

**THE FLORIDA BAR BOARD OF GOVERNORS**

**Regular Minutes**

April 8, 2005

The Florida Bar

Tallahassee, Florida

Pursuant to notice, the regular meeting of the Board of Governors of The Florida Bar was called to order at 8:30 A.M. on Friday, April 8, 2005, in Tallahassee, 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  
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  
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  
Russell Divine, Ninth Judicial Circuit  
Warren W. Lindsey, Ninth 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  
Benedict P. Kuehne, 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  
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  
Nancy W. Gregoire, Seventeenth Judicial Circuit  
Jesse H. Diner, Seventeenth Judicial Circuit  
Clifton A. McClelland, Jr., Eighteenth Judicial Circuit  
Harold G. Melville, Nineteenth Judicial Circuit  
A. Lawrence (Larry) Ringers, Twentieth Judicial Circuit  
Richard Arthur Tanner, Out-of-State  
Ian M. Comisky, Out-of-State  
Gary J. Leppla, Out-of-State  
Brian D. Burgoon, Out-of-State  
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:

William H. Phelan, Jr., Fifth Judicial Circuit  
Robert M. Brush, Tenth Judicial Circuit  
Ervin A. Gonzalez, Eleventh Judicial Circuit  
Steven Chaykin, Eleventh Judicial Circuit  
Amy Lee Smith, Fifteenth Judicial Circuit  
James S. Lupino, Sixteenth Judicial Circuit  
Alan C. Brandt, Jr., Seventeenth Judicial Circuit  
Frank C. Walker, II, Seventeenth Judicial Circuit  
J. Christopher Lombardo, Twentieth Judicial Circuit

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  
Mike Tartaglia, Director of Programs Division  
Dan Bennett, Division Director of Administration  
Mike Garcia, Director of Research, Planning and Evaluation  
Lori Holcomb, Director of Unlicensed Practice of Law  
Elizabeth Tarbert, Director of Ethics and Advertising  
Gary Blankenship, Senior Editor, Florida Bar News  
Mark Killian, Managing Editor, Florida Bar News  
Jan Pudlow, Senior Editor, Florida Bar News  
Melinda Melendez, Assistant 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  
Christina Sykes, Administrative Secretary for Ethics and Advertising  
Donna McMahon, Lawyer Regulation Office Manager  
Dawna Bicknell, Director of Legal Specialization and Education  
Francine Walker, Director of Public Information

## **2. Guests**

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

Chief Justice Barbara Pariente, Florida Supreme Court  
Justice Charlie Wells, Florida Supreme Court  
Justice Kenneth Bell, Florida Supreme Court  
Justice Fred Lewis, Florida Supreme Court  
Representative Dudley Goodlette, Florida House of Representatives  
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  
Ben Crump, President of the Florida Chapter of the National Bar Association  
Lisa Small, incoming member of the board of governors, Fifteenth Circuit

## **3. Invocation and Pledge of Allegiance**

Invocation and Pledge of Allegiance by Pastor Matt Wallis of the First United Methodist Church of Perry.

**4. Non-Roll Call Grievance agenda items**

Co-Chair Grier Wells reported that the following items were numbers 4, 10, 16, 17, 27 and 19. The client security fund item numbers were 2, 5, 18, 20, 33, and 34.

**5. Non-Roll Call advertising appeal agenda items**

Chair Gary Leppla reported that there were no non-roll call advertising appeal agenda items.

**6. APPROVAL OF MINUTES and EXECUTIVE COMMITTEE ACTION**

A. Regular Minutes January 28, 2005 meeting

B. Grievance Minutes January 28, 2005 meeting

C. Executive Committee action taken:

1) Tuesday, March 8, 2005

One item needing possible Florida Bar action prior to the next Board of Governors meeting was forwarded to the Executive Committee for its consideration on March 8, 2005. A quorum was achieved that same day.

Executive Committee members were asked to consider a legislative position request from the Real Property, Probate & Trust Law (RPPTL) Section regarding repeal of the Deadperson's Statute, F.S. §90.602 and creation of a hearsay exception within §90.804(2)(e), both of which would allow relevant testimony about statements made by a deceased or mentally incapacitated person to be considered and weighed by a fact-finder in the same manner as all other admissible evidence.

The section's proposal had been deferred by the Legislation Committee at the January 28, 2005 board meeting in order to confirm the sentiments of the Code & Rules of Evidence (CRE) Committee and Trial Lawyers Section on this issue. In the interim, the CRE Committee voted to support the RPPTL Section request. The Executive Council of the Trial Lawyers Section, after several discussions of the issue, reported some reservations about the proposal but stated its willingness to let RPPTL proceed with its advocacy – adding that it might yet consider its own separate position on this topic.

Legislation proposing repeal of F.S. §90.602 and amendment of §90.804(2)(e), was scheduled for consideration by the House Civil Justice Committee on March 9, and the RPPTL indicated its preference to speak in favor of the measure, HB 523. The next regularly scheduled meeting of the board of governors occurs at a later date, on April 8, 2005.

General Counsel Paul Hill advised the Executive Committee that the Deadperson's Statute and evidentiary matters did not appear to be topics for unified bar advocacy under *Keller/Schwarzl* criteria, and that The Florida Bar had previously allowed sections to have differing legislative positions on the same subject without a great deal of confusion among state lawmakers. Based on the current posture of RPPTL's submission, the matter was otherwise considered ripe for Florida Bar consideration.

