

The Florida Bar Board of Governors  
May 30, 2008  
Westin Key West Resort & Marina  
Key West, FL

Pursuant to notice, the regular meeting of the Board of Governors of The Florida Bar was called to order at 9 a.m. on Friday, May 30, in Key West, FL, with President Frank Angones presiding.

**1. Roll Call**

Francisco R. Angones, President  
John G. White III, President-elect  
Stephen H. Echsner, First Circuit  
Lawrence E. Sellers, Jr., Second Circuit  
Dominic M. Caparello, Second Circuit  
Gregory S. Parker, Third Circuit  
S. Grier Wells, Fourth Circuit  
John J. Schickel, Fourth Circuit  
Denise A. Lyn, Fifth Circuit  
Andrew B. Sasso, Sixth Circuit  
Charles Chobee Ebbets, Seventh Circuit  
Carl B. Schwait, Eighth Circuit  
Mayanne Downs, Ninth Circuit  
Daniel L. DeCubellis, Ninth Circuit  
Ramon A. Abadin, 10th Circuit  
David Rothman, 11th Circuit  
Ervin A. Gonzalez, 11th Circuit  
Jennifer Coberly, 11th Circuit  
Dennis G. Kainen, 11th Circuit  
Juliet Roulhac, 11th Circuit  
Benedict P. Kuehne, 11th Circuit  
Steven Chaykin, 11th Circuit  
L. Normal Vaughan-Birch, 12th Circuit  
Timon V. Sullivan, 13th Circuit  
William Kalish, 13th Circuit  
Gwynne Alice Young, 13th Circuit  
David C. Prather, 15th Circuit  
Gregory Coleman, 15th Circuit  
Scott G. Hawkins, 15th Circuit  
Lisa S. Small, 15th Circuit  
Edwin A. Scales, 16th Circuit  
Nancy W. Gregoire, 17th Circuit

Eugene Pettis, 17th Circuit  
Jesse H. Diner, 17th Circuit  
Frank C. Walker II, 17th Circuit  
John M. Stewart, 19th Circuit  
Laird Lile, 20th Circuit  
Lawrence (Larry) Ringers, 20th Circuit  
Richard Arthur Tanner, Out of State  
Ian M. Comisky, Out of State  
Eric L. Meeks, Out of State  
Brian D. Burgoon, Out of State  
Jewel White Cole, Young Lawyers Division President-elect  
Arnell Bryant-Willis, Public Member  
J. Blair Culpepper, Public Member

Board members absent:

Murray B. Silverstein, Sixth Circuit  
Warren W. Lindsey, Ninth Circuit  
Robert M. Brush, Tenth Circuit  
Clifford W. Sanborn, 14th Circuit  
Clifton A. McClelland, Jr., 18th Circuit  
Scott Atwood, Young Lawyers Division President

Staff Attending meeting:

John F. Harkness, Jr., Executive Director  
Allen Martin, Director, Finance and Accounting  
Ken Marvin, Director of Lawyer Regulation  
Francine Walker, Director of Public Information and Bar Services  
Mary Ellen Bateman, Director, Ethics, Advertising, and Special Projects  
Elizabeth Tarbert, Director, Ethics and Advertising  
Lori Holcomb, Director, Unlicensed Practice of Law  
Dawna Bicknell, Director, Legal Specialization and Education  
Gary Blankenship, Senior Editor, Florida Bar News

**2. Guests**

Marlene Quintana, President, Cuban American Bar Association  
Sherri Johnson, President, Florida Association for Women Lawyers  
Rebecca Steele, President-elect, Florida Association for Women Lawyers  
Kalinthia Dillard, Virgil Hawkins Florida Chapter of the National Bar Association  
Jane Curran, Executive Director, Florida Bar Foundation  
Manny Garcia, President, Monroe County Bar Association  
Hank Coxe, Immediate Past Florida Bar President  
Edward H. Davis, Jr., Chair, International Law Section  
Steven Brannock, Chair, Appellate Practice Section  
Michelle Diffenderfer, Chair, Environmental and Land Use Law Section  
Mark Zientz, Chair, Workers' Compensation Section

Michael Tanner, Chair, Board of Legal Specialization and Education  
Bruce Moore, Disciplinary Actor  
Clay Schnitker, incoming board member  
Jay Cohen, incoming board member  
Jack Hickey, incoming board member  
Bill Schifino, incoming board member  
R.J. Haughey, Young Lawyers Division President-elect

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

The invocation was given by Ed Scales and the Pledge of Allegiance was led by Scott Hawkins.

### **4. Special Appearance by Manny Garcia, President, Monroe County Bar Association**

Manny Garcia welcomed the board to Key West.

