

THE FLORIDA BAR BOARD OF GOVERNORS

Regular Minutes

February 17, 2006
The Florida Bar Annex
Tallahassee, 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, February 17, 2006, in Tallahassee, Florida, with President Alan B. Bookman presiding.

1. Roll Call

Alan B. Bookman, President
Henry M. Coxe, III, President-elect
Ross M. Goodman, First Judicial Circuit,
Lawrence E. Sellers, Jr., Second Judicial Circuit
Dominic M. Caparello, Second Judicial Circuit
S. Grier Wells, Fourth Judicial Circuit
John J. Schickel, Fourth Judicial Circuit
Denise A. Lyn, Fifth Judicial Circuit
Andrew B. Sasso, Sixth Judicial Circuit
Murray B. Silverstein, Sixth Judicial Circuit
Carl B. Schwait, Eighth Judicial Circuit
Daniel L. DeCubellis, Ninth Judicial Circuit
Warren W. Lindsey, Ninth Judicial Circuit
Robert M. Brush, Tenth Judicial Circuit
Francisco R. Angones, Eleventh Judicial Circuit
David Rothman, Eleventh Judicial Circuit
Ervin A. Gonzalez, Eleventh Judicial Circuit
Jennifer Coberly, Eleventh Judicial Circuit
Henry T. Courtney, Eleventh Judicial Circuit
Sharon L. Langer, Eleventh Judicial Circuit
Kimberly A. Bald, Twelfth Judicial Circuit
William Kalish, Thirteenth Judicial Circuit
Gwynne Alice Young, Thirteenth Judicial Circuit
Clifford W. Sanborn, Fourteenth Judicial Circuit
John G. White, III, Fifteenth Judicial Circuit
Gregory Coleman, Fifteenth Judicial Circuit
Scott G. Hawkins, Fifteenth Judicial Circuit
Lisa S. Small, Fifteenth Judicial Circuit
Edwin Scales, Sixteenth Judicial Circuit
Alan C. Brandt, Jr., Seventeenth Judicial Circuit
Nancy W. Gregoire, Seventeenth Judicial Circuit
Eugene K. Pettis, Seventeenth Judicial Circuit
Jesse H. Diner, Seventeenth Judicial Circuit
Clifton A. McClelland, Jr., Eighteenth Judicial Circuit
Harold G. Melville, Nineteenth Judicial Circuit
J. Christopher Lombardo, Twentieth Judicial Circuit
A. Lawrence (Larry) Ringers, Twentieth Judicial Circuit
Richard Arthur Tanner, Out-of-State
Gary J. Leppla, Out-of-State
Brian D. Burgoon, Out-of-State
Jamie B. Moses, YLD President
John M. Stewart, YLD President-elect
Solomon L. Badger, III, Public Member

J. Blair Culpepper, Public Member

Board members absent:

Gregory S. Parker, Third Judicial Circuit
Charles Chobee Ebbets, Seventh Judicial Circuit
Mayanne Downs, Ninth Judicial Circuit
Benedict P. Kuehne, Eleventh Judicial Circuit
Steven Chaykin, Eleventh Judicial Circuit
Timon V. Sullivan, Thirteenth Judicial Circuit
Frank C. Walker, II, Seventeenth Judicial Circuit
Ian M. Comisky, Out-of-State

Others in attendance:

June McKinney Bartelle, President of Florida Association for Women Lawyers
Barbara Pittman, President of the Virgil Hawkins chapter of the National Bar Association

Staff attending the meeting:

John F. Harkness, Jr., Executive Director
Paul F. Hill, General Counsel
Tina Ruffin, Assistant to the President
Dana Watson, Secretary to the Board of Governors
Elizabeth Tarbert, Director of Ethics and Advertising
Gary Blankenship, Senior Editor, Florida Bar News
Allen Martin, Director Finance and Accounting
Tony Boggs, Director Legal Division
Mary Ellen Bateman, Director, Ethics, Advertising and Professionalism Division
Lori Holcomb, Director of Unlicensed Practice of Law
Ken Marvin, Director of Lawyer Regulation
Francine Walker, Director of Public Information
Mike Tartaglia, Director of Programs Division
Dan Bennett, Division Director of Administration
Mike Garcia, Director of Research, Planning and Evaluation
Lily Quintiliani, Ethics and Advertising
PJ Humpheries, Executive Office Assistant

2. Guests

Jane Curran, Florida Bar Foundation, Executive Director
Florida Supreme Court Justice Peggy Quince
Former Florida Supreme Court Justice Major Harding
Florida Senator Rod Smith
Mr. William Hahn, President of the Florida Chapter of the American Board of Trial Advocates
Art Goldberg, Executive Director of the Broward County Lawyer Referral
Edith Osman, Past President of The Florida Bar

3. Invocation and Pledge of Allegiance

Invocation and Pledge of Allegiance were led by Dominic Caparello.

