



December 15, 2003

New Bar panel to review attorney advertising rules

Bar President-elect Kelly Overstreet Johnson is now seeking members who want to serve on a special committee to study the Bar's lawyer advertising regulations.

Johnson said the Advertising Task Force 2004 will be charged with reviewing the attorney advertising rules and recommending changes if deemed necessary, including any to clarify the meaning of the rules and provide notice to Florida Bar members of the rules' requirements. Included within this charge is an analysis of the advertising filing and review requirements, including consideration of mandatory review prior to dissemination of advertisements.

Johnson said many lawyers still dislike or oppose lawyer advertising, believing it's the largest cause of public discontent with the profession. But the U.S. Supreme Court has said advertising cannot be banned, and she wants to make sure the Bar's rules are as consistent and simple as possible — and enforced.

"I'm looking for a broad cross section of the membership to serve on this committee," Johnson said. "I want to have people who advertise represented as well as those who don't. I think the key is to make sure that people who use the rules right now — those who advertise — have a voice on the committee, because they will be able to help us determine if there are problem areas that need to be corrected."

Johnson said she also will seek geographic diversity on the panel.

The task force should expect to make a final report to The Florida Bar Board of Governors in 2004-05 Bar year.

Those interested in serving should submit a letter of interest to Elizabeth Tarbert, Bar ethics counsel, 651 E. Jefferson St., Tallahassee 32399-2300, telephone (850) 561-5780, e-mail eto@flabar.org. Letters of interest must be received no later than January 15.

January 1, 2004

Board approves funds for grievance process survey

Money for surveys for the Bar's ongoing review of its grievance process and staff time transfers for a new advertising task force have been approved by the Bar Board of Governors, acting on recommendations of the Budget Committee.

Both those activities were also approved by the Program Evaluation Committee, and the board also approved two other budget amendments.

Budget Committee Chair Jesse Diner said the Special Commission on Lawyer Regulation sought \$22,342 to survey judges, lawyers, grievance committee members, complainants, and others involved in the grievance process.

Special commission Chair Hank Coxe reported to the board that the commission's work is proceeding well. He said the panel has already received a wide range of comments and advice, but in addition wants to do a comprehensive survey of people who have been involved in the grievance process.

"It is a remarkable education process," Coxe said of the commission's work so far. "It's going to be a tedious process, but I think a worthwhile one. I am amazed at the number of people who are aware this is going on."

On the advertising task force, Diner said that President-elect Kelly Overstreet Johnson is creating that panel to review Bar advertising regulations and their effectiveness. That will require an allocation of \$10,210 plus Bar staff time.

Johnson said she hopes to appoint the task force this month, which she expects will have 13 to 15 members.

"I definitely plan to put people on who advertise," she said. "I think we need their input to see what rules work and which don't."

Johnson said she also wants to ask Bar attorney Barry Richard about whether the Bar can constitutionally require lawyers to submit ads for Bar review before they are published or aired without running afoul of prior restraint issues. Present Bar rules require that ads to be reviewed must be submitted no later than concurrently with their first publication.

On other budget matters, Diner recommended and the board approved paying \$8,963 for a planning retreat. Those expenses, he explained, are part of implementing the recommendation to have the Bar's Executive Committee, with a few additional members, take over long-range planning for the Bar.

President-elect Johnson said the board will be getting a plan for that transition at its January 30 meeting. "We've got a good workable plan, and we're looking forward to being able to give that to you," she said.

The Budget Committee also recommended, and the board approved, a \$3,000 allocation to the joint Bar/CPA committee. The money will be used to help pay for an upcoming CLE seminar on complying with the Sarbanes Oxley Act.

March 1, 2004

Lawyer ad violations on the rise

The Bar's Statewide Grievance Committee, which handles grievance complaints stemming from the Bar's advertising rules, is taking on a rising number of cases.

Board of Governors member Gary Leppla told the board recently that the committee has become very active.

In its first year, only three grievance sanctions were imposed. In the most recent year, that rose to 17, Leppla said, and the committee currently has 157 cases under investigation. About 25 cases are at the probable cause stage. And about one-third of all the cases are from the Miami area, he said.

Board member Mike Glazer, who acts as the designated reviewer for the statewide committee, said most of the cases are resolved without the filing of formal charges. But he noted he also insists on a condition when reaching a settlement that "the lawyer agrees in the future that the ads will be submitted for review

prior to publication.”

He said a frustrating part of the enforcement process is by the time the Bar acts on an ad, especially an electronic one, it often is no longer being broadcast or displayed. Because of prior restraint concerns, Bar rules require that an ad be submitted for review no later than concurrently with its first publication or broadcast.

Glazer noted that a special advertising task force being set up by President-elect Kelly Overstreet Johnson will have among its tasks exploring whether the Bar can require a submission ahead of that initial broadcast or publication.

April 15, 2004

Bar's Advertising Task Force gets its marching orders

The Florida Bar's Advertising Task Force 2004 has held its first meeting which included a review of Bar advertising regulations and a discussion of the challenges the group faces.

Bar President-elect Kelly Overstreet Johnson, who has made the review of ad rules a priority for her upcoming year leading the Bar, gave the panel its charge at the March 9 meeting in Tampa.

The panel is to review Bar advertising rules and recommend any needed changes, including alterations that would clarify the meaning of the rules and help provide notice to Bar members of the rules' intent, Johnson said. She also called for a specific review of the Bar's requirement that most ads be reviewed, including whether the Bar can require that those ads be filed prior to broadcast or publication.

Current Bar rules require the filing be no later than concurrent with the first broadcast or publication.

Johnson also asked the task force to submit its final report to the Board of Governors in the 2004-05 Bar year, her presidential year which starts July 1.

Former Bar President Ben Hill, who chaired the 1995-97 Joint Presidential Task Force on Advertising, gave the task force a history of Bar advertising regulations.

The Bar's first advertising commission was set up in the late 1980s, a few years after the U.S. Supreme Court's *Bates* decision made lawyer advertising legal, he said. The majority opinion predicted only routine legal services would lend themselves to advertising, and personal injury and criminal matters would not be likely candidates for ads. Dissenters predicted a glut of misleading ads that would damage the profession.

The first ads, Hill said, were relatively restrained, but by the late 1980s ads were frequently misleading and deceptive. The Bar launched a two-year review, including a study that showed the public had a lower opinion of the legal system because of lawyer advertising.

That commission recommended, the Board of Governors approved, and the Florida Supreme Court included in Bar rules some of the toughest regulations on lawyer advertising in the country. They included the requirement that most ads be submitted to the Bar for review, a ban on promising results in ads, limitations on images that could be shown in ads, a ban on using nonlawyer spokespersons in broadcast ads, and a ban on direct mail solicitations for 30 days following a personal injury.

The latter regulation led to a legal challenge that went all the way to the U.S. Supreme Court, which in

The Florida Bar v. Went For It, Inc., upheld the regulation in a 5-4 decision. It was the first time the high court had upheld any state bar advertising rule.

Following that decision, Hill said the Bar launched its second review of ads and its rules, which he chaired. That commission had the goal of improving the advertising regulations, and it recommended many changes, including television and Internet ads. Most of the changes made in the wake of the commission's recommendations are still in effect, Hill said.

He also advocated a periodic review of ad rules and urged the task force to retain rules as a restraint on advertising and to avoid ads that can mislead the public.

Following Hill, the task force heard from Bar outside counsel Barry Richard, who represented the Bar on the U.S. Supreme Court appeal, Ethics Counsel Elizabeth Tarbert, who oversees the Bar's advertising rules, and Legal Division Director Tony Boggs. Boggs reported on the Statewide Advertising Grievance Committee, which was set up two years ago to bring uniformity to prosecution of ad rule violations.

Following the presentations, task force members had a wide-ranging discussion about lawyer advertising. Several members said it is important to have clear, fair, and simple rules that are enforced. Others said while there is a potential for misleading advertising, it's also important to realize good advertising can educate the public about legal issues and their rights and — since most don't know an attorney — help find a lawyer if they need one.

The task force chair is former Board of Governors member Manny Morales of Miami, and board member Charles Chobee Ebbets of Daytona Beach is vice chair.

Other members are Naples attorney Basil L. Bain, Tampa attorney John C. Bales, state Assistant Attorney General Linzie F. Bogan of Tallahassee, Live Oak attorney John R.J. Bullard, Allstate Insurance attorney Mina C. Bustamante of Jacksonville, Nova Southeastern University School of Law Professor Debra M. Curtis, Tampa attorney William F. "Casey" Ebsary, Jr., Orlando attorney Michael R. Hammond of Attorneys' Title Insurance Fund, Ft. Myers attorney Kelly K. Huang, Tallahassee attorney S. Curtis Kiser, Hollywood attorney Rozalyn Landisburg, Palm Beach Gardens attorney Theodore J. Leopold, Pensacola attorney Ann E. Meador, Tampa attorney Shane T. Munoz, nonlawyer John L. Remsen, Jr., of Ft. Lauderdale who advises law firms on marketing, board member Robert A. Rush of Gainesville, Pensacola attorney David L. Sellers, Tampa attorney Bill Wagner, and Tallahassee attorney Matthew R. Willard.

The task force has tentatively agreed to meet again in May, although it had not set a date as this *News* went to press. Members also authorized Morales to appoint subcommittees to study various parts of the advertising rules.

May 1, 2004

What do you think of lawyer advertising?

The Florida Bar's Advertising Task Force 2004 is seeking input from Bar members during the upcoming Annual Meeting.