### **5. Introduction of New Members**

Retiring board members introduced their replacement board members who were in attendance. Greg Parker introduced Clay Schnitker, Ben Kuehne introduced Jack Hickey, Tim Sullivan introduced Bill Schifino, Jesse Diner introduced Jay Cohen, Jewel White Cole introduced R.J. Haughey, president-elect designate of the Young Lawyers Division, J. Blair Culpepper introduced Alvin Alsobrook. Sherri Johnson introduced Rebecca (Becky) Steele, incoming president of the Florida Association for Women Lawyers.

### **6. Non-Roll Call Items**

Disciplinary Review Committee Co-chair David Rothman listed items 9 and 13 as nonroll call for the executive session, DRC Co-chair Grier Wells listed Clients' Security Fund items 17, 21, 54, 94, 95 and CSFM #2 (information only on the latter) as non-roll call items. Board Review Committee on Professional Ethics Vice Chair Larry Sellers listed advertising appeal 5(B)(ii) in issue C only had been removed from the consent agenda.

### **7. Minutes**

The board approved the minutes from its March 28, 2008 meeting.

The board ratified Executive Committee actions from the following meetings:

- April 14, 2008, allowing the Criminal Procedure Rules Committee to submit a comment to the Supreme Court on Proposed Rule of Judicial Administration 2.420(g) recommending that proposed Rule 2.420(g)(4) be deleted and approved a Bar member's request for a refund on Bar Legislative Position 14 and the Legal Needs of Children Committee Position 1.

- March 18, 2008, allowing the Real Property, Probate and Trust Law Section to oppose amendments to F.S. Chap. 720 that would require pre-suit mediation and pre-suit arbitration before filing civil actions over homeowners' association disputes. The committee also authorized the Code and Rules of Evidence Committee to oppose HB 645 and SB 1448 relating to expert witnesses.

- March 24, 2008, approved two requests from the Administrative Law Section. One authorized the section to broaden its Legislative Position #6 to oppose amendments to F.S. Chap. 120 or any other legislation that limit, restrict, or penalize full participation in the administrative process without compelling justification. The second position authorized the section to support adequate funding of the Division of Administrative Hearings and other existing state administrative dispute resolution forums in order to ensure efficient resolution of administrative disputes.

- April 2, 2008, approved five requests from the Family Law Section for legislative activities. Those were to: Oppose legislation removing the need for a father to be current in his support to seek disestablishment of paternity; oppose legislation such as SB 374 re: attorney ad litem representation that seeks to regulate the profession, instruct and/or train lawyers on how they should represent their clients, and that allows another governmental branch agency to train lawyers; oppose legislation that remedies barriers to remarriage through equitable distribution; support legislation designed to promote and implement a Unified Family Court; and support legislation that expands the range of both civil and criminal sanctions imposed against those who violate existing injunctions for protections against domestic, repeat, sexual, and dating violence.

## **8. Consent Agenda**

With the exception of the advertising appeal noted above, the board approved the consent agenda.

That approval included appointing Peggy Adolphson, Holly J. Burnaman, James Albert Hightower, Jr., Samantha Leone, Susan L. Levine, Adam P. Schwartz, Diana Boruchin, Gladys C. Rubin, Gloria Valencia, Bradley G. Harper, Paula Albright, Dr. Barbara Jean Scheffer, Diane Frankowski, Robert Gebaide, and John Starks, Jr., to Florida Registered Paralegal district committees.

The consent agenda approval ratified the following advertising appeal actions from the Board Review Committee on Professional Ethics:

- 5b(i) Request For Review Of Advertising Inquiry 26793, deferred at the request of the inquirer.

- 5b(ii) Advertising Appeals 08-01486 and 08-01487. The Board Review Committee on Professional Ethics voted 3-0 to recommend that the Board of Governors affirm the Standing Committee on Advertising decision that the direct mail postcard in file 08-01486, which is sent to public adjusters in counties in which hurricanes have recently occurred, is prompted by a specific occurrence and therefore must comply with the targeted direct mail requirements of Rule 4-7.4(b)(2). The Board Review Committee on Professional Ethics voted 3-0 to recommend that the Board of Governors affirm the Standing Committee on Advertising decision that the direct mail postcard in file 08-

