

THE FLORIDA BAR BOARD OF GOVERNORS

Regular Minutes

January 30, 2004
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 9 a.m. on Friday, January 30, 2004 at The Florida Bar, Tallahassee, Florida, with President Miles A. McGrane, III presiding.

1. Roll Call

Board members present:

Miles A. McGrane, III President
Kelly Overstreet Johnson, President-elect
Alan B. Bookman, First Judicial Circuit
Lawrence E. Sellers, Jr., Second Judicial Circuit
Michael J. Glazer, Second Judicial Circuit
Gregory S. Parker, Third Judicial Circuit
S. Grier Wells, Fourth Judicial Circuit
Henry M. Coxe, III, Fourth Judicial Circuit
William H. Phelan, Jr., Fifth Judicial Circuit
Louis Kwall, Sixth Judicial Circuit
Murray B. Silverstein, Sixth Judicial Circuit
Chobee Ebbets, Seventh Judicial Circuit
Robert A. Rush, Eighth Judicial Circuit
Mayanne Downs, Ninth Judicial Circuit
Russell W. Divine, Ninth Judicial Circuit
Warren W. Lindsey, Ninth Judicial Circuit
Robert M. Brush, Tenth Judicial Circuit
Francisco R. Angones, Eleventh Judicial Circuit
David Rothman, Eleventh Judicial Circuit
Jennifer R. Coberly, Eleventh Judicial Circuit
Don L. Horn, Eleventh Judicial Circuit
Sharon L. Langer, Eleventh Judicial Circuit
Steven E. Chaykin, Eleventh Judicial Circuit
Timon V. Sullivan, Thirteenth Judicial Circuit
John F. Rudy, II, Thirteenth Judicial Circuit
Rob Blue, Jr., Fourteenth Judicial Circuit
John G. White, III, Fifteenth Judicial Circuit
Jerald S. Beer, Fifteenth Judicial Circuit
Amy L. Smith, Fifteenth Judicial Circuit
James S. Lupino, Sixteenth Judicial Circuit
Alan C. Brandt, Seventeenth Judicial Circuit
Nancy W. Gregoire, Seventeenth Judicial Circuit
Henry Latimer, Seventeenth Judicial Circuit
Jesse H. Diner, Seventeenth Judicial Circuit
Frank C. Walker, II, Seventeenth Judicial Circuit
Clifton A. McClelland, Eighteenth Judicial Circuit
Harold G. Melville, Jr., Nineteenth Judicial Circuit
A. Lawrence Ringers, Twentieth Judicial Circuit
Richard Tanner, Out of State

Gary J. Leppla, Out of State
Brian D. Burgoon, Out of State
Mark Romance, YLD President
Michael J. Faehner, YLD President-elect
Solomon L. Badger, III, Ed. D., Public Member
Vivian Hobbs, Ph.D., Public Member

Board members absent:

Ervin A. Gonzalez, Eleventh Judicial Circuit
David W. Bianchi, Eleventh Judicial Circuit
Kimberly A. Bald, Twelfth Judicial Circuit
Gwynne A. Young, Thirteenth Judicial Circuit
Michael T. Kranz, Fifteenth Judicial Circuit
J. Christopher Lombardo, Twentieth Judicial Circuit
Ian Comisky, Out of State

Staff attending the meeting:

John F. Harkness, Jr., Executive Director
Tina Ruffin, Assistant to the President
Paul Hill, General Counsel
Dana Riggs, Secretary to the Board of Governors
Mike Tartaglia, Director of Programs Division
Dale Dehart Grigas, Director of Research, Planning and Evaluation
Lori Holcomb, Unlicensed Practice of Law Counsel
Elizabeth Tarbert, Director of Ethics and Advertising
Gary Blankenship, Senior Editor, Florida Bar News
Mark Killian, Managing Editor, Florida Bar News
Brit Dys, Assistant Editor, Florida Bar News
Allen Martin, Division Director Finance and Accounting
Tony Boggs, Director Legal Division
Shannon Flemming, Attorney Consumer Assistance Program, Lead Attorney
Mary Ellen Bateman, Director, Ethics, Advertising and Professionalism Division
Ken Marvin, Director of Lawyer Regulation
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:

Dinita James, President of Florida Association for Women Lawyers
Thomas M. Ervin, Jr., Board Legal Specialization and Education Counsel
Roddy Bailey, Chairman, Citizens forum
Barry Crown, Citizens forum member
Linda Osmanson, Citizens forum member
Dr. Rudy Frye, Citizens forum member

3. Invocation and Pledge of Allegiance

Board member Michael Glazer offered the invocation and Board member Larry Sellers led the Board of Governors in the pledge of allegiance.

4. Greetings and Other Guest Appearances

Florida Supreme Court Chief Justice Harry Lee Anstead
Florida Supreme Court Justice Kenneth B. Bell
Florida Supreme Court Justice Raoul G. Cantero III
Florida Supreme Court Justice R. Fred Lewis
Florida Supreme Court Justice Peggy A. Quince
Florida Supreme Court Justice Charles T. Wells
Florida Supreme Court Clerk Tom Hall
Florida Supreme Court Marshal Wilson Barnes
Matthew W. Dietz, Chair, Public Interest Law Section
Dennis Dean Smejkal, Chair, Workers' Compensation Section
Robert Meyer, Pro bono award winner, Eleventh Judicial Circuit

5. Non-Roll call Advertising Appeal Agenda Items

Board member Henry Latimer reported the non-roll call advertising appeal items as Appeal Items 23853, 04-00243 and 04-00244, and 04-00531.

