

THE FLORIDA BAR BOARD OF GOVERNORS

Regular Minutes

June 2, 2006
Hilton Resort
Key West, Florida

Pursuant to notice, the regular meeting of the Board of Governors of The Florida Bar was called to order at 9:00 A.M. on Friday, June 2, 2006, in Key West, Florida, with President Alan B. Bookman presiding.

1. Roll Call

Alan B. Bookman, President
Henry M. Coxe, III, President-elect
Ross M. Goodman, First Judicial Circuit
Lawrence E. Sellers, Jr., Second Judicial Circuit
Dominic M. Caparello, Second Judicial Circuit
S. Grier Wells, Fourth Judicial Circuit
John J. Schickel, Fourth Judicial Circuit
Denise A. Lyn, Fifth Judicial Circuit
Andrew B. Sasso, Sixth Judicial Circuit
Murray B. Silverstein, Sixth Judicial Circuit
Charles Chobee Ebbets, Seventh Judicial Circuit
Carl B. Schwait, Eighth Judicial Circuit
Mayanne Downs, Ninth Judicial Circuit
Warren W. Lindsey, Ninth Judicial Circuit
Robert M. Brush, Tenth Judicial Circuit
Francisco R. Angones, Eleventh Judicial Circuit
David Rothman, Eleventh Judicial Circuit
Ervin A. Gonzalez, Eleventh Judicial Circuit
Jennifer Coberly, Eleventh Judicial Circuit
Sharon L. Langer, Eleventh Judicial Circuit
Benedict P. Kuehne, Eleventh Judicial Circuit
Steven Chaykin, Eleventh Judicial Circuit
Kimberly A. Bald, 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
John G. White, III, Fifteenth Judicial Circuit
Gregory Coleman, Fifteenth Judicial Circuit
Edwin Scales, Sixteenth Judicial Circuit
Nancy W. Gregoire, Seventeenth Judicial Circuit
Eugene K. Pettis, Seventeenth Judicial Circuit
Frank C. Walker, II, Seventeenth Judicial Circuit
Clifton A. McClelland, Jr., Eighteenth Judicial Circuit
A. Lawrence (Larry) Ringers, Twentieth Judicial Circuit
Richard Arthur Tanner, Out-of-State
Ian M. Comisky, Out-of-State
Gary J. Leppla, Out-of-State
Brian D. Burgoon, Out-of-State
Jamie B. Moses, YLD President
John M. Stewart, YLD President-elect
Solomon L. Badger, III, Public Member

Board members absent:

Gregory S. Parker, Third Judicial Circuit
Daniel L. DeCubellis, Ninth Judicial Circuit
Henry T. Courtney, Eleventh Judicial Circuit
Scott G. Hawkins, Fifteenth Judicial Circuit
Lisa S. Small, Fifteenth Judicial Circuit
Alan C. Brandt, Jr., Seventeenth Judicial Circuit
Jesse H. Diner, Seventeenth Judicial Circuit
Harold G. Melville, Nineteenth Judicial Circuit
J. Christopher Lombardo, Twentieth Judicial Circuit
J. Blair Culpepper, Public Member

Others in attendance:

June McKinney Bartelle, President of Florida Association for Women Lawyers

Staff attending the meeting:

John F. Harkness, Jr., Executive Director
Paul F. Hill, General Counsel
Tina Ruffin, Assistant to the President
Dana Watson, Secretary to the Board of Governors
Elizabeth Tarbert, Director of Ethics and Advertising
Gary Blankenship, Senior Editor, Florida Bar News
Allen Martin, Director Finance and Accounting
Tony Boggs, Director Legal Division
Mary Ellen Bateman, Director, Ethics, Advertising and Professionalism Division
Lori Holcomb, Director of Unlicensed Practice of Law
Francine Walker, Director of Public Information

2. Guests

Jane Curran, Florida Bar Foundation, Executive Director
Kelly Overstreet Johnson, Immediate Past President of the Board of Governors
Jerry Beer, Past member of the Board of Governors
Tawna Stringfellow, Co-chair of the Special Committee to Study Paralegal Regulation
Karen McClean, Member of the Special Committee to Study Paralegal Regulation
Tom Hall, Clerk of Florida Supreme Court
Sonny McCoy, Mayor of Monroe County
Steve Metz, Chief Legislative Counsel
Laird Lile, New board member
Ramon Abadin, New board member
Dennis Kainen, New board member
Scott Atwood, President-elect designate for the Young Lawyers Division

3. Invocation and Pledge of Allegiance

Invocation and Pledge of Allegiance were led by Ed Scales.

4. Welcome by Mayor of Monroe County

Local Board of Governors member Ed Scales introduced the Mayor of Monroe County, Charles "Sonny" McCoy. McCoy welcomed the board and read a resolution to the board which made President Alan B. Bookman an honorary member of the conch republic.