After review and consideration of RPPTL's request and accompanying materials, the Executive Committee voted 11-0: that this issue was a legislative emergency worthy of executive committee action pursuant to SBP 9.21; that the proposal complied with applicable policies regarding executive committee action and section lobbying; and agreed to not prohibit the section's advocacy of these matters. The section position will be officially published as follows:

The Real Property, Probate & Trust Law Section supports repeal of the Deadperson's Statute, F.S. §90.602, and creation of a hearsay exception within §90.804(2)(e), to allow relevant testimony about statements made by a deceased or mentally incapacitated person to be considered and weighed by a fact-finder in the same manner as all other admissible evidence.

- 2) Wednesday, March 2, 2005  
Pursuant to Standing Board Policy 9.21(d) President Kelly Overstreet Johnson considered emergency action as to a proposed legislative position of the Business Law Section regarding federal bankruptcy reform.  
Emergency action was deemed necessary because the measure cleared its final committee stop in the U.S. Senate and will likely be heard on the Senate floor within days. The next regularly scheduled meeting of the board of governors occurs on April 8, 2005.  
President Johnson determined that, pursuant to Standing Board Policy 9.21(d), the issue could not have been reasonably submitted for consideration to the board of governors or the executive committee. Policy states that when an emergency exists, and it is not feasible for the executive committee to act, then the president, upon consultation with the president-elect and the Legislation Committee chair, if possible, may act upon requests for action on a pending or proposed legislative issue.  
After consideration of the request, President Johnson singularly determined that the proposal complied with applicable policies regarding section lobbying, and agreed to not prohibit the Business Law Section's advocacy of this matter. The section position will be officially published as follows:  
The Florida Bar Business Law section opposes federal bankruptcy reform within Senate Bill 256.
- 3) Wednesday, March 16, 2005  
Two items required Executive Committee approval. The Executive Committee was transmitted the information on the two items via fax and the following members responded with their vote: Kelly Overstreet Johnson, Alan Bookman, Jerry Beer, Hank Coxe, Jesse Diner, Mike Glazer, Sharon Langer and David Rothman.  
Item 1  
Formal action was sought from the Executive Committee on member objections to legislative positions 2 through 11. 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. The Executive Committee approved refunding the portion of the membership dues allocated to lobbying these positions to the objectors with a vote of 8-0.  
Item 2  
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:  
Darren Jackson, attorney member, committee 3  
John J. Kendron, attorney member, committee 3  
Carolyn Beth Brombacker, attorney member, committee 17 A  
Scott Michael Dressler, attorney member, committee 17 A  
The Executive Committee approved, by a vote of 8-0, the nominations to the UPL circuit committees.
- 4) Friday, March 18, 2005  
Pursuant to Standing Board Policy 9.21(d) President Kelly Overstreet considered emergency action as to a proposed legislative position of the Business Law Section, relating to the actions of so-called "foreclosure vultures" and their theft of equity from homeowners in the context of residential mortgage foreclosure proceedings.  
Emergency action was deemed necessary because, according to section legislative consultant Bill Willey, two separate bills – SB 2428 (Campbell) and HB 1311 (Porth) – were both moving quickly through committees in both chambers and needed to be dealt with as soon as possible. The legislation is in response to recent accounts of surplus funds being collected by lawyers and non-lawyers – supposedly on behalf of former homeowners but without their knowledge – with excessive amounts of such surplus funds being retained as payment for such unnecessary or minimal "services."  
President Johnson determined that, pursuant to Standing Board Policy 9.21(d), the issue could not have been reasonably submitted for consideration to the board of governors or

the executive committee. Policy states that when an emergency exists, and it is not feasible for the executive committee to act, the president, upon consultation with the president-elect and the Legislation Committee chair, if possible, may act upon a request for action on a pending or proposed legislative issue.

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

The Business Law Section position will be officially published as follows:

Supports legislation to remedy the problem of "equity theft" stemming from surplus funds being collected – supposedly on behalf of former homeowners but without their knowledge – by non-owner "foreclosure vultures," with excessive amounts of such surplus funds being retained as payment for such unnecessary or minimal "services."

5) Thursday, March 24, 2005

Pursuant to Standing Board Policy 9.21(d) President Kelly Overstreet considered emergency action as to a proposed legislative position of the Code & Rules of Evidence (CRE) Committee, relating to opposition to creation of an evidentiary privilege for parent-child communications. President-elect Alan Bookman and Legislation chair Sharon Langer were both also advised of the committee's request.

Emergency action was deemed necessary because, according to CRE Committee leaders, two separate bills – SB 80 (Geller) and HB 1157 (A. Gibson) – are presently pending that again propose a parent-child privilege. Due to potential movement of these measures, CRE leadership thought this position should be formalized as soon as possible. The Family Law Section currently has a recognized position in opposition to creation of an evidentiary privilege for parent-child communications, and the CRE Committee has held this same position previously.

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

After consideration of the request, President Johnson singularly determined that the proposal complied with applicable policies regarding committee lobbying, and agreed to authorize the Code & Rules of Evidence Committee's advocacy of this matter. President-elect Alan Bookman subsequently concurred in the action.

The committee position will be officially published as follows:

Opposes creation of an evidentiary privilege for parent-child communications.

## **7. Consent Calendar**

The following items were **withdrawn** by the Public Interest Law section from further consideration:

- c. Legislation Committee review
  - 1) New section legislative position requests for the 2004-2006 biennium
    - b) Public Interest Law Section
      - i. Healthcare benefits for all Floridians-Removed from consent
      - ii. Membership in the Coalition for responsible health care reform.

