

The Florida Bar
December 14, 2007
The Ritz Carlton
Amelia Island, 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, December 14, 2007, in Amelia Island, Florida, with President Francisco R. Angones presiding.

1. Roll Call

Francisco R. Angones, President
John G. White, III, President-elect
Steve Ecshner, First Judicial Circuit
Lawrence E. Sellers, Jr., Second Judicial Circuit
Dominic M. Caparello, Second Judicial Circuit
Gregory S. Parker, Third Judicial Circuit
S. Grier Wells, Fourth Judicial Circuit
John J. Schickel, Fourth Judicial Circuit
Denise A. Lyn, Fifth Judicial Circuit
Andrew B. Sasso, Sixth Judicial Circuit
Murray B. Silverstein, Sixth Judicial Circuit
Charles Chobee Ebbets, Seventh Judicial Circuit
Carl B. Schwait, Eighth Judicial Circuit
Mayanne Downs, Ninth Judicial Circuit
Daniel L. DeCubellis, Ninth Judicial Circuit
Warren W. Lindsey, Ninth Judicial Circuit
Ramon Abadin, Eleventh Judicial Circuit
David Rothman, Eleventh Judicial Circuit
Ervin A. Gonzalez, Eleventh Judicial Circuit
Jennifer Coberly, Eleventh Judicial Circuit
Dennis Kainen, Eleventh Judicial Circuit
Juliet Roulhac, Eleventh Judicial Circuit
Benedict P. Kuehne, Eleventh Judicial Circuit
Steven Chaykin, Eleventh Judicial Circuit
Norman Vaughan-Birch, Twelfth Judicial Circuit
Timon V. Sullivan, Thirteenth Judicial Circuit
William Kalish, Thirteenth Judicial Circuit
Gwynne Alice Young, Thirteenth Judicial Circuit
Clifford W. Sanborn, Fourteenth Judicial Circuit
David Prather, 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
Nancy W. Gregoire, Seventeenth Judicial Circuit
Eugene K. Pettis, Seventeenth Judicial Circuit
Jesse H. Diner, Seventeenth Judicial Circuit
Frank C. Walker, II, Seventeenth Judicial Circuit
Clifton A. McClelland, Jr., Eighteenth Judicial Circuit
Richard Arthur Tanner, Out-of-State
Ian M. Comisky, Out-of-State
Eric Meeks, Out-of-State
Brian D. Burgoon, Out-of-State
Jewel White Cole, YLD President-elect

Arnell Bryant-Willis, Public Member
J. Blair Culpepper, Public Member

Board members absent:

Robert M. Brush, Tenth Judicial Circuit
Allison Bethel, Seventeenth Judicial Circuit
John M. Stewart, Nineteenth Judicial Circuit
Laird A. Lile, Twentieth Judicial Circuit
A. Lawrence (Larry) Ringers, Twentieth Judicial Circuit
Scott Atwood, YLD President

Staff attending the meeting:

John F. Harkness, Jr., Executive Director
Paul F. Hill, General Counsel
Tony Boggs, Assistant to Division Director – Legal
John Berry, Director of Legal Division
Don Spangler, Attorney Consumer Assistance Program
Mary Ellen Bateman, Director, Ethics, Advertising and Special Projects Division
Ken Marvin, Director of Lawyer Regulation
Elizabeth Tarbert, Director of Ethics and Advertising
Lori Holcomb, Director of Unlicensed Practice of Law
Allen Martin, Director Finance and Accounting
Roselyn Scott, Assistant to the President
Dana Watson, Secretary to the Board of Governors
Gary Blankenship, Senior Editor, Florida Bar News
Francine Walker, Director of Public Information

2. Guests

Jane Curran, Executive Director, Florida Bar Foundation
Marlene Quintana, President-elect, Cuban American Bar Association
Sherri Johnson, President, Florida Association of Women Lawyers
Kalinthia R. Dillard, President, Virgil Hawkins Florida Chapter of the National Bar Association
Steve Metz, Chief Legislative Consultant
Teri Sopp, President, Nassau County Bar
Caroline Emery, President, Jacksonville Bar Association
William Choisser, President, Clay County Bar Association

3. Invocation and Pledge of Allegiance

The Invocation was given by Grier Wells and the Pledge of Allegiance was led by Jake Schickel.

4. Non-roll call Grievance Agenda Items

Co-chair David Rothman reported that the non-roll call discipline items were numbers 17, 19 & 25.

5. Non-roll call Advertising Appeal Agenda Items

Chair Jennifer Coberly reported that non-roll call advertising appeal agenda items were 5b(i) issues 1 & 2 and 5b(ii) issues f & g.

6. Welcome by Nassau County Bar President

Teri Sopp, President of the Nassau County Bar welcomed the board to Amelia Island and gave a brief report on the local bar's activities.