5. Non Roll Call Grievance Items

Co-chair Grier Wells reported that that the non-roll call grievance agenda items were numbers 7, 9, 10, 19, 20 and 23. The Client Security Fund items were numbers 5, 10, 17, 20, 21, 31, 50, 51, and items 7, 8, & 9 were tabled.

6. Non Roll Call Advertising Appeal Items

Chair Steve Chaykin reported that the only non roll call advertising appeal item was Advertising Appeal 06-01397.

7. Approval of Minutes

- a. Regular Minutes, April 7, 2006 meeting - Approved
- b. Grievance Minutes, April 7, 2006 meeting - Approved
- c. Summary of Executive Committee action taken
 - 1) April 10, 2006 16th circuit JNC nominee
Members participating: President Alan Bookman, President-elect Hank Coxe, Kimberly Bald, Jesse Diner, Mayanne Downs, Nancy Gregoire, Jamie Moses, David Rothman, Grier Wells and Jay White.
During the April 7, 2006 board meeting, the board voted on the nominees for the 16th Circuit JNC. Only 5 nominees were approved and the sixth was to be taken up by the Executive Committee. After review of the additional applications, Ed Scales recommended Val Winter as the sixth nominee. The Executive Committee voted in favor of Val Winter as the sixth nominee to the 16th Circuit JNC with a vote of 10-0.
 - 2) April 13, 2006 2nd DCA JNC nominee/UPL waiver/CrimRPC comments
Members participating: President Alan Bookman, President-elect Hank Coxe, President-elect designate Frank Angones, Kimberly Bald, Jesse Diner, Mayanne Downs, Nancy Gregoire, Jamie Moses, David Rothman, Grier Wells and Jay White.
Item 1
One of the nominees, Christine Greider, for the 2nd DCA JNC was appointed to a county judgeship in Collier County making her ineligible to serve on a JNC. President Bookman requested Kim Bald, chair of the 2nd DCA JNC screening committee, reassemble the screening committee for the purposes of recommending an additional name for the Executive Committee consideration. The screening committee selected Ross L. Fogelman to fill the vacancy on the 2nd DCA JNC. The Executive Committee voted in favor of Ross L. Fogelman as the nominee to the 2nd DCA JNC with a vote of 11-0.
Item 2
A request for waiver of Rule 10-5.2(c) of the Rules Regulating The Florida Bar was brought before the Executive Committee. The request was from Dustin Deese of Trenam Kemker. Mr. Deese wished to represent the respondent in a UPL investigation. Bar Counsel had no objection to the waiver. The Executive Committee approved the waiver with a vote of 11-0.
Item 3
The Criminal Procedure Rules Committee requested Executive Committee approval to go forward with filing a comment with the Supreme Court involving whether the state should be given the right to closing argument in all prosecutions. The comment was in regards to the amendments proposed by The Supreme Court's Criminal Court Steering Committee to repeal part of the Florida Rule of Criminal Procedure 3.250 and to supersede it with newly created Florida Rule of Criminal Procedure 3.381 to provide the State of Florida with initial closing argument and rebuttal closing argument in all criminal trials. The Executive Committee approved the comment with a vote of 11-0.
 - 3) April 24, 2006 1st DCA JNC nominee
Members participating: President Alan Bookman, President-elect Hank Coxe, President-elect designate Frank Angones, Kimberly Bald, Jesse Diner, Mayanne

Downs, Nancy Gregoire, Jamie Moses, David Rothman, Grier Wells and Jay White.

One of the nominees, Jephtha Barbour, for the 1st DCA JNC informed The Florida Bar that, although he applied for a vacancy on the 1st DCA, his residency was really in the 5th DCA, thereby making him ineligible. The 1st DCA JNC screening committee reassembled and reviewed the list of applicants. The screening committee recommended John S. Mills of Jacksonville as the replacement. The Executive Committee voted in favor of John S. Mills as the nominee to the 1st DCA JNC with a vote of 11-0.

4) April 27, 2006 RJA committee comments

Seven items required Executive Committee approval. The Executive Committee was transmitted the information on the seven items via fax and the following members responded with their vote: Kelly Overstreet Johnson, Alan Bookman, Jerry Beer, Hank Coxe, Mayanne Downs, Mike Glazer, Sharon Langer and David Rothman.

Item 1

The Third Amendment to The Florida Bar Employees' Pension Plan provides for automatic rollovers of distributable account balances greater than \$1,000 and not more than \$5,000 when participants fail to provide The Florida Bar with directions regarding the distribution of their accounts. The Executive Committee approved the Third Amendment to The Florida Bar Employees' Pension Plan by a vote of 8-0.

Item 2

The Secretary's Certificate of the Board of Governors of The Florida Bar contains resolutions approving the adoption of the Third Amendment. The Executive Committee approved the Secretary's Certificate of the Board of Governors of The Florida Bar with a vote of 8-0.