The board **approved** the following items:

- a. UPL Circuit committee nominations  
April 2005

Jo Haley, Public Member, Third Judicial Circuit  
Mary Ellen Osterndorf, Attorney Member, Seventh Judicial Circuit  
Christen Svendsen, Public Member, Ninth Judicial Circuit  
William Ira Altfield, Attorney Member, Eleventh Judicial Circuit  
Orlando Loli, Public Member, Eleventh Judicial Circuit  
Lori Dorman, Attorney Member, Twelfth Judicial Circuit  
John Chapman, Jr., Attorney Member, Twelfth Judicial Circuit  
Alan Prather, Attorney Member, Twelfth Judicial Circuit  
Mark Singer, Attorney Member, Twelfth Judicial Circuit  
Judith Cordover, Public Member, Twelfth Judicial Circuit  
Milton Fox, Public Member, Twelfth Judicial Circuit  
Albert Gregory Melchior, Attorney Member, Thirteenth Judicial Circuit  
Mark F. Lewis, Attorney Member, Thirteenth Judicial Circuit  
Gino Martone, Public Member, Seventeenth Judicial Circuit  
Brian L. Cheek, Public Member, Eighteenth Judicial Circuit  
Garrison Michael Dundas, Attorney Member, Nineteenth Judicial Circuit  
Deborah Sawyer, Attorney Member, Nineteenth Judicial Circuit  
Elizabeth Metzger, Attorney Member, Nineteenth Judicial Circuit  
Hugo M. Villagra, Attorney Member, Twentieth Judicial Circuit

b.

Rules, Bylaws & Policies

- 1) Rule 3-5.1 Generally  
Within subdivision (b)(3), adds language to clarify that a respondent is responsible for the \$1250 administrative fee if guilty of minor misconduct.
- 2) 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 or 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 requirement that bar must proceed to trial within 60 days of any emergency order.
- 3) Rule 3-7.16 Limitation on Time to Bring Complaint  
Within subdivision (a), adds provision stating that a reopened disciplinary investigation shall not be time barred by this rule if the investigation is reopened within 1 year of the date on which the matter was closed, except that reopened investigations based on deferrals shall not be barred if reopened within 1 year of the conclusion of the proceeding on which the deferral is based; amends subdivision title to additionally reference reopened cases; amends subdivision (b), to extend its exception from time limitations to the reopening of any matter alleging theft or conviction of a felony criminal offense; amends subdivision (c), to extend its tolling provisions to the reopening of any matter where fraud, concealment or misrepresentation is shown to have prevented discovery of the matter.
- 4) Rule 3-7.5 Procedures Before the Board of Governors; Review by Designated Reviewer  
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.
- 5) SBP 15.90 Review and Approval of Disciplinary Cost Payment Plans

Expands current policy to include procedure for review and approval of plans for member payment of diversion fees, restitution amounts, and fee arbitration awards.

- c. Legislation Committee review
  - 1) New section legislative position requests for the 2004-2006 biennium
    - a) International Law Section
      - i. Supports amending § 55.502 F.S. to correct a glitch by conforming language defining “judgments” to the language of the uniform Foreign Money Recognition Act which includes judgments rendered by courts of U. S. possessions not located within a state of the U S.
    - b) Real Property, Probate and Trust Law Section
      - i. Opposes legislation requiring parties to record notices, warnings or reports regarding the physical condition of land or improvements in the public records regarding the title to real property.
    - c) Family Law Section
      - i. Supports Senate Bill 348 and House Bill 145 on Family Court Efficiency.
      - ii. Supports the statutory recognition of collaborative law as a form of alternative dispute resolution in family law cases and the establishment of a privilege regarding the disclosure of information related to collaborative proceedings.
      - iii. Supports the amendment of § 61.21 F. S. concerning rotating custody to reflect that there shall be no presumption in favor of or against rotating custody.
      - iv. Opposes House Bill 1195 and Senate Bill 1456 which addresses paternity fraud.
      - v. Supports legislation to create a reputable presumption for the purposes of imputation of income in a child support case that every parent in the State of Florida can earn minimum wage.
      - vi. Supports the establishment of supervised visitation program standards and Senate Bill 466.
      - vii. Opposes House Bill 152 and senate Bill 1181 and the termination or modification of alimony based upon a finding that a de facto marriage exists.
  - 2) Section legislative consultant contracts
    - a) The board approved the legislative consultant contract for Tom Batchelor for the Elder Law Section.

### **8. Board of Legal Specialization and Education Report**

Chair Judge Ralph Artigliere reported that they now have the ability to verify CLE hours through the Bar’s website, and will soon have the ability to post CLE and seminars 24 hours a day. The BLSE program is financially sound, and is self sufficient. BLSE has started its two year action plan

The highlight has come from its public relations effort.

Last year BLSE had to deal with some difficult issues dealing with peer review. They have adopted a way to give feedback to people who were undergoing peer review and maintain confidentiality essential to the system. Professionalism and peer review is a mandated part of our program, without it you cannot become board certified. Every person who becomes board certified not only gets checked by the area certification committee, but that person is checked by every member of the BLSE. The program is trying to become more inclusive rather than exclusive. They are in the process of making changes to the civil trial standards to reflect the fact that when we started it 20 years ago, it was easier to get more trials. The idea is to bring in more people who are qualified, and not break down the standards.

BLSE is looking at increasing the types of certifications it approves. The idea is that if there is an area where there are enough lawyers to become certified and it is a discrete specialty, BLSE is

going to try to get those lawyers certified. BLSE wants to ensure that the lawyers being certified have competence and commitment to their specialty.