6. Approval of Minutes and Executive Committee Action

The following minutes and summaries of Executive Committee actions were approved as submitted.

- A. Regular Minutes December 5, 2003, meeting
- B. Grievance Minutes December 5, 2003, meeting

C. SUMMARY OF EXECUTIVE COMMITTEE ACTION TAKEN

Thursday, January 15, 2004

One matter needing Executive Committee consideration was discussed by committee members telephonically on January 15, 2004. A quorum was reached, with the following members participating: Miles McGrane, Kelly Overstreet Johnson, Alan Bookman, Hank Coxe, Jim Lupino, Mark Romance and Richard Tanner. Staff in attendance included John F. Harkness, Jr., Francine Walker and Tina Ruffin.

Pursuant to Standing Board Policy 9.21 (a) (1), the executive committee considered emergency action as to a proposed application and legislative bill relating to a specialty license plate presented by The Florida Bar : Justice 4 Kids. Emergency action was deemed necessary because the deadline for filing an application for a specialty license plate was before the next meeting of the Board of Governors.

Prior to the conference call, the full board was polled by email in regards to the proposed application and legislative bill. Resounding support resulted. Three dissents/concerns were discussed, however, two of the three had been mollified.

President-elect Johnson said she had originally drafted the bill to have the Bar reimbursed for the first \$60,000 spent (for the consultant and application fee), but after discussion said she would change the intent from "shall be" to "may be."

President-elect Johnson announced that Bar staff has a preliminary design for the plate and is working on the required marketing plan. Board Member Jim Lupino said the Communications Committee and Citizens Forum will be asked to provide input into the marketing plan. President McGrane said the legislation, if passed, would go into effect July 1, 2004 so the upcoming Annual Meeting will be an ideal marketing venue, using such techniques as placing the plate applications at the registration desk. President-elect Johnson asked YLD President Mark Romance for marketing assistance from the YLD.

A motion was made by Jim Lupino and seconded by Richard Tanner, to (1) take a legislative position in favor of establishing a specialty license plate "Justice For Kids" with proceeds going to The Florida Bar Foundation for support of the legal needs of Florida's children; (2) approve a budget amendment of \$30,000 to hire a consultant to obtain the necessary signatures needed for the application; and (3) approve a budget amendment of \$60,000 for the application fee. The

Executive Committee voted 7-0 in favor.

7. Consent Calendar

The board approved the following items:

- A. UPL Circuit committee nominations
 - 1) February 2004
Mary Pavloff Attridge, Attorney , Fifth Judicial Circuit
Stewart Glenn Abrams, Attorney, Eleventh Judicial Circuit
Bob Cohen, Public Member, Eleventh Judicial Circuit
Suzan Jon Jacobs, Attorney, Eleventh Judicial Circuit
- B. Fee Arbitration committee nominations - **none this meeting**
- C. Rules, Bylaws & Policies
 - 1) Rule 1-3.8 (e) Right to Inventory
Creates new subdivision (e) which would require each member of the bar who practices law in Florida and who is the only lawyer responsible for protecting the interests of the member's clients to identify another member who is willing to serve as inventory attorney in the event of any need for such; clarifies that the designated member is under no obligation to serve in that capacity.
 - 2) Rule 3-5.1 Generally (probation)
Within subdivision (c), clarifies that a failure to comply with terms of probation or a finding of probable cause for misconduct during probation may be prosecuted as contempt and processed as other contempt proceedings elsewhere; additionally confirms that any order of sanctions for contempt hereunder may also terminate probation previously imposed.
 - 3) Rule 3-7.10 (h) Reinstatement and Readmission Procedures (report)
Within subdivision (h), deletes language that requires the referee to copy The Florida Bar with the referee's report as to reinstatement.
 - 4) Rule 4-5.4 Professional Independence of a Lawyer
Within subdivision (a)(4), clarifies existing language prohibiting bonus payments to nonlawyer employees based on the generation of clients or business, or calculated upon a percentage of legal fees received by the lawyer or firm.
 - 5) Real Estate Certification Rules
 - a) Rule 6-9.1 Generally
Adds to purpose of standards the criteria of "character, ethics and reputation for professionalism"; also adds language to address uniqueness of Florida real estate law and necessity for applicants to demonstrate knowledge and experience in Florida real estate law and transactions.
 - b) Rule 6-9.2 Definitions
Expands definition of real estate law to include matters relating to ownership and rights, examination of titles, real estate conveyances and other transfers, sales and other transactions, property owner associations and planned developments, regulation in land use and zoning.
 - c) Rule 6-9.3 Minimum Standards
Within subdivision (a), requires applicants to demonstrate experience with Florida real estate law for at least 3 of the 5 years of law practice before filing an application; within subdivision (b), requires applicants demonstrate experience and involvement with Florida real estate law and transactions; within subdivision (c), requires at least 3 references to be licensed to practice law in Florida or alternatively authorize references from non-Florida lawyers, judges, and others; within subdivision (d), authorizes establishment of policies by BLSE to provide guidance on CLE accreditation.
 - d) Rule 6-9.4 Recertification
Within subdivision (a), eliminates "continuous and substantial" as criteria for involvement in real estate law since last date of certification; within subdivision

(b), provides BLSE with authority to establish policies to govern CLE credit allocations; within subdivision (c), requires 3 of the 5 references to be licensed to practice law in Florida and adds "character, ethics and a reputation for professionalism" as criteria for recertification.