4. Non-Roll Call Grievance agenda items

Co-Chair Grier Wells reported that the non-roll call grievance items were numbers 10, 11, and 28. Client Security Fund items were numbers 3, 4, 8, 19, 33, and 34. Client Security Fund item number 1 was tabled. Board members Lisa Small and Jay White recused themselves from items 10 and 11. Board members Jake Schickel and Grier Wells recused themselves from items 13 and 14.

5. Non-Roll Call advertising appeal agenda items

Vice-chair Larry Ringers reported that item 5b(3) was the only advertising appeal agenda item pulled from consent.

6. APPROVAL OF MINUTES and EXECUTIVE COMMITTEE ACTION

- a. Regular Minutes, December 16, 2005 meeting -**Approved**
- b. Grievance Minutes, December 16, 2005 meeting –**Approved**
- c. Summary of Executive Committee action taken - **Approved**

1) January 11, 2006 – BoG public member/FRAJC/UPL circuit committee

Three matters required Executive Committee approval. The Executive Committee was transmitted the information on the items via email. The following members participated: President Alan Bookman, President-elect designate Frank Angones, Kim Bald, Jesse Diner, Mayanne Downs, Nancy Gregoire, Jamie Moses, David Rothman, Grier Wells and Jay White.

Item Number 1

BoG Public Member Blair Culpepper

Board of Governors public member Blair Culpepper's first term will expire June 2006.

He has agreed to serve a second term and the Executive Committee approved him doing so with a vote of 10-0. As a result, President Bookman will send a letter to the Supreme Court recommending they appoint him to serve another two years.

Item Number 2

Florida Realtor-Attorney Joint Committee nomination

The Florida Realtor-Attorney Joint Committee nominations went before the board at the December 16 meeting in Amelia Island. Appointments were made to all appellate districts except for the 3rd. Two attorneys applied for the 3rd appellate district - Ira B. Price, Miami and Robert Flavell, Miami Lakes. The RPPTL Section recommended Mr. Price.

At the same December 16 board meeting, a pending grievance matter on Ira Price was brought up, and so the board requested more information on the grievance matter and deferred the appointment to the Executive Committee.

Lawyer Regulation shared with the Executive Committee the details of the grievance and the fact that the case was closed on 12/1/05 with no probable cause. As a result, the Executive Committee approved Mr. Price to serve on the Florida Realtor-Attorney Joint Committee seat in the 3rd appellate district with a vote of 10-0.

Item Number 3

UPL 20th Circuit Committee nomination

The UPL 20th Circuit Committee was improperly constituted. Larry Ringers nominated Ed Flannery to serve on the committee as a public member. The Executive Committee approved the nomination of Ed Flannery with a vote of 10-0.

2) January 30, 2006 – Rules of JA Comm/ABA Immigration Comm

One matter required Executive Committee approval. The Executive Committee was transmitted the information on the items via email. The following members participated: President Alan Bookman, Jesse Diner, Mayanne Downs, Nancy Gregoire, Jamie Moses, David Rothman, Grier Wells and Jay White.

Item Number 1

Rules of Judicial Administration Committee comments

Comments by the Rules of Judicial Administration Committee relating to "Group One" of the report of the Supreme Court Committee on Privacy and Court Records were given to the Executive Committee for their review and approval prior to the February 1st date they are due to be filed. The Executive Committee approved the comments with a vote of 8-0.

3) February 3, 2006 - Family Law Rules Committee comments

One matter required Executive Committee approval. The Executive Committee was transmitted the information on the items via email. The following members participated: President Alan Bookman, President-elect Hank Coxe, President-elect designate Frank Angones, Mayanne Downs, Nancy Gregoire, Jamie Moses, David Rothman, Grier Wells and Jay White.

Item Number 1

Family Law Rules Committee comments

Comments by the Family Law Rules Committee relating to "Group One" of the report of the Supreme Court Committee on Privacy and Court Records were given to the Executive Committee for their review and approval prior to the date they are due to be filed. The Executive Committee approved the comments with a vote of 9-0.