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01486 fails contain the first sentence “If you have already retained a lawyer for this matter, please disregard this letter” as required by Rule 4-7.4(b)(2)(F). The Board Review Committee on Professional Ethics voted 3-0 to recommend that the Board of Governors affirm the Standing Committee on Advertising decision that the direct mail postcard in file 08-01486 fails to disclose where the filer obtained the information prompting the direct mail postcard as required by Rule 4-7.4(b)(2)(I). The Board Review Committee on Professional Ethics voted 3-0 to recommend that the Board of Governors affirm the Standing Committee on Advertising decision that the direct mail postcard in file 08-01486 discloses the nature of the recipient’s legal problem in violation of Rule 4-7.4(b)(2)(F). The Board Review Committee on Professional Ethics voted 3-0 to recommend that the Board of Governors affirm the Standing Committee on Advertising decision that the direct mail postcard in file 08-01487, which is sent to recipients in counties in which hurricanes have recently occurred, is prompted by a specific occurrence and therefore must comply with the targeted direct mail requirements of Rule 4-7.4(b)(2). The Board Review Committee on Professional Ethics voted 3-0 to recommend that the Board of Governors affirm the Standing Committee on Advertising decision that the direct mail postcard in file 08-01487 fails contain the first sentence “If you have already retained a lawyer for this matter, please disregard this letter” as required by Rule 4-7.4(b)(2)(F). The Board Review Committee on Professional Ethics voted 3-0 to recommend that the Board of Governors affirm the Standing Committee on Advertising decision that the direct mail postcard in file 08-014867 fails to disclose where the filer obtained the information the prompting the direct mail postcard as required by Rule 4-7.4(b)(2)(I). The Board Review Committee on Professional Ethics voted 3-0 to recommend that the Board of Governors affirm the Standing Committee on Advertising decision that the direct mail postcard in file 08-01487 discloses the nature of the recipient’s legal problem in violation of Rule 4-7.4(b)(2)(F). The Board Review Committee on Professional Ethics voted 3-0 to recommend that the Board of Governors affirm the Standing Committee on Advertising decision that the direct mail postcard in file 08-01486 constitutes direct solicitation in violation of Rules 4-7.4(a) and 4-8.4(a) when it is sent to public adjusters with the suggestion that “If your client asks for an attorney refer them to us and we will. . . .”

- 5b(iii) Advertising Appeal 08-01648. The Board Review Committee on Professional Ethics voted 4-0 to recommend that the Board of Governors affirm the Standing Committee on Advertising decision on a Yellow Pages advertisement in file 08-01648, determining that the statement “**People Make Mistakes. I Help Fix Them**” in the context of an advertisement for criminal defense and family law promises results in violation of Rule 4-7.2(c)(1)(G).

The consent agenda approval included an amendment to Rule 3-2.1(p) which codifies that a designated reviewer for a specially created grievance committee will be selected by the president and ratified by the board.

The consent agenda approval included appointing Jennifer Dana Tipton as an attorney member of the 12th Circuit Unlicensed Practice of Law Committee.

4a (5)

The consent agenda approval included reappointing Brian Lee Fernandes, Dr. Rudolph Frei, Carin Maurine Gordon, Johnette Louise Hardiman, Helen Holloway, Chuck Hudson, Avonelle R. MacKerell, Harry J. Vordermeier, and Graham Watt to the Standing Committee on the Unlicensed Practice of Law, and appointing Lawrence Gordon, Robert H. Manis, A. Renee Pobjecky, Timothy Nicholas Thomes, and Carolyn Thompson as new members of the committee.

### **9. Public Reprimands**

President Frank Angones administered nine public reprimands scheduled for the meeting.

### **10. Executive Session**

The board went into executive session to discuss disciplinary and Clients Security Fund issues.

### **11. Board Review Committee on Professional Ethics Report**

Vice-chair Lawrence E. Sellers, Jr. gave the report of the Board Review Committee on Professional Ethics.

#### **a. Ethics Appeal 27698**

The Board Review Committee on Professional Ethics voted 5-0 to recommend that the Board of Governors to refer ethics inquiry 27698, regarding an inquiry on the ethical propriety of dividing a court-awarded fee with a client, back to the Professional Ethics Committee to respond to the inquirer and direct the Professional Ethics Committee to assume the fact as presented by the inquirer that the fee belongs to the attorney based on the wording of the inquirer's request. The Board of Governors voted to approve the Board Review Committee on Professional Ethics recommendation by voice vote.

#### **b. Proposed Advisory Opinion 07-2 (Outsourcing)**

The Board Review Committee on Professional Ethics voted 5-0 to defer further consideration of Proposed Advisory Opinion 07-2 regarding outsourcing until the July 2008 Board of Governors meeting and directed staff to draft language for its consideration addressing the concerns of the Florida Bar member who requested review of the proposed advisory opinion.

#### **c. Item removed from the consent calendar**

5bii, Advertising Appeals 08-01486 and 08-01487, Issue C

The Board Review Committee on Professional Ethics voted 3-0 to recommend that the Board of Governors affirm in part and reverse in part the Standing Committee on Advertising decision, determining that the trade name "The Hurricane Firm" in files 08-01486 and 08-01487 is misleading because it is unclear that the entity is a private law firm and requires use of the disclosure "A Private Law Firm," but that the disclosure is not required to be used everywhere the firm name appears under Rule 4-7.9.