The task force is meeting from 10 a.m. to noon on Thursday, June 24, at the June convention, held at the Boca Raton Resort & Club.

Members are being invited to share their experiences with the Bar advertising rules (subchapter 4-7, Rules Regulating The Florida Bar) or their opinions about lawyer advertising.

The task force appreciates the submission of written comments along with any oral testimony, but written comments are not required. Anyone who cannot attend is also invited to submit written comments.

Also, anyone wishing to speak should contact Bar Ethics Counsel Elizabeth Tarbert, to schedule a time, at (850) 561-5780, by e-mail to eto@flabar.org, or in writing to The Florida Bar, 651 E. Jefferson St., Tallahassee 32399-2300.

May 1, 2004

Attorney advertising bill stalls

By Gary Blankenship
Senior Editor

A bill that would ban some lawyer advertising has apparently stalled in the Florida Legislature after its sponsor told Florida Bar officials he wants time to address concerns before bringing the bill back next year.

Rep. David Simmons, R-Altamonte Springs, said he hopes the Bar and the Florida Supreme Court will address lawyer advertising before the 2005 session, or he expects to reintroduce — and pass — legislation that prohibits lawyers from running ads soliciting clients to file lawsuits.

Simmons' HB 1357 passed the House of Representatives 104-8 in late March and was sent to the Senate. It was taken up in the Senate Judiciary Committee on April 12, and temporarily postponed. Since that committee wasn't expected to meet again this session, it is very unlikely the bill will be acted on by the upper chamber.

Bar legislative consultants said if taken up by the entire Senate, the bill likely would have passed and been sent to the governor.

Despite disagreement of some experts, Simmons, in an interview with the *News*, said he thinks his bill is constitutional and is necessary to protect the future of the legal profession.

He noted that the U.S. Supreme Court has upheld regulations that ban in-person solicitation by attorneys. "I don't believe someone should be able to go in the back door and solicit by advertising when they can't go in the front door [with direct solicitation]," the representative said. "I think it is inaccurate to suggest the strength of television advertising is less than a person appearing personally."

While he said he strongly supports the Bar, he added its advertising efforts have fallen short, either through a lack of resources in enforcement or through weak regulations. "In many ways it [his bill] is a shot over the bow, it's a wake-up call to The Florida Bar and the Florida Supreme Court and attorneys," Simmons said.

The danger from not regulating ads is the bad advertisements cause the public to mistrust the legal profession. That creates pressure in the legislature for laws that are ultimately damaging to the profession and the legal system, he said. As an example, Simmons noted that last year's workers' compensation changes severely limited the role of attorneys in representing injured workers.

An expected review of PIP insurance cases in the next year or so could produce the same result, Simmons said, and there are also efforts to reduce the participation of plaintiff attorneys in personal injury cases.

"I am one of the strongest proponents for the legal profession there ever was in the legislature, but I assure you unless attorneys get control over their own advertising, we're going to see the future and it's not bright for attorneys," he said. "The compelling state interest is we need attorneys involved to represent people who are injured and who have their rights violated, and the way things are headed, there is going to be a significant effort to exclude attorneys from all of these processes

"I am watching the burning of Rome, and if the attorneys sit around and fiddle, we're going to see the end of the legal profession the way we know it."

Simmons said he knows about the special advertising task force created by President-elect Kelly Overstreet Johnson to look at Bar advertising rules, and he is considering addressing that panel. He said he was less familiar with the Bar's statewide advertising grievance committee, created a couple years ago to handle advertising cases and has recently stepped up its enforcement efforts.

Simmons' HB 1357 would make it illegal to run an ad in electronic or other media that urges a potential client to file a lawsuit. The bill would allow public service ads as long as there was no solicitation for clients. Ads that give a law firm's name, area of practice, and informs an aggrieved person of his or her right to seek redress in the courts are also allowed, as are ads that meet the "safe harbor" provisions of the Rule Regulating The Florida Bar 4-7.2(c)(11).

The bill also has a finding that such advertising "destroys personal responsibility of individuals, fosters frivolous litigation, and demeans the judiciary and the practice of law."

The bill imposed a penalty of \$1,000 for the first violation and \$10,000 for each succeeding violation, and delegates enforcement responsibilities to The Florida Bar and the Florida Attorney General. Those agencies would also be able to collect fees and costs for any successful prosecution.

Another bill, HB 1821, on medical negligence contained a provision banning lawyer advertising that would solicit clients to file a medical malpractice claim. That bill was stalled on the House floor as this *News* went to press.

In response to the bill, the Bar Board of Governors, at its April 2 meeting, approved a legislative position that the Bar would support legislation imposing the strictest legislation of attorney advertising consistent with constitutional limitations.

June 1, 2004

Ad Task Force invites comments

The Florida Bar's Advertising Task Force 2004 is inviting lawyers at the Bar Annual Meeting to address the panel about Bar advertising rules and regulatory practices.

The task force is meeting Thursday, June 24, 2004, at 10 a.m. at the Boca Raton Resort and Club.

If possible, the task force prefers that prior to the meeting those interested in speaking contact Bar Ethics Counsel Elizabeth Clark Tarbert so that sufficient time to hear all comments will be ensured. The task force strongly suggests that speakers also provide written comments.

The task force also welcomes comments from those unable to attend the meeting. To send comments or

arrange to speak at the June 24 meeting, contact Tarbert at The Florida Bar, 651 E. Jefferson Street, Tallahassee 32399-2300, or by e-mail to eto@flabar.org.

July 1, 2004

Bar works on putting legislators on procedural rules committees

The Florida Bar is working on a compromise that will have state legislators appointed to procedural rule committees, but the issue of the Supreme Court overseeing procedural rules is likely to arise again in the legislature, according to new Bar President-elect Alan Bookman

Bookman, the outgoing chair of the Legislation Committee, reported to the Board of Governors in May that outgoing Bar President Miles McGrane had reached the agreement to appoint state lawmakers to the procedural rule committees. In exchange, Rep. Gus Barreiro, R-Miami, agreed to drop his proposed constitutional amendment to have the legislature take from the court the authority to promulgate procedural rules.

But the issue is likely to come back before the legislature, Bookman said, after Gov. Jeb Bush expressed displeasure over a recent court decision. In that ruling, the court adopted rules that say in a murder case where the death penalty could be sought, it should be determined before the trial if the defendant is mentally retarded. (See story in the June 15 *Bar News*.) Under state law and a recent U.S. Supreme Court ruling, the mentally retarded cannot be executed.

Bush explained that state law reads that determination should be made only after conviction and at the end of the sentencing process. He also said in a letter he would consult with legislative leaders about seeking a constitutional amendment to rein in the court's rule-making powers.

"This rule-making issue is going to come up again and this is something we are going to have to be very diligent about," Bookman said.

As this *News* went to press, McGrane was sending a letter to legislative leaders inviting them to forward the names of legislators for appointment to various procedural rule committees.

On other matters, Bookman said the committee is exploring having a law school for legislators as part of the orientation later this year for new lawmakers. He also said the Bar needs to begin planning immediately for next year's legislative session.

The courts were happy with the funding they received for Art. V, Revision 7, issues, Bookman said, but for the second year in a row, no new judges were authorized for the court system. Both House and Senate were willing to approve at least some judges, Bookman said, but the Senate would not accept the House condition that any new judges be tied to the creation of a Sixth District Court of Appeal.

The House passed a bill limiting lawyer advertising by a 104-8 margin, Bookman noted, but the measure was not taken up in the Senate. The bill's sponsor, Rep. David Simmons, R-Altamonte Springs, has been invited to testify at the Bar's advertising task force, which is looking at revising Bar advertising rules.

That issue is also expected to come before the legislature again next year.

July 15, 2004

Members sound off on lawyer advertising

By Gary Blankenship

Senior Editor

Anyone curious about the difficulties facing the Bar's Advertising Task Force 2004 didn't have to wait long to get a sample at the panel's recent public hearing.

Meeting June 24 at the Bar convention in Boca Raton, the task force invited anyone interested to come and speak their mind about the problems and benefits of attorney advertising.

First up was state Rep. David Simmons, R-Altamonte Springs, who introduced a bill earlier this year — and which passed the House but didn't get heard in the Senate — that would have restricted advertising that urged potential clients to file a lawsuit.

Simmons said the legislature does have concurrent jurisdiction with the Florida Supreme Court over such things as lawyer advertising. He also said under a 1987 U.S. Supreme Court decision the Bar, while it may not ban ads, can require more disclosures that will make advertising less attractive for attorneys.

Next up was Jacksonville attorney William Harrell, president of the First Amendment Society, which includes advertising agencies as well as law firms that advertise.

Referring to Simmons' presentation, he told the task force, "Almost nothing David said was correct."

And so it went. Some speakers praised advertising and the Bar regulations; others condemned it and said Bar rules are confusing, complex, and not uniformly enforced.

The committee has been charged by Bar President Kelly Overstreet Johnson with reviewing Bar advertising regulations and recommending changes. A specific charge is to examine whether the Bar can require lawyers to get some ads approved before they are printed or broadcast.

Committee Chair Manny Morales said the purpose of the hearing was to give interested persons an unrestricted chance to speak their minds. "We have some very important people who have taken time out of their day to come and address us on this issue," he said. "All we're going to do is sit and listen."

Simmons said lawyer advertising is hurting the profession and, if unchecked, will lead to statutory changes that will hurt lawyers and the public. He noted that attorneys' participation in workers' compensation cases has been restricted, and others are calling for similar restrictions in personal injury cases.