7. Approval of Minutes- Approved

- a. Regular Minutes, October 5, 2007 meeting
- b. Grievance Minutes, October 5, 2007 meeting

c. Summary of Executive Committee action taken

i) October 12, 2007 – Juvenile Court Rules Committee – Rule Amendments

The Juvenile Court Rules Committee sought approval of the Executive Committee to file an out-of-cycle amendment to Fla.R.Juv.P. 8.100(e), as required by Fla.R.Jud.Admin. 2.140(e) and (f). The Committee submitted the following amendments for its review and approval:

(e) Record of Testimony. A record of the testimony in all hearings shall be made by an official court reporter, a court approved stenographer, or a recording device. The records shall be preserved for 5 years from the date of the hearing. Official records of testimony shall be provided only upon request of a party, a party's attorney, or a court order.

After review and consideration, the Executive Committee voted 10-0 to approve the amendments.

ii) October 30, 2007 – Rules of Judicial Administration Committee – Rule Amendments

The Rules of Judicial Administration Committee was asked to file amendments to Rule of Judicial Administration 2.420, governing public access to judicial branch records.

The Committee submitted the following amendments to the Executive Committee for its review and approval:

(1) Subdivision (c)(10) is a style amendment that merely substitutes a current reference to the Judicial Ethics Advisory Committee for an out-of date reference to the Committee on Standards of Conduct for Judges.

(2) Subdivision (d)(7) addresses appeals. The current subdivision provides a mechanism by which the appellate court can be advised that the record contains sealed documents. The Appellate and RJA Committees agreed that any rule addressing confidentiality should remain in the Rules of Judicial Administration rather than in the Rules of Appellate Procedure. Given that the Supreme Court had considered and approved the procedure for making civil court records confidential, the committees felt that appellate courts should consider requests for confidential treatment under the same standards and guidelines applicable to trial courts under subdivision (d). The committees are proposing to modify the existing provision in 2.420(d)(7) to make it clear that it encompasses records of all lower tribunals (including hearing tribunals in the executive branch) that are made confidential under the procedures specified in subdivision (d).

(3) New subdivision (e) addresses confidentiality in criminal matters. A subcommittee of the Rules of Judicial Administration Committee held a series of conference calls to review Rule 2.420 and consider amendments to the rule to address the sealing of court records in criminal cases. Those calls were joint conferences with members of the Criminal Procedure Rules Committee.

After review and consideration, the Executive Committee voted 7-0 to approve the amendments.

iii) November 15, 2007 – RPPTL Section requested authorization for an amicus brief

The Real Property, Probate & Trust Law (RPPTL) Section requested authorization for an amicus appearance, in their name only, in an en banc rehearing of a February 28, 2007 Third DCA opinion in a case styled Edward Cutler et. al v. Cynthia Cutler (Case No. 3D04-3070). The RPPTL Section was specifically invited by the court to file an amicus brief in the matter. The particular issue before the court in Cutler is whether a testator's specific devise of protected homestead under the "inuring clause" of Florida's homestead law, Article X, Section 4(b) of the Florida Constitution, trumps a testator's residuary direction that the property be used to satisfy estate debts, if necessary, to pay those expenses. The section's brief endorsed the court's original decision in support of the testator's wishes but suggested that portions of the opinion be somewhat modified.

After review and consideration, the Executive Committee voted 9-0 to approve the request of the RPPTL Section for authorization to file an amicus brief in the Cutler case as described.

- iv) December 6, 2007 – Workers' Compensation Section requested authorization for an amicus brief

The Workers' Compensation Section requested authorization for an amicus appearance, in their name only, in a Florida Supreme Court proceeding involving attorneys' fees in workers' comp matters.

The issue before the court – in Emma Murray v. Mariner Health/Ace/USA (Case No. SC07-244) and as specifically certified by the First DCA – is: "Do the amended provisions of Section 440.34(1), Fla. Stat. (2003), clearly and unambiguously establish the percentage fee formula provided therein as the sole standard for determining the reasonableness of an attorney's fee to be awarded a claimant?"

The section's proposed filing states that is intended to be neutral and is not meant to support either party. The brief merely reiterates two of the Workers' Compensation Section's long-standing legislative positions re access to courts and reasonable attorney fees, officially recognized by the board of governors. The pleadings request that the court render a decision consistent with the section's positions, however.

After review and consideration, the Executive Committee voted 11-0 to approve the request of the Workers' Compensation Section for authorization to file its proposed amicus brief in the Murray case.