Item 3

The Summary of Material Modifications (SMM) to The Florida Bar Employees' Pension Plan Summary Plan Description modifies Section 18 of the Plan's Summary Plan Description (SPD) as a result of the Third Amendment. In addition, the SMM corrects a scrivener's error in Paragraph D of Section 16 of the SPD. The Executive Committee approved the Summary of Material Modifications to The Florida Bar Employees' Pension Plan Summary Plan Description by a vote of 8-0.

Item 4

The Automatic Rollover Agreement allows for T. Rowe Price Trust Company to act as custodian for rollover Individual Retirement Accounts resulting from retirement plan force-out distributions. The Executive Committee approved the T. Rowe Price Automatic Rollover Agreement by a vote of 8-0.

Item 5

Two UPL circuit committees were improperly constituted and so Executive Committee approval was sought on the nominations to fill the vacancies. The following individuals were nominated to serve:

Ronald W. Flury, attorney member, committee 2

Michelle A. Smith, attorney member, committee 8

Barbara W. Lingis, public member, committee 8

Cheryl Jarvis, public member, committee 8

The Executive Committee approved the UPL circuit committee nominations with a vote of 8-0.

Item 6

Executive Committee action was necessary to formalize The Florida Bar's support for passage of HB 9075, the legislative resolution that honors the memory of Henry Latimer. Per Standing Board Policy 9.21, the Executive Committee was authorized to act on this matter instead of the board since the next regularly scheduled meeting of the board of governors occurs June 3, 2005,

after the legislative session. The Executive Committee approved the Henry Latimer legislative resolution by a vote of 8-0.

Item 7

Formal action was sought from the Executive Committee on member objections to legislative position 12. The date of the next Board meeting would have been past the applicable deadline for action on these objections, so intervening Executive Committee action was required. This active position has drawn objections from 3 separate bar members, of which none are new objectors in this biennium. The Executive Committee acknowledged objections to the legislative objectors.

- 5) May 2, 2006 1st DCA JNC replacement nominee
Members participating: President-elect Hank Coxe, President-elect designate Frank Angones, Kimberly Bald, Jesse Diner, Mayanne Downs, Nancy Gregoire, Jamie Moses, David Rothman, Grier Wells and Jay White.
One of the nominees, Rufus Pennington, for the 1st DCA JNC informed The Florida Bar that, although he applied for a vacancy on the 1st DCA, his residency was really in the 5th DCA, thereby making him ineligible. The 1st DCA JNC screening committee reassembled and reviewed the list of applicants. The screening committee recommended John C. Taylor, Jr. of Jacksonville as the replacement. The Executive Committee voted in favor of John C. Taylor, Jr. as the nominee to the 1st DCA JNC with a vote of 10-0.

8. Consent Calendar -Approved

- a. Standing Committee on UPL appointments
Stacey Lyn Feinstein, Attorney Member
James Edward McDonald, Attorney Member
Diane McGill, Attorney Member
James William Pimentel, Attorney Member
Mark Ragusa Attorney Member
Alba Rodriguez, Attorney Member
Marcia Tabak, Attorney Member
Jeffrey Pope Watson, Attorney Member
Henry Prior, Public Member
Carl Patterson, Public Member
John Chaves, Public Member
Philip Lazzara, Public Member
Richard Oliver, Attorney Member
Ingrid Riera, Public Member
- b. Administrative Law Section Bylaws
Within Article I, adds title (Description) and creates new Section 3 (Aspirational Goal) regarding a balanced executive council membership of both government attorneys and private practitioners; within Article II, Section 3 (Membership – Annual Dues) deletes \$25 cap on dues; within Article III, Section 4 (Officers – Election of Officers) revises nominations process, to require nominations by a nominating committee of the executive council rather than the full council; within Article IV (Executive Council) deletes duplicative provision in Section 1 (Governing Body) regarding council meetings, and creates new Section 5 (Duties) regarding council member participation in section, Florida Bar, or other sections' activities; within Article V (Meetings) adds new title and provisions within Section 1 (Meetings of the Membership) and new Section 2 (Meetings of the Executive Council) specifying revised procedures for calling and conducting both regular and special meetings of the section and executive council, including new quorum and absence provisions for executive council meetings; within Article VI (Committees) revises descriptions of various standing committees, adds new Law School Outreach and Nominating Committees, and allows for establishment of ad hoc committees by the chair; includes other non-substantive edits and revises existing subdivision entries as necessary.

- c. Labor & Employment Law Section Bylaws
Amends Article II, Section 5 to increase the section's annual dues from \$25 to \$40.
- d. Confirmation of appointments to Legal Services of North Florida Board of Directors
The board approved the recommendation that Mechele McBride be appointed to fill the remainder of Karla Ellis' term on the Legal Services of North Florida's Board of Directors.
- e. Legislative Objections - 2004-2006 Biennium (Position #18)
There were two objectors to Position #18. The objectors are entitled to be refunded \$6.42 of their Bar dues, however, both objectors had previously objected to other legislative positions and have already received their refund.