"I can assure you . . . in a few years, five, 10 or 15 years, unless something is done with respect to the way we as attorneys are presented to the public, the practice of law is going to be dramatically different than the way it is today," Simmons said.

He said that the U.S. Supreme Court in *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626 (1985), allows bars to restrict advertising, including requiring the inclusion of disclosures. As an example, he said the Bar could require personal injury ads to include a disclosure that the plaintiff could be liable for considerable costs if the defendant prevails.

Harrell, however, said *Zauderer* is much more restrictive and would not allow such a requirement. He also questioned Simmons' assertion that the legislature can legally impose advertising restrictions. He presented a detailed report from the First Amendment Society analyzing advertising issues.

Harrell said studies have shown that the public accepts lawyer advertising, that it helps the poor and

minorities who don't generally have access to legal services, and that the most objectionable ads — "the 1-800-PIT-BULL abuses" — don't work and will be eliminated by the marketplace.

He also said the only state to try prior restraint requirements on advertising is Kentucky, and that state is dropping that rule because of constitutional questions. When that happens, Florida will have the most restrictive ad regulations in the country, Harrell said, and that's something most of the lawyer members of the society favor.

He advocated a tweaking of the rules rather than major changes, giving a regulatory scheme that prevents egregious abuses but still allows lawyers to advertise efficiently.

Stuart Grossman, a former member of the Bar Board of Governors, said advertising is misleading because "it's the difference between image and reputation, and these guys who make images are making [undeserved] reputations ... and they are hurting the rest of us."

He also said that what the public is interested in is how lawyers have done in their cases — something advertising regulations prevent them from including.

Two publishers addressed the task force and said the advertising regulations cause problems. Lynda Keever of *Florida Trend* and Chris Mobley, who publishes the *Daily Business Review* in southeast Florida, said the regulations hurt lawyers for different reasons.

Keever said the regulations are particularly hard on smaller firms that don't have the marketing and ad services used by large firms.

"If the Bar's goal is to stop small and medium size firms from advertising — because the big firms are going to do it anyway — you've just about accomplished it," Keever said. "The hassle factor is overwhelming to them."

Mobley said the regulations are aimed at protecting an unsophisticated public, while his publications are aimed at other law firms and sophisticated commercial ventures.

"The rules impose undue restrictions on Florida law firms in competing for referrals of other sophisticated lawyers," he said. "It also inhibits the ability to compete for commercial work from business executives who are sophisticated people."

Miami attorney Alan Becker agreed. He said out-of-state mega firms advertising for national clients are not constrained by Bar rules in their ads, which can refer to case results and use endorsements from clients — things banned by Bar rules.

"Obviously, we can't compete at the same level," Becker said. "The Bar's well-intentioned efforts to protect the public is having one effect, and that's to harm Florida lawyers. It doesn't make us better professionals to have us out of business."

Another problem, Becker said, is it can be difficult to follow the rules. His firm submitted an ad and was allowed to use the words "competent" and "skilled," but prohibited from using the words "talented" and "innovative."

Becker also disputed that the public is unsophisticated about ads, saying the average person sees thousands and thousands of ads every month. "People are used to this stuff; they understand it; and I think we need to give them a bit more credit," he said.

Carl Patterson, a nonlawyer who has served on several Bar advertising study commissions and currently is on the Statewide Advertising Grievance Committee, disputed that there are serious problems with ad rules, which he said need no more than minor changes.

"Your Bar staff is excellent; the rules are clear and not new," he said. "The problem as I see it is . . . dumb, lazy attorneys. They are the ones who fail to read the rules; they fail to prepare their ads properly; and they listen to other people [about what can be included in an ad]."

He said the Bar has publications (including information on its Web site) about preparing an ad, but lawyers don't take the time to research it. Patterson said the rules could be changed to bar lawyers from taking out Yellow Pages ads for two years if they have had two ad violations in five years, and upping the disciplinary fee when probable cause is found for a violation.

Other testimony included:

- Wayne Thomas, vice chair of the Bar's Standing Committee on the Unlicensed Practice of Law, asked for two "minor" changes to ad rules. One would require lawyer referral services to clearly identify themselves as a referral service in any ads. The second would clearly prohibit lawyers from taking referrals from nonlawyers who got the cases by advertisements that don't follow Bar rules.

Thomas said such a prohibition is implicit in Bar rules, but needs to be explicit. He cited, as an example, that a former stockbroker could advertise as an expert in securities fraud cases, and then refer clients to an attorney.

- Judge Ralph Artigliere, representing the Board of Legal Specialization and Education, asked for restrictions on lawyers saying they limit their practices to certain areas. Under Bar rules, only lawyers who are certified can say they specialize in an area of law, but Artigliere argued that allowing lawyers to say they limit their practices to certain areas implies they have special expertise in that area.

"The fact of the matter is when you look at it from the public perspective, they will never be able to tell the difference between someone who is a specialist and someone who says they limit their practice to a certain area," he said. "It's misleading."

- Frank Benasutti, former chair of the Pennsylvania bar's professionalism committee and an expert witness in the *Zauderer* case, said what is important is what the public, not lawyers, thinks about ads. "You better take surveys on what kind of information is getting into the minds of the public and then base your regulations on that," he said. "It's not your standard that counts; it's what goes across to the public."

He also said that the Bar's banning of legal advice in ads is unconstitutional, since the U.S. Supreme Court has specifically held that advertisements can contain legal advice.

Morales closed the meeting by saying the task force would meet again in July to discuss the testimony and other matters. The time and location of that meeting had not been set as this *News* went to press.

The task force has already divided into subcommittees charged with reviewing various areas of the advertising regulations.

Morales also said the panel will continue to welcome input, which can be submitted to Bar Ethics Counsel Elizabeth Tarbert, 651 E. Jefferson St., Tallahassee 32399-2300, or e-mailed to eto@flabar.org.

August 15, 2004

Ad Task Force moves toward drafting rules

By Gary Blankenship

Senior Editor

A rule that would require criminal defense lawyers to wait 30 days before direct mailing potential clients is being considered by the Bar's Advertising Task Force 2004.

The group has also begun discussions on whether the Bar can require advertising attorneys to submit their ads to the Bar for review before they are published or aired.

The task force met by teleconference July 26 and began discussion on 22 "questions" designed to help the group begin formulating its recommendations.

One of the most controversial was the query on whether the Bar should extend its 30-day ban on direct mail solicitations in personal injury cases to all such mailings in criminal cases.

Task force members reached no consensus, but agreed to ask Bar staff to draft such a rule amendment for consideration at the group's next meeting, September 9, during the Bar's General Meeting in Tampa.

Pensacola attorney David Sellers said defendants are arraigned shortly after an arrest and will need the help of an attorney to protect their rights. "People don't understand what goes on in a case," he said.

But Tallahassee attorney Hal Lewis disagreed. "They have already been told they have a right to counsel," he said. "How does getting a letter in any way assist you? You already know you need a lawyer."

Added Bar Board of Governors member Robert Rush, "If you read the [rule] comment that prohibits direct mail solicitation for personal injury, it also applies to criminal cases."

After several minutes of vigorous discussion, Chair Manny Morales noted that an agreement was unlikely that day, and asked staff to draw up a rule change for consideration next month.

The matter of reviewing ads before they are published or broadcast was the last item discussed by the task force, which ran out of time before reaching any conclusions. Reviewing ads before publication was one of the specific items that Bar President Kelly Overstreet Johnson asked the task force to look at when it was created earlier this year.

Current Bar rules require members to file ads that must be reviewed no later than concurrently with the first publication or broadcast. Morales asked members for their views on an amendment that would require ads to be filed 30 days before their debut. Under that scheme, the Bar would have 30 days to review the ad or the ad would be deemed approved and the advertising lawyer would be immune from prosecution for violating ad rules. Similarly, if Bar staff okayed the ad during the 30-day period, the lawyer would be immune from prosecution if a rule violation was discovered later.

Some task force members liked the idea, while others said it raised constitutional issues.

"I don't think we should have prior review of any ad," said Tampa attorney Shane Munoz. "We're inviting a constitutional challenge that we're going to lose."

Added Tampa attorney Bill Wagner, "I'm very concerned about any prior approval, unless you are going to completely ban television advertising, which is okay with me."

He said while thousands of ads would be subject to prior restraint, only a few violation would be caught

that way.

Others called for continuing the present policy of having lawyers agree to have their ads screened before publication when they settle an advertising grievance case, and having severe penalties for major, nontechnical violations of advertising rules.

Morales then proposed a two-tiered system. One part would be voluntary, where lawyers would submit ads 30 days before airing or publications, with the same conditions as his original suggestion. Lawyers who didn't want to use that option would use the current system, with concurrent submission, but with no immunity if a rule violation is discovered by staff or a later review.

The meeting ended before that idea received much discussion.

Ad Task Force tackles other issues

Other issues discussed by the Advertising Task Force at its recent meeting included:

- By a 9-7 vote said they would recommend keeping the requirement that in print ads lawyers list a "bona fide" local office.

- Agreed that a wide variety of images could be included in ads that fall under the "safe harbor" provisions in the rules, which do not require a review by Bar staff before publications. Those include such things as the Statue of Liberty, the American eagle, diplomas, pictures on the inside or outside of courthouses, unadorned law books, diplomas, and common religious symbols.