8. Consent Calendar – Approved

- a. UPL committee nominations
- i) Circuit Committee Nomination
Steve Adams, Public Member, Ninth Judicial Circuit
Gerald P. Hill, II, Attorney Member, Tenth Judicial Circuit
- b. Board Review Committee on Professional Ethics
- i) Advertising Appeals 07-02429 and 07-02477- issues 1 & 2 were removed from consent.
 1. Removed from consent.
 2. Removed from consent.
 3. The Board Review Committee on Professional Ethics voted 6-0 to recommend that the Board of Governors affirm the Standing Committee on Advertising, determining the illustration of **hands through a jail cell** in file 07-02429 is manipulative in violation of Rule 4-7.2(c)(3).
 4. The Board Review Committee on Professional Ethics voted 6-0 to recommend that the Board of Governors affirm the Standing Committee on Advertising, determining that the illustration of **a person being arrested and led to police car in handcuffs** in file 07-02429 is manipulative in violation of Rule 4-7.2(c)(3).
 5. The Board Review Committee on Professional Ethics voted 6-0 to recommend that the Board of Governors affirm the Standing Committee on Advertising, determining that the illustration of **hands coming through a jail cell** in file 07-02477 is manipulative in violation of Rule 4-7.2(c)(3).
 6. The Board Review Committee on Professional Ethics voted 6-0 to recommend that the Board of Governors affirm the Standing Committee on Advertising, determining that the illustration of **hands behind back in handcuffs** in file 07-02477 is manipulative in violation of Rule 4-7.2(c)(3).
 7. The Board Review Committee on Professional Ethics voted 6-0 to recommend that the Board of Governors affirm the Standing Committee on Advertising, determining that the statement **Please note that we received your name from public records for the purpose of advertising** in files 07-02429 and 07-02477 does not sufficiently disclose how the filer obtained the recipient's name and address as required by Rule 4-7.4(b)(2)(I).
 - ii) Advertising Appeal 08-00269- issues 6 & 7 were removed from consent.
 1. The Board Review Committee on Professional Ethics voted 6-0 to

recommend that the Board of Governors affirm SCA, determining that the statement **The Miami-based firm now has correspondent offices in Latin America, Europe, Asia and the Middle East** is misleading in violation of Rule 4-7.2(c)(1) because it appears that the offices are not bona fide offices of the law firm but are law offices of foreign law firms with which the Miami-based law firm has some kind of referral or space-sharing agreement.

2. The Board Review Committee on Professional Ethics voted 6-0 to recommend that the Board of Governors affirm Standing Committee on Advertising, determining that the statement **Diaz, Reus, Rolff & Targ lawyers obtained an anti-suit injunction in the District Court in Miami in favor of Canon on the basis that the distributor had previously agreed to litigate legal disputes in the United States. If the distributor persisted with its foreign action, it would incur sanctions, including jail time** refers to past successes in violation of Rule 4 7.2(c)(1)(F).

3. The Board Review Committee on Professional Ethics voted 6-0 to recommend that the Board of Governors affirm Standing Committee on Advertising, determining that the statement **Because the attorneys had the international know-how to handle the case, they minimized client time and money normally used to research case history. Instead they are making history** refers to past successes in violation of Rule 4 7.2(c)(1)(F).

4. The Board Review Committee on Professional Ethics voted 6-0 to recommend that the Board of Governors affirm Standing Committee on Advertising, determining that the statement **Our Firm has a tradition of independent thinking, and we keep ahead of the competition** a comparison of services that cannot be factually substantiated in violation of Rule 4-7.2(c)(1)(I).

5. The Board Review Committee on Professional Ethics voted 6-0 to recommend that the Board of Governors affirm Standing Committee on Advertising, determining that the italicized language in the statement **Our Firm has a tradition of independent thinking, and we keep ahead of the competition** characterizes the quality of the services being offered in violation of Rule 4-7.2(c)(2).

6. Removed from consent.

7. Removed from consent.

c. Rules, Bylaws & Policies

- i) Rule 10-6.3 Recommendations and Disposition of Complaints (UPL)
Changes order of sentences for clarity; clarifies role of the board of governors.
- ii) BLSE Policy 2.02 Areas of Certification
Within subdivision (b) adds state and federal government and administrative practice and intellectual property to the approved areas of certification; adds new subdivision (c), to ensure bar sections, divisions, and related substantive committees are afforded the opportunity to offer comment on proposed amendments to certification standards before referral to the BLSE, Program Evaluation Committee, and the Board of Governors.
- iii) BLSE Policy 2.04 Certification Fees
Within subdivision (c), increases the annual fee for certification, from \$125 to \$150.
- iv) BLSE Policy 2.05 Applications for Certification
Within subdivision (e), assigns intellectual property law and state and federal government and administrative practice to the second application filing cycle.
- v) BLSE Policy 2.08 Peer Review
Within subdivision (3), codifies practice of excluding members of the Supreme Court from the solicitation of peer review for certification applicants.
- vi) BLSE Policy 2.10 Approved Continuing Legal Education