4) **February 10, 2006** - Get Out the Vote Campaign

One item required Executive Committee approval. The Executive Committee was transmitted the information on the item via email and the following members responded with their vote: Alan Bookman, Jesse Diner, Mayanne Downs, Nancy Gregoire, Jamie Moses, David Rothman, Grier Wells and Jay White.

David Stafford, the Escambia County Supervisor of Elections, contacted President Bookman about a statewide voter education campaign that will launch on February 21st. Supervisors of Elections throughout Florida, in cooperation with the Secretary of State, are mounting a vigorous voter awareness and education program. They want to make sure voters are registered, name changes are submitted, the best poll workers are recruited and people vote on Election Day. They are soliciting the support, but not financial, of groups throughout Florida to join them in the implementation of the outreach program. They plan to produce simultaneous activities in all 67 counties. To assist in this campaign, they asked The Florida Bar to inform local affiliates about the program and urge them to work with their county's Supervisor of Elections.

The Executive committee voted 8-0 in favor of the request.

7. Consent Calendar

a. UPL Circuit committee nominations - Approved

January 2006

Michele Leo Hintson, Attorney member, Sixth Judicial Circuit

Sean A. Costis, Attorney member, Sixth Judicial Circuit

Lester A. Lewis, Attorney member, Seventh Judicial Circuit

John Adams, Public member, Seventh Judicial Circuit

Michelle Donahue, Attorney member, Tenth Judicial Circuit

Martin Lance Holden, Attorney member, Tenth Judicial Circuit

Marilyn Weekly, Public member, Thirteenth Judicial Circuit

Katheryn Elizabeth Smith, Attorney member, Twentieth Judicial Circuit

February 2006

Lisa Jo Spencer, Attorney member, First Judicial Circuit

Daniel Will Uhlfelder, Attorney member, First Judicial Circuit

Eve Greenberg, Public member, Tenth Judicial Circuit

Pam Sams, Tenth Judicial Circuit

Noelle M. Melanson, Attorney member, Twentieth Judicial Circuit

b. Board Review Committee on Professional Ethics - Approved

1) ADVERTISING APPEAL 06-00222

Advertising Appeal 06-00222 concerns application of Rule 4-7.10(c), requiring that a lawyer advertising under a trade name must practice under that trade name, including using the trade name on letterhead, business cards, together with the signature on pleadings, etc. Staff rendered an opinion on August 5, 2005, among other violations, that a television failed to comply with Rule 4-7.10(c), because the trade name used in the television advertisement "Attorneys Trial Group" did not appear prominently in the letterhead, which used "Martinez, Manglardi, Diez-Arguelles & Tejedor" at the top of the letterhead. In the television advertisement, the trade name "Attorneys Trial Group" was featured prominently, with the more traditional firm name "Martinez, Manglardi, Diez-Arguelles & Tejedor" appearing in much smaller print below and sometimes not used in conjunction with the trade name "Attorneys Trial Group" at all. On the letterhead, "Attorneys Trial Group" appeared in smaller print below and to the left of the more traditional firm name "Martinez, Manglardi, Diez-Arguelles & Tejedor" which is prominently featured at the top of the letterhead. The Standing Committee on Advertising

upheld staff's opinion on October 18, 2005, because the trade name was not consistently used in the advertisement and letterhead. The attorney subsequently requested Board of Governors review.

The BRC voted 6-0 to affirm the SCA decision that the firm is not practicing under the trade name used in the firm's advertisements.

The board voted to approved the BRC recommendation on the consent calendar.

2) ADVERTISING APPEAL 06-00439

Advertising Appeal 06-00439 concerns application of Rules 4-7.7(a), 4-7.8(a) and 4-7.2(c)(12), requiring filing of all advertisements containing only permissible content of advertisements as listed in Rule 4-7.2(c)(12). At the suggestion of Orlando Branch Bar Counsel, a Florida Bar member filed an advertisement published in the Stuart newspaper. Staff rendered an opinion on September 13, 2005, that the advertisement was required to be filed for review because the advertisement included the language "Need a Divorce?" The staff opinion also concluded that a late fee was required, because the advertisement was not filed either prior to or concurrently with its first use as required by Rule 4-7.7(a). The filer does not dispute that the advertisement was not filed either prior to or concurrently with its publication. The Standing Committee on Advertising upheld staff's opinion on November 15, 2005. The attorney subsequently requested Board of Governors review.

The BRC voted 6-0 to affirm the SCA decision that the language "Need a Divorce?" is not permissible content listed in Rule 4-7.2(c)(12), and the advertisement therefore must be filed with a late fee.