- Agreed to remove a rule that requires lawyers who advertise solely to get cases that they will refer to other firms to state in their ads that the cases will be referred. Members said they don't want to discourage a referral when a lawyer gets a case he or she isn't qualified to handle, but they are concerned that some lawyers basically act only as referral agencies with little or no service to clients. But they couldn't agree on language to accomplish that. "I'd rather have something to govern the brokers than nothing," said Hal Lewis, one of four members who opposed changing the rule. "That really is leaving the public unprotected."

- Agreed there is no need to seek regulations on information provided by lawyers at the request of potential clients.

- Advocated changing the requirement in print ads that required information — such as the hiring disclaimer, phone numbers, and office address — be in type at least one fourth the size of the largest type in the ad. Task force members said the size requirement should be dropped in favor of providing that such information should be legible. They also said the hiring disclosure should be eliminated because it probably doesn't provide much real help to consumers.

- Discussed defining "prior professional relationship" in the solicitation rule, which allows that the direct solicitation prohibition does not apply to family members or someone with whom the lawyer has had a "prior professional relationship." Morales said the goal is to prevent lawyers from "ambulance chasing" but not to discourage them from holding education seminars and the like for the public and answering questions at such gatherings. Assistant Attorney General Linzie Bogan noted that if "prior professional relationship" is interpreted loosely, he could claim that he represents and has a relationship with every person in the state, and consequently has the right to directly solicit them, should he enter private practice.

Issues yet to be discussed by the task force include addressing what, if any, regulations are needed on e-mail, Web pages, Internet pop-up ads, and other such online communications; regulations on lawyer referral services; and whether regulations on TV and radio ads should continue to be different from print media.

September 15, 2004

Ad Task Force begins drafting recommendations

By Gary Blankenship
Senior Editor

With two major issues still unresolved, the Bar's Advertising Task Force 2004 has finished going through a list of options and is ready to begin the first draft of its recommendations.

Meeting by teleconference August 25, task force members finished going through 22 questions designed to allow them to reach tentative consensus about a variety of issues and show them where their disagreements lie.

The group was scheduled to meet again September 9 (after this *News* went to press) in Tampa, during the Bar's General Meeting.

"What I expect to come out of Tampa with is something very close to [a draft report]," task force Chair Manny Morales said at the end of the August 25 meeting. "My thought is that after Tampa, we'll have a document we can tweak a little, but we'll be getting close to the end of the process."

He acknowledged that two very tricky issues remain unresolved. Both were discussed at the task force's July 26 meeting without an agreement being reached.

One is whether the Bar can require lawyers to submit ads for Bar review before they are published or broadcast. Current Bar rules require submission of ads that are not exempt from review under Bar Rule 4-7.8 no later than concurrently with their first broadcast or publication.

The second issue is whether the ban on direct mail personal injury solicitations within 30 days of an incident should be extended to criminal cases.

Morales said he expected further discussion on both of those issues. "If the answer is we don't have a consensus on that, then we can give the [Bar] Board of Governors some options," he said. Bar staff is drafting several options for the task force on both issues.

Issues addressed at the August 25 meeting ranged from Internet advertising to lawyer referral services.

One issue that generated considerable discussion was whether lawyer communications to other lawyers, family members, and former clients should be exempt from advertising rules. Task force members agreed that communications to other lawyers should not be covered, but some members dissented from the final consensus that communications to family members and former clients should also be excluded.

Task force member Hal Lewis said a lawyer could build up a large client base by doing inexpensive wills, and then circumvent Bar rules in seeking personal injury work. He and others also argued that, for example, personal injury attorneys would be able to circumvent Bar rules by getting other lawyers, in exchange for a referral fee, to approach clients about potential representation.

But other task force members said such regulations could inhibit lawyers in normal conversations with family and clients.

"If I see where they are being mistreated, I want to be able to say, 'Hey, you need representation,'" said task force member John Bales.

The task force also extensively discussed the new Bar rule that allows nonlawyers to appear in law firm ads, but requires they be identified as spokespersons and nonlawyers. The spokesperson may not be a celebrity or someone generally recognizable to the public.

Task force members said they were concerned how the rule would apply to some ads, most notably sponsorship announcements on National Public Radio ads. Ethics counsel Elizabeth Tarbert noted FCC regulations mandate that NPR personnel read the ads, and prohibit the “sponsor” from doing it.

“If it’s a situation where you have one anchorperson doing . . . a series of ads and an attorney ad comes up, he or she should not have to say it [that the announcer is a nonlawyer],” Bales said. “The exception is where in the context it’s not clear the person is not an attorney.”

The task force directed Bar staff to draft alternative rules on that issue.

As for Internet ads, the task force generally felt current Bar rules cover what’s needed.

That includes that Web sites are treated as requested information, that e-mail is subject to the same rules as regular mail, that spyware is already addressed by other Bar rules and federal regulations, and that pop-up ads are subject to the advertising rules because they appear without the request or action of the computer user. Members also said lawyers who frequent online chat rooms would be subject to the same regulations — such as on solicitation — as a lawyer at a party or other social gathering.

Among other issues addressed, the task force:

- Agreed with the Standing Committee on Unlicensed Practice of Law that lawyer referral services should be clearly identified as that in their ads, and that otherwise no changes are needed to lawyer referral service rules.
- Disagreed with the Board of Legal Education and Specialization that lawyers should be prohibited from saying in ads that they limit their practices to certain areas. BLSE officials had argued that language implied that a lawyer specialized in certain areas, and the only lawyers who can say they specialize are those who are certified.

“The reason we will win challenges to some of these rules is we are protecting the public from being misled,” said task force member Casey Ebsary. “In this case, if it’s factually true that you are limiting your practice to these areas, how is that harming the public?”

- Agreed that the advertising rules should continue to treat television and radio ads differently from print ads.
- Decided advertising rules shouldn’t be amended to distinguish between ads aimed at sophisticated potential clients as opposed to the general public. Morales noted that Ft. Lauderdale attorney Alan Becker said his and other Florida firms are restricted when they advertise to large corporations because they must follow Bar rules while out-of-state firms seeking the same clients are unhindered. But task force members were skeptical that a difference would be defined in the rules.

“I’m sympathetic to that gentleman’s plight,” task force member Linzie Bogan said. “I don’t think it’s an ill that can be cured.”

- Determined that no changes should be made in rules that distinguish between which ads must be filed for Bar review and which can run without a review, as delineated in Rule 4-7.8.

September 15, 2004

Letters

Lawyer Advertising

I would disagree with Advertising Task Force 2004 member Hal Lewis who recently said he is under the impression that criminal defendants “have been told they need a lawyer, so why do they need a letter” during a debate on whether to extend the 30-day ban on direct mail solicitation to criminal cases, as reported the August 15 issue of the *News*.

Who tells them? The police? Don't bet on it. One should not assume that Miranda warnings are read in each and every case, because they are not.

Personal injury cases are not similar to criminal cases, in any aspect. In criminal cases the defendant has an immediate problem that may result in their incarceration for perhaps months or years. No such issue exists in a personal injury case. Immediate action is called for in a criminal case. There are potential witnesses, who may be reluctant, who might disappear. These witnesses should be interviewed as soon as possible.

In the all-too-common DUI case, a driver has 10 days from the date of arrest to file a request for a hearing to contest an administrative suspension. I constantly speak to individuals who are arrested for DUI, and were not told by the police that they have 10 days to file such a request. Additionally I have found that drivers are told, incorrectly, by the arresting officer, that the DUI citation is their driving permit for 30 days. This is, of course, incorrect. They should have a lawyer file the hearing request for them, because there is more involved than just the filing.

No, individuals who are arrested need immediate help. Maybe the Advertising Task Force ought to concentrate on billboard ads, and not what an individual receives and reads in the privacy of his own home.

Timothy Foster
Jupiter

October 1, 2004

Advertising panel offers alterations

By Gary Blankenship
Senior Editor

A tentative and preliminary report suggesting changes to Bar advertising rules has been approved by the Advertising Task Force 2004 and, as this *News* reaches Bar members, should be posted on the Bar's Web site for comments.

The task force has rejected for now a proposal to require that all nonexempt ads be reviewed by the Bar before publication or broadcast, but instead offered an incentive program to encourage lawyers to have their ads prescreened.

The panel also could not reach agreement on whether the 30-day prohibition on direct mail advertisements in personal injury cases should be extended to criminal cases. The task force is offering

three options on that.

Task force Chair Manny Morales told the group, which met by conference call September 9 following the cancelation of the General Meeting because of Hurricane Frances, that the plan is to get lots of input before meeting again at the Midyear Meeting in January.

"I'd really like to get to the point that here is what we've come up with for a draft for the rules and get comments," Morales said. "By the time we have our meeting in January and have heard in writing, in e-mail, and testimony at the January meeting, we'll be close to a final report after that."

That report will go to the Bar Board of Governors, which will send any final suggested rule amendments to the Supreme Court.

The task force planned to write up the actions at its September 9 meeting, circulate them to all its members (several missed the teleconference), make any final adjustments, and then have the preliminary report posted on the Web site (www.flabar.org) by October 1. Comments on that draft can be sent to Bar Ethics Counsel Elizabeth Tarbert at The Florida Bar, 651 E. Jefferson St., Tallahassee 32399-2300, or at eto@flabar.org.

(Note: Because task force members were still reviewing a draft as this *News* went to press, some details in the preliminary report may have been changed since the September 9 meeting.)

At its earlier two meetings, the task force had been unable to reach an agreement on perhaps its two most high profile issues: whether to expand the 30-day bar on direct mail solicitations to criminal cases and whether to require prescreening of nonexempt ads.