6) Standing Board Policy 5.10 Standing Committees

Rule change to transfer strategic planning responsibilities from the Long Range Planning Committee to the Executive Committee's Strategic Planning subcommittee.

7) Standing Board Policy 15.30 Executive Committee Actions on Disciplinary Matters

Within subdivision (b), clarifies existing policy for the disposition of unopposed reinstatement matters, to allow agreements or stipulations for reinstatement to be treated the same as consent judgments which do not require board or executive committee review.

8) Labor & Employment Law Section Bylaw Changes

Within Article III (Officers) and IV (Executive Council) deletes "continuing" from various references to legal education committees and seminars; within Article VI (Standing Committees) streamlines and updates existing provision by deleting selected standing committees, and by creating a smaller standing committee structure with subcommittees; also adds appropriate section/subsection headings throughout Articles II through VI where omitted.

D. Board Review Committee on Professional Ethics

1) Advertising Appeal 23853-Withdrawn from consent

2) Advertising Appeals 04-00243 and 04-00244- Withdrawn from consent

3) Advertising Appeal 04-00563

Advertising Appeal 04-00563 concerns application of Rule 4-7.4(b)(2)(K), prohibiting a direct mail communication from revealing the nature of a prospective client's legal problem on the outside. Staff rendered an opinion on September 22, 2003, among other violations, that an illustration of a stop sign and the web address www.Trafficlawfirm.com in the context of an offer to defend a prospective client regarding traffic tickets revealed the nature of the prospective client's legal problem in violation of Rule 4-7.4(b)(2)(K).

The Standing Committee on Advertising upheld staff's opinion on December 3, 2003. The attorney subsequently requested Board of Governors review, indicating that the attorney was willing to remove the web address from the outside, but believes that the stop sign, by itself, does not reveal the nature of the client's legal problem.

The BRC voted 6-0 to recommend that the BoG affirm the SCA decision that the stop sign on the outside of the envelope reveals the nature of the prospective client's legal problem.

4) Advertising Appeal 04-00531-Withdrawn from consent

E. Legislative Committee review

1) New section legislative position requests for the 2002-2004 biennium

a) Real Property, Probate and Trust Law Section

- i. Supports legislation to amend F. S. § 222.21 (2) to strengthen the exemption from creditors' claims for individual retirement accounts and employee benefit funds or accounts from taxation
- ii. Supports legislation to amend F. S. §§ 710.102 by adding a definition for "qualified minor's trust" in sub-section (14); 710.104 & 710.108 to expressly include benefit plans within the UTMA statutes; and 710.116 to authorize a custodian under a UTMA account to transfer the minor's property to a qualified minors's trust.
- iii. Supports legislation to amend F. S. § 744.301 in order to achieve greater consistency among state laws, i.e., the Uniform transfers to Minors Statutes.
- iv. Supports amending F. S. § 733.808 to expand the category of retirement plan proceeds which may be made payable to trusts to include stock ownership plans and individual retirement accounts and to be consistent

with F. S. § 710.102.

- F. Confirmation of appointments to Legal Services of North Florida Board of Directors
Cathi C. Wilkinson, Three year term
Lee Baldwin, Three year term
E. Philip Smith, Two year term
Joel Margules. Two year term
Karla Ellis, Three year term
Wendy Loquasto, Two year term
Mark Bednar, Three year term

8. Public Interest Law Section Report

Section Chair Matthew L. Dietz reported that the section held a seminar on January 16, 2004 to train lawyers to represent children. The Real Property Probate and Trust Law Section co-sponsored the event by underwriting the costs which was \$7,500. Janet Reno was the keynote speaker. Other speakers included: Florida Supreme Court Chief Justice Anstead, Florida Bar President Miles A. McGrane, III and Department of Children and Families Secretary Jerry Rieger. The lawyers who attended the seminar received free CLE credit if they committed to represent one child pro bono. Out of the 114 lawyers that applied for CLE credit, 100 agreed to represent a child pro bono. Because of the success of the seminar, other sections have shown interest in co-sponsoring events similar to this one.

9. Special Commission on Lawyer Regulation Report

Chairman Hank Coxe reported that the commission was conducting a survey. The commission will reconvene upon receipt of these, which is probably 5 to 6 weeks away.