The board voted to approve the BRC recommendation on the consent calendar.

3) Advertising Appeals 05-02814, 05-02815, 05-02816, 05-02817, 05-02818 and 05-02819 – Withdrawn from Consent calendar

c. Legislation Committee review - Approved

1) New section legislative position requests for the 2004-2006 biennium

a) Real Property, Probate and Trust Law Section

i. Supports legislation to amend §734.101 F. S. so that the procedural and timing provisions under §734.101 F.S. are consistent with § 655.936 F. S.

ii. Supports legislation to amend §731.110 F. S. to statutorily require that a will not be admitted to probate or a personal representative appointed if a caveat has been filed by an interested person other than a creditor until that person is served by formal notice as required by the Florida Probate Rules.

b) Business Law Section

i. Supports the passage of Revised Article I of the Uniform Commercial Code, as developed y the National Conference of Commissioners on Uniform State Laws (NCCULS), with the exception of s. 1-301 re choice of laws, with an effective date of "upon becoming law."

ii. Supports passage of a Revised Model Trademark Act, Ch. 495, Florida Statutes.

c) Tax Law Section

i. Supports the Florida Citrus Mutual's efforts to amend the Internal Revenue Code and changes to Sections 1033, 1301 and 1302 to allow for compensation for tree replacement and compensation for lost income.

d. Rules, Bylaws & Policies - Approved

1) Rule 1-7.3(f) Membership Fees

Creates new subdivision (f), to allow for an exemption from membership fees for activated reserve members of the armed services.

2) Tax Section Bylaws

Within Article VI, Section 3 (Standing Committees – State Tax) revises committee structure relating to state tax law and administration.

e. Confirmation of appointments to Legal Services of North Florida Board of Directors - Approved

E. Philip Smith

Joel Margules

Benjamin Crump
Wendy Loquasto

f. **Trust Accounting Certificate for Annual Fee Statement – Approved the following language:**

~~By answering this question and submitting this form to The Florida Bar I hereby~~ representing that I have read the rules applicable to lawyer trust accounts (rule 4-1.5 and Chapter 5) and that I or my law firm have complied with all applicable parts of the Rules Regulating The Florida Bar with respect to trust account records, if any, including required participation in the IOTA program, and maintenance of trust account records.

8. Disciplinary Procedures Committee Report

Chair Murray Silverstein reported that the committee recommends the approval of the following rule amendments on second reading:

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

- 1) Rule 3-2.1 (p) Definitions; Generally (Designated Reviewer)
Within subdivision (p), deletes various provisions regarding the assignment of other specific duties by the board of governors, service of other board members as replacement reviewers in the event of a designated reviewer's recusal or unavailability, selection of a designated reviewer by those board members from the circuit of the grievance committee's jurisdiction, and the reassignment of reviewer responsibility within circuits with unequal numbers of board members and grievance committees
- 2) Rule 3-7.5 (a) Procedures Before the Board of Governors
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 reconsiderations, and that the bar as a party 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.
- 3) Rule 3-7.6 (n)(3) & (4) Procedures Before a Referee
Within subdivision (n), adds new subdivision (3) to state that the referee prepares the record with the assistance with bar counsel, certifies that the record is complete, serves a copy of the index on the respondent and the bar, and files the record with the court; adds new subdivision (4) to confirm that the respondent and bar may seek to supplement the record or have items removed via appropriate motion to the referee within 15 days of service of the index, and to provide for review of any denial of such motion.

The board concurred with the committee recommendation and approved the rule amendments.

b. Items on **first reading – Final approval expected in April 2006**

- 1) SBP 15.76 Policy on Review of Grievance Committee Action by Designated Reviewers
Sets forth allowable actions and guidelines for a designated reviewer in reviewing grievance committee action; specifies timeframes and available materials for such review and the form in which it must be requested.