9. Special Committee to Study Paralegal Regulation Report

Chair Ross Goodman reported that after legislation attempting to regulate paralegals was filed during the 2005 legislative session, The Bar created the special committee made up of attorneys, paralegals, and legal educators. The committee has been working on the issue of paralegal regulation since last August. The committee's solution sets two tiers, one for paralegals as they presently exist in Bar rules and the second tier is for what will be called registered paralegals. Goodman said that under the two-tier system, the first tier would encompass paralegals based on the definition in Bar Rule 10-2.1, as someone with education, training, or work experience who, under the supervision of a lawyer, performs delegated substantive work for which the lawyer is responsible. Tier two paralegals would have to meet education and experience requirements or be certified by the National Association of Legal Assistants or the National Federation of Paralegal Associations and then could hold themselves out as "Florida Registered Paralegals". They would also have to meet continuing education requirements. The proposal's grandfathering provision would allow paralegals who can show five years of substantial experience, but who don't meet the education or certification requirements, to become registered paralegals. That provision is limited to the first three years of the program. Goodman said the proposed rule also creates a disciplinary system and a code of ethics for paralegals. The proposed rule was also reviewed and approved by the Disciplinary Review, Program Evaluation and Rules committees. The board approved the new program and the following rule which now goes to the Supreme Court:

- 1) Rules Regulating The Florida Bar Chapter 20 - Florida Registered Paralegal Program
New chapter 20 setting forth standards to establish new Florida Registered Paralegal Program; establishes a two-tiered system.

10. Presentation of Past-President's Scrapbooks

President Bookman presented past President Kelly Overstreet Johnson with several scrapbooks full of pictures and memories from her term as Bar President. Johnson thanked the board and said that her year as Bar President had been very fulfilling. She thanked the board members for allowing her to lead them and encouraged them to continue their good work. She also took the opportunity to remind the board members that they should purchase the "Kids Deserve Justice" license plate the next time they renew. Bookman told the board that Johnson had recently been elected to the National Council of Bar Presidents.

11. Appellate Practice & Advocacy Section Report

Chair, Tom Hall reported to the board that this year is the 11th year of the appellate practice section. It started with 154 members and now has 1,400 members and is still growing. Hall said that the section wanted to have a long range strategic planning retreat, as the section had accomplished the goals from the retreat six years ago. The section members wanted to have a retreat type meeting with appellate judges and will be doing that this year. The section will be sponsoring it with the DCA conference judges. There will be 20 DCA judges and they will discuss primarily when and why they choose to write opinions and when and why they choose not to. Hall said that the section is also working on a pro se guidebook for appeals. The guidebook will be published sometime next year and the Bar Foundation will provide funding for the publication. Hall reported that the section is working to get more government lawyers in the section.

Approximately 60 percent of appeals are processed by government lawyers, yet few are members of the section, so the section will be doing an outreach to those who do it on a regular basis.

Hall told the board that the section is very happy with the way the new budgetary section split is working. This section was one of the sections that really had no objection to it and it is working out very well for the section. This year the section sponsored a meeting of the National Association of Appellate Court Clerks and also helped with the National Chief Justice Conference. Hall said that the section intends to keep growing and work with the Bar on a number of issues. The section has a lot of concerns about the way the judicial nominating commissions (JNC) are working. The section believes that a lot of long time experienced appellate lawyers are not getting nominated by the JNCs. The section is going to try to get some of our members on the JNCs to address that. The section is also concerned that the legislature has recently been looking at taking away power from the Supreme Court or creating branch DCAs without any input from the courts. The section will continue to monitor the legislature.

12. Unlicensed Practice of Law Report

Lori Holcomb, Director of Unlicensed Practice of Law reported on the following items on first reading:

- 1) Rule 1-3.11 Appearance by Non-Florida Lawyer in an Arbitration Proceeding in Florida (Rules Regulating The Florida Bar)
Within subdivision (e) re content of verified statement for leave to appear, deletes requirement that non-Florida lawyers supply their social security number to The Florida Bar; adds requirement that such lawyers otherwise provide The Florida Bar with appropriate attorney or bar numbers from those states in which they are eligible to practice law.
- 2) Rule 2.061 Foreign Attorneys (Rules of Judicial Administration)
Deletes form motion from the rule; allows Supreme Court of Florida to promulgate form motion; adds requirement that the out-of-state attorney supply the bar or attorney number for all states where currently eligible to practice law.

13. Communications Committee Report

Chair Kim Bald began her report by passing out copies of news reports on the bar's civics education initiative resulting from President Bookman's editorial board meetings and interviews about the poll on the principles of democracy. Bookman visited 12 editorial boards along with local board members and, when possible, the Chief Judge of the circuit. She said this initiative is this year's Dignity in Law. The topic received positive and valuable coverage and as a result Common Cause of Florida and the League of Women Voters worked with Florida Law Related Education Association to advocate for mandatory civics courses in middle schools. The effort was successful by amending the major education reform bill to require one semester of state and local government and civics education.