10. Budget Committee Report

- A. Chairman Jesse Diner reported that the budget committee considered and approved 5 budget amendments.
1. \$25,000- Justice Institute teacher training
 2. \$39,500- Communications Audit-evaluation of publications
 3. \$10,000- Symposium on diversity in the legal profession
 4. \$250,000- Building Reserve
 5. \$250,000- Equipment Reserve
- The board of governors approved the amendments
- B. Incoming chairman Jerry Beer reported on next year's budget. He stated that the committee expects to have a budget for the board to approve at the April meeting. He expects the budget to be balanced or possibly have a surplus.

11. Communications Committee Report

Chairman Jim Lupino reported that the committee met the previous day with the Citizens Forum. Board member Alan Bookman joined them and presented strategic planning priorities for input. Citizens Forum members suggested that the Bar commit more than one year on each of its public relations projects. The committee discussed the website video update which began in December. During the first month that the video update was available, there were 442 visits to the webpage and 240 people viewed the clips. During the second month, there were 476 visits and 417 people viewed the clips. David Burley gave a presentation on Rich-Site Summaries (RSS). These can be a no-cost benefit to members and would have no budget impact. RSS feeds allow Internet users to periodically view a collection of news clip headlines and summaries and by using a link can read an article in its entirety. The committee will be testing this for a month and if agreed, it will be made available to the full membership.

The directory subcommittee began its study of the Bar's directory in order to develop a strategic plan for the future of the publication. The committee decided not to act on any proposed changes because of the impending member communications audit which will include the directory.

The committee also discussed the proposal for the member communications audit and approved its implementation pending satisfaction that the survey component will be a representative sample of the membership.

The committee discussed the marketing of the specialty license plate. Among the ideas was sending an e-mail birthday card to Bar members prior to their license plate renewal period. The e-card would include a picture of the Justice for Kids specialty license plate which would encourage members to purchase the tag. Sending the e-card will have a minimum cost.

12. Audit Committee Report

Chairman Russ Divine reported that the committee is looking into how the Sarbanes Oxley legislation may affect the field of auditing to be sure that the Bar is able to adjust. The auditors spoke with managers at the Bar to find areas where they were at risk. They identified 5 areas and are writing an RFP to hire someone to come in and review the Bar's internal controls in those areas identified. The RFP will be advertised in Tallahassee and Jacksonville.

13. Combined Certification Plan Appeals Committee and Board of Legal Specialization and Education Policies Report

Chairman David Rothman reported that last year CPAC discussed whether the record on appeal should also include peer review. After considerable discussion with BLSE, policy amendments were proposed by BLSE to maintain such information at the BLSE level and clarify CPAC's review as procedural. The policy amendments reflecting this change were on their second and final reading and are as follows:

- 1) BLSE Policy 2.13 Applicant Review Process for Certification or Recertification
Adds new subdivision (n) to clarify the end of the substantive review process regarding peer review
- 2) BLSE Policy 4.03 Standard of Review
Within subdivisions (a) and (b), clarifies scope and standard of review to be followed by the Appeals Committee in an appeal of certification denial at BLSE level; amends subdivision titles accordingly.
- 3) BLSE Policy 4.09 Consideration of Appeal
Within subdivision (b), clarifies content of record before Appeals Committee.

The board of governors unanimously approved these BLSE policy changes.

14. Legislation Committee Report

Chairman Alan Bookman reported that the legislation committee met the previous day and approved the following items:

- A. Workers' Compensation Section legislative counsel contract for Fausto Gomez
The board approved the contract.
- B. New section legislative position requests for the 2002-2004 biennium
The board approved the following positions.
 - 1) Business Law Section
 - i. Opposes legislation prohibiting the sale or disclosure of personal customer information by persons in bankruptcy.
 - 2) Real Property, Probate and Trust Law Section
 - i. Opposes legislation amending Part 1 of Chapter 394, Florida Statutes authorizing the court to order involuntary outpatient placement but provides no funding for needed mental health treatment.
 - ii. Supports modifications to F. S. 721.83(3) to limit the consolidated foreclosure of timeshares to 20 timeshares estates requiring a single filing fee in each consolidated foreclosure case/ and additional filing fee of \$3.00 for each additional timeshare.
- C. Amicus Request from Real Property, Probate and Trust Law Section.
The board of governors approved the request to file an amicus to 4th DCA case Warburton v.

McKean. It is a homestead issue, and the section believes that if the case is not overturned it could harm homestead law.

Steve Metz reported to the board that the Tax Watch report was expected around the middle of February. He reiterated to the board that the report would be very beneficial when it came to lobbying the legislature. He reported that he and President McGrane met with the Governor and Raquel Rodriguez. They discussed Article V funding issues as well as civil legal assistance.

Metz reported that the courts would need an addition \$50 to \$70 million dollars beyond what the Governor included in his budget.

Metz reported that the legislature had taken away the county authority to add a surcharge on filing fees which would pay for law libraries and legal aid. The legal aid societies throughout the state are not happy with this, and don't want to have to go to their local commissioners to try to get the funding.

Metz reported that the legislature is planning to amend the citizen initiative process by amending the way the amendments get on the ballot. He gave examples of opposing amendments being pushed by the Florida Medical Association and the Florida Academy of Trial Lawyers. He stated that he expected to see an amendment on the ballot of the August primary, or in the general election this fall that will raise the number of signatures that it takes to get an amendment on the ballot. He suggested that the Bar hold a post session educational symposium.