9. Report on the Special Committee on Amendment 3

Chair Major Harding reported to the board that in December, the Supreme Court of Florida directed the Bar to draft a rule to allow clients to waive their rights according to Amendment 3 to the state Constitution concerning attorney contingency fee agreements. Harding told the board that the committee had 45 days to complete its work. He said the Supreme Court dictated that they do two things: first the committee must recognize the language in the amendment that passed on attorney's fees and state somewhere that the lawyers who engage in this practice

using affirmative speak with clients and get something in writing; and second, design a procedure to be followed. The committee wanted the attorneys in Florida to recognize that lawyers are obligated to do everything they can so that clients understand they have a constitutional right, and that they are giving up this right, and that they have a right to and probably should seek out other attorneys. Harding said that the primary question was; if you require the court to approve fees in excess of what is in the rules, how can you allow a waiver under Amendment 3 without judicial oversight? William Hahn, President of the Florida Chapter of American Board of Trial Advocates told the board that the committee tried to blend this in with the existing rules, if an attorney wants to collect a higher fee, above the descending 40 percent, 30 percent, 20 percent they are still required to go to court. The committee felt that what they were trying to make sure of was that this was a fee schedule that was already approved by the Florida Supreme Court. The board approved Rules Regulating the Florida Bar Rule 4-1.5 with a 38-1 hand vote. Board member Larry Sellers recused himself from the vote.

10. Program Evaluation Committee

Past chair Richard Tanner told the board that the PEC had 2 items for board approval and 1 for review.

- a. Review of Expansion of the Broward County Bar Association Lawyer Referral Service to Include Miami -Dade County
Tanner told the board that the PEC recommends that the board grant permission to the Broward County Bar Association lawyer referral service to include Dade County. The board concurred with the committee recommendation and approved the expansion.
- b. Review of Proposed BLSE Award for Outstanding Professionalism in the Promotion of Board Certification
Tanner explained to the board that this is an award created by the Board of Legal Specialization Education. The special award will be given to someone who has done a terrific job in the promotion of certification. Tanner said that the board would be able to vote on the issue in April.
- c. Review of Questionnaire for Survey on Lawyers with Disabilities
Tanner told the board that the third item on the agenda is the lawyers with disability survey. The questionnaire reviewer looked at it found it without bias however he said it could be shortened. Tanner said that the committee is going to attempt to shorten it. The PEC requests permission to file this questionnaire and begin exploring the problems. The board approved the survey.

11. Young Lawyers Division Report

President Jamie Moses greeted the board and said that the young lawyers division had been very busy since the last board of governors meeting. They held their affiliate outreach program in Brevard County, and the reception was at the Kennedy space center. Several affiliates attended, two were minority and four were new, and one of those won second place in project presentation. Sarasota's young lawyers won first place. They created a DVD to educate 17 year olds about the legal challenges they will face when they turn 18, such as signing leases, establishing credit, and more.

Moses said that in January she went to Pensacola for a gift giving to foster children's Christmas in January. The program is similar to "Toys for Tots" and reaches 240 children. Each child received a jacket, a large toy and three small toys, candy and books. Left over donations are given to new children entering foster care in Pensacola.

Practicing with professionalism (PWP) was held in February. One session had to be cancelled last fall, because of a hurricane. Nancy Daniels, Public Defender of the 2nd judicial circuit, attended the PWP. Daniels had surveyed all of her Public Defenders who had taken the program and she didn't anticipate that there would be future challenges to the PWP by the government lawyers. Moses also met with attorney Matthew Deitz to invite lawyers with disabilities to speak at their PWP and seminars. Deitz said that he received 5-6 commitments almost immediately and they are all government lawyers.

Moses reported that the YLD is gearing up for the Florida Bar's Annual Meeting. The YLD will have a skin cancer 5K with the Skin Cancer Foundation and doctors there to do evaluations.

Moses closed by distributing a pamphlet and disk on getting involved in The Florida Bar and told the board that the pamphlet is on the young lawyer's division website.

12. Budget Committee Report

Chair elect Jesse Diner reported that there were no budget amendments. Diner told the board that the budget committee had been in Tallahassee since Tuesday. He said that the committee had completed its work and that the Bar had a balanced budget, which will be presented in April. The budget committee recommended that the board approve Rule 1-7.3, which creates new subdivision (f), to allow for an exemption from membership fees for activated reserve members of the armed services. The board approved the rule amendment.

13. Board of Legal Specialization and Education

Board of Legal Specialization and Education reported that the BLSE recommends that the board approve Rule 6-22.3 (3)(e) on Minimum Standards, Antitrust & Trade Regulation Certification which, within subdivision (e), adjusts time frame from 2 years to 4 years for applicants to qualify for certification under exam exemption provision. The board approved the rule amendment.

14. Unlicensed Practice of Law Report

Director of Unlicensed Practice of Law, Lori Holcomb, reported that the Supreme Court of Florida has approved several simplified forms, not only for lawyers to use but nonlawyers as well. Most of the forms are in family law, but some are simplified lease forms and eviction.