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

### **12. Communications Committee Report**

Chair Richard Tanner said the committee discussed changes to the Citizens Forum charter to allow simultaneous consideration of applicants for the public member seats on the Board of Governors for appointment to the forum. He said the committee considered and rejected a requirement that public board members must have first served on the forum. He also reported that the committee is looking at a program to encourage lawyers to get involved in upcoming elections in a variety of ways. The committee, in addition, will be initiating a review of the Bar's website usage to consider additional features and enhancements.

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

Chair Michael Tanner noted that the certification program is celebrating its 25th anniversary, with 22 certification areas and more than 4,127 certified lawyers. Two additional certification areas are pending before the Supreme Court. Around 140 to 150 lawyers are certified every year, Tanner reported, and he noted the program has designed a new logo as part of its ongoing public information program. More information, he said, was provided in a written report to the board.

### **14. Legislation Committee Report**

The board approved, on the committee's recommendation, the Elder Law Section's lobbying contract with Tom Batchelor.

Chair Jesse Diner reported that court funding will continue to be the major issue of concern for the Bar in its legislative activities. He noted that state revenues for the spring were below already reduced projections, which could indicate that even more budget cuts are in the offing beyond those made by the legislature in its 2008-09 budget. Chief Legislative Consultant Steve Metz said the Bar needs to develop a plan to develop dependable revenue sources for the courts and to have those revenues placed in trust funds, to help protect the courts from economic downturns. Metz noted that the Bar did manage to get \$1 million in funding for the Civil Legal Assistance Act.

Chair Diner noted that all Bar, section, and Bar committee legislative positions will sunset as of July 1, 2008, although they can be renewed with board approval or review.

### **15. Presentation of Scrapbook to Immediate Past President Hank Cox**

Bar President Frank Angones presented past President Hank Cox with a scrapbook commemorating his year leading the Bar.

### **16. International Law Section Report**

Chair Ed Davis said the section has had a successful year, particularly with CLE seminars. Those include a course on alternative fuels, an international tax and estate planning seminar, a mock international arbitration and litigation seminar, and an international business seminar that helped showcase Florida's international legal talent. The section has reciprocal relationships with several foreign bar associations, Davis said, and actively coaches six Florida law schools that participate in an international law moot court competition. This year is the 25th anniversary of the section, Davis said, and it has marked the occasion by producing a video that includes interviews with all 25 past section chairs.

### **17. Environment and Land Use Law Section Report**

Chair Michelle Diffenderfer said the section is concentrating on three areas: mentoring, education, and technology. The section has a mentoring committee which seeks to help young lawyers on environmental and land use issues and in conjunction with the Real Property, Probate and Trust Law Section sponsors two fellowships with nonprofit or state agencies. The section, she said, has just added a third fellowship that is funded entirely by the section. The section maintains an active CLE program, which includes an annual update seminar and a land use conference held at the University of Florida, with help by professors, students, and the section's Environmental Committee. In addition, the section is planning a new CLE this year with the Costa Rican bar and located in that country and offered in both Spanish and English. The section is using technology to begin offering a series of luncheon Web-based CLE programs, which has proved successful, Diffenderfer said. The section also maintains a website and a listserv for members to discuss topical issues. The section continues to offer its landmark two-volume handbook on land use law, which is free to section members and available on the member section of the section's website, she said.

### **18. Appellate Practice Section Report**

Chair Steven Brannock announced that Supreme Court Justice Raoul Cantero, who was chair-elect of the section when he was appointed to the court in 2002, will again become chair-elect of the section when his resignation from the court becomes effective in September. He also said that the section's free handbook for pro se litigants handling appeals, which was completed and released late last year, has been translated into Spanish and Creole French thanks to a grant from the Florida Bar Foundation. More than half of all appeals now involve at least one party who is pro se, he said, and the handbook is intended to help them in the process. It will be made available at court clerks' offices, in prison law libraries, and on the section's website. The Appellate Practice Section works with other sections to have specialized appellate CLE seminars, and will be doing at the end of July its bi-annual three-day appellate workshop at Florida Coastal Law School in Jacksonville. The section has also begun a monthly telephone conference with judges and lawyers around the state to discuss topical issues and recent court decisions. Brannock said that's held the third Tuesday of each month. Brannock is also chair of the



Appellate Rules Committee and he said he's noticed that with state budget cutbacks, judges are having more difficulty in attending both section and rules committee activities because of a shortage in travel funds. He said the section look at that issue but determined it didn't have the resources to address that but suggested the Bar might want to investigate that matter. He also said that rules committees are seeing more referrals from the Supreme Court on suggested rule changes, including changes that affect more than one committee. He said committee leaders are getting together to discuss the best way to handle such referrals.