- Within new subdivision (b), codifies practice of awarding CLE credit for grade review panel service, up to 5 hours of credit; redesignates other affected entries as necessary.
- vii) BLSE Policy 2.13 Applicant Review Process for Certification or Recertification
Within subdivision (e), modifies language to allow certification committees discretion in determining if supplemental documentation submitted by an applicant warrants or makes appropriate further investigation of the applicant's qualifications for certification or recertification.
 - viii) BLSE Policy 5.01 Course Approval Administration
Within subdivision (j), alters the maximum accreditation period of a course with multiple dates and locations, from 1 year, to 18 months; within subdivision (k), adds CDs and DVDs as credit-eligible media for CLE courses.
 - ix) BLSE Policy 5.04 Course and Credit Approval
Deletes subdivision (b) and related language elsewhere re maximum credit hours per CLE cycle in law office management and economics, computer training, ethics, substance abuse, self improvement, stress management, mental illness, and other non-law courses; redesignates other affected entries as necessary; and adds new language that further defines ethics and substance abuse for application of the CLE ethics requirement.
 - x) Proposed BLSE Policy 5.06 Accreditation Revocation
New policy, to provide the BLSE authority to rescind CLE credit if the course content or speaker credentials do not reflect the accreditation standards set forth by BLSE.
 - xi) BLSE Policy 5.07 Complimentary CLE (formerly 5.06 Complimentary Audiotapes)
Changes policy number and revises title, to read "5.07 – Complimentary CLE" and adds new language that would require The Florida Bar to provide 10 credit hours of CLE materials to each county law library per year, as well as to out-of-state bar associations that meet required criteria.

9. Attorney Consumer Assistance Program Report

Status report presented by Don Spangler.

10. Disciplinary Procedures Committee Report

- a. Chair Andy Sasso moved on behalf of the Disciplinary Procedures Committee the following items on second reading.
 - i) Rule 3-7.7(c)(6) Procedures Before Supreme Court of Florida; Procedure for Review
Within subdivision (c)(6), adds new provisions specifying that, where appropriate, the judgment from the Supreme Court shall indicate the party to whom costs are awarded, the persons to whom restitution is ordered, or the persons to whom a fee is ordered to be forfeited; also adds subdivision titles to address such new matters.
 - ii) Rule 5-1.2(b) Trust Accounting Records and Procedures
Within subdivision (b) re minimum trust account records, deletes the requirement that original canceled checks be maintained, and substitutes a legible copy requirement provided that such copies include all data contained in the original.
- The board concurred with the committee recommendation and approved the rule amendments.
- b. Sasso told the board that the following items were under consideration and would be voted on at a later date.
 - i) Rule 3-3.2 Board of Governors; Authority to File a Formal Complaint
adds that a grievance committee chair's decision to not file a complaint may be reviewed by the full committee, which may affirm or reverse the chair's decision; also adds action brought by the Judicial Qualifications Commission to the list of events that authorizes the filing of a formal lawyer disciplinary complaint.
 - ii) Rule 3-7.2(m) Procedures Upon Criminal or Professional Misconduct; Discipline

Upon Determination or Judgment of Guilt of Criminal Misconduct –Discipline on Removal from Judicial Office

adds new subdivision (m), to require notice to the bar of any order of the Supreme Court removing a member from judicial office; authorizes the bar to file a formal complaint with the court and to seek appropriate discipline; provides that the findings of fact by the court in any proceedings resulting in the removal of a member from judicial office shall be conclusive proof of such facts in bar disciplinary proceedings.

iii) Rule 4-3.3 Candor toward the Tribunal (client perjury)

Revises Comment

iv) Rule 3-7.6(a) Procedures Before a Referee

Within subdivision (a), adds language requiring that before a judge may be appointed to serve as a referee, the judge must have served as a judicial referee at least once or that the judge reviews the training materials provided by the Office of State Courts' Administrator and certifies to the clerk of the supreme court that the training materials

have been reviewed.

v) SPB 15.77 Access to Designated Reviewer

New policy, to formalize the manner in which access to a designated reviewer may be obtained and to clarify the role of bar counsel in such contact.

11. Communications Committee Report

Chair Richard Tanner reported that the committee discussed Fastcase. Bar members may receive one CLE credit for taking an on-line training course on Fastcase.

12. Unlicensed Practice of Law Report

Lori Holcomb, Director of Unlicensed Practice of Law, reported that the following rules were on second reading. The committee recommended approval of the following rule amendment.

i) Rule 1-3.10 Appearances by Non-Florida Lawyers in a Florida Court

Within subdivision (b), allows a Florida resident who has a pending application for admission to The Florida Bar and who has not previously been denied admission to The Florida Bar to move to appear pro hac vice.

The board concurred and approved the amendment.

