendment to Rule 18-1.2(a)(4) until PEC's next meeting.

Tanner reported that the committee reviewed a Proposal for a Special Committee on Paralegals in the Legal Profession. Tanner told the board that the committee discussed recent legislation sponsored by Senator Argenziano and Representative Zapata concerning the regulation of paralegals. He explained how Bar staff recently held meetings with several of the entities involved and it resulted in the bill being temporarily postponed. A letter was recently sent to the Bar from the legislators stating that the bill would be re-filed if the Bar and the paralegal association behind the initial bill could not reach an agreement very quickly. Tanner told the board that President-elect Bookman stated that he would like the Bar to form a special committee to study paralegals which would consist of 10 to 12 members. He said the committee would include Board of Governors members, non Board members, and legislators. Tanner said that Bookman had asked Ross Goodman to serve as chair. The committee recommended that the board approve the special committee to study paralegals. The board concurred and approved the committee motion.

Tanner told the board that PEC had approved the following proposed rule amendments by the BLSE:

- 1) Rule 6-1.2 Public Notice
Updates the explanation of board certification, for public notice in telephone directory yellow pages.
- 2) Rule 6-22.4(a) & (b) Antitrust & Trade Regulation Recertification Standards
Amendment to (a) adds "or trade regulation law" to area name in substantial involvement section for recertification consistent with area heading elsewhere in rule 6-22.
Amendment to (b) allows certification committee discretion as to whether to request samples of administrative, trial, appellate memoranda, or briefs from the applicant rather than mandating same.
- 3) Rule 6-23.3 Labor & Employment Law Certification – Minimum Standards
In subsection (c), Experience, expands qualifying experience to include role as a judge, hearing officer, arbitrator or mediator in the 30 days minimum involvement in litigation

and/or administrative proceedings. In subsection (e), Education, provides authority for the board of legal specialization and education or the labor and employment law certification committee to establish policies applicable to the accreditation of programs for labor and employment law certification credit.

4) Rule 6-23.4 Recertification

In subsection (a), Substantial Involvement, removes reference to language in 6-23.3(b) and restates provision verbatim. In subsection (b), Experience, removes reference to rule 6-23.3(c) and restates provision with proposed expansion of qualifying experience to include role as a judge, hearing officer, arbitrator or mediator in the 25 days minimum involvement in litigation and/or administrative proceedings. In subsection (c), Education, adds authority for the board of legal specialization and education or the labor and employment law certification committee to establish policies applicable to the accreditation of programs for labor and employment law certification credit, eliminates reference to rule 6-23.3(e) and expands subsection to include same language found in rule 6-23.3(e) which lists ways in which to satisfy the education requirement.

5) BLSE Policy 2.11 (f)

Adds new subdivision (f) to clarify that any misconduct that may arise during the examination shall disqualify an applicant's exam and application.

6) BLSE Policy 2.13 (a)

Within subdivision (a), initiates a policy to permit application files and supplemental information to be shared with another area certification committee when an applicant is certified or applies for certification in more than one area and the information is relative to the overall qualifications for board certification. Also within subdivision (a), adds language to ensure fair review of an application for (re)certification when, for example, the applicant may be related to or a partner of a committee member, or has recently served on the committee and the committee has concerns about its capacity to render an impartial decision.

7) BLSE Policies – 300 Series – Certification Program Accreditation

The proposed policies establish the procedures and criteria to guide BLSE in its review and evaluation of programs and organizations which issue board certification to members of The Florida Bar.

16. Advertising Task Force Report

Chair Manuel R. Morales, Jr. reported that on April 8, 2005, the board voted to subject websites to the same regulations as other advertisements, with the exception of the filing requirement. Morales explained that websites would be subject to additional restrictions if the Supreme Court of Florida adopted the rule as approved by the board. President Johnson appointed a special committee to review the issue, chaired by Morales and consisting of board members Downs, Ebbets, Glazer, Goodman, Hawkins, Sellers, and Sullivan. Morales, on behalf of the website committee, reported the committee's recommendation that the board reconsider its April 8, 2005 vote as to websites, and adopt a rule that maintains the current status of the advertising rules concerning websites. Websites would then be subject to the general advertising rules set forth in Rule 4-7.2, with the exception of the prohibition against advertising prior results and the prohibition against statements characterizing the quality of legal services. Websites would still be exempt from filing. The board voted to reconsider its prior vote. The board then voted to adopt a rule that maintains the status quo by subjecting websites to the regulations in Rule 4-7.2 with the exception of the prohibition against advertising prior results and the prohibition against statements characterizing the quality of legal services. The board also voted to replace the word "guarantees" with the word "promises" in proposed rule 4-7.2(c)(1)(G).