### **19. Workers' Compensation Section Report**

Chair Mark Zientz noted that 2003 changes made to workers' compensation laws by the state legislature have had a profound effect on the practice, especially for plaintiff's lawyers. The most far reaching effect has been making it difficult for lawyers to seek pursue minor medical claims and treatments for their clients since under the law compensation is limited to 10 percent of the benefit obtained. The state also has a problem of adjudicating claims because of a backlog of cases, which stems at least in part from there being only one new judge of compensation claims position created since 1979 – and that position has not yet been filled. Zientz said since funding for judges comes from a percentage of workers' comp insurance premiums, there should be sufficient money for an adequate number of judges and to protect the system from budget cuts. Legislation did pass this spring enabling the First District Court of Appeals, which hears all workers' comp appeals, to crease a special workers' compensation section staffed by attorneys experienced in that area, he said. Working with the judges of compensation claims, the section recently began a poll on judges and mediators in the workers' comp system, with the goal of improving the system. Zientz closed by noting there have been several challenges to the 2003 law but the Supreme Court several times turned down certified questions on the issue before recently accepting a case.

### **20. Consent Agenda for Grievance and Clients Security Fund items**

The board approved the consent agenda for grievance and Clients' Security Fund matters.

### **21. Out-of-Cycle Rules of Judicial Administration Amendment**

Equal Opportunities Section Chair-elect Matthew Dietz presented the proposed amendment to Rule 2.540 to the board, which was unanimously approved by the Rules of Judicial Administration Committee. He said the rule is needed to bring the courts into compliance with the federal Americans with Disabilities Act on access, creating a uniform system to request accommodations for all participants in a court proceeding and to request an appeal if an accommodation is denied. Board members expressed concerns about the cost of the rule, but concluded that the cost factor is irrelevant because access is already required by federal law. The board voted to approve the amendment as an out-of-cycle rule change and voted 37-0 to endorse the amendment, but also attach a note that the amendment only implements federal law.

## **22. Budget Committee Report**

Chair Mayanne Downs presented three amendments which were approved by the board: \$35,293 for building and grounds improvements that were primarily air conditioning repairs; \$40,000 for unexpected litigation expenses from the Tampa branch office; and \$42,229 for the Clients' Security Fund for litigation costs related to the Robles case. Incoming Chair Gwynne Young presented member objections to the Bar's 2008-09 budget. Those were three minor changes sought by the Health Law Section and a \$57,582 adjustment to account for the Bar taking over Miami-Dade County lawyer referral operations from the Broward County Bar Association. Young said the extra expenses association with that transfer will be offset by extra income from referral fees. The board approved those changes, which makes the 2008-09 budget final.

## **23. Investment Committee Report**

Chair Ian Comisky noted the market has been volatile, but the Bar's investment portfolio is designed to limit losses in a volatile and down market. While the Bar's portfolio had been down by as much as 4.5 percent at the end of the first quarter, by the end of April it was down by less than 1 percent, or around \$400,000. He said the Bar's investment advisor was predicting another three to six months of a difficult market, and that interest rates have bottomed out and are likely to start rising. The advisor also predicted that the decline in the value of the dollar versus other foreign currencies will shortly end and its value will start to rise. Comisky reported that one of the Bar's small cap funds, the Franklin Fund, has not been performing up to expectations and the Bar's investment advisory has begun searching for a replacement fund.

## **24. Young Lawyer Division Report**

President-elect Jewel White Cole reported that the division in the past couple of years has establishing relationships and liaison with law schools, including getting word out about the division and Bar work during student orientation.

## **25. Diversity Symposium Report**

Board member Eugene Pettis, heading up this year's Diversity Symposium, called on board members to contact five leaders in the legal profession in their communities and invite them to this year's symposium at the Annual Convention. He said the board, and the Bar in general, has shown admirable commitment to diversity but this year's symposium will focus at taking that commitment into the broader legal community.

## **26. Program Evaluation Committee Report**

Chair Ervin Gonzalez presented several recommendations to the board, all of which were approved. Those include:

- Amending Rule 1-12.1; Within subdivision (a), clarifies language regarding those chapters of the Rules Regulating The Florida Bar that the Board of Governors has

authority to unilaterally amend; deletes outdated reference to schedule A of the former designation plan.

- Amending Standing Board Policy 1.10; In connection with separate proposed amendment of SBP 6.20, deletes within subdivision (a), outdated references to the designation plan.

- Amending Standing Board Policy 6.20; In connection with separate proposed amendment of SBP 1.10, deletes within subdivision (a), outdated references to the designation plan.

- Having the Bar take over the lawyer referral services for Miami-Dade County from the Broward County Bar Association, per their request.

- Approving a new logo for the Bar's certification program as part of the ongoing certification public information campaign.

- Sunsetting the Relations with CPAs and the FICPA Committee. Gonzalez said the committee had not met goals set out by PEC in 2003 and balked at a suggested merger with the Business Law Section. So he said PEC voted to recommended sunsetting the committee, with the understanding that the section will create a new panel that will essentially take over the committee's functions. He noted that FICPA officials had written a letter opposing ending the CPA committee, but vowing to work cooperatively with the new section committee.