The lease forms and landlord-tenant forms have not been revised for several years. The UPL committee suggests that the board refer the forms to a committee or an appropriate section to consider whether to update the lease and evictions forms. The board concurred with the committee recommendation and approved the committee motion.

Holcomb said that the second issue is a request for a waiver, 10-5.2 (c) from Burton W. Wiand of Fowler White Boggs Banker, P.A. Mr. Wiand wished to represent to respondents in *The Florida Bar v. We The People of Sarasota, Inc., et al.* Two of the circuit UPL committee members are employed at Fowler White Boggs Banker, P.A., but they were not involved in the investigation. UPL Counsel has no objection to the waiver. The board approved the waiver.

15. President-elect Report

President-elect Hank Coxe reminded the board that they needed to be looking in their circuits for people to nominate for the Citizens Forum because the board would be appointing 4 new members in April. He said that the deadline for nominations is March 16, 2006.

Coxe also reminded the board of the upcoming Diversity Symposium to be held April 28, 2006. He told the board that everyone who has committed to attend needed to make every effort to actually attend. Board of governors members in attendance will be assigned to help moderate panels.

16. Gubernatorial Candidate, Senator Rod Smith

Senator and Gubernatorial candidate Rod Smith came and spoke to the board. He gave the board a brief background of himself and explained why he would be a good Governor. He promised strong support for an independent judiciary and a return to the former system of The Florida Bar appointing members to judicial nominating commissions. The old system had three appointed by the governor, three by the Bar and those six picking three public members. Currently all nine are appointed by the governor, although four come from slates nominated by the Bar. All four major gubernatorial candidates were invited to address the board, but only Smith was able to attend.

17. Supreme Court Justice Peggy Quince

Supreme Court Justice Peggy Quince addressed the board. Quince told the board that the justices believe that it is extremely important to make sure the public understand about the three branches of government. At least 9 percent of adults think the separation of powers is important, although they don't seem to understand what it is. The justices think it is a good step toward

making sure the people of this state understand the importance of the three branches of government. It would increase the public's trust and confidence in the judicial system and the public's trust and confidence in lawyers, who are our judicial system. The justices today are out visiting schools and civic events where they always talk about civic education. Quince stated that she was really surprised that in Florida public schools students only need a half a credit in civil education. The schools need to start early so young people understand the importance of the executive branch, the legislative branch and the judicial branch and the part each plays.

Quince told the board that the Pro bono ceremony held on Thursday, February 16, 2006 was wonderful. Lawyers in Florida gave 1.5 million hours in pro bono and gave \$3.8 million in pro bono. Only about 25 percent of the legal needs of citizens are being met and over half the children in the system have no lawyer or no guardian at litem.

Quince went on to extend a thank you from the Supreme Court and ask for the board's continued support when there are attacks on the judiciary. She said that it wasn't important whether a person agrees or disagrees with particular issues or opinions that come out, the question is, "do we want to change our system because of a decision or group of decisions?"

Quince asked the board for support on the judiciary's budget. The court is very interested in trying to provide some pay parity for the court employees. The clerk's office and other entities pay their people a lot more. The budget of the court system represents about 0.6 percent of the entire state budget, the state budget is about \$58 million, and the judicial budget is just over \$400 million. Half of the court's budget goes to judicial salaries which doesn't leave much for operations or the salaries. When the courts are not adequately funded, everyone loses. So, it's vitally important that the court system is adequately funded. The budget for the clerks of this state exceeds the budget of the judicial system. The clerks who have the responsibility of taking care of the judiciary system records have a larger budget than the judicial system.

Quince said that the courts desperately need to upgrade the salaries of people who work for them. The courts cannot afford to keep the people they need, and be able to compete for the well qualified workers.

Quince said that on behalf of the Supreme Court of Florida, thank you for the support received from the Florida Bar and the board of governors in the past, and asks for your continued support especially in this upcoming legislative session.

18. Special Committee on Paralegal Regulation

Chair Ross Goodman reported that the initial plan came up with a lot of resistance from the legislators working on the paralegal bill. So the committee is going to go back again and will meet again March 2, 2006. The subcommittee had put the finishing touches on the new rule. The rule will be chapter 20 of the Rules Regulating the Florida Bar. It will provide for paralegals staying the way they are and a new system of registered paralegals with higher requirements to obtain that position.

19. Florida Association of Women Lawyers

June McKinney Bartelle, President of Florida Association for Women Lawyers spoke to the board about Fawl Lobby Days scheduled for March 13-14, 2006. Bartelle said that Bookman will be at the 4 hour CLE and will be giving a legislative update along with the new FAWL lobbyist, Yolanda Cash Jackson.