Bald told the board that the committee had quite a bit of discussion this year on the Citizens Forum charter changes that were being presented by PEC for Board approval. She explained that the changes set up staggered terms so that each president has four appointments and the Forum will have eight returning members each year. Terms will be for three years. President-elect Coxe made his citizen appointments, which she announced. She said that this was the first year we had nominations from current and former Forum members and that all of the nominees have excellent backgrounds and qualifications. For 2006-7, Ed Scales will be chair, Rebecca Frank will be vice chair and the lawyer members are Mayanne Downs and Bookman.

The committee approved a request to add an Unlicensed Practice section on the homepage of the Web site. Staff will organize all related web information into this new area which will be located on the main navigation bar just below Lawyer Regulation.

14. Young Lawyers Division Report

President Jamie Moses reported that she was excited that Scott Atwood is the president elect designate. Moses told the board that the YLD gives out 10 scholarships per year, had 70 applicants, and awarded 8 of the scholarships to women and two to minorities. She said that the YLD had another contested election of ABA district representative. Erica White from Tallahassee won that election. She will work with the Bar in an effort to thank the Bar staff that truly does the work on our hotline, the 1,500 to 2,000 calls they get during a hurricane. They will get some specialized training on dealing with emergency calls. It has proven to be hard to handle the emotional crisis and destruction those people were going through. The training will be on June 12.

15. Investment Committee Report

Chair Ian Comisky reported that the Bar investments had another good quarter. Comisky said that for the one year period ended March 31, 2006, the Bar's portfolio was up over 13 percent. The first quarter 2006 we were up almost 4 percent. He also gave a preview for the July meeting. He told the board that it has been recommended by our advisers that the Bar further diversify the portfolio and it's somewhat controversial. Their primary recommendation is we go into alternative investments including hedge funds. The committee is not unanimous on what we should diversify into. This could include managed futures, REITs, TIPs, emerging market equity's and hedge funds. The addition of these investments categories into the portfolio should decrease volatility without hurting the investment returns. He repeated that it's been a subject the committee has had some disagreement and is unsure on how far The Board will want to follow the advices. The advisers will make a presentation at the next meeting giving us at least two alternatives.

16. Budget Committee Report

Chair Mayanne Downs reported that the budget committee recommends the approval of 6 amendments that adjust time and other cost allocations distributions in the 2005-06 budget. The board concurred and approved the amendments. The budget was approved by the board at its April 2006 meeting and then published to the membership for their review and comment. The board considers any comments and/or objections from members at this meeting; either approving the member recommendations or not. The budget is then filed with the Supreme Court for its review. Downs said there were only minor comments or changes to next year's budget. They include providing \$200,000 for emergency generator backup in the event of a hurricane or other disaster for the Bar's computer, communications and building security systems and \$30,000 to provide a broader base for the Bar's off-site backup program. The board approved the objections.

Downs told the board that the committee recommended that the board approve an amendment to Standing Board Policy 5.63, the Administrative Support Policy on second reading and were requesting a waiver of second reading for Standing Board Policy 4.30 Dues for Law Faculty Affiliates. The board concurred and approved both Standing Board Policy amendments.

- a. Items on **second reading - Approved**
 - 1) Standing Board Policy 5.63 Administrative Support Policy
Within subdivision (a), adds language stating that the section expenses used in calculating general and administrative allocations will be reduced by the amount of sponsorships collected in the year.
- b. Items on **first reading - asking for waiver of 2nd reading and for final action - Approved**
 - 1) Standing Board Policy 4.30 Dues for Faculty Affiliate Members of The Florida Bar
Increases the annual dues amount for Law Faculty Affiliates from \$25.00 to \$35.00, effective July 1, 2006.

17. Board Review of Professional Ethics Committee Report

Chair Steve Chaykin reported on the following advertising appeals:

a. Standing Committee on Advertising Request for Reconsideration of Advertising Appeal 05-02359

The Standing Committee on Advertising requests that The Florida Bar Board of Governors reconsider the board's decision in advertising appeal 05-02359. Advertising Appeal 05-02359 concerned application of Rule 4-7.2 (b)(1), prohibiting misleading information. Staff rendered an opinion on May 13, 2005, that the advertisement in file number 05-02359 contained misleading information based on the filer's inclusion of the term "Doctor En Leyes." The Standing Committee on Advertising upheld staff's opinion on September 13, 2005. The attorney subsequently requested Board of Governors review. The Board Review Committee on Professional Ethics voted 5-0 to affirm the Standing Committee on Advertising decision that the term "Doctor En Leyes" (Doctor in Laws) is misleading under Rule 4-7.2(b)(1)(A) because it implies the lawyer has qualifications other than a juris doctor degree. The board voted to approve the BRC recommendation on the consent calendar.