The BLSE is evolving as a Bar board rather than an advocate for certified lawyers. He reported that they were looking at the possibility of making a section or division for board certified lawyers to take up issues that they wouldn't as a board.

Judge Artigliere concluded his report with a reminder of the following rule amendments:

a. **Items on first reading**

1) Rule 6-1.2 Public Notice

Updates explanation of board certification, for public notice in telephone directory yellow pages.

2) Rule 6-4.1 Generally

Incorporates professionalism reference in preamble as to purpose of board certification.

3) Rule 6-4.3 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.

4) Rule 6-4.4 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.

## **9. Budget Committee Report**

Chair Jerry Beer reported that the Budget committee recommended one budget amendment. This budget amendment is for a contribution to Florida Law Related Education Association of \$13,500 for an essay and poster contest.

A second information item is the BLSE processing fee for late course evaluations. BLSE wants to charge a \$50 late processing fee for people who wait to submit a request for course approval until the last 60 days of their cycle. This is for people who have taken an unapproved course earlier in their cycle and then request course approval at the end of their cycle. This will not apply to a lawyer that actually took the course during the last 60 days of their cycle.

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

Beer went on to describe the issue of section splits. In order to review The Florida Bar's interactions with the sections of the Florida Bar, past President Miles McGrane created a Special Budget Task Force in August 2003. Beer reported that in addition to him, William Kalish and Marsha Rydberg, two former board of governor's members, were appointed. At the time of appointment, Rydberg was the chair-elect of the Council of Sections. In reviewing the financial relationships, the Task Force focused on two main areas: the Bar's relationship with the sections, and the Bar's relationship with the Young Lawyers Division. The board of governors approved changes between the Bar and the Young Lawyers Division at its December 2004 meeting in Naples.

The Task force sent letter to all of the sections and the council of sections. The letter told them that the task force wanted to meet with the sections and conference calls were held. The task force members have spoken to 20 of the 22 sections, shared information and tried to address some of the sections concerns.

Beer went on to review the task force's proposal and the budget committee's recommendation. The proposal consists of five parts, the first is the way the Bar handle the dues. The budget committee recommended that the Bar's no longer take a share of section dues. But instead have a per member administrative fee for each section membership provisionally set at \$17.50 (raised from the \$12.50 half dues cap) This works for most sections but some sections are not creating a large deficit and feel it is not fair to charge them more money. Therefore, the task force added a refund feature. The amount returned to the section will be the lesser of the surplus in revised section support per section or the \$5.00 per member section increase in The Florida Bar's administrative charge.

The second part of the proposal is in regard to the sections "printing" subsidy. At present, the Florida Bar provides the printing and other services such as graphic arts, for the sections, which does not includes printing for CLE. The jobs are billed to the sections at the preferred "Bar rate" as opposed to the rate outside vendors would charge. However, at the end of each month, the sections receive a rebate for all of the job costs except for the cost of the ink and the paper. This "printing rebate" includes other small items such as charges for graphic arts, meetings, administration, advertising in the *News*, mail processing, etc. The Task Force agreed that this was an unusual arrangement.

The board of governors' budget committee recommends that the Bar eliminate this cost subsidy. The Bar will continue to allow the sections to use its print shop and other services, and the sections will continue to receive the preferred "Bar rate". Some of the sections said The Bar is charging too much for use of its print shop, so, the Bar will allow the sections to go outside the Bar for all of its printing, but this must be decided annually by either December 31 or January 31 of each year so that annual budgeting can be done for the print shop.

The third part of the proposal concerns the allocation of general and administrative overhead (G&A). The budget committee recommends that the G & A expense continue to be allocated and the sections remain accountable for their share of G & A. The budget committee felt that these costs should be included in determining the amount of financial support being provided to the sections, as it is a true cost to deliver the services. The task force suggested there be some limitations what the bar supplies to each section. The task force suggested having a numeric formula that will provide that if the sections continue to grow the theoretical support will continue to grow.

The fourth part of the proposal deals with the split of CLE revenues. The Budget Committee agreed unanimously that the CLE split should be done on a *net* basis. They believe the concept of allocating the monies based on gross revenue has not worked consistently in past years, and the current formula does not allocate the costs to the users who create the costs. There was some discussion as to whether any split to The Florida Bar should be made at all as sections were responsible for putting on the seminars that generate the CLE funds. It was the overwhelming feeling of the Budget Committee that The Florida Bar and the sections operate in a partnership in putting on CLE courses, and has been doing so for a significant number of years. There was no complaint of the partnership when the sections collectively made hundreds of thousands of dollars annually, while The Florida Bar absorbed similar sized losses. The

partnership should continue. Additionally, The Florida Bar grants the sections/divisions a monopoly in providing Florida Bar CLE. The Bar itself only offers 3 or 4 programs a year none of which are in a substantive area of the law. Not only do the sections/divisions have a monopoly but they can charge non-section members (a majority of the Bar) a fee up to \$25 to attend one of their CLE programs. This fee is not shared in the profit split with The Florida Bar. The Budget Committee recommends that the split be based on the net amount of funds left over after all expenses have been paid, and that the split of profit and losses should be 80% to the sections and 20% to The Florida Bar. To ease the effect of the other recommended changes, the Budget Committee recommends the sections be given a bonus allocation for the first two years. During fiscal year 2006-2007, the sections' allocation will be 90%, and in fiscal year 2007-2008, the sections allocation will be 85%. Thereafter, the split will revert to The Budget Committee's recommended split of 80/20.