20. Legislation Committee Report

Chair Frank Angones reported to the board that the legislation committee recommended the board approve the following Florida Bar legislative position on judicial certification, as listed on the Florida Bar Masterlist of legislative positions for the 2004-2006 biennium:

18. Supports legislation consistent with the Supreme Court of Florida's December 15, 2005 certification of need for new judges.

By the required 2-part vote, on the request was within the scope of authority and on the merits of the request. The board concurred with the committee recommendation and approved the position.

Angones said that the committee recommends approval of the following section legislative positions. He explained that all of the section positions would have been considered on the

consent calendar if they had been submitted on time. The following legislative positions are shown as they are listed on the Florida Bar Masterlist of legislative positions for the 2004-2006 biennium:

Public Interest Law Section

29. Supports legislation to assure that state funding, resources and policies are directed to provide adequate housing for extremely low income persons, including persons with special needs.

Family Law Section

37. Supports 2006 Senate Bill 408 amending Florida Statutes Chapter 63 on Adoption.

38. Supports the amendment of Florida Statutes 61.08 and 61.14 to fix certain "glitches" created by the 2005 amendment of the Florida Statutes which provided for the termination or modification of alimony based upon a finding that a *de facto* marriage occurred.

39. Supports amendment to Florida Statutes section 61.13(1)(a)(1), (2) and (3) to require that the trial court set forth in every order establishing or modifying child support a schedule containing specific findings designating the child support award for multiple children based upon current net income, so that as each child attains the age of majority or otherwise emancipates, the aggregate number of remaining minor children for whom child support is being paid is accordingly reduced, to the appropriate child support amount as set forth on the schedule, until such time as the total child support obligation is extinguished.

40. Supports an amendment to Florida Statutes 61.14 to include subparagraphs (1)(a)1, (2), (3) (a) and (b), as well as (4) to enable a court to temporarily reduce support under certain defined circumstances post-judgment.

41. Supports an amendment to Florida Statutes section 61.30(2) (b) to include subparagraphs 1, 2, 3, and 4 which define the criteria imputation of income for child support calculation purposes under the statutory child support guidelines, assigns the evidentiary burden to the party seeking to impute the income; and finally, creates a rebuttable presumption pertaining to imputation of the minimum wage.

42. Supports the amendment to Florida Statutes section 61.30 (16) to adjust the child support statutory guidelines no less than every 3 years to ensure that Federal Poverty Guidelines are properly adjusted within those statutory guidelines.

43. Supports the creation of a remedy to set aside a determination of paternity for the express purpose for terminating prospective court ordered child support under certain defined circumstances.

44. Supports the amendment of Florida Statutes Chapter 61 to include a section modeled, in part, on the Uniform Premarital Agreement Act.

45. Supports 2006 Senate Bill 182-C2 on Temporary Custody.

Elder Law Section

10. Supports SB 472 (2006) regarding Florida's Guardianship law as originally filed on 10/25/05, with two exceptions: (1) the proposed amendments to §744.441(19), Florida Statutes; and (2) the proposed amendments to §744.474(20) Florida Statutes.

11. Supports creating Chapter 736, Florida Statutes, to codify the law of trusts and makes conforming revisions to other Florida Statutes.

The board concurred with the committee motion to approve the legislative positions.

Angones told the board that because of funding through a grant from the Florida Bar Foundation, Tax Watch would be preparing a third report for the courts. The first half of the report will be finished by the end of March and will be on competitive salaries for the court employees, and the second half will be court functions.

Angones applauded those governors who had contacted and/or met with their assigned legislators. He encouraged those governors who had yet to act to do so quickly, as the 2006 legislative session was only weeks away.

Chief legislative counsel Steve Metz spoke to the board about the upcoming session. He informed the board that the atmosphere in the Senate was experiencing a shift to the right as members of the more conservative House of Representatives were being elected to the Senate. He explained to the board the some of the circumstances involved in the sudden change of who would be Senate President in 2008. Metz told the board that three of the Supreme Court justices

were up for a retention vote in the fall. He said to expect to see negative advertisements about the courts in general, referring to them as liberal or activist. Bookman told the board about a constitutional amendment under consideration called JAIL. It creates 24 grand juries in the constitution and their purpose is to concentrate on judges. According to Bookman the proposal was recently filed in the Secretary of State's office, and the organization behind this proposal only has about 100 signatures. Bookman also told the board that a South Dakota ballot issue allows judges to be sued for judicial decisions.