On January 20, 2006, the Standing Committee reviewed staff's opinion on a yellow pages advertisement filed by another attorney in file no. 06-00996. The committee voted 4-2 to reverse staff's opinion for all three attorneys, determining that listing "Doctor of Law" in the attorneys' qualifications is not potentially false or misleading under Rule 4-7.2(b)(2)(B) because two lawyers were each awarded a "Doctor of Law" degree from Emory University and the third lawyer was awarded a "Juris Doctor" from the University of Florida, which can be translated as "Doctor of Law."

In light of the committee's January 20, 2006 decision, staff requested that the Standing Committee on Advertising seek the board's reconsideration in advertising appeal 05-02359, because it seems inconsistent with the January 20, 2006 decision.

At its April 2006 meeting, the BRC voted not to reconsider the Standing Committee on Advertising's request. The board tabled the issue until the next board meeting.

The Board Review Committee on Professional Ethics voted 4-0 to recommend that the board deny the request for reconsideration and further provide guidance to the Standing Committee on Advertising that any references to educational degrees must be limited to the actual degree held by the attorney (e.g., "juris doctor"). The Board Review Committee on Professional Ethics noted in this instance that the lawyer seemingly intended to imply an additional qualification other than that the lawyer is an attorney, because the lawyer also used the terms "abogado" (meaning "lawyer") and "lic." (for "licenciado") which are terms commonly used in the Hispanic community to refer to lawyers.

The Board Review Committee on Professional Ethics' motion failed 16-23.

A motion to reconsider the board's December 2005 decision in file number 05-02359 regarding the use of "Doctor en Leyes" passed.

A motion to find "Doctor en Leyes" permissible in the context of a Spanish language advertisement was made, seconded and passed.

The board directed the Board Review Committee on Professional Ethics to further study the issue in the context of English language advertisements.

b. Report of Professional Ethics Committee Action of Florida Ethics Opinion 77-30

On March 11, 2005, the State of Florida Commission on Ethics requested an advisory opinion from The Florida Bar providing clarification and/or expansion of ethical guidance to Florida Bar members regarding conflicts of interest in representing public officials as expressed in Florida Ethics Opinion 77-30. The Florida Bar Executive Director requested the Professional Ethics Committee's guidance on how The Florida Bar Board of Governors should respond to the request. At its June 23, 2005 meeting, the Professional Ethics Committee voted to recommend that the board respond to the inquiry by informing the commission that the opinion is good, the commission should continue to refer lawyers who appear before it to the opinion, and that enforcement of the ethics rules is not within the purview of the committee. At its August 2005 meeting, the board deferred this issue to obtain input from the City, County and Local Government Law Section. At its December 16, 2005 meeting, the board reviewed the response by the City, County and Local Government Law Section, which indicated that the opinion was overbroad and

should be modified. The board voted to refer Florida Ethics Opinion 77-30 to the Professional Ethics Committee to review and modify the opinion in light of current rules and practices. After study by a subcommittee and discussion by the full committee, the Professional Ethics Committee voted at its April 10, 2006 meeting not to modify the opinion, which is based on a limited set of facts.

The Board Review Committee on Professional Ethics voted to defer action on Florida Ethics Opinion 77-30 and direct staff to draft a revised opinion that addresses consent and waiver for the board's consideration.

The board approved the Board Review Committee on Professional Ethics recommendation by voice vote.

c. Advertising Appeal 06-01397 –Removed from Consent

Advertising Appeal 06-01397 concerns application of Rule 4-7.2(b)(1)(B), prohibiting statements that are likely to create an unjustified expectation about results the lawyer can achieve. Staff rendered an opinion on January 9, 2006, that language in a television advertisement created an unjustified expectation about results, in violation of Rule 4-7.2(b)(1)(B), in addition to violations concerning impermissible visual images used in the advertisement. The lawyer revised the visual images, but requested review of the language staff indicated created unjustified expectations. The Standing Committee on Advertising upheld staff's opinion on March 7, 2006 that the following language is likely to create an unjustified expectation about results the lawyer can achieve in violation of Rule 4-7.2(b)(1)(B):

. . . for more than ten years I've stood side by side with fellow boaters,
working to get compensation for their injuries.

The attorney subsequently requested Board of Governors review.

The Board Review Committee on Professional Ethics voted 3-2 to reverse the Standing Committee on Advertising decision, finding the above language permissible.

The board approved the Board Review Committee on Professional Ethics recommendation by voice vote.

18. Disciplinary Procedure Committee Report

Chair Murray Silverstein reported on the following items

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

- 1) Standing Board Policy 15.45 Policy in Bankruptcy Proceedings
The proposed policy presents direction from the board to staff as to what actions should be undertaken in various bankruptcy proceedings to protect the bar's ability to collect disciplinary costs.

b. Items on **first reading** – Conceptually approved; will be voted on in July.