Holcomb informed the board that when civil penalties are imposed, up to \$1,000 per count of UPL, it is a civil penalty, which goes to the court. The court deposits the penalty in the general revenues of the state. If a respondent does not pay the penalty, the court issues an Order to Show Cause for Contempt. The court asked the bar to look at this procedure as well as the order in which costs, restitution and penalty should be paid. The issue was sent to the standing committee on UPL and the committee came up with two recommendations. The full standing committee voted to send both options to the court, both went to DPC, which also voted to send both to the court. Both the standing committee and DPC favored option 1 over option 2.

ii) Rule 10-7.1 Proceedings for Injunctive Relief

Option 1

Summary: Within subdivision (d)(1), deletes provisions re imposition of a civil penalty not to exceed \$1000 per incident of UPL; adds within (d)(2), as an allowable cost, a litigation expense in an amount up to \$1000 per incident, to encompass litigation costs not otherwise specified; revises other affected subdivision entries as necessary; within (d)(3) adds a provision to allow the referee to consider testimony as well as documentary evidence when reviewing a restitution request; within subdivision (e)(2), deletes provision that court orders of restitution contain a requirement that the respondent provide to the bar monthly reports of payment to the complainant, instead adding a new requirement that such orders specify that payment be sent to the bar, payable to the complainant, and forwarded by the bar to the complainant; further specifies that if the complainant cannot be located such restitution shall be returned to the respondent by the bar.

Option 2

Summary: Within subdivision (c)(2), adds new requirement that, if civil penalties are requested, the referee's order of a case management conference shall include notice to respondent re respondent's burden to show an inability to pay such penalty; within subdivision (d)(3), deletes provision that states restitution shall be paid before costs, and adds provision to allow the referee to consider testimony as well as documentary evidence when reviewing a restitution request; creates new (d)(4) – civil penalty – requiring the referee's determination and report of the respondent's ability or inability to pay such penalty in unstipulated cases, confirming the respondent's burden to show inability via sworn affidavit, and specifying the application of statutory indigency criteria in the process; revises other affected subdivision entries as necessary; adds new (d)(6) – timing of payment – specifying that the order of payment in such cases is restitution, then costs, and then civil penalty; and within subdivision (e)(2) re Supreme Court review, adds new provisions specifying the Court's determination of whether civil penalties shall be awarded, that orders imposing restitution or civil penalties require their transmittal to the bar – with restitution payable to the complainant and civil penalties payable to the Court – for forwarding by the bar to those respective payees; further specifies that if the complainant cannot be located such restitution shall be returned to the respondent by the bar.

iii) Rule 10-7.3 Enforcement of Award of Civil Penalty

New rule, authorizing The Florida Bar to conduct discovery in aid of execution if a respondent fails to timely pay a civil penalty; allows dissolution of the penalty by the court on motion of the Bar stating that the respondent is unable to pay; if discovery shows otherwise, allows the penalty to stand and authorizes the Bar to file a petition for indirect criminal contempt. NOTE -- This rule needs to be adopted only if option 2 of rule 10-7.1 is adopted.

The board voted to send both options to the Supreme Court, but recommend option 1 over option 2.

13. Budget Committee Report

Chair Mayanne Downs moved on behalf of the Budget Committee the approval of the following amendments to the 2007-2008 Budget.

- 1) Legislative Objectors - \$142 from the Legislation budget.
- 2) City, County & Local Government Law Section – increase grant program - \$7,500 from the section's Fund Balance.

The board approved the budget amendments.

Downs reported that the Budget Committee also reviewed the following BLSE policy on first reading.

- 1) BLSE Policy 2.04 Certification Fees.
Within subdivision (c), increases the annual fee for certification, from \$125 to \$150.

Materials included recommendation of the budget committee to set the application fee and yearly renewal fee for the Florida Registered Paralegal program at \$150 each. Approved by consent.

14. Legislation Committee Report

Chair Jesse Diner moved on behalf of the Legislation Committee approval of the Trial Lawyers Section's legislative consultant contract with Bob L. Harris and Mark Herron. The board concurred and approved the contract.

Steve Metz, chief legislative counsel, reported on the upcoming legislative session.

15. Investment Committee Report

Chair Ian Comisky reported that as of September 30, 2007, the Bar's investments were up by 7.72% for the year and 2.8% for the quarter. Comisky told the board that its decision to diversify its holdings had proven to be a good one. The Bar's long term composite had grown by \$350,000

over the past 60 days, a very tough market, to over \$34 million. Comisky closed by ensuring the board that the Bar's portfolio had no exposure to subprime mortgages.

16. Audit Committee Report

Chair Bill Kalish reported that the Audit Committee had met with the special consultants regarding upgrading our IT procedures to comply with recently issued auditing standards, which are an outcome of Sarbanes Oxley. The Committee expects it will be recommending an increase in fees of 10 to 15 percent for the annual audit, about \$5,000, due to implementing these new standards.

He also reported that the committee also looked into credit card data security to facilitate credit card payments by members with improved security over personal identity information.