17. President-elect Report

President-elect Alan Bookman reported that he had completed the task of appointing committees. He encouraged the section liaisons to get involved with their sections. He wants the liaisons to

attend the section meetings and get to know the section's issues. He noted that Mayanne Downs had been appointed to be the board liaison to the council of sections. Bookman told the board that he was going to be appointing a special committee of about 12-15 people to look at the Paralegal regulation issue, and that board member Ross Goodman would be chairing it. Bookman told the board that at the meeting in August in St. Petersburg the board would be battling the Young Lawyers division in the Battle of the Boards. Also, in St. Petersburg, Saturday, August 27, 2005, he would be hosting a retreat with board members and section chairs and vice chairs. He requested that board members stay in St. Petersburg to participate to try to re-engage the section in an open dialogue.

18. Special Appointments

The board approved the following appointments:

- a. The Florida Bar Board of Governors Executive Committee – 3 members
Nancy Gregoire
Grier Wells
Jay White
- b. ABA House of Delegates--3 lawyers for 2-year terms and 1 lawyer for a 1-year term commencing at conclusion of ABA Annual meeting
Michele K. Cummings
Herman J. Russomanno
Kelly Overstreet Johnson
Theodore W. Small, Jr. – 1-year term
- c. Florida Legal Services Board of Directors--6 lawyers for 2-year terms beginning July 1, 2005
Howard A. Caplan
Donna Krusbe
Alicia L. Latimore
Gladys Perez
Theodore W. Small
Daniel H. Thompson
A. Hamilton Cooke – 1-year term
- d. Florida Lawyers Assistance Board of Directors--3 lawyers and 2 non-lawyers for 3-year terms beginning July 1, 2005
Mark Journey - lawyer
Wayne LaRue Smith - lawyer
Ellis Gary Work, Jr. - lawyer
Mary Barlow – non-lawyer
Joseph M. Tomaino – non-lawyer
- e. The board approved forwarding to the Florida Supreme Court Florida the following names for consideration of appointment to the Florida Board of Bar Examiners -- 3 lawyers for 5-year terms beginning November 1, 2005.
Alan H. Aronson
Michael Canendish
Reginald J. Clyne
Bishop C Holifield
Tracy Edler Leduc
David A. Rowland
Carolyn House Stewart
John Jeffry Wahlen
David Weiss
- f. JNC – State Wide Nominating Commission for Judges of Compensation Claims - 1 lawyer from 2nd DCA, 4-year term beginning July 2, 2005
T. Rankin Terry, Jr.
- g. Florida Judicial Qualifications Commission -- 1 lawyer for remainder of term ending December 31, 2006, beginning immediately
Miles A. McGrane, III

19. Committee to Study Chapter 11 Law School Practice Program Report

In response to a request from Supreme Court Justice Fred Lewis, Chair Robert Rush reported that the committee had prepared a letter to Justice Lewis with suggested changes within Chapter 11 of the Rules Regulating The Florida Bar to address shortcomings that Lewis perceives in the law school practice program as currently administered. The changes include: (1) confirming that in-state law students and graduates of non-Florida law schools who seek to be interns must have first made application for admission to The Florida Bar and received a letter of initial clearance as to character and fitness from the Florida Board of Bar Examiners; (2) clarifying that legal aid organizations authorized by the court for use of interns must exclusively serve the indigent; and (3) adding – for those who continue an internship upon successful completion of a law school practice program or following their law school graduation – that failure of any part of the bar exam shall terminate the internship. Rush noted that the committee's suggestions presume further coordination with other justices, and that any ultimate proposals for change in Chapter 11 from the court should still be subject to additional lawyer and public comment prior to their final adoption. The committee's report additionally notes sentiment against the third item, from various governmental offices that rely heavily on interns. The board concurred with the committee proposals and approved the draft letter of transmittal to Justice Lewis included in board materials.

20. Governance Commission of the American Bar Association

President Overstreet Johnson told the board that it had received a request from Ben Hill to direct Florida's ABA delegates to vote with the National Caucus position. One of the issues included is the sections representation in House of Delegates and board of governors and nomination commission. These would be increased, which would dilute the state's representation. The report also proposes term limits for house and nominating commission; however an ABA survey concluded no limit was needed. Finally, the commission wants to add law students to the nominating committee, the caucus opposes that because few students attend and none pay dues. The board approved a motion to direct the ABA delegates.