15. Report on the Ad Hoc Committee Regarding Judicial Campaign Conduct

Judge Charles Kahn reported that the committee was created due to a ruling in the U.S. 11th Judicial Circuit which allows judges to use committees rather than directly solicit cash contributions. The Committee met in early January in Miami. President McGrane and board members Alan Bookman and Hank Coxe were in attendance. The committee discussed steps to take to keep Florida's judicial campaigns upstanding and honorable as they have traditionally been with a few exceptions. The suggestion is to start by sensitizing local and volunteer bars to what is on the horizon in judicial campaigns. Many of the board members mistakenly believed that this was a south Florida problem. However, in recent times there have been statewide problems with judicial campaigns. The board suggested that all areas of Florida have a system in place to determine if a candidate is breaking the law. Examples of current functional programs through out the state were given by many board members. A model program is in The Florida Bar Voluntary Bar Leaders handbook.

President McGrane asked the board if it felt the organization should play a role in correcting the problem. The conclusion was that the board members should become involved locally to help set up local programs.

16. Report on the Internship Program

Florida Supreme Court Justice R. Fred Lewis asked the board to address the problems with Chapter 11 of the Rules Regulating The Florida Bar, which covers law students participating in internships. The interns are able to handle cases under the supervision of a lawyer for the state attorneys, public defenders and legal aid agencies. Justice Lewis said that law students are perceiving the certified internship program as an entitlement rather than as the privilege that it is. He gave the board some examples of students with police records becoming interns. Justice Lewis suggested that first year law students pay the Florida Board of Bar Examiners a \$75 registration fee to have a background check done before the student be certified to be a legal intern. He told the board that the law schools were not fond of this idea because of the fees and the fact that not all of the students plan to practice in Florida.

President McGrane appointed the Special Board Committee to Study the Law School Practice Program. Board member Robert Rush will chair the committee and board members Mayanne Downs, Peter Brandt and Don Horn will be on the committee, as well as the Young Lawyers Division President Mark Romance.

17. State of the Judiciary Report

Florida Supreme Court Chief Justice Harry Lee Anstead began his report by thanking Jack Harkness for his leadership of The Florida Bar and the seamless relationship between the Court and the Bar. He went on to thank President McGrane for making the Bar's commission of the legal needs of children a

permanent standing committee, thereby recognizing that the first obligation Florida judges and lawyers should be the legal needs of children.

Chief Justice Anstead reported that for the last year, the courts have been in a state of crisis. The courts suffered substantial cuts. The trial courts had a 5 percent cut, and the Office of Supreme Court Administrators had a 10 percent cut which equaled 17 employees, four people from his own staff. There was a \$5 million shortfall in operations around the state. In almost all of the circuits, there was no money to pay jurors. The legislature and the Governor's office may consider supplemental funding, but only after they have looked in every nook and cranny. Most circuits have run out of money for senior judges. He stated that the good news is that the Governor has not urged any new cuts this year. However, the \$170 million request that has been submitted to the legislature for the essential elements still leaves virtually every circuit in this state with a substantial shortfall. He suggested that when the board members return home that they get in touch with their chief judges and ask how they can help with the legislative issues. He reported that the way that HB113 was drafted, there are two classes of justice, one for the urban areas with a strong tax base where they counties could help fund the courts, and one for the rural areas with an agricultural tax base and strapped budgets.

Chief Justice Anstead referred to the pro bono awards ceremony as the most important ceremony that the Supreme Court holds. He also told the board that this year is the 50th anniversary of Brown v. Board of Education, which spawned the greatest civil rights revolution in this country.

18. Office of the State Court Administration Report

Blan Teagle, the assistant state court administrator spoke to the board about Article V, Revision 7. He gave out hand outs with key talking points for the board members to use when talking to their local leaders and legislators. He pointed out the differences between the Governor's recommended budget and the budget request that was submitted to the legislature. He reported that the civil trials will suffer the most if the gap is not closed, and that there will not be equity among the counties.

19. Attorney Consumer Assistance Program Report

Tony Boggs introduced Shannon Flemming, the lead attorney at the Attorney Consumer Assistance Program (ACAP). Ms. Flemming reported ACAP is a mediation program for those with complaints about an attorney. The program was started in March 2001. Ms. Flemming reported that there are 10 common complaints. They are trust accounting; incompetence; excessive fees; diligence; lack of communications; unprofessional conduct; returning files; withdrawal of representation; conflict of interest; misrepresentation.

ACAP receives about 30,000 calls per year on average, with about 19,000 open files per year. The number of complaints has declined by 8% since the inception of ACAP. This program has benefitted the members, the public and The Florida Bar. The members benefit because this leaves no discipline record, the public benefits because there is a resolution, and the Bar benefits because the issues are resolved without creating adversarial relationships with the members.

20. Statewide Advertising Grievance Committee Report

Chairman Gary Leppla reported that it was too soon to measure the committee's success since it only began to see activity June 1, 2002. Leppla reported that the local Bar counsels open the disciplinary files. If there are problems then the grievance is sent to Tallahassee and are placed on the agenda of the statewide grievance committee. Tony Boggs shares the information once a month via conference call. Once the statewide committee determines that there is probable cause, the matter is referred back to the local Bar counsel and a trial date is set, just like any other grievance matter. In 2001 to 2002 there were only three sanctions imposed. Currently, there are 157 pending cases.