The fifth part of the proposal deals with setting a limit to the administrative support that the Bar provides the sections. The Budget Committee recommends that the sections continue to be given administrative support, but that each of the sections have a theoretical cap as to the total amount of money The Florida Bar will expend on any section in excess of the \$17.50 per membership. Accordingly, The Budget Committee recommends on a 9 to 1 vote, that a limit on administrative support be put in place for all the sections during the year commencing July 1, 2006 as set forth in the next paragraph. The first 1,000 memberships of each section will receive up to \$10.00 of administrative support per section membership, for the next 500 memberships each section will receive up to \$5.00 of support per section member, and all section members in excess of 1,500, will receive support of up to \$2.50 per membership. If the section goes over its subsidy "cap", that amount will be paid back to The Florida Bar at the end of the fiscal year when the amounts are calculated (in much the same way any surplus from administrative efficiency, up to the amount of \$5.00 fee increase, will be returned to the sections).

Beer concluded the discussion on the section splits by reminding the board that the extent the sections will not receive as large a subsidy as in the past, the sections will now receive a much greater share of its CLE profits. For those sections that operate with some administrative efficiency, and continue to promote successful CLE courses, the impact will either be negligible or the sections will actually end up with more money. Those sections that continue to disproportionately use the resources of The Florida Bar for its activities and/or are unable to promote successful CLE courses, will find that they will have to revamp the manner in which they continue to do business.

Beer answered questions from the board concerning how the sections were responding to the proposal and how the Bar will help the smaller, less financially sound sections. Beer reminded the board that they would be voting on this proposal in June at its board of governors meeting in Palm Beach.

Chair-elect Mayanne Downs told the board that budget committee met in Tallahassee in February to review the Bar staff's budget proposals. The Bar's budget for the 2005-06 fiscal year is a conservative budget with adequate reserves and funding to operate our programs and services that we need to provide to members, the public and the courts. The budget committee took a close look at the technological needs of The Bar. The budget committee believes that an organization as large as The Bar should have adequate back up in the event of disasters, such as the hurricanes suffered last fall. The budget committee recommends that the board approve the 2005-06 budget as provided in the board materials. The board concurred on a voice vote.

#### **10. Advertising Task Force Report**

Advertising Task Force 2004 chair Manuel R. Morales, Jr. reported on the work of the task force. The task force, which was a diverse group of individuals, concluded a one year study of the rules that included numerous opportunities for bar members to have input. The task force recommended numerous changes to the rules. He described the substantive changes in each rule before the board discussed and voted on that rule.

The board approved the task force recommendations regarding rules 4-7.1 through 4-7.11, pages 28b(2) through (71), with the following exceptions:

The board approved a proposal by the DPC to delete the phrases “directly or impliedly,” “potentially,” and “actually or potentially” from proposed rule 4-7.2(c)(1) subdivisions (B), (C), and (D) as set forth on lines 199-204.

The task force motion to delete existing rule 4-7.2(b)(5) regarding advertising areas of practice failed, 19-22.

The task force motion to delete existing rule 4-7.2(c)(8) regarding referrals to another lawyer failed on a voice vote.

The task force motion to remove websites from application of the lawyer advertising rules in rule 4-7.6(b) failed. An alternate proposal made by board members Moses, Rush and Silverstein and a majority of the DPC that subjects websites to the general advertising regulations set forth in rule 4-7.2 passed by voice vote.

The board approved rule 4-7.7 alternative 2, lines 1082 through 1282, requiring prior review of television and radio advertisements and concurrent review of all other non-exempt advertisements by voice vote.

Housekeeping provisions in rule 4-7.7 recommended by staff, but not reviewed by the task force, passed by voice vote.

The task force motion to delete existing rule 4-7.8(g), regarding exemption of websites from the filing requirement, failed.

A motion by board member Rush and seconded by board member Lindsey to impose a 5 day ban for direct mail in criminal cases failed on a voice vote.

Rule 4-7.7 was discussed in executive session.

At the conclusion of the Advertising Task Force report, chair Manuel R. Morales, Jr. was given a standing ovation.

#### **11. Chief Justice of the Florida Supreme Court**

Florida Supreme Court Chief Justice Barbara Pariente, along with Justice Kenneth Bell, Justice Fred Lewis and Justice Charlie Wells joined the board for lunch. Before lunch Chief Justice Pariente told the board of governors that the 2005 Supreme Court Pro Bono awards had been dedicated to the late Henry Latimer. She shared that the example that Henry Latimer set in professionalism and mentoring was one that the board should follow. She suggested that the board should continue to work to make the board of governors more diverse.

Chief Justice Pariente spoke to the board about funding for new judges. She told the board that the House of Representative’s proposed budget included \$6.6 million to pay for new judges and the Senate proposed budget included only \$2.4 million. She requested that the board members take the time to contact the legislators on both the House and Senate appropriations committees to let them know the depth of the need for new judges in Florida.

Chief Justice Pariente told the board about a program that the Supreme Court and The Bar had put on for the legislators call the Judicial Institute. This program was an outreach from the judicial branch to the legislators to try to educate the individual legislators, lawyer/legislators and nonlawyer/ legislators on the different and specific needs and functions of the courts. She stressed to the board that the independence of the judiciary is under attack, not only in Florida, but nationwide. She stressed that the Terri Schiavo case was a lesson in separation of powers and checks and balances. She applauded the Governor and the House and Senate for showing restraint and not going against Judge Greer’s order.