Direct Mailing

The group was still unable to reach a consensus on the direct mailing issue, although several members said they have concerns about direct mailings to criminal defendants.

Morales, Tarbert, and other task force members said they had received many comments from criminal defense lawyers opposing limitations on their direct mailings. Tarbert reported that the Florida Association of Criminal Defense Lawyers is waiting for the task force's final recommendation before weighing in. Despite the comments, some task force members said they remained unconvinced and wanted to hear from a broader membership spectrum.

"The one thing that makes a criminal case different from a civil case is within 24 hours you're brought before a judge and the judge tells you you should have a lawyer," said Board of Governors and task force member Robert Rush, adding that defendants also get Miranda warnings. "We're bombarding people who are in a very vulnerable position and I think they are as vulnerable as personal injury people. . . . There isn't anything bad that can happen to you in a criminal case that can't be undone by a competent attorney. There are so many opportunities where you are told to get a lawyer in a criminal case."

But task force member John Bales disagreed, and said the mailings could be helpful.

"That's like telling me when my toilet overflows I need a plumber. If it weren't for the Yellow Pages, I wouldn't know who to call," he said. "These people, they know they need a lawyer; they're told they need a lawyer, and they have no idea who to call."

The task force agreed to seek comments on three alternatives in the preliminary report:

- Keep the present system where only direct mail letters in personal injury cases are subject to the 30-day waiting period.

- Extend the waiting period to cover direct mail solicitations in criminal cases.
- Extend the waiting period to both criminal cases and civil traffic solicitations. Some task force members noted that criminal DUI charges are frequently accompanied by civil traffic charges which could create a loophole if the waiting period is imposed on criminal cases.

Ad Review

On the screening of ads, the task force is recommending a voluntary system that encourages lawyers to submit an ad to the Bar for review before it is published or broadcast.

The task force rejected options that included not reviewing ads at all (members could still be disciplined for rule violations), requiring prescreening of TV and radio ads only, and requiring prescreening of all ads that are not exempt from the filing requirements. (Under Rule 4-7.8, ads that contain only certain, basic information do not have to be filed for review.) Task force members questioned whether the last two options would pass constitutional muster on free speech grounds.

The proposed amendment is a modification of current rules, that provide the Bar will respond within 15 days after an ad is filed. The current rule says only that if a grievance is filed, the Bar's approval of the ad can be considered. Under the proposed rule, a lawyer would be immune from being disciplined if the Bar had approved the ad, even in error.

"It's giving you the option of 'I'm going to voluntarily submit my ad to the Bar and they can tell me in 15 days if it's okay,'" Morales said. "It's giving him or her a process that no matter what happens, he or she is not going to be subjected to a grievance, but at the same time it does not require every single ad to be filed [and approved prior to publication or broadcast]. . . ."

"If I'm going to put an ad out and I've got an alternative where the Bar is going to tell me it's okay and I'm not subject to a grievance, who is not going to want to do that?"

The proposed rule also provides that if the Bar fails to respond within 15 days, the ad is assumed approved and the lawyer can run it without fear of a grievance.

While task force members readily agreed on that option, they wrangled over details. Morales first advocated a hard deadline of 15 days for review, with no exceptions. But Tarbert said while most ads could be done in that time frame, there would be difficulties. The most common problems, she said, are that lawyers have to be contacted to get more information and on close calls Bar staff frequently takes the ad to the Standing Committee on Advertising for guidance. Both of those typically take more than 15 days.

If staff had to meet the 15-day deadline without exception, reviewers would err on the side of caution and reject those ads, she said.

The task force agreed to keep the rule that the Bar must make a response within 15 days, but not necessarily a final decision.

Tarbert also asked for a rule that would spare a lawyer from discipline for running an ad that violated the rules but which was accidentally approved by Bar staff, as long as the ad was corrected after the Bar notified the lawyer. The task force rejected that. Morales said if the Bar wants lawyers to use the system, then its word must be final. The task force, though, agreed the approval would not be binding if the member provided false information in the proposed ad that wasn't discovered until after the Bar gave its okay.

Other Recommendations

On other matters, the task force:

- Reviewed several options but decided, for the moment, not to add a definition of advertising to the rules. Members said while it might help provide some clarity, it could also create more problems that it would solve and that the definition is set by case law and court rulings.
- Added language that out-of-state lawyers who advertise in Florida must follow the advertising rules. Tarbert noted that is consistent with proposed multijurisdictional practice rules pending at the Supreme Court.
- Ratified that communications between lawyers, with family members, with current and former clients, and at the request of a prospective client are not covered by the advertising rules, but are subject to the general misconduct rule involving dishonesty, deceit, or misrepresentation.
- Refined and expanded slightly what can be included in an ad and still be exempt from being filed and reviewed by the Bar. New exempt information includes military service information, and illustrations of the state or American flag, the American eagle, unadorned law books, diplomas, and inside or outside depictions of a courthouse.
- Decided to tighten up the definition of “continuing professional relationship” as it applies to whom an attorney can solicit. Members said they don’t want attorneys approaching accident victims in a hospital merely because the attorney had served on a charitable or civic board with the victim or the victim had attended a seminar held by the lawyer. At the same time, task force members said they did not want to discourage attorneys from inviting people to their seminars or similar function. They rejected an alternative rule that would define professional relationship as a strictly current or past attorney-client relationship.
- Decided to recommend a change that a spokesperson on a radio or TV ad who is obviously not an attorney would not have to be identified as a nonlawyer. Task force members said such identification could take up an inordinate amount of time on a 10-, 20- or 30-second spot and with some ads, such as on National Public Radio, it is plain that the ad reader is a station employee and not an attorney.
- Recommended that lawyers’ Web pages no longer be required to state all jurisdictions where members of the firm are licensed to practice, or list the bona fide offices of the firm. But task force members said e-mail communications should be subject to all the restrictions of direct mail solicitations and that “pop-up” and “banner” Internet ads should be regulated as other ads.
- Recommended eliminating most of Rule 4-7.9 which applies to information provided by an attorney or law firm upon request of a prospective client. Task force members favored little regulation of such communications, beyond that they must be truthful and not misleading, and noted most of the provisions of that rule were covered in other sections of advertising regulations.
- Agreed to an amendment to the rule on lawyer referral services that requires all such services to affirmatively state in their ads that they are referral services. That change was recommended by the Bar’s Standing Committee on the Unlicensed Practice of Law.

Noncomplying ads

Throughout the debates on the rules, task force members reiterated their desire to simplify the rules and make them as easy as possible for Bar members to follow.

Tarbert presented some Bar statistics that supported that goal. According to Bar records, in 1991-92, the first year the Bar required that ads be reviewed, 3,937 ads were filed and 87 percent of them did not comply with the rules on their initial submission. In 1994-95, it was 93 percent, and in 1997-98, it was 91

percent.

For the most recent year, 2003-04, 82 percent of the 2,705 ads submitted did not comply. So far for the 2004-05 fiscal year, that number has dropped to 63 percent.

October 1, 2004

Letters

Lawyer Advertising

I read with dismay that the Bar's Advertising Task Force was considering whether to ban direct mail solicitations to criminal defendants within 30 days of their arrest date.

As an attorney who has used such direct mailings for over 10 years, I can attest first-hand that the public benefits of the current rule far outweigh any potential for harm sought to be addressed by a rule change.

During the thousands of free consultations conducted in response to my advertisement letter, I have enlightened defendants as to the seriousness of their charges; advised them of potential defenses and lack thereof; discussed strategies; quoted fees; estimated costs; given impressions on involved personalities; given comfort and innumerable bits of legal, practical, and human advice to all sorts of people accused of crimes, all presumed innocent, most of whom were in need of a voice they could trust. All were at no charge in response to my advertisement letter.

Many recipients of my letter received other solicitations and responded to those also. This indicates that people are making an informed selection of an attorney based on more than just advertisements.

Those who seek to change the rule might not give the public enough credit and assume that people are so easily swayed by clever lawyer advertisements that there can never be too much regulation. The result is that attorney advertisements all look similar and attorneys have an unfavorable, commonplace image.

Rule 4-7.4 provides more than adequate safeguards to ensure that any potential for abuse is minimized, its extensive requirements need not be repeated here.

While the 30-day limitation may or may not make sense in the personal injury context, crucial criminal proceedings occur within the first 30 days following an arrest. Attorney involvement is desirable immediately after an arrest. Pre-trial release, evidentiary preservation and "fast track" plea issues must be considered immediately.

Many people who responded to my letter never realized that they could afford to hire a private attorney. They would have never known of the availability of an affordable payment plan and were planning on using a public defender before responding.

Extending the ban on direct mail solicitations to 30 days would limit the amount of available information and choices to the public and would undoubtedly further strain our public resources.

Louis N. Larsen
Stuart

November 15, 2004

Panel asked to consider pre-screening of ads

By Gary Blankenship
Senior Editor

After its first quick look at preliminary recommendations for changes to Bar advertising rules, the Bar Board of Governors has asked for draft alternative proposals that could allow for mandatory screening of ads before they are aired or published.

The board, at its October meeting, also asked the Advertising Task Force 2004 to draft alternative rules relating to language in ads that creates unjustified expectations.

Board members and task force Vice Chair Chobee Ebbets presented the panel's preliminary recommendations for rule changes, and noted the board will have a detailed discussion at its December 10 meeting in Naples.