21. Workers' Compensation Section Report

Chairman Dennis Smejkal reported that the workers' compensation laws were drastically changed during the 2002 legislative session. He reported that in spite of the law changes and the fact that their dues were raised, the membership of the section has remained constant. There are currently 1741 members.

He reported that due to the new law, the section is expecting to see a dramatic drop in the number of members and revenue. The only foreseeable remedy to this problem is if the courts step in and rule against the new laws.

There is an ongoing conflict of who has the right to promulgate the rules of the Workers' Compensation rules of procedures. In one statute the Division of Administrative Hearings has the right to promulgate the rules and in another statute the Supreme Court has the rule making authority. The section was working with DOAH on a joint committee to deal with the rules, however DOAH has backed out of the joint committee. At this time the section and DOAH are waiting to see what the Supreme Court does.

The statute that was enacted as of 10/01/03 SB 58 has proven to be devastating to injured workers. The legislative intent was to improve affordability and accessibility for the employers. They expected a 14% reduction in premiums, which has yet to be seen. To deal with accessibility they depended on the Joint Underwriting Association (JUA). At this point the JUA is operating with a \$36 million deficit. Benefits have been substantially reduced, and it is more difficult to get a case heard in court. Smejkal reported that due to the decreasing benefits, fewer attorneys will take these cases.

Several legislative committees have looked at these issues, however they don't seem to see the agency in fixing these problems. The first responders, firemen and others have realized that these laws apply to them and are not happy with what they have learned.

President McGrane expressed that he believed in November that there was an agreement with DOAH and Judge Cohen. He concurred that the board will have to wait to see what the Supreme Court decides.

22. Investment Committee Report

Chairman Ian Comisky reported via video tape that the Bar continues to make money. As of July 1, 2003 the Bar portfolio was worth \$14.277 million. As of December 1, 2003 it was worth \$15.631 million, and as of January 23, 2004 it was over \$16 million. Changing from Putnam Mutual to Henderson Global has proven to be a correct decision.

23. Program Evaluation Committee Report

Chairman Hank Coxe reported that the committee met and reviewed the judicial evaluation committee (JEC) and the judicial administration selection and tenure committee (JAST). They first heard from Judge Davis from the 1st DCA on the behalf of the JEC. The committee received an e-mail from past board member and now 2nd DCA Judge Silberman who chairs JAST.

Judge Davis reported to the board that the JEC had sent out 20,000 surveys requesting evaluations of both trial and appellate court judges and the performances of their duties that are routed back to the bar staff and then forwarded onto the judges without ever being opened, thereby maintaining the confidentiality. The committee questioned whether there was a need for both JEC and JAST. It appears that there is a duplication of efforts.

Judge Silberman told the committee that the charge of JAST is to accept specific assignments from the board of governors. Since the conclusion of the unsuccessful effort on merit selection and retention, Judge Silberman reported that the committee has been inactive. This current Bar year there have been no assignments for JAST.

The committee has requested that between now and the next meeting of the Bar that Judge Davis, Judge Silberman and Richard Dorn, chair of the Judicial nominating procedure committee meet and make suggestions to the Bar as to whether the committees should be merged, or discontinued. Judge Davis suggested that if there be a merger between JAST and JEC, that JAST be brought into JEC, because JEC works continually.

Client Security Fund matter: PEC requested that Mike Tartaglia and staff meet with the client security fund committee and bring recommendations to PEC for any changes.

The board was given a copy of a MEMO to President McGrane regarding a symposium being put on by the Equal Opportunity Law Section. The PEC review of the EOL section will be put off until the May board meeting. The PEC and the full board approved the symposium.

24. Rules Committee Report

Chair Vivian Hobbs reported on the following items:

A. Items for **final action**

- 1) Strategic Planning Standing Board Policies
 - a) SBP 5.10 Standing Committees
Rule change to transfer strategic planning responsibilities from the Long Range Planning Committee to the Executive Committee.
 - b) SBP 10.50 Long Range Planning Committee
Transfers strategic planning responsibilities from the Long Range Planning Committee to the Executive Committee

The board approved the rules by a voice vote.

25. The Florida Bar Foundation Report

Board member Alan Bookman reported that the Florida Bar Foundation wanted to amend their charter to include more public members increasing the number from 2 to 4 non-attorney members. The board agreed with this change to their charter.

26. Appellate Practice Section Bylaws

Appellate Practice Section Bylaws were on first reading.

27. Lee County Bar Association Report

The Lee County Bar Association submitted an application to operate a Bar-sponsored lawyer referral service. The board approved this with an effective date of June 1, 2004.