17. Board Review Committee on Professional Ethics

Chair Jennifer R. Coberly gave the report of the Board Review Committee on Professional Ethics.

a. **REQUEST FOR REVIEW OF ADVERTISING FILE 08-00005 BY BOARD LIAISON CHARLES CHOBEE EBBETS**

The Board Review Committee on Professional Ethics voted 6-0 to recommend that the Board of Governors reverse the Standing Committee on Advertising decision and find that Rule 4-7.5(b)(1)(B) requires that the radio sponsorship of National Public Radio include a spoken disclosure that a nonlawyer spokesperson appears in the sponsorship.

The Board of Governors voted to approve the Board Review Committee on Professional Ethics recommendation.

b. **REQUEST FOR REVIEW OF ADVERTISING INQUIRY 26793**

This item was deferred at the request of the filer.

c. **REQUEST FOR REVIEW OF ADVERTISING INQUIRY 27490**

The Board Review Committee on Professional Ethics voted 5-1 to recommend that the Board of Governors reverse the Standing Committee on Advertising, withdraw staff's e-mail opinion dated August 6, 2007, that the inquiring attorney was prohibited from obtaining a client by responding to participants the inquirer encountered in a car talk chat room, pursuant to Rule 4-7.4 (a) and Opinion A-00-1 and direct the filer to rely on Florida Advertising Opinion A-00-1.

The Board of Governors voted to approve the Board Review Committee on Professional Ethics recommendation.

d. **ETHICS APPEAL 27397**

The Board Review Committee on Professional Ethics voted 4-3 to recommend that the Board of Governors deny the request for review of Florida Bar Staff Opinion 27397, which concluded that the inquirer had a conflict of interest in representing a debtor client in bankruptcy proceedings when a firm partner had a \$100,000 financial interest in a loan guaranteed by the debtor client because the issue is now moot after the inquirer changed law firms and no longer has a partner that has a financial interest in the loan that is the subject of the staff opinion.

The Board of Governors voted to approve the Board Review Committee on Professional Ethics recommendation.

e. **PROPOSED CHANGES TO ATTORNEY ADVERTISING RULES**

Amendments to the Attorney Advertising Rules appear on first reading.

Substantive changes include extending prohibitions regarding use of celebrities and use of sounds applying only in television and radio advertisements to all forms of advertising, and changing a prohibition against nearly all background sounds to a prohibition against background sounds that are deceptive, misleading, or manipulative.

f. **DISCUSSION OF LAWYER TO LAWYER COMMUNICATIONS**

The Board Review Committee voted 6-0 to recommend that the Board of Governors approve an e-mail survey of Florida Bar members on the issues of lawyer to lawyer communications and communications between lawyers and their own past and current clients. The proposal will be sent to the Program Evaluation and Budget committees in January 2008.

Items 5b(i) issues 1 and 2; 5b(ii) issues f and g were removed from the consent calendar by the Board Review Committee on Professional Ethics.

The following items were removed from the consent calendar.

g. ITEMS REMOVED FROM CONSENT

i) 5b(i) ADVERTISING APPEALS 07-02429 and 07-02477 ITEMS 1 & 2

1. The Board Review Committee on Professional Ethics voted 6-0 to recommend that the Board of Governors reverse the Standing Committee on Advertising, determining that the statement **Let us take the load off your back** in file 07-02429 does not promise results and therefore is permissible. The Board of Governors voted to approve the Board Review Committee on Professional Ethics recommendation.

2. The Board Review Committee on Professional Ethics voted 6-0 to recommend that the Board of Governors reverse the Standing Committee on Advertising, determining that the statement **To reduce anxiety, we give our clients a courtroom orientation – a dry run, so you'll know what to expect and how to conduct yourself** in file 07-02477 does not promise results under Rule 4-7.2(c)(1)(G) and is therefore permissible. The Board of Governors voted to approve the Board Review Committee on Professional Ethics recommendation.

The Board Review Committee on Professional Ethics voted 4-3 to recommend that the Board of Governors reverse the Standing Committee on Advertising as to the second sentence, determining that the statement **If you go to trial with us, you'll know how to testify effectively and how to handle cross-examination** in file 07-02477 does not promise results under Rule 4-7.2(c)(1)(G) and is therefore permissible. The Board of Governors voted to approve the Board Review Committee on Professional Ethics recommendation.

ii) 5b(ii) ADVERTISING APPEAL 08-00269 ITEMS 5 & 6.

1. The Board Review Committee on Professional Ethics voted 6-0 to affirm Standing Committee on Advertising that the phrase uniquely qualify in the statement **The partners' backgrounds uniquely qualify them to represent individuals as well as multinational corporations and foreign governments** characterizes the quality of the services being offered in violation of Rule 4-7.2(c)(2). The Board of Governors voted to approve the Board Review Committee on Professional Ethics recommendation.