- 1) Rule 1-3.6 Delinquent Members
Within subdivisions (e) and (f), changes the period of time for the effective date of delinquencies from 90 days to 30 days.
- 2) Rule 1-3.8 Right to Inventory
Within subdivision (e) re designation of an inventory attorney, adds exception for Florida practitioners who practice law as an employee of a governmental entity.
- 3) Rule 3-7.11(i) and Rule 5-1.2(e) Procedures after Disbarment
Creates new subdivision (i), re proceedings after disbarment, authorizing by consent or court order: the audit of a respondent's trust, operating, or personal bank accounts; the respondent's provision of an affidavit re personal and business finances; and the respondent's maintenance of a current mailing address for a stated period of time.
- 4) Rule 3-7.9 and Rule 3-5.1 Language in Court Orders Regarding Accepting New Business
Consistent with proposed changes within rule 3-5.1(e) and (f), adds language within subdivision (d) – re content of conditional pleas – to clarify that all such pleas agreeing to suspension or disbarment shall include, unless waived or modified by the court on motion of the respondent showing good cause, a prohibition on the lawyer accepting new business from the date of the order of

discipline, effective 30 days thereafter and until such term of discipline has expired.

- 5) Rule 5-1.2(c) Minimum Trust Accounting Procedures (overdraft notice)
Within subdivision (c), adds clarifying edits to confirm that a lawyer or law firm's authorization that a bank or savings and loan association notify The Florida Bar of various trust account irregularities shall occur at the time the account is opened, and that such account irregularities include overdrawing an account and dishonoring a trust check.
- 6) Rule 14-4.1 Arbitration Proceedings
Amends subdivisions (a) and (b), and adds new subdivisions (c), (d), (e) and (f) to conform procedures for the institution of bar fee arbitration with the procedures applicable to grievance mediation.

19. Special Committee on Website Advertising Rules 2005-2006

Chobbee Ebbets told the board that the committee will be meeting at the Florida Bar Annual meeting in Boca Raton. At that time the committee intends to begin formulating a special set of rules that will apply only to website advertising that will conform to this board's wishes to have some regulation of website advertising.

20. President-elect Report

President-elect Coxe told the board that he had named Kim Bald and Chuck Badger to the Executive committee and that they would need to select 3 more members. After many nominations, the board selected Mayanne Downs, David Rothman and Richard Tanner. Coxe told the board that Ian Comisky, Greg Coleman and Bill Kalish had approached him about a conducting a comprehensive review into the rules regarding the client security fund. Coxe went on tell the board that the 2006-2007 Standing Committee Officers had been selected and needed to be approved. He told the board that In 2004 -05 minorities constituted 8 percent of the committee officers, in 2005-06 they were 8 percent, this year (2006-07) they constitute 17 percent and the reason for that is Miles M. McGrane and Kelly Overstreet Johnson and Alan B. Bookman worked so hard on getting minorities to participate in committees that when I got to this point, the work had already been done. The board unanimously approved the officers.

21. Legislation Committee Report

Chair Frank Angones reported that the legislation committee has no new "Big Bar" or section legislative positions for the board's approval. He told them that at the July meeting, the board will be "sunsetting" all of the legislative positions on the 2004-06 bienium. He explained that they Bar gives the sections the opportunity to roll over any of their positions from this biennium; which will be voted on in July. He said that following the sunset of the "Big Bar" positions, the Board of Governors typically leave this slate blank until their next board meeting. Any "Big Bar" positions considered after this lapse (whether similar to previous ones or not) are reviewed *de novo* by a newly configured BoG, and are treated as new in every other respect – particularly for purposes of member dissent and potential fee rebates.

Steve Metz, chief legislative counsel told the board that the Bar had a very good session in part because so many more board members interacted with legislators. It does start with the voice and face of the Florida bar which is always the President. He said that there are other real reasons why the Bar and courts were so successful. The court under Chief Justice Pariente did a great job of early communication with the legislature, that's why we didn't see many attacks on the judiciary. He said that the Bar was lucky, there were no flash points, and there were no terribly controversial Supreme Court opinions that came down.

Metz stressed to the board that they need to be looking at the future. He reminded the board that it would be losing several friends in the legislature due to term limits. Dudley Goodlette will be gone, as well as Skip Campbell, Ron Klein and Rod Smith. He said that the board really has to start developing some other heroes in the legislature. Some of them probably aren't going to be lawyers, because we're running out of them. He mentioned that Representatives Jeff Kottkamp, John Stargel and Joe Pickens will most likely be very helpful to the Bar.

22. Special Committee on Lawyer Regulation Report

Chair Coxe distributed a copy of the report and recommendations of the Special Commission on Lawyer Regulation. He said that the board was receiving the first copies and that the commission members themselves will be receiving a copy of the report on Monday. He told the board to read through it, and that the board would be voting on some of the issues included at the July meeting.