28. Disciplinary Procedure Committee Report

Chairman Don Horn reported on the following items:

A. Items on **first reading**

- 1) Rule 3-7.4 Grievance Committee Procedures
Within subdivision (l), alters the requirement that the presiding officer of a grievance committee sign a formal complaint, to only require that the document be "approved" by such officer.
- 2) Rule 3-7.9 Consent Judgement
Within subdivision (a), conforms approval language to that of subdivision (b); subdivision (e) re-titled for clarity regarding effect of a guilty plea on bar certification.
- 3) Rule 4-1.5 (f)(4)(B) Contingent Fees

B. Items for **final action**

- 1) Rule 4-5.8 Procedures for Lawyers Leaving Law Firms and Dissolution of Law Firms-
Withdrawn from consideration and referred back to committee to consider the Young Lawyers division requests.
- 2) Disbarment on Consent Rules - Approved
 - a) Rule 3-5.1 Generally
Consistent with proposed changes in rules 3-6.1, 3-7.2, 3-7.10, and 3-7.12, within subdivisions (g) & (j), revises the term "disciplinary resignation" throughout, to read "disbarment on consent"; additionally within (j), streamlines verbiage to reflect that disbarment by consent shall have the same effect as and shall be governed by the same rules as provided for disbarment, and that matters involving disbarment by consent shall be processed in the same manner as conditional guilty pleas for consent judgment.
 - b) Rule 3-6.1 Generally
Consistent with proposed changes in rule 3-5.1, 3-7.2, 3-7.10, and 3-7.12, adds attorneys who have been "disbarred on consent" within subdivision (a) as individuals subject to this rule.

- c) Rule 3-7.2 (j)(1) Procedures Upon Criminal or Professional Misconduct; Discipline Upon Determination or Judgement of Guilt of Criminal Misconduct
 - d) Rule 3-7.10 (n) Reinstatement and Readmission Procedures
Consistent with proposed changes in rules 3-5.1, 3-6.1, 3-7.2, and 3-7.12, adds verbiage within subdivision (n) to make this rule applicable to an attorney who has been "disbarred on consent".
 - e) Rule 3-7.12 Disciplinary Resignation from The Florida Bar
Deletes entire rule in view of proposed amendments to rules 3-5.1, 3-6.1, 3-7.2, and 3-7.10, which would supersede and moot current provisions, and otherwise create unnecessary redundancy.
- 3) Standing Board Policy 15.10 Waiver of Disqualification as Attorney for Respondents-Not Approved
Within subdivision (b), revises current prohibition against a member of board members' law firm representing a respondent in a disciplinary proceeding, and specifies those circumstances under which the board may grant a waiver for such representation.
- 4) Standing Board Policy 15.55 Deferral of Disciplinary Investigation During Civil or Criminal Proceedings - Approved
New policy in furtherance of rule 3-7.4(e), to provide additional guidance for deferral of the investigation of a disciplinary complaint that may have been initiated to influence a separate civil or criminal proceeding.

29. Board Review Committee on Professional Ethics Report

Board member Steve Chaykin reported on the following Advertising Appeals Items:

- A. Advertising Appeal 23853 concerns application of Rule 4-7.11, defining lawyer referral services, to television and radio advertisements of The Fund. The Fund previously filed several print advertisements that included contact information for individual members of The Fund, who are members of The Florida Bar. During the course of reviewing those advertisements, members of the Standing Committee on Advertising requested that The Fund provide copies of television and radio advertisements that members of the committee had seen or heard in the media. The Fund responded that The Florida Bar has no jurisdiction over The Fund, The Fund is not required to file the advertisements for review and is not acting as a lawyer referral service, but provided transcripts of radio and television advertisements to the committee. The radio and television advertisements advise the viewer to use a lawyer who is a member of The Fund to handle real estate transactions and invite the viewer to call The Fund for additional information using a toll-free telephone number. On March 13, 2002, the Standing Committee on Advertising found that The Fund met the definition of lawyer referral service under Rule 4-7.11(c)(2) as:

any group or pooled advertising program operated by any person, group of persons, association, organization, or entity wherein the legal services advertisements utilize a common telephone number and potential clients are then referred only to lawyers or law firms participating in the group or pooled advertising program.

The Standing Committee on Advertising informed The Fund that The Florida Bar has no jurisdiction over The Fund, but does regulate the lawyers that the committee believes are accepting referrals from The Fund. The Standing Committee on Advertising therefore requested that The Fund submit its television and radio advertisements for review. The Fund requested reconsideration of the issue. On June 20, 2002, the Standing Committee on Advertising again found that The Fund's television and radio advertising campaign met the definition of a lawyer referral service. The Fund subsequently requested Board of Governors review of the issue. The BRC voted 5-1 to recommend that the board affirm the SCA decision, finding that The Fund's advertising campaign meets the definition of a lawyer referral service under Rule 4-7.11(c)(2).

The BRC voted 4-2 to recommend that the board defer any enforcement of the rule involving The Fund's advertising campaign and refer the entire issue to the new Advertising Task Force 2004 for study.

The BRC reconsidered its earlier action and voted 4-2 to recommend that the board defer action on this item.

The BRC motion to defer action failed. A new motion was made, seconded and passed to find that The Fund's advertising campaign meets the definition of a lawyer referral service under Rule 4-7.11(c)(2).