## **27. Disciplinary Procedure Committee Report**

Chair Andy Sasso reported on numerous committee recommendations, after which the board approved 12 rule and policy changes and tabled one additional recommendation. Approved changes were:

- Rule 3-5.4 Publication of Discipline; Proposed new rule, to codify court and bar policy regarding publication of disciplinary sanctions in the Southern Reporter and The Florida Bar News, and on The Florida Bar's website.

- Rule 3-7.17, Designation of Vexatious Conduct and Limitation on Filings; New rule, proposing procedures – for the bar to seek , a referee to recommend, or the court to issue – an order prohibiting vexatious conduct and/or limiting other activities of those engaged in such behavior.

- Rule 4-3.3, Within comment re false evidence, deletes previous board approved provision stating that a lawyer's knowledge of false evidence can be inferred from the circumstances and that a lawyer cannot ignore an obvious falsehood; deletes comment regarding perjury by a criminal defendant, to reflect no difference between the obligations of a civil lawyer and a criminal lawyer regarding client perjury; and, within comment regarding remedial measures, deletes provisions regarding withdrawal, to reflect that withdrawal alone will likely never be an adequate remedial measure when there has been a misrepresentation to the court.

- Rule 4-7.10, The current rule may be interpreted as requiring monetary payment only for referral of clients as the definition of a lawyer a referral service. There are instances in which other forms or consideration are given for those referrals, and these cases should be covered by this rule.

- Rule 3-3.2, Board of Governors of The Florida Bar; Authority to File a Complaint; In connection with separate proposed amendments to rule 3-7.2, within

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subdivision (b) re authority to file complaints based on felony charges, 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, within the list of specific events that authorize the filing of a formal lawyer disciplinary complaint, adds a decision of the Florida Supreme Court imposing judicial discipline in an action brought by the Judicial Qualifications Commission; includes other non-substantive edits, adds appropriate subdivision titles and numbers consistent with controlling editorial protocols, and redesignates other affected subdivision entries as necessary.

- Rule 3-7.2, Procedures upon Criminal or Professional Misconduct; Discipline Upon Determination or Judgment of Guilt of Criminal Misconduct – Discipline on Removal from Judicial Office; In connection with separate proposed amendments to rule 3-3.2, adds new subdivision (m), re discipline upon removal from judicial office, to require notice to the bar of any order of the Supreme Court removing a member from judicial office; upon receipt of such order, also authorizes the bar to file a formal complaint with the court and to seek appropriate discipline; further 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.

- Rule 3-7.11, General Rules of Procedure; In connection with separate proposed amendments to rule 4-8.4(g), within subdivision (f) re contempt, provides a summary process for addressing a respondent's failure to respond to official bar inquiries in disciplinary proceedings; requires a bar petition to the supreme court, for contempt and an order to show cause; provides 10 days for respondent's response; allows for assignment of matters to a referee for factual findings; and authorizes suspension in such cases.

- Rule 4-8.4, Misconduct; summary process for failure to respond; In connection with separate proposed amendments to rule 3-7.11(f), within subdivision (g), specifies that failure to respond to an official bar inquiry without good cause shown may be a matter of contempt.

- Rule 5-1.1, Trust Accounts; Generally; IOTA; Within subdivisions (g)(1)(A) & (g)(2), clarifies definition and IOTA participation requirements regarding the practicable investment of nominal or short term funds, to specify funds the lawyer has determined cannot "earn income for the client or third person in excess of the costs to secure the income."

- Standing Board Policy 15.77, Access to Designated Reviewer; Expresses bar policy that designated reviewers shall exercise sound discretion with respect to discussions concerning disciplinary cases with persons other than members of the board of governors, bar counsel, or other bar staff; further states as policy that designated reviewers should report such communications to bar counsel so that bar counsel may be better informed and provide more competent representation.

- Rule 4-7.4 Within subdivision (b), adds new prohibition against a lawyer sending direct mail to the respondent in proceedings involving a petition for injunction for protection against any form of physical violence if the lawyer knows or should know such individual has not been served with notice of process in the matter.

- Rule 4-7.5, Advertisements in the Electronic Media Other than Computer-Accessed Communications; Within subdivision (b), deletes the requirement, in instances

where a nonlawyer spokesperson is used, that an oral disclosure be given that the spokesperson is a spokesperson and is not a lawyer.

The latter two items were on the agenda on first reading, but the board voted to waive first reading and proceed to final approval.

The following two items were presented to the board on first reading:

- Fee Arbitration Rules – Rule IV, Hearings; Within subdivision (e), authorizes the arbitrator(s) to allow persons to appear at fee arbitration hearings by telephone conferencing and proscribes a procedure for that appearance.