#### **12. Report of the In Memoriam Henry Latimer Committee**

Chair Hank Coxe reported that the committee appointed to find a proper way to honor Henry Latimer recommended that the board approve a resolution naming the Bar’s Professionalism Center after the late board member Henry Latimer, to honor his accomplishments as a lawyer and contributions to the profession. The board concurred with the committee recommendation and approved the resolution.

#### **13. Comments by Representative Dudley Goodlette**

Past board of governor and current Representative in the Florida House of Representatives, Dudley Goodlette thanked the board for having him come and join them for lunch and asking him

to speak. He told the board that The Bar has incredible legislative counsel in Steve Metz. He said that Metz does a terrific job and that The Bar is lucky to have him, and well as Paul Hill and all of the others on the legislative team. He told the board that the Bar has an absolute treasure in the sections of The Bar. He said that in his time in the legislature, lawyers from the Bar sections had provided input on at least half of the bills he has worked on. He feels that The Bar needs to work on letting the rest of the legislature know of the value of the sections and their input. He shared with the board that Representative Joe Negron, chair of the House appropriations committee was committed to funding the Judiciary at the highest possible levels. He told the board that the House proposed budget included funding for all 110 new judges included in the Supreme Court certification, as well as \$5 million for civil legal assistance. The new funds for the civil legal assistance will allow that program to go statewide and help many more Floridians.

Representative Goodlette concluded by acknowledging the time and talent that the board members put in to serving on the board of governors and encouraged them to take their service even further by running for an office in the Florida Legislature, as there is always a need for lawyers in the legislature.

President Johnson thanked Representative Goodlette for all of his help, and shared with the board that Representative Goodlette would be receiving the Medal of Honor award at The Bar's Annual meeting.

#### **14. Communications Committee Report**

Chair Mike Glazer reported that the committee met and among several key topics they discussed the Bar directory. Over the last few years, the board decided to try to reduce the number of pages, and therefore the expense, of the directory. A communications audit last year provided a recommendation to phase the book out completely over time. In 2004, the center section listing court information, state and federal officials and legal groups was removed. When the 2004 directory was distributed comments were received that the court information was particularly useful and that the Bar should consider restoring that section. The same information is available on the Bar Web site and is more current, but the court listings were not in the same format as in print and that format was clearly preferred. The comments, including a resolution by the Martin County Bar Association calling for the courts section to be restored, were considered and discussed by the committee. A motion was then approved by the committee to restore the courts section in the printed directory, beginning with the 2005 edition, until the Communications Committee has the opportunity to review the policy issues involved in reducing or eliminating the printed Directory altogether. The estimated cost to print is \$9,300. Assembling the information for the printed directory will also enable the Bar to publish it in the same format on the Web site. The board concurred with the committee motion.

Francine Andia Walker, Director of Public Information, gave the board a preview of the newly designed Web site. She demonstrated both the graphic redesign and the content reorganization and said that users should be able to reach the information they need in three or fewer clicks. Mr. Glazer reported that the committee had discussed the issue of advertising on the new site and had the following motion to present to the board: The Florida Bar will exclude commercial advertisements on its Web site homepage, the ethics opinions section pages and the professionalism practice section pages, and that all other advertisements on the site be limited to pages currently being sold, and if the opportunity to sell on other pages arises, the communications committee would have to approve the sale. The board concurred with the committee motion.

#### **15. Rules Committee Report**

Chair Cliff McClelland reported that the minutes to the Rules committee meeting were included in the board materials and that there was no other report.

#### **16. Disciplinary Procedure Committee Report**

Chair Greg Parker reported that the committee met and dealt with the following items:

- a. The board approved the following items on **second 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 members firm, but not the board member, to represent a disciplinary respondent in limited instances; if the respondent is a member of the board members 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) Arbitration Clauses to Settle Fee and Malpractice Disputes

a) Rule 4-1.8 (h) Conflicts of Interest; Prohibited and Other Transactions; Limiting Liability for Malpractice

Within subdivision (h), adds new language that would permit 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).

b. The board **rejected** proposed rule 4-1.5 removing arbitration of malpractice claims, and then voted to direct the DPC to draft a rule that such an arbitration requirement cannot be in a fee contract unless requested by the client.

c. Items on **first reading**

1) Rule 14-6.1 Binding Nature (fee arbitration awards)

Adds, as new subdivision (c), provisions to conform the rule to recent approved amendments to 1-3.6 and confirm that a member's failure to timely pay a fee arbitration award without just cause shall result in the member being delinquent and not authorized to practice law pursuant to rule 1-3.6; amends subchapter and rule title to reflect this new matter.

d. Items under consideration

1) Rule 3-7.2 (b)(c) Procedures upon criminal or professional misconduct; discipline upon determination

Within subdivision (a) better defines a determination of guilt to include the entry of a guilty plea or no contest plea in the entry of a verdict of guilt by their trial judge or a jury; (b) ~~and (c)~~, extends the conclusive proof of guilt provisions regarding felony cases to all criminal cases; within subdivision (c), requires a member of the bar who is arrested on felony charges to give notice of such arrest to the executive director; also requires such notice from the state attorney's office assigned to the felony case if the defendant is known to be a Florida Bar member, .9d) requires notice of the determination of judgment of guilt of the trial judge, the clerk of the court, and the state attorney if state attorney knows the respondents as a member of the bar; new (e) requires notice of the determination or judgment guilt from the respondents;(f) clarifies that the court shall enter a suspension based on notice of judgment guilt; (g) allows for the filing a petition to modify or terminate a suspension entered under this rule, but clarifies the filing of such petition does not stay suspension imposed; (h) requires the prop the appointment of a referee to hold a hearing on the petition to terminate or modify the suspension within seven days of assignment and then to submit a report the seven days of the hearing, further clarifies the termination modification and recommended only similar the bar can demonstrate limited matters; further end (h)(2) acquires a referee to hold her own sanctions if no petition terminator

modifier has been filed and allows air spot challenge in the position of a section only a limited ground.;(i) clarifies and restates that an appeal shall not have any effect on suspension of this rule unless so ordered by the court;(j) provides for expulsion of sections entered of this rule when the final disposition of the cruel case has resulted in acquittal of the respondents;(k) allows for waiver by the respondents of the time limitations set forth in this rule. If