The Board Review Committee on Professional Ethics voted 4-3 to recommend that the Board of Governors affirm Standing Committee on Advertising, determining that the phrase **valuable insight** in the statement **With clients such as the Republics of China, Venezuela and Honduras, the Firm has gained valuable insight into the inner workings of foreign governments and their respective sensitivities and expectations** characterizes the quality of the services being offered in violation of Rule 4-7.2(c)(2). The Board of Governors voted to approve the Board Review Committee on Professional Ethics recommendation.

The Board Review Committee on Professional Ethics voted sua sponte 5-1 to recommend that the Board of Governors determine that the statement **The partners' backgrounds uniquely qualify them to represent individuals as well as multinational corporations and foreign governments. With clients such as the Republics of China, Venezuela and Honduras, the Firm has gained valuable insight into the inner workings of foreign governments and their respective sensitivities and expectations** is a comparison of legal services that cannot be factually substantiated in violation of Rule 4-7.2(c)(1)(I).

The Board of Governors voted to approve the Board Review Committee on Professional Ethics recommendation.

2. The Board Review Committee on Professional Ethics voted 6-0 to recommend that the Board of Governors affirm Standing Committee on Advertising the italicized language in the statement **Diaz, Reus, Rolff & Targ, LLP is well-qualified to be the Firm for 'One World'** characterizes the quality of the services being offered in violation of Rule 4-7.2(c)(2). - Removed from consent.

The Board of Governors voted to approve the Board Review Committee on Professional Ethics recommendation.

The Board Review Committee on Professional Ethics voted 6-0 sua sponte to recommend that the Board of Governors determine the statement **Diaz, Reus, Rolff & Targ, LLP is well-qualified to be the Firm for 'One World'** is also a comparison of legal services that cannot be factually substantiated in violation of Rule 4-7.2(c)(1)(I).

The Board of Governors voted to approve the Board Review Committee on Professional Ethics recommendation.

18. Special Appointments

The board made the following appointments:

Eleventh Circuit Judicial Conference

Margaret Diane Mathews was appointed for a 4-year term commencing on January 1, 2008.

Florida Rural Legal Services, Inc. Board of Directors

Travis W. Trueblood was appointed for a 3-year term commencing on January 1, 2008.

Florida Realtor-Attorney Joint Committee

Denise Lowry Hutson was appointed to the 1st Appellate District to serve a 2-year term commencing on January 1, 2008.

Julie A. Horstkamp was appointed to the 2nd Appellate District to serve a 2-year term commencing on January 1, 2008.

Ira B. Price was appointed to the 3rd Appellate District to serve a 2-year term commencing on January 1, 2008.

John R. Banister was appointed to the 4th Appellate District to serve a 2-year term commencing on January 1, 2008.

Frederick W. Jones was appointed to the 5th Appellate District to serve a 2-year term commencing on January 1, 2008.

19. President-elect Report

President-elect Jay White reported that the 2008-2011 Florida Bar Strategic Plan was in the board materials and required the board approval. The board approved the plan.

20. Annual Convention Committee Report

Chair Scott Hawkins reported that the Annual Convention Committee had raised \$45,000 for the judicial luncheon. Their goal is to raise \$100,000. He reported that Capital Steps would be performing.

21. Diversity Symposium Committee Report

Chair Eugene Pettis reported that the diversity symposium committee will meet at the Midyear meeting to plan the symposium in June. Pettis told the board that racial diversity is a significant component, but more than that, the committee is looking at inclusion of racial, gender, physical disabilities, and sexual orientation; all are issues that must be confronted by the bar.

22. Program Evaluation Committee Report

Chair Ervin Gonzalez reported that the committee is making progress with the issues that were previously raised with BLSE. The committee is also resolving issues with the Code and Rules of Evidence Committee. Gonzalez told the board that the committee reviewed the following items on first reading.

- i) Rule 1-4.3 Committees
Adds the chair of the Disciplinary Review Committee to the Board of Governors Executive Committee.
- ii) SBP 10.50 Strategic Planning Policy
Within subdivision (d), adds Program Evaluation Committee chair, Program Evaluation Committee chair-elect, Council of Sections chair, and Council of Sections chair-elect to the Strategic Planning Committee.

23. Family Law Rules Committee Report

President Angones reported that the Family Law Rules committee had received comments on its Three Year Cycle Rules Amendments and proposed the following amendment to Rule 12.040(c)(2).

- (2) An attorney for the IV-D child support enforcement agency who appears in a

family law matter governed by these rules, whether in an initial proceeding or any subsequent modification or enforcement action in the proceeding, shall file a notice in compliance with subdivisions (c) (1) and (e) which shall also state: whether the recipient of IV-D services is a party to the case; any limits on the legal services being performed for the recipient of IV-D services; and any limits on the issues that may be addressed by the attorney during the proceeding.

The board voted 33-0 in favor of the amendment.

24. Appellate Court Rules Committee

President Angones reported that the Appellate Court Rules Committee had received comments on its Three Year Cycle Rules Amendments and proposed amendments to Rule 9.050. The new rule protects privacy of personal data by not including certain information in briefs, petitions, replies, motions, notices, responses, and attachments. The board voted 32-0 in favor of the amendment.