- Clients' Security Fund Regulations – Regulation 6; Changes department with responsibility for program from Public Interest Programs and Services Department to Clients' Security Fund Department.

The board voted to table the DPC recommendation to approve an amendment to Standing Board Policy 15.92, Administration of Public Reprimands. That policy change would require the bar president to approve the video recording of the administration of a public reprimand; further states that the bar will not post the video of the administration of a public reprimand on its website. Board members said they wanted to further discuss under what circumstances a public reprimand would be recorded by the bar and how that recording could be used.

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

Board member Ben Kuehne, liaison to the BLSE, said the BLSE recommended approval of BLSE Policy 5.02, Executive Branch Service, which, within new subdivision (g), permits continuing legal education credit for selected executive branch offices. The board approved that recommendation.

## **29. Special Appointments**

The board made several appointments, as follows:

- Bar President Frank Angones and Deland attorney Theodore W. "Ted" Small to the ABA House of Delegates, and Jose F. Diaz of Miami as the under-35 representative to the House. Incoming Bar President-elect Jesse Diner becomes an automatic delegate. They will serve two-year terms beginning in August at the end of the ABA annual convention.

- Adam P. Schwartz of Tampa for a two-year term on the Supreme Court's Bar Admissions Committee.

- Ruth Kinsolving of Tampa, Robert James McCune of Ocala, Richard Sachs of Ft. Lauderdale, Brian F. Spector of Miami, and Ardyth Walker of Miami for four-year terms beginning July 1 on the Supreme Court's Commission on Professionalism.

- Mark Alan Journey of Miami, Patrick M. Reilly of Miramar Beach, Wayne LaRue Smith of Key West, Mary B. Barlow of Highland Beach, and Barry M. Crown of South Miami to three-year terms beginning July 1 on the Florida Lawyers Assistance, Inc., Board of Directors. Barlow and Crown are nonlawyers.

- Appointing Cristina Alonso of Miami, A. Hamilton Cooke of Jacksonville, Cleveland Ferguson III of Jacksonville, Diana L. Martin of Palm Beach Gardens, and

Charles R. Stepter of Winter Park to two-year terms beginning July 1 on the Florida Legal Services Board of Directors.

- Appointing Jay Wolfson of Tampa to a two-year term beginning July 1 on the Florida Medical Malpractice Joint Underwriting Association.
- Appointing Dean Bunch of Tallahassee to a four-year term on the Supreme Court's Judicial Ethics Advisory Committee.
- Appointing John A. Yanchunis of Tampa to a three-year term on the Supreme Court Judicial Management Council.

### **30. Nominations for Judicial Nominating Commissions**

The board nominated three lawyers for upcoming vacancies on the state judicial nominating commissions. Note: on the following list, the board did not make nominations for the Third, 10th, 12th, and 20th circuit JNCs. Those nominations were made by the Executive Committee on June 2, and are included here for completeness. The governor will select one person from each nominated slate for a four-year term that begins July 1, 2008. Those nominated are:

- Coral Gables attorney Katherine Ezell, West Palm Beach attorney Louis Silber, and incumbent Diana Santa Maria of Cooper City for the Supreme Court JNC.
- Charles Wayne Alford of Jacksonville, Michael J. Glazer of Tallahassee, and Ned Irwin Price of Jacksonville for the First District Court of Appeal JNC.
- David M. Caldevilla of Tampa, Joshua Magidson of Clearwater, and David A. Wallace of Sarasota for the Second DCA JNC.
- Roberta G. Mandel and Lauri Waldman Ross, both of Miami, and Catherine Vogel of Key West for the Third DCA JNC.
- Harold G. Melville of Ft. Pierce, Gerald F. Richman of Palm Beach Gardens, and Rafael J. Roca of Jupiter for the Fourth DCA JNC.
- R. Lee Bennett of Orlando, Shannon McLin Carlyle of Leesburg, and Mary Ann Morgan of Winter Park for the Fifth DCA JNC.
- Bryan F. Aylstock and James Richard Barnes, both of Gulf Breeze, and Sally Bussell Fox of Pensacola for the First Circuit JNC.
- Elizabeth Bevington of Lamont and William Howard Davis and Michale P. Donaldson, both of Tallahassee, for the Second Circuit JNC.
- Angela M. Cancio of Live Oak, George T. Reeves of Madison, and James E. Willingham, Jr., of Jasper for the Third Circuit JNCs.
- Hugh Cotney of Jacksonville, Charles P. Pillans of Fernandina Beach, and Joseph W. Prichard, Jr., of Jacksonville for the Fourth Circuit JNC.
- Julia Roberts Law of Groveland, Jack Arthur Moring of Dunnellon, and Michael John Rogers of Mount Dora for the Fifth Circuit JNC.
- C. Bryan Boydston, Jr., Robert H. Dillinger, and Thomas D. Masterson, all of St. Petersburg, for the Sixth Circuit JNC.
- Edwin D. Davis II of Ormond Beach, Allison Leigh Morris of Deland, and Tance E. Roberts of St. Augustine for the Seventh Circuit JNC.
- Marcia Davis of High Springs, Leonard E. Ireland, Jr., of Gainesville, and Richard M. Knellinger of Evinston for the Eighth Circuit JNC.