Metz reminded the board to visit their legislators and offered guidance to anyone who requests it.

21. Communications Committee Report

Chair Kim Bald reported that the committee received an update on the Board of Legal Specialization and Education's communications program by consultant Lisa Garcia, APR. The program is going well and now has greatly improved graphics and significantly increased communications to both board certified and non-board certified members as well as the public. The committee reviewed a staff recommendation for an expanded member profile on the Bar's Web site that would provide members with an opportunity to voluntarily provide practice information on their individual "Find a Lawyer" pages. The practice information added could include the name and size of the law firm, areas of law practice, courts of admittance, languages spoken and special services available such as ADA accessible client services. Staff will finalize the process for submitting and publishing the information and report back to the committee in April.

Bald reminded the board about the Citizens Forum nominations to be screened by the committee in April. Board members, section chairs and current and former Citizens Forum members may nominate individuals for appointment by the incoming President. The deadline for nominations is March 6, 2006.

Finally, Bald told the board that the committee discussed the status of civics education and The Florida Bar poll on civic knowledge. They also discussed a request by the Citizens Forum that the Bar support legislation requiring a yearlong middle school applied civics course. The committee agreed that this was a good recommendation and is referring it to the Legislation Committee.

22. Investment Committee Report

Committee member Jay White told the board that the Bar portfolio has experienced a 6.56% return on its investments in 2005, bringing the balance to around \$23 million, up \$400,000 from the previous year.

Allen Martin, Director Finance and Accounting told the board that last year there was a change in the accounting policies on custodial risk. This change requires Morgan Stanley investment counselors to carry insurance. He told the board that they would be voting on this in April.

23. Board Review Committee on Professional Ethics

Vice chair Larry Ringers reported on Advertising Appeals 05-02814, 05-02815, 05-02816, 05-02817, 05-02818, and 05-02819 concern application of Rules 4-7.2(b)(1)(B), prohibiting statements that are likely to create an unjustified expectation, and 4-7.2(b)(2)(D), prohibiting statements that cannot be factually substantiated. Staff rendered opinions on June 16, 2005, and July 6, 2005, that some language used in the advertisements was likely to create unjustified expectations about results the lawyer can achieve and that some language used in the advertisements was prohibited unless it could be factually substantiated. The Standing Committee on Advertising reversed staff's opinion as to some of the language used in the advertisements and upheld staff's opinion as to other language used in the advertisement on October 18, 2005. The attorney subsequently requested Board of Governors review on the issue of whether the following language is likely to create unjustified expectations about results the lawyer or law firm can achieve: "Call the Matassini Law Firm *where justice begins for you and your family.*"

The BRC voted 3-3 on a motion to reverse the Standing Committee on Advertising decision.

The board voted to reverse the Standing Committee on Advertising decision, finding that the language "Call the Matassini Law Firm *where justice begins for you and your family*" is not likely to create unjustified expectations and is therefore permissible.

24. Family Law Rules Committee Report

Board liaison Nancy Gregoire reported that the Family Law Rules committee had an out of cycle request to clear up a few "glitch" items. The board approved the amendments to Family Law Form 12.902(b) and (c) and Family Law Form 12.902(i) by a hand vote of 28-0.

25. Juvenile Court Rules Committee

Board liaison Sharron Langer reported that the Juvenile Court Rules committee had an out of cycle request to amend the Application for Determination for Civil Indigent Status Form. The board approved the amended form by a hand vote of 29-0.

26. Special Appointments

The board appointed the following to lawyers to the Florida Bar Foundation Board of Governors: Michael Faehner and George Knox.

27. Legislative Objectors

President Bookman told the board that this presents series of legislative objections is the sixth in our current legislative biennium that began July of 2004. This active position has drawn objections from three Bar members, none of whom are new objectors in this biennium. The board approved a refund of \$6.42 from the objectors Bar dues.

28. President's Report

President Bookman told the board that Mike Greco from the American Bar Association had accompanied him on his recent editorial board visits, where they discussed civic education. Bookman shared with the board that 2006 marks the 50th anniversary of the Florida Bar Foundation. The Foundation will be celebrating this all year long and will hold a special celebration at its Annual convention.

29. Time and Place of Next meeting

The Florida Bar Board of Governors will meet April 5-8, 2006 at the Biltmore Hotel in Coral Gables, Florida.

There being no further business, the board adjourned at 2:53 PM.

Respectfully Submitted,

Dana M. Watson

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