25. Young Lawyers Division Report

President-elect Jewel White Cole reported that the YLD had scheduled an Affiliate Outreach Conference for January 5 - 6, 2008 at the Vinoy in St. Petersburg. She said that they are including the minority affiliate bar associations.

Cole also reported that The Florida Bar Foundation donated \$25,000 toward grants to support children in foster care and other programs.

White told the board that another YLD initiative is to have a better presence in law schools and looking at creating a law school division.

26. Board of Legal Specialization and Education Report

Board liaison Ben Kuehne reported that the following items were on first reading.

- i) Rule 6-3.5(c)(4) Standards for Certification
Within subdivision (c)(4), adds new language that would require certification exams to include ethics and professional responsibility components.
- ii) Rule 6-13.4 Appellate Practice Recertification
Within subdivision (b), adds language to allow the appellate practice certification committee to waive the requirement for 15 appellate actions, for good cause, for applicants who have been certified in appellate practice for 14 years or more; and creates new subdivision (g) – “Good Cause” – to specify various considerations for determining good cause under subdivisions (b) & (c) when the minimum requirements for appellate actions or oral arguments have not been met.
- iii) Subchapter 6-27 Standards for Certification of a Board Certified Education Lawyer
New subchapter 6-27 setting forth standards for an additional certification area in education law.
- iv) Subchapter 6-28 Standards for Certification of a Board Certified Adoption Lawyer
New subchapter 6-28 setting forth standards for an additional certification area in adoption law.
- v) BLSE Policy 2.11 Exam Preparation and/or Review Courses
Within subdivision (a), revises language to permit certification committees to release one or more sample question(s) and answer(s) from past certification exams; also eliminates restriction on providing such sample(s) only to review course “attendees”; within subdivision (c), provides BLSE authority, along with the certification committee, to determine where and when an exam may be administered.
- vi) BLSE Policy 2.12 Grading, Review, and Petition Process
Within subdivision (b), reduces opportunity to review exam to 1 expanded session and deletes current provisions re a separate notice of intent to petition for grade review and the provision of a record 3 days after the more limited “initial” exam review now allowed; also amends subdivision (b) to afford BLSE the right to determine the specific location and date of such exam review; further adds a new 30-day deadline to file a grade review petition after any exam review; revises subdivision title accordingly and conforms other

- vii) text as appropriate.
BLSE Policy 2.16 Revocation
Complete revision of current policy; references chapter 6 of the Rules Regulating The Florida Bar as authorization for BLSE revocation of certification; outlines instances in which a member's certification can be automatically revoked; specifies instances in which BLSE may use discretion in considering certification revocation; sets forth procedures for discretionary revocation; and clarifies BLSE's right to suspend certification of members currently under investigation for offenses related to professional integrity.

27. Elder Law Section Bylaws

The board reviewed Elder Law Section Bylaws on first reading.

28. Time and Place of Next Meeting

The next Board of Governor's meeting will be held January 30 – February 2, 2008 in Tallahassee.

There being no further business to discuss, the board adjourned at 3:30 P.M.

Respectfully submitted,



Dana M. Watson

SUBJECT INDEX

ANNUAL CONVENTION COMMITTEE REPORT	11
APPROVAL OF MINUTES	2
Regular	2
Executive	3
APPELLATE COURT RULES COMMITTEE REPORT	12
ATTORNEY CONSUMER ASSISTANCE PROGRAM REPORT	6
AUDIT COMMITTEE REPORT	9
BOARD OF LEGAL SPECIALIZATION & EDUCATION REPORT	12
BOARD REVIEW COMMITTEE ON PROFESSIONAL ETHICS REPORT	9
BUDGET COMMITTEE REPORT	8
COMMUNICATIONS COMMITTEE REPORT	7
CONSENT CALENDAR	4
DISCIPLINARY PROCEDURE COMMITTEE REPORT	6
DIVERSITY SYMPOSIUM COMMITTEE REPORT	11
ELDER LAW SECTION BYLAWS	13
FAMILY LAW RULES COMMITTEE REPORT	11
GUESTS	2
INVESTMENT COMMITTEE REPORT	8
INVOCATION AND PLEDGE OF ALLEGIANCE	2
LEGISLATION COMMITTEE REPORT	8
NON ROLL CALL ADVERTISING APPEAL ITEMS	2
NON ROLL CALL GRIEVANCE AGENDA ITEM	2
PRESIDENT-ELECT REPORT	11
PROGRAM EVALUATION COMMITTEE REPORT	11
ROLL CALL	1
SPECIAL APPOINTMENTS	11
TIME AND PLACE OF NEXT MEETING	13
UNLICENSED PRACTICE OF LAW REPORT	7
YOUNG LAWYERS DIVISION REPORT	12