- Patrick T. Christiansen of Orlando, Wayne L. Helsby of Winter Park, and Richard E. Mitchell of Windermere for the Ninth Circuit JNC.
- Melodie Johnson-Lopez of Winter Haven, and Rodney Kent Lilly and Jeffrey Sullivan, both of Lakeland, for the 10th Circuit JNC.
- Melanie Damian of Coral Gables, Elizabeth M. Hernandez of Miami Beach, and Rayfiled M. McGhee, Jr., of Miami Gardens for the 11th Circuit JNC.
- Morgan R. Bentley of Sarasota, Henry Roger Lutz of Holmes Beach, and Michel E. Siegel of Sarasota for the 12th Circuit JNC.
- Richard C. Alvarez, Edward W. Gerecke, and Joseph Franklin Kinman, all of Tampa, for the 13th Circuit JNC.
- William Charles Henry of Panama City Beach, Kathi Lee Kilpatrick of Sneads, and Robert S. Sombathy of Lynn Haven for the 14th Circuit JNC.
- Nancy S. Lavista of Juno Beach, and L. Louis Mrachek and Lynn Solomon, both of West Palm Beach, for the 15th Circuit JNC.
- Loriellen Robertson, Robert Blake Shillinger, and Val Ellsworth Winter, all of Key West, for the 16th Circuit JNC.
- Ileana M. Almeida of Ft. Lauderdale, Terrence Patrick O'Connor of Lighthouse Point, and Glenn Jerrold Waldman of Weston for the 17th Circuit JNC.
- Harold Turner Bistline of Indian Harbour Beach, Anthony James Hall of Sanford, and Janice L. Merrill of Geneva for the 18th Circuit JNC.
- George W. Bush, Jr., of Palm City, Robert J. Gorman of Ft. Pierce, and Louis B. Vocelle, Jr., of Vero Beach for the 19th Circuit JNC.
- Jack Owen Hackett II of Charlotte Harbor, Russell T. Kirshy of Punta Gorda, and D. Keith Wickenden of Naples for the 20th Circuit JNC.

### **31. Executive Committee Appointments**

The board elected board members Eugene Pettis, David Rothman, and Jake Schickel as its representatives on the 2008-09 Executive Committee.

### **32. Comments from the President**

President Angones, presiding at his last meeting, thanked retiring board members for their service and commented on how much he had enjoyed being Bar president, a honor he ranked with becoming an American citizen and becoming a lawyer. He received a standing ovation from the board.

### **33. Items on First Reading**

The following items were presented to the board on first reading, but were not part of any verbal presentation:

- Rule 1-3.12, Provision of Legal Services Following Determination of Major disaster; new rule, in connection with separate proposed amendments to rule 4-5.5, which allows attorneys from other jurisdictions to provide legal services in Florida after the Supreme Court of Florida determines that a major disaster affecting the justice system has occurred.

- Rule 4-5.5, Unlicensed Practice of Law; Multijurisdictional Practice of Law; Within subdivisions (c) & (d), adds "or" at the end of each listed instance of authorized temporary practice in Florida, to clarify that a lawyer admitted to practice in a non-Florida jurisdiction need only meet 1 such criterion to be authorized to temporarily practice in Florida ; in connection with separate proposed amendments for new rule 1-3.12, within subdivision (c) and commentary, adds language that allows a lawyer admitted to practice in another U.S. jurisdiction to engage in activities authorized by rule 1-3.12 after a determination of a major disaster by the appropriate court.

- Bylaws amendments for the Criminal Law Section; within Article IV, Section 3 (Duties and Powers of Executive Council and Executive Committee – Meetings), clarifies that meetings may be conducted by “electronic or written” correspondence; within Article V, Section 5 (Nomination and Election of Officers and Executive Council – Nominating Committee) deletes provision that requires chair to appoint a nominating committee of five “retiring members” of the executive council; within Article VI, Section 1 (Committees – Standing Committees) deletes the Criminal Procedure Rules, Budget, and Liaison with Judiciary Committees; within Article VIII (Amendments), authorizes “electronic” notice of proposed amendments; includes other corrective or non-substantive edits consistent with controlling editorial protocols.

- Bylaws amendments for the General Practice, Solo & Small Firm Section (later sent back to the section).

#### **34. Time and Place of Next Meeting**

The next Board of Governors meeting will be held July 23-26 at the Sandpearl Resort in Clearwater Beach, Florida.

There being no further business, the meeting was adjourned at 5:58 p.m.

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