23. Special Appointments

- a. Supreme Court's Commission on Professionalism
Stephen Emmanuel and Angela Flowers were each appointed to 4-year terms and Brian F. Spector was appointed to a 2-year term.
- b. Supreme Court's Judicial Ethics Advisory committee
Patricia E. Lowry was appointed to a 4-year term beginning July 1, 2006.
- c. Florida Medical Malpractice Joint Underwriting Association - Board of Governors
James C. Sawran was appointed to a 2-year term beginning July 1, 2006.
- d. ABA House of Delegates, including one under 35 delegate
Alan B. Bookman, Theodore W. Small, Jr and Edith G. Osman were appointed for 2-year terms beginning August 7, 2006. Jose F. Diaz was the "under 35" appointment to serve a 2-term beginning August 7, 2006.
- e. Florida Legal Services Board of Directors
Cristina Alonso, A. Hamilton Cooke, Sally D. M. Kest, Emery H. Rosenbluth, Jr., and Daniel F. Wilensky were appointed for 2-year terms and Francisco J. Calvo and Brian Peter Wolk were appointed for 1-year terms beginning July 1, 2006.
- f. Florida Lawyers Assistance Board of Directors
John T. Berry, Matthew Gissen, Julie K. Meadows, Judge Joseph Murphy, and Gail E. Sasnett were appointed for 3-year terms beginning July 1, 2006.
- g. Statewide Nominating Commission for Judges of Compensation Claims
Silvia M. Hoeg of the 5th State Appellate District was appointed to fill remainder of term expiring July 1, 2007.

24. Special Nominations

- a. Florida Board of Bar Examiners
The board nominated Alan H. Aronson, Stephen C. Chumbris, Pedro L. DeMahy. Michael P. Dickey, Jerry M. Gewirtz, and David A. Rowland to fill 2 vacancies for 5-year terms commencing November 1, 2006.

25. Program Evaluation Committee Report

Chair Frank Walker told the board that the committee met and recommends approval of the Florida Bar Citizens Forum Charter revisions. The changes are to the governing rules affecting membership, staggered terms and structure. The charter changes originated in the Citizens Forum and forum members approved. The board concurred and approved the charter. Walker told the board that the committee discussed the creation of a Florida Bar committee on legal medical relations. This idea came from board member Grier Wells at PEC at the beginning of the year because of the relations between the medical profession and the legal profession. The PEC voted to unanimously to approve the concept of this committee. In the next bar year, subcommittees will be appointed to meet with representatives from the FMA. The board approved the concept of the committee. Walker told the board that the PEC approved the survey of law office management and economics. He said that it goes out every two years; the results will be available on the Internet for free as opposed to the former way of having, to order a copy for \$35.

Finally, Walker told the board that the following rule amendments were on final reading and that the PEC recommendation was to approve the amendments. The board concurred and approved the following rule amendments on second reading.

- 1) Rule 1-3.7 Reinstatement to Membership
Within subdivision (a), revises verbiage so that provision effectively relates to all types of membership delinquencies.

- 2) Rule 1-7.5 Retired, Resigned, Inactive, Delinquent members
Deletes "resigned" members from text that lists those members who shall not practice law until reinstated; revises title likewise.

26. 2014 Judicial Plan Report

Chair Jennifer Coberly reported that the committee met on May 18-19 in Orlando, to work on the judicial systems 10 year plan. The committee discussed all of the new technology and how the courts are going to integrate it. Another topic discussed was how to deal with interpreters and dealing with diverse populations. A recurrent theme was the communications obstacles faced by these courts. Another long range goal is to continue building public trust. This particular long range plan deals with the erosion of public trust and how that undermines the judiciary. Some of the objectives include, keeping the judiciary accountable, keeping the public informed, and the judicial branch meeting expectations. A new objective is to form a more formal and effective partnership between the courts and the bar and educators, because the bar and educators are in the best position to represent and communicate with the public.

27. Board of Legal Specialization and Education Report

Liaison Ben Kuehne reported that the BLSE recommended approval of the following items on second reading. The board concurred and approved the rule amendments.

- a. BLSE amendments to Rules Regulation The Florida Bar
- 1) Rule 6-3.9(a) Manner of Listing Certification
Within subdivision (a), adds an option for certified lawyers to use the initials "B.C.S." to indicate they are board certified specialists in an abbreviated manner; further specifies appropriate contexts for the use of such initials.
 - 2) Rule 6-16.3(b) Minimum Number of Matters - Standards for Certification
Consistent with proposed changes in rule 6-16.4(b), adds language within subdivision (b), to allow completion of particular advanced trial advocacy seminars to substitute for 1 of the 8 required matters submitted to the trier of fact for resolution; deletes current reference to "complex" in definition of "protracted adversary proceeding" and adds further clarification that such proceedings are "business litigation" matters.
 - 3) Rule 6-16.4(b) Minimum Number of Matters - Standards for Recertification
Consistent with proposed changes in rule 6-16.3(b), adds language within subdivision (b), to allow completion of advanced trial advocacy seminars to substitute for 1 of the 5 required matters submitted to the trier of fact for resolution.

28. Time and Place of Next Meeting

The next board of Governors meeting will be July 26 – 30, 2006 at the Omni – Champions Gate in Orlando, FL.

There being no further business to discuss the board adjourned at 4:33 P.M.

Respectfully submitted,

Dana M. Watson

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