21. Rules of Judicial Administration Committee Report

Board liaison Tim Sullivan reported that the committee, in response to a request from the Florida Supreme Court, is proposing to reorganize the Rules of Judicial Administration. The Court requested that the committee suggest a reorganization plan according to whether the rules are (a) internal to the management of the courts or judicial branch; (b) procedural in nature and therefore impact the practice of law; or (c) a combination of categories (a) and (b). The committee recommends that the board approved the changes. The board concurred with the committee motion.

22. Report of the Board of Legal Specialization and Education

Board member Tim Sullivan reported on the following:

The board approved the following items on **second reading (final action)**.

- 1) Rule 6-4.1 Civil Trial Law Certification – Generally

The rule incorporates the professionalism reference in preamble as to purpose of board certification.

- 2) Rule 6-4.3 Civil Trial Law Certification – Minimum Standards

Substantial editorial rewrite of rule, with some substantive edits as noted; within subdivision (a), adds competence to substantial involvement criteria; in subdivision (a)(1), increases the active participation practice time from 30 to 50 percent; in subdivision (a)(2), specifies that each of the 15 minimum cases must involve substantial legal or factual issues; identifies matters unacceptable for the 15-case requirement; defines a "day" as at least 6 hours for purposes of this rule; and includes an allowance of 3 substitutions, including evidentiary hearings or preliminary injunctions lasting at least 1 day and involving substantial legal or factual issues – provided that matters submitted as substitutions are adversarial and binding on the parties, with "binding" meaning that parties must honor the court's decision unless overturned pursuant to law; in subdivision (a)(3)(b), specifies that peer review must be sufficient to confirm competence, ethics, and

professionalism; otherwise clarifies throughout that "courts of general jurisdiction" mean circuit courts, federal district courts, or courts of similar jurisdiction in other states.

3) **Rule 6-4.4 Civil Trial Law Certification – Recertification**

Substantial editorial rewrite of rule with some substantive edits as noted; within subdivision (a), adds competence to substantial involvement criteria and increases active participation practice time from 30 to 50 percent; within subdivision (b)(1), reduces from 3 to 2 the number of contested trials for recertification; specifies that at least 1 trial must be a jury trial and handled by the applicant as lead counsel; references unacceptable trial matters for recertification, from rule 6-4.3(a)(2); allows a creditable non-jury matter to be an evidentiary hearing or preliminary injunction, as defined in rule 6-4.3(a)(2); within subdivision (b)(2), also permits recertification with 1 jury trial as lead counsel lasting a minimum of 10 days, with each day defined as at least 6 hours, in lieu of 2 contested cases; within subdivision (c), would allow the jury trial/lead counsel requirement to be replaced by either teaching or attending an advanced trial advocacy seminar, eliminating the substitution for a non-jury trial; within subdivision (d), specifies that peer review must be sufficient to confirm competence, ethics, and professionalism; otherwise clarifies throughout that "courts of general jurisdiction" mean circuit courts, federal district courts, or courts of similar jurisdiction in other states; revises other subdivision entries as editorially necessary to accommodate these proposed changes

23. Special Committee to Study the Constitutional Revision Process Report

Chair Hal Melville reported that the legislative session had come to a close without ever adopting HB 1727 or SB 4 related to a constitutional filter for all amendments to the constitution. He reminded the board of the legislative position in support of a filter. Melville explained to the board that although the legislation failed during the 2005 session, it could still pass during 2006 and be included on the 2006 ballot. He told the board that since there was no known opposition to the measure that it was probable that the bill would be filed again next year.

24. Audit Committee Report

Board member Warren Lindsey reported that the Audit committee met and created a charter for the committee. The committee recommended that the board approve the charter. The board concurred with the committee recommendation and approved the charter.

25. Special Commission on Lawyer Regulation Information Report

Chair Hank Coxe reported that the committee met for two days in late April and would meet Thursday afternoon for several hours at The Florida Bar's Annual meeting. One of the issues addressed was the public accessibility online to lawyers' discipline records. A subcommittee has recommended that whatever information people can get on the phone be made available online. Another issue is the time that it takes to get a lawyer through the disciplinary process; it now takes on average almost an entire year from the time an issue is raised to finality. The committee is working to come up with guidelines to lessen the amount of time.

26. Time and Place of Next Meeting

The Florida Bar Board of Governors will meet August 24-28, 2005 at the Don CeSar Beach Resort in St. Petersburg, Florida.

There being no further business to discuss, the board adjourned at 3:00 PM.

Respectfully submitted,

Dana M. Wood

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