- B. Advertising Appeals 04-00243 and 04-00244 concerns application of Rule 4-7.5(b), prohibiting visual images in television advertisements other than an attorney in front of a single solid color background, a set of unadorned law books, or the attorney's own office. Staff rendered an opinion on August 13, 2003, that two television advertisements filed by a lawyer referral service contained visual images of a father and child in a wheelchair and children on a playground (file number 04-00243) and a mother and infant in a stroller and children on a playground (file number 04-00244), in violation of Rule 4-7.5(b), among other violations. The Standing Committee on Advertising upheld staff's opinion on October 15, 2003. The filer subsequently requested Board of Governors review, limiting the request for review to the issue of whether the visual images in the television advertisements violate any Florida Bar rules and whether enforcement of the rule should be suspended.

The BRC voted 4-2 to recommend that the board of governors defer consideration of this issue. The board concurred in the recommendation of the BRC.

- C. Advertising Appeal 04-00531 concerns application of Rule 4-7.4(b)(2)(K), prohibiting a direct mail communication from revealing the nature of a prospective client's legal problem on the outside. Staff rendered an opinion on September 16, 2003, that among other violations, the language "Patents, Trademarks & Copyrights" on the outside of the firm envelope in the context of an offer to represent a prospective client in a pending intellectual property lawsuit revealed the nature of the prospective client's legal problem in violation of Rule 4-7.4(b)(2)(K). The Standing Committee on Advertising upheld staff's opinion on December 3, 2003. The attorney subsequently requested Board of Governors review.

The BRC voted 5-1 to recommend that the BoG affirm the SCA decision that the language "Patents, Trademarks & Copyrights" on the outside of the envelope reveals the nature of the prospective client's legal problem.

The board of governor's concurred in the recommendation of the BRC.

30. President-elect Report

President-elect Overstreet Johnson reported that the specialty license plate briefing survey should be finished within 2 weeks. The language for the specialty tag was filed the previous day and was in bill drafting.

She reminded the members that she would be making committee appointments for next year and they needed to submit their requests. She also requested that the board members speak to her about committee liaison appointments. Johnson submitted to the board the dates and locations of the upcoming board meetings they are as follows:

August 11-15, 2004	Ponte Vedra Beach	Ponte Vedra Beach Resort
October 12-17, 2004	Las Vegas, Nevada	The Bellagio
December 8-12, 2004	Naples	Ritz Carlton
January 26-30, 2005	Key West	Wyndham Casa Marina
April 6-8, 2005	Tallahassee	The Florida Bar
June 1-5, 2005	Palm Beach	Four Seasons

The board approved the dates and locations.

Johnson reported on the discussion of the 17th Circuit Judicial Nominating Committee during the Judicial

Nominating Procedure Committee meeting at Midyear. Board member Jesse Diner, from the 17th circuit, reported that he had spoken with the chair of the local JNC and he was certain that there would not be another occurrence like the one at issue. Several of the board questioned whether the Bar had responded appropriately to reassure potential candidates that the problems would not reoccur. Many were concerned with the perception that the Bar had not responded. Johnson reminded the board The Bar does not directly appoint JNC members, and previous authority to investigate actions was eliminated by the legislature. She asked the members to encourage upstanding attorneys to apply, so that the Bar can submit a good quality list to the Governors office.

Johnson closed her report by reporting that she will be appointing the advertising review committee next week. She read through the list of people who have submitted their applications and requested feedback from the members on anyone that they personally know. Manny Morales will be the chair, and Chobee Ebbets will be the vice-chair.

31. Special Appointments

- A. Florida Bar Foundation Board of Director
The board approved the following two lawyers for 3-year terms:
Louis Kwall
John Patterson

32. Young Lawyers Division Report

Young Lawyers Division President Mark Romance told the board about the Article V, Revision 7 Symposium held on January 23, 2004 at the Contemporary Hotel in Orlando, Florida. Representative Dudley Goodlette was the moderator. Chief Justice Anstead, Representative Benson, Harvey Bennett and board member Alan Bookman were on the panel. The symposium was video taped and can be seen on the Young Lawyer Division web site, an edited version can be seen on The Florida Bar website. Harvey Bennett of Tax Watch gave a partial report and said that the report would be available around the middle of February.

In closing, Romance reported that there is a contested race for President-elect designate between Jamie Moses and Paul Scheck.

33. President's Report

President McGrane reported that he had been very busy since the board meeting in December. He has been handling the 17th Circuit Judicial Nominating Committee situation. He has also had to explain to the public why the Bar provided labels of Bar members to the National Alliance.

President McGrane reported that he would be continuing to meet with the Governor to ensure funding for Civil Legal Assistance.

President McGrane appointed the following board members to The Florida Bar Board of Governors Public Member Screening Committee:

Ervin Gonzalez- Chair
Nancy Gregoire
Solomon Badger
Larry Sellers
Amy Smith
Jack Rudy
Murray Siverstein

34. Time and Place of Next Meeting

The next Board of Governors meeting will be held March 31 - April 3, 2004 at the Crown Plaza Grand Hotel in Pensacola, Florida.

There being no further business to discuss, the Board of Governors meeting adjourned at 4:30 p.m.

Respectfully submitted,

Dana M. Wood
Secretary to the Board of Governors

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