The task force will take public input on its suggestions and work on a final report at the Bar's January Midyear Meeting in Miami. Bar President Kelly Overstreet Johnson, who appointed the task force last year, said if that is ready, the board could take it up for final action at its January 28, 2005, meeting.

"It is a working draft that has a lot of need for improvement, but it does identify the key issues for you," Ebbets said. "We want to have a revision of the rules that goes up to the Supreme Court that again puts us at the forefront of advertising rules."

The issue of pre-screening ads came up as Ebbets went over some of the task force's tentative recommendations. (See stories in the August 15 and October 1 *Bar News*. The preliminary recommendations are also posted on the Bar's Web site, www.flabar.org.)

He noted that the task force proposed a voluntary program, where lawyers who submitted ads before publication or broadcast would be guaranteed not to be prosecuted if they got the Bar's approval first. The Bar would have 15 days to respond, although that response could include a request for clarification or more information.

Ebbets also reported that Bar Counsel Barry Richard has been asked to prepare a brief on the constitutionality of requiring a review of ads before they are aired or printed, since that raises prior restraint issues. Task force members had questioned whether mandatory pre-screening would pass constitutional muster.

Such a rule change would likely involve an expensive constitutional lawsuit, he said. "Regardless of what the task force has done in streamlining the rules and making some vast improvement, the issue of pre-review belongs to this board as a policy issue," he said.

Board member Mike Glazer, who is the designated reviewer for all advertising grievance cases from the Bar's Statewide Grievance Committee, said he was distressed at how long it takes for a complaint to make its way through the process. He noted one case that just reached him involved a 2002 Yellow Pages ad.

He moved, and the board approved, to ask the task force to prepare a pre-screening rule so the board could see what it would look like. "We wanted to see what the details are, because they spend more time on the details and thought through some of the nuances," he said.

Board members did not say they would approve such a change, only that they wanted to see the language.

As for the unjustified expectation issue, Ebbets said the task force decided not to tackle that because of its “inability to come up with a description” of what constitutes an unreasonable expectation.

President Johnson, noting that the rules on unjustified expectations are one of the most common reasons for ad appeals to the board, suggested that the task force should take another look at that area. The board voted to approve that action.

Ebbets said the task force is looking for exactly that kind of input as preliminary recommendations are circulated, and hopes the board makes more suggestions at its next meeting.

“When you come to Naples, please be prepared to help us make this a better document than it is now, so when we go back the final work of the task force is something we can truly be proud of,” Ebbets said.

The task force has three goals, he said: Making the rules simpler, making them internally consistent, and improving enforcement by having as many ads as possible screened before being published or broadcast.

Aside from the prior review of ads and the unjustified expectations issues, the main action of the task force so far, Ebbets said, is looking at three alternatives for having a 30-day cooling-off period on direct-mail solicitations in criminal cases.

Task force members have been unable to agree on the direct mail issue, Ebbets said, with some saying the same 30-day waiting period that covers such mailings in personal injury cases also should apply to criminal solicitations.

The panel’s three options are to make no changes to the present rules with no waiting period for criminal mailings, extend the 30-day waiting period to criminal mailings, and extend the waiting period to both criminal and civil traffic mailings. The latter proposal was suggested to close a potential loophole because many times criminal charges, such as DUI, are accompanied by civil traffic charges.

Ebbets also said the task force is recommending that the rule apply to out-of-state lawyers who advertise in Florida.

Among other changes proposed by the task force are expanding slightly what can be included in “safe harbor” ads that contain basic information and do not have to be filed with the Bar for review, allowing a spokesperson to appear in an ad without being identified as such if it is clear the person is not a lawyer, and exempting Web sites from the attorney advertising rules.

Ebbets said the task force welcomes input from all lawyers, including comments on the options for pre-screening ads and on the 30-day waiting period on direct-mail criminal solicitations. Again, a complete list of the task force’s recommendations can be found on the Bar’s Web site. On the left side menu of the home page at flabar.org, click on Organization, and on the next page select Special under Committees to bring up a page of special committees. The Advertising Task Force is the first on the list. Clicking on it will bring up a page containing links to both an executive summary and the amendments in a legislative format, showing deleted and added language.

Comments should be sent to Ethics Counsel Elizabeth Tarbert, 651 E. Jefferson St., Tallahassee 32399-2300, or to ETO@flabar.org.

December 1, 2004

Board to take up advertising, gay adoptions December 10

A more detailed look at tentative revisions to The Florida Bar's advertising rules and dealing with the request of two sections to advocate for a repeal of the state law banning adoptions by gays will be on the Bar Board of Governors' December 10 agenda.

The board, meeting in Naples, also will get several two-year-cycle procedural rule amendment packages.

The Advertising Task Force 2004 completed its preliminary recommendations in September and sent them to the board for review. The proposals are also posted on the Bar's Web site at www.flabar.org.

The board took a quick look at its October meeting and made two requests. It asked the task force to present options on requiring screening of advertisements before publication or broadcast and for options on language that creates unjustified expectations in ads, a frequent point of contention on advertising appeals.

(The task force met last month and drafted language for those alternatives, which have been posted on the Bar's Web site with the panel's other recommendations. Panel members noted that providing the alternative language doesn't mean they endorse them, but only that they are providing options requested by the board.)

The board is scheduled to review the tentative proposals in more detail in December and make any final requests or suggestions. The task force is taking public comment January 20 during the Bar's Midyear Meeting, and then will begin working on the final draft of its recommendations.

Of major interest are the three options the task force presenting on whether the 30-day waiting period on direct mail solicitations in personal injury cases should be extended to criminal cases. The task force has also recommended a slight expansion of the "safe harbor" content of what can be included in ads that don't have to be submitted for Bar review.

While the board has asked for options on requiring review of ads before they are published, the task force has recommended a voluntary program where lawyers would be immune from disciplinary prosecution if they get Bar approval before the ad is printed or aired.

Other recommendations include requiring out-of-state lawyers advertising in Florida to comply with the Bar's advertising rules.

The issue over the state's statutory ban on gay adoption was raised by the Family Law and Public Interest Law sections. They want the law repealed and the state to adopt a best-interest-of-the-child standard.

The request was considered by the Bar's Legislation Committee in August which asked the sections to postpone their request after committee members expressed concern the matter raised deep philosophical and emotional divisions within the Bar. That's one of the few grounds the Bar can use to deny a section's lobbying request.

At the time, the Equal Opportunities Law Committee and the Legal Needs of Children Committee endorsed the two sections' position, and the Legislation Committee asked that other sections be approached, and questioned about whether they saw the issue as divisive.

Since then, the Elder Law Section and the Florida Association for Women Lawyers have added their support. The Young Lawyer Division Board of Governors also debated the issue at its November 5-6 meeting and recommended not allowing the sections to lobby the issue because of divisiveness (see story above).

Opponents, who have largely contacted Bar leaders and written letters-to-the-editor to the *Bar News*, generally contend that the gay adoption issue is a moral issue and hence not appropriate for Bar action. They also say that even if the sections, as required, specify only they and not the Bar at large are advocating for the repeal, their position will still carry the imprimatur of the entire Bar.

The sections contend that gay adoptions are supported by at least 11 germane mainstream organizations, including the American Medical Association and the American Psychiatric Association. They also note that academic studies have concluded there is no harm done to children when they are adopted by gay parents.

The board will review five sets of rule amendments as this year's two-year-cycle procedural rule reviews: small claims, probate, civil procedure, family law, and judicial administration.

The Rules of Judicial Administration report does not include a controversial provision on circuit chief judges' oversight of court clerks. That provision, which has been tabled in the committee, was being considered separately from the two-year-cycle amendments.

December 1, 2004

Lawyer Advertising

I read in the October 1 *News* some rather disturbing comments made by Robert Rush, a member of the Bar Advertising Task Force, relating to a suggested amendment to Bar rules prohibiting direct mail to criminal defendants for a period of 30 days.

I was deeply disturbed by his comment that "there isn't anything bad that can happen to you in a criminal case that can't be undone by a competent attorney." That is akin to saying you don't need to have an attorney review a contract or release before signing it. I am concerned that fellow members of the task force may not understand how very critical it is to have representation immediately after an arrest. The comments reflect a misconception of what really happens in the early days of a criminal case.

Let me give you several specific examples of how a delay in hiring an attorney can adversely impact a criminal defendant. In a multi-defendant homicide case, or in a multi-defendant felony murder case, generally there are varying degrees of culpability. In the first 30 days before the filing of the formal charge, a competent attorney may convince the prosecutor to either drop or reduce the charge against his client in return for cooperation and testimony. If successful, this negotiation may result in a client's status changing from that of a defendant to that of a cooperating witness. This negotiation may also result in the filing of a lesser charge, such as second degree murder or manslaughter. Literally, immediate efforts by competent defense counsel in some cases make the difference between life and death sentences.

Similarly, in most multi-defendant drug conspiracies, and in drug trafficking cases, there are minimum mandatory jail sentences. Often, the only way for the client to avoid the imposition of a lengthy mandatory jail sentence is to provide "substantial assistance." In multi-defendant drug conspiracies and drug trafficking cases, a competent attorney, in the first few days following the defendant's arrest, may be successful in negotiating his client's "substantial assistance" in return for a reduced charge or a reduced sentence. This window of opportunity closes quickly. The unrepresented defendant is at a tremendous

disadvantage, in that other co-defendants who are represented by competent counsel may offer their client's cooperation first. In these cases, the result is that there is often a race by the various defendants to obtain a "substantial assistance" agreement. A delay in hiring counsel can result in a defendant coming in last in this race and receiving a mandatory sentence where otherwise he may have received a substantially reduced sentence or no sentence at all.