2) Rule 4-1.5(f)(4)(B) Contingent Fees

Consistent with existing commentary language, adds verbiage within subdivision (f)(4)(B)(ii) intended to further clarify the process by which a trial judge should consider an upward departure from an otherwise presumed reasonable fee under the provisions of this rule; discusses the burden of justifying an increased fee placed on both the lawyer and client, and the criteria for judges to consider in reviewing a petition for approval of such a fee. Amendments to this rule repairs the approved by the Board and then withdrawn from the filing package on reconsideration and were returned to the display procedure committee for further study. The committee is collecting and discussing member comments.

3) 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. The proposed limits have been approved by the disciplinary procedure committee and will be presented for final action at the board's next meeting.

**17. Florida Chapter of the National Bar Association Report**

Ben Crump, President of the Florida Chapter of the National Bar Association (NBA) reported that the NBA was holding its quarterly meeting in conjunction with the Diversity symposium being held in Tampa on April 22, 2005. He thanked the board for the honor it is showing Henry Latimer and for its effort in diversity. He thanked board member Chuck Badger specifically for attending so many of the minority bar activities and acting as a type of bridge between the minority bars and The Florida Bar. He encouraged other board members to participate in the minority Bar activities. He reminded the board that in order to increase the diversity of the board, it must be more inclusive. He said that the only way for the board to become more diverse id for the members to reach out on a regular basis to the minority bars. Crump closed his report by inviting the board members to a luncheon being held at the Florida Bar Annual meeting with the Florida Chapter of the National Bar Association, the Florida Association of Women Lawyers and the Equal Opportunity Law section. He said that they would be giving the President's Award to Henry Latimer's family, and the family will participate in giving out the Lorriane Latimer award, for pro bono work.

**18. Legislation Committee Report**

Chair Sharon Langer reported on the following legislative items:

- a. Florida Bar legislative position requests for the 2004-2006 biennium
  - 1) Legal Needs of Children Committee-- **Approved**
    - i) Supports legislation to require that a child have a meaningful opportunity to consult with an attorney before waiving his/her right to counsel in a delinquency proceeding.
  - 2) Special Committee to Study the Constitutional Revision Process -- **Approved**
    - i) Supports the concept of having the Florida Legislature enact a joint resolution to place on the ballot a provision that amendments or revisions by initiative must: amend or repeal an existing section of this constitution on the same subject and matter; address a basic or fundamental right of a citizen of this state; or changes

- the basic structure of state government as established in Article II, Article III, Article IV, or Article V of this constitution.
- b. New section legislative position requests for the 2004-2006 biennium-**Denied**
    - 1) Family Law Section
      - i) Foster parent adoption notwithstanding § 63.042
  - c. New section legislative position requests for the 2004-2006 biennium-**Approved**
    - 1) Tax Law Section
      - i) Supports legislation to address the inconsistency for corporate income tax purposes between the statutory lookback period for audits and statutory lookback period for refund claims in Florida.
    - 2) Public Interest Law Section
      - i) Supports legislation to reduce the use, by the state and private providers, of physical restraints on minors.
      - ii) Supports legislation that prohibits the use of Tasers on minors.
      - iii) Supports legislation to facilitate unaccompanied, abused, neglected, or abandoned immigrant minor's ability to access services including juvenile visas.
      - iv) Supports legislation to require that a child have a meaningful opportunity to consult with an attorney before waiving his/her right to counsel in a delinquency proceeding.

Steve Metz, chief legislative counsel for The Bar reported that there are 4 weeks left of the 2005 legislative session and that things were changing hourly. He began by sharing with the board that House Bill 1007 the bill that deals with court rulemaking, had been withdrawn from the House Justice Appropriations committee and would be heard by the House Justice Council. The bill was not voted on in the Justice Appropriations committee. He encouraged the board members to contact the Representatives on the House Justice Council and encourage them to vote against the bill. Metz went on to tell the board about Senate Bill 192, by Senator Campbell, the attorney advertising bill. He told the board that he and Bar staff had been working with Senator Skip Campbell's office to try to draft a bill that would be constitutional. He said that House bill 599 by Representative Kottkamp had not been heard in any of its referenced committees. Metz told the board that the legislature was aware of the issues between the Clerks of Court and the Chief Judges and that they would likely deal with the issue in their Article V, Revision 7 "glitch" bill.

He went on to discuss Senate Bill 2054 by Senator Argenziano and House Bill 1519 by Representative Zapata, these are the paralegal bills. He said that Bar staff had been working with the people from the paralegal association, the Supreme Court, as well as the legislature to try to come to an agreement. Neither of the bills had been heard in any of their referenced committees and that unless he is directed by the board to push for these bills to be heard, that they probably wouldn't be. However, he did say that the legislature has let the parties know that they want them to work something out.