After a defendant's arrest and before the filing of the formal charges (usually in the first 30 days), quite often the defendant is subjected to additional interrogation. In the real world, the un-counseled confession is difficult, if not impossible, to overcome. It cannot be "undone."

The right to counsel is not just a token right. It is an important constitutional right. A Bar rule that would delay and prohibit attorneys from advising defendants of their constitutional rights for a period of 30 days has serious constitutional implications. The Bar rules presently require direct mail advertisements to be submitted to the Bar for approval. If, in fact, it is an approved communication and contains no impermissible content, then why delay its transmission for 30 days? Hindering or delaying a defendant's hiring of counsel serves no legitimate purpose and, in many instances, results in irreparable harm to the client.

Direct mail advertising by criminal defense attorneys serves a valuable purpose. It encourages clients to compare qualifications and experience. Often, it advises them of rights that may be inadvertently waived. It provides to the client a broader selection of attorneys. Contrary to the conclusions reached by some members of this task force, it provides a valuable service. The passage of Amendment 3, in my opinion, reflects the negative opinion of the general public against what they now perceive to be the "greedy lawyers." In my view, this is in part due to the saturation of television advertising of some personal injury firms. Direct mail to criminal defendants, on the other hand, is the least offensive and the most informative of all forms of advertising. It reaches only those people who have a genuine need at the time.

Peter D. Aiken
Ft. Myers

January 15, 2005

Board to look at ad rules at January meeting

The Bar Board of Governors could get its first look at the final recommendations for advertising rules amendments from a task force when it meets January 28 in Key West. It is also scheduled to get an update from the Member Benefits Committee on providing free basic legal research for Bar members.

On other matters, the board will be making its final preparations for the upcoming 2005 Regular Legislative session, which begins in March, and appointing two members to the Florida Bar Foundation Board of Directors.

The Advertising Task Force 2004, appointed by Bar President Kelly Overstreet Johnson, has been working since March reviewing and suggesting changes to the Bar's advertising rules. Its work is scheduled to continue through the January 19-21 Midyear Meeting, where the panel is scheduled to take public testimony and then make its final recommendations.

Final board action isn't expected until its early April or early June meeting.

The task force has been working to simplify rules and also considering some potentially major changes. One of those is possibly requiring ads that contain more than just basic information to be reviewed by the Bar before they are published or broadcast. Current rules require those ads to be submitted no later than

concurrently with the first broadcast or publication.

The task force is also looking at an alternative that would offer incentives to Bar members to get pre-approval, but wouldn't require the pre-review.

The panel is looking at requiring a waiting period before direct mail solicitations in criminal and traffic cases, although Chair Manny Morales said that has sparked widespread opposition and may not be a final recommendation. (See story, page 1.)

At its December meeting, the board heard Frank Walker, chair of the Member Benefits Committee, report that the panel had solicited bids from vendors on providing a basic legal research service to Bar members.

Several bids had been received, he said, and the committee hoped to have those evaluated and a further report ready by the January meeting. The goal, Walker said, is to provide a free Bar benefit that would be particularly helpful to young and new lawyers.

On legislative issues, the Young Lawyers Division is bringing a request to the board for permission to lobby for a bill that would repay at least some of the student loans for assistant state attorneys and public defenders who spend at least three years on the job. They would get a higher repayment rate after six years, with a cap at \$44,000.

Sections, many of which will be meeting a week earlier at the Midyear Meeting, are also expected to request board approval to lobby on a variety of positions.

Two new board committees, which have had organizational meetings by phone, are expected to have their first in-person meetings during the Key West gathering. Those committees are the Special Board Committee on Judicial Independence, sought by President Johnson, and the Special Board Committee to Study the Florida Constitutional Amendment Process, sought by President-elect Alan Bookman.

Finally, the board will appoint two lawyers for three-year terms on the Florida Bar Foundation Board of Directors.

January 15, 2005

Ad rules making their way to the board

'We're going to have a long and lengthy debate on this'

By Gary Blankenship
Senior Editor

The Bar's Advertising Task Force 2004 has spent hundreds of hours reviewing and redrafting advertising regulations, but there will still be serious policy issues left for the Bar Board of Governors to decide.

"It will be this body's final decision to look at the policy issues," said board member Chobee Ebbets, who is also vice chair of the task force.

Ebbets was responding to a question at the board's recent meeting. A board member asked if the task force considered what to do about pending grievances under current rules that might not be violations after changes that could be proposed by the task force and approved by the board and the Supreme Court.

"What to do with old complaints. Will we need more Bar staff [to review ads]? All of those things are going to be on our plate," Ebbets said. "There was a limit to what the task force could do. . . .

"We're going to have a long and lengthy debate on this."

Task force Chair Manny Morales gave a detailed summary of the task force's preliminary recommendations, which are published on the Bar's Web site at www.flabar.org.

He said the task force is getting feedback on the proposals and will hold a public hearing on the morning of January 20 at the Bar's Midyear Meeting in Miami. That afternoon the task force will attempt to hammer out its final recommendations, which could be presented to the board preliminarily the following week when it meets in Key West.

The goal, Morales said, is for the board to take final action on the rules at its early April meeting in Tallahassee or its early June meeting in Palm Beach. After that, the amendments will go to the Supreme Court.

Aside from Ebbets' comments, Morales said the task force is presenting options on two controversial issues for the board's ultimate decision.

One is whether to extend the 30-day ban on direct mail advertising in personal injury cases to criminal defense and civil traffic ticket mailings. The other is whether the rules should require lawyers to submit their nonexempt ads to the Bar for review before they are published or broadcast. (Ads that provide only certain basic information do not have to be submitted for review.)

On extending the 30-day direct mailing ban, Morales said the task force may make a recommendation instead of presenting options. "We have gotten more mail and e-mails about this particular issue from the criminal defense bar and lawyers involved with civil traffic infractions than anything else," he said. "My personal judgment is we're probably going to leave the rule the way it is, that it only applies to the personal injury cases. But again, we'll decide that in January."

At the request of the board, the task force did add an option requiring prepublication review of nonexempt ads, Morales said, although that came by an 8-7 vote. Other options are to keep the present system where ads must be submitted no later than the first publication or broadcast or implementing an incentive system. The latter provides that a lawyer who has an ad approved before using it would get a guarantee he or she would not receive a grievance prosecution if a violation was later discovered, as long as the ad did not have a deliberate falsehood that was found after the ad was approved.

"It makes it clear that a lawyer who wants a safe harbor should submit the ad and have it okayed," Morales said. "Looking at the whole scheme, that's probably the best practice for any advertising lawyer to follow."

Board members had a variety of questions and observations.

Board member Warren Lindsey questioned the need to extend the 30-day ban in direct mail to criminal cases. If that is done, he suggested that lawyers should be limited to defendants who are not already represented by counsel. Morales noted that could cause some enforcement difficulties in determining whether a lawyer had made an innocent mistake.

Board member Nancy Gregoire said she agreed with a conclusion of the Citizens Forum (see story, page 1) that lawyer Web sites should be subject to the same regulations as print and electronic ads. The task force is recommending that Web sites be treated as information provided at the request of a potential client, which would exempt them from most advertising regulations.

“Because of search engines, it’s just like they’re flipping through the Yellow Pages and up comes your site,” she said. “I think this is too close to the line.”

In answering a question from board member Steven Chaykin, Morales said the task force is recommending the elimination of the required hiring disclosure language in print ads because task force members feel it no longer serves any purpose.

Board member Ian Comisky said he was concerned about First Amendment issues that could be raised by the revisions.

“I think the task force needs to take a First Amendment prism to the entire set of rules so we don’t pass new rules that are immediately challenged,” he said.

Other changes being considered, Morales told the board, include:

- Expanding what can be included in an ad that does not require review by the Bar.
 - Making it clear that advertising rules do not apply to communications between lawyers, communications with family members, and communications with current or former clients.
 - Dropping the prohibition of language that creates unjustified expectations. Morales said that is covered by other parts of the rules, and it was difficult creating a definition for that term.
 - Clarifying to lawyers that their ads cannot guarantee results.
 - Dropping the requirement that a lawyer must state in an ad that he or she intends to refer a case to another lawyer. “We decided that it’s better to have a lawyer refer a case than attempting to do it if it’s not their area of practice,” Morales said.
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January 15, 2005

Everday citizens study Bar issues

By Gary Blankenship

Senior Editor

A cross section of Floridians is sitting in a hotel conference room, arrayed around a square of tables, listening intently.

They include a director of a domestic abuse prevention agency, a neuropsychologist, a banking vice president, a retired FBI agent, and a court reporter. Being presented is a review of the Bar’s current advertising regulations by Bar Ethics Counsel Elizabeth Tarbert and tentative rule changes suggested by the Advertising Task Force 2004 by Chair Manny Morales.

The presentations are followed by a spirited question-and-answer session, lively discussion, and then some pointed suggestions.

The December 9 meeting was what is getting to be a typical meeting for The Florida Bar’s Citizens Forum, a group of mostly nonlawyers that is both playing a larger role in Bar issues and winning praise for its work.

According to its mission statement, the forum is to “provide a vehicle for two-way communication between Florida’s major citizen constituencies and The Florida Bar to inform and educate the public about significant legal-justice issues and to gain public understanding and support.”

In effect, the group is both a sounding board and a focus group on issues affecting the legal profession. Its work has won high praise from Bar leaders and Board of Governors, and a major effort of the Communications Committee this year is to involve the forum in more Bar issues.