Metz concluded his report by discussing the budget. He told the board that the House appropriations bill included funding for all 110 judges included in the Supreme Court certification. He explained that the Senate budget did not include funding for this, but that the Senate was promising new judges. He also told the board that the Civil Legal Assistance Act was funded in the House proposal for \$5 million and in the Senate proposal for \$1.5 million.

### **19. Special Appointments**

Supreme Court's Bar Admissions Committee – 1 lawyer for 2-year term beginning July 1, 2005  
The board appointed Regine Monestime to the committee.

### **20. Program Evaluation Committee Report**

Chair Richard Tanner reported that the committee met and considered a request by the Special Committee on Judicial Independence to become a standing board committee. The committee recommends the following motion: The current Special Committee on Judicial Independence should be elevated to a Florida Bar Standing Committee on Judicial Independence with the

president having the flexibility to appoint Board members, non-Board members and non-lawyers to the committee. The board concurred with the committee motion.

The committee also reviewed the following BLSE rules and made the following recommendations. The PEC did not approve Rule 6-1.2, but rather recommend that it be sent back to the BLSE for evaluation and redrafting

The committee approved of the following BLSE rules and recommend that the board do likewise:

2) Rule 6-4.1 Generally

Incorporates professionalism reference in preamble as to purpose of board certification.

3) Rule 6-4.3 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.

4) Rule 6-4.4 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.

The board concurred with the committee motion.

**21. Workers' Compensation Law Section Bylaws – first reading**

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.

**22. Report of the Unbundled Legal Services Monitoring Committee**

Lori Holcomb, staff liaison for the unbundled legal services monitoring committee gave a brief history to the board. She said that the Florida Supreme Court had requested that The Bar look into unbundled legal services, which allows a lawyer to take part of a case, but not necessarily

represent the client on all of their issues. The Bar drafted rules pertaining to this which were adopted by the court in an order dated November 13, 2003, becoming effective January 2004. In the order, the court also ordered the Bar to monitor the implementation of the rule and any difficulties that may arise, and report back to the court within two years of the effective date with recommendations for improvements or changes. A committee was appointed to monitor the rules and report back to the court. The committee decided to do surveys. The committee did not get back very many surveys back, but they ones that were returned displayed that the rule seems to be working. The committee decided to bring its report to the board to let the board tell the committee if its report is ready to be submitted to the court. The recommendations include: getting the information about the rule out to more lawyers; having the Family Law section or Family Law Rules committee consider drafting a form retainer agreement to be used in unbundled cases; make information regarding unbundled legal services available in offices of the Clerks of Court; and clarify whether the rule was intended to apply to the Department of Revenue in child support enforcement cases. The committee recommendation is that the board approve the report as submitted, so that it can be filed with the Supreme Court. The board concurred with the committee motion.

### **23. Report of Board Review Committee on Professional Ethics**

After consideration of the request of the Professional Ethics Committee, the Board Review Committee on Professional voted 4-3 to recommend that the board direct staff to draft a rule governing "of counsel" relationships for consideration by the appropriate board committee(s). The board concurred in the committee's recommendation.

### **24. Report of the Member Benefits Committee**

Staff liaison Mike Tartaglia described to the board a contract with Fastcase to provide free online basic legal research for all Florida Bar members. The service should be available in June. Fastcase will also provide a substantial discount for Bar members who wish to get more than the basic service. The board approved the contract with some technical amendments.

### **25. President-elect Report**

President-elect Alan Bookman thanked the Tallahassee delegation for the wonderful dinner held the prior evening. Bookman reported that the board had been provided with a list of the committee chairs and vice chairs appointments. The board voted to approve the appointments. Bookman reminded the board that it had been challenged by the Young Lawyers division in the Battle of the Boards in St. Petersburg in August. He is also planning a 1 day retreat for Saturday, August 27, 2005 after the board of governors meeting.

Bookman announced his two appointments to the executive committee. He explained that the chairs of the budget, communications and legislation committees were automatically on the executive committee, the president-elect appoints two members, and the board will select three other board members at its June meeting. At this time the committee consists of Mayanne Downs, Kimberly Bald, and Frank Angones, and Bookman's appointments are David Rothman and Jesse Diner.

### **26. Special Committee on Judicial Independence**

Chair Jesse Diner reported that the special committee had requested that it become a permanent standing committee instead of a special board committee, with the membership expanded to include general Bar members and nonlawyers. The PEC voted to approve the request and the board concurred with the PEC motion. Diner told the board that the committee had a meeting scheduled for Thursday, April 21, 2005 in Tampa at Gwynne Young's office at Carlton Fields. The meeting is scheduled on the day before the diversity symposium. The next meeting of the committee will be held at The Bar's Annual meeting, where it will be collecting anecdotal information on the judicial nominating commissions. The committee is scheduled for a 3 hour block and all who are interested are invited to attend.

### **27. Investment Committee Report**

Chair Jay White reported that at the beginning of the quarter The Bar had approximately \$17 million in the account. The Bar lost some money in the first quarter, which was consistent with the market. The Bar has received some suggestions of how to reallocate some of the funds into different areas and stay within the parameters of the Bar investment policy.

**28. Report of the Judicial Nominating Procedures Committee**

Chair Jay White gave the report from the Judicial Nominating Procedures Committee that the committee was reluctant to adopt a rule requiring Judicial Nominating Commissions to record their candidate interviews because of the expense. The board referred the matter to the Committee on Judicial Independence.

**29. Time and Place of next meeting**

The Florida Bar Board of Governors will meet June 1-4, 2005 at the Four Seasons in Palm Beach Florida.

There being no further business to discuss, the board adjourned at 4:45 PM.

Respectfully submitted,

Dana M. Wood

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