“I can’t say enough about the Citizens Forum,” board member Henry Latimer commented at the December Communications Committee meeting. “I think they give us very valuable insight.”

The December gathering, held in conjunction with the Bar Board of Governors meeting, focused on lawyer advertising issues. In October, the forum studied the legal needs of children, particularly those related to domestic violence. In the past it has tackled such diverse topics as merit selection and retention of trial judges and the image of the legal profession.

In many ways, the forum discussion on advertising mirrored debates held at the Board of Governors meetings and other venues on the difficulties and frustrations of balancing free speech rights with advertising regulations. But the forum did reach some definite conclusions — along with fulfilling their role of providing an independent, nonlegal eye on Bar issues.

“The two primary things that any regulation of advertising needs to do is, number one, protect the consumers of the state and, number two, to do what the Bar can to enhance the image of the profession,” said John Biesinger, a vice president with Wachovia Trust. “To me, simplicity should rule. Lawyers are really good about over-regulating and over-defining, but many lawyers aren’t even looking at what we’ve got on the books today.”

He and other members advocated that the Bar should set those principles, reduce the number of rules, and create an enforcement committee empowered to level steep penalties for violators.

Members stuck to that view even though Morales said such a scheme might have trouble passing constitutional muster. “Here’s what I’m hearing: We want to have less rules that are more general in nature, but on the other hand we’re going to say if you degrade the profession, we want you disbarred,” he said. “I don’t know how we enforce that.”

But task force members continued to insist they saw such simplification as important.

They also had two other recommendations. One was to reach out to law students and educate them about the importance of ethical advertising.

The second was that attorney Web sites should be regulated the same as other forms of advertising. The advertising task force has made a preliminary recommendation that Web sites be treated as information provided at the request of a potential client. That exempts them from most ad regulations, except general rules that the information must not be false, misleading, or deceptive.

Task force members, though, said they see Web sites as high-tech Yellow Pages and that regulations should be the same.

“Web sites are almost exclusively the way some people get information,” said Roddie Bailey, a real estate developer from Panama City. “It’s not difficult to type in www.pitbull.com and see that Web site. I suggest you make the rules uniform across the medium.”

That also illustrated the importance of keeping rules simple because technology will bring new ways of marketing. “I don’t think the speed at which the Bar can regulate is fast enough to keep up with the things that will be coming to us,” Biesinger said. “The bottom line . . . is simplicity. The easier the Bar makes what’s right and what’s wrong, the easier it will make the regulating of something that is increasingly getting out of control.”

The forum’s tentative conclusions were presented to the Board of Governors the next day, when it received a detailed report from Morales on the task force’s preliminary recommendations. (See story, page 1.) The task force will receive a report of the forum’s conclusions as part of its input process.

Aside from advertising, members also put the finishing touches on their recommendations on the legal needs of children. Those were presented to the Communications Committee, which in turn sent them to the Committee on the Legal Needs of Children for consideration.

The forum made several findings and recommendations, including:

- Every child in the legal system should have a lawyer/legal counsel.
- The Florida Bar should recognize that children not only may be direct victims of abuse but can be witnesses to abuse and that, in both situations, they have unique needs.
- The majority of cases involving abuse are complex and last a long period of time. It is difficult for lawyers in active practice to take on such cases pro bono. The lawyers best suited to handle these cases are employed by legal aid organizations. Legal aid organizations need more funding in order to hire more lawyers.
- The Florida Bar should study loopholes in F.S. 787.03 which adversely affect the children and mothers/women who are victims of abuse.
- There is a problem with domestic abuse among immigrants. A joint effort between immigration lawyers and family lawyers — *i.e.*, providing education for volunteer lawyers or others involved in the cases — would be beneficial. The Florida Bar should facilitate a joint effort between relevant sections in this regard.
- The Florida Bar should take the lead in the provision of education/training regarding children’s legal issues including domestic violence; notably, law students, guardians ad litem, and judges need additional (nonlegal) training/education regarding domestic abuse situations.
- The Florida Bar should study and consider support of the Palm Beach County model of one judge/one family.
- The Florida Bar should prioritize the recommendation of the Commission on the Legal Needs of Children that would amend F.S. Chapters 39, 61, 984, and 985 to authorize information sharing among courts handling cases involving custody, delinquency, truancy, child abuse, and neglect.
- Further, the Citizens Forum supports all recommendations of the commission regarding technology and the courts, particularly supporting “A Model Family Court for Florida” as the blueprint for a unified family court and improved technology between the courts and executive agencies working with families (must be a legislative priority).
- The Florida Bar should prioritize and take the lead in enacting the commission’s recommendation to create local interdisciplinary groups of social service, psychology, medical, and legal experts.

- The Florida Bar should prioritize the commission's recommendation that Florida should develop a statewide comprehensive system and structure for children's representation.
 - In domestic violence abuse cases, The Florida Bar should consider ways to ensure cooperation of the attorney for the child and the attorney for the protective parent.
 - The Florida Bar should study the need for any revisions to current statutes to ensure that children in domestic violence/abuse cases not be removed from the protective parent.
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February 1, 2005

Bar board OKs funds for diversity program

Funding for a second diversity symposium and possibly for a survey that may be needed with new advertising rules has been approved by the Bar Board of Governors.

Budget Committee Chair Jerald Beer, at the board's recent meeting, also won governors' approval for budget amendments for the Membership Outreach Committee, the new Special Board Committee on Judicial Independence, and a slightly revised procedure for the Bar approving CLE courses.

Beer said that President Kelly Overstreet Johnson wants to hold a second diversity symposium to follow up on the successful first one held last April. The Budget Committee, he said, earmarked \$10,000 for the next gathering, the same as for the first one.

The program is set for Tampa April 22.

Related to that, Beer said, the Membership Outreach Committee, chaired by President-elect Alan Bookman, is coordinating recommendations from the first diversity symposium to find ways to involve all segments of the membership in Bar activities. The committee, Beer said, needs \$10,000 for postage, travel, and other expenses.

With the Advertising Task Force 2004 set to make its final report, the Bar may need to conduct surveys to help defend the rules if they are challenged in court, Beer said.

Accordingly, the Budget Committee recommended that \$52,700 be set aside in case such work is needed.

The judicial independence committee will need \$6,470 to carry out its charge of investigating ways to bolster judicial independence, including looking at the JNC appointment process, Beer said. But only \$2,470 of that is needed from general revenues, and the rest will come from a reallocation of other resources, he said.

The Budget Committee, Beer said, made a slight change in the procedures by which the Bar accounts for CLE course approvals.

He also said the committee recommended \$17,000 to defray the costs of distributing new passwords to Bar members for use on the Bar's Web site. The new passwords are part of improved Web site security and will allow members to pay their annual fees online, buy CLE courses online, change their official Bar address, and other activities via the Web site.

February 15, 2005

Board looks at ad rules

The Bar plans to take action on the proposals in April

By Gary Blankenship

Senior Editor

The final recommendations for amending the Bar's advertising rules have been made by the Advertising Task Force 2004, and the Bar Board of Governors has given them a thorough first scrutiny.

The task force held a public hearing January 20 during the Bar's Midyear Meeting, and then met immediately afterward to firm up its final recommendations. Those were presented to the board on January 28 in Key West, and governors spent about 70 minutes cross-examining task force Chair Manny Morales on the details of the recommendations.

Bar President Kelly Overstreet Johnson said she expects the board to take final action at its April 8 meeting in Tallahassee, and asked board members to work with Bar staff before that meeting to draft any changes.

Any amendments would ultimately have to be approved by the Florida Supreme Court.

The task force's final report is posted on the Bar's Web site, www.flabar.org.

Morales said the rules have been simplified and consolidated into 10 parts (see sidebar).

"Key is we have clarified and organized the rules in a nicer way than they were," he said, noting, "I'm sure after this is published we'll get some more comments."

Questions and comments from board members generally fell into four areas:

- Morales reported that the task force recommended that ads not be required to be approved by the Bar before they are broadcast or published. Instead, it proposed that lawyers who do get prior approval be guaranteed (except under exceptional circumstances) that they won't be prosecuted if a rules violation is found later. President Johnson asked that the board be provided with language for two alternatives to that proposal. One would require that all ads be Bar approved before publication and the other would require preapproval for radio and TV ads only.

- The task force did not adopt a suggested amendment that would have extended the 30-day waiting period for personal injury direct mail solicitations to criminal and traffic infraction cases. Morales said the task force received the most feedback on that issue and also got information that those letters included valuable information, not just solicitations. But board members Robert Rush (who served on the task force) and David Rothman said they had reservations. "The theory that a criminal defendant in jail doesn't know he needs a lawyer is absolutely ridiculous," Rothman said. "There are some problems in not getting a lawyer quick enough, but it's not really solved by getting a brochure [in the mail]."

- Board members said they were concerned with the recommendation to drop a rule that lawyers could not advertise for cases they intended to refer without disclosing the case would be referred. Morales said it could be difficult to determine whether a lawyer intended to refer a case, and some task force members felt the referring lawyers would help the clients find competent help. He also noted there's no regulation on this type of practice if it's done without advertising. "Is this something we really need to regulate by way of our advertising rules, when we don't regulate it otherwise?" he asked. But board member Jesse Diner disagreed, noting, "Aren't we deluding ourselves and being somewhat hypocritical in saying this is

helping the client find the ultimate lawyer?"

- The task force recommended that lawyer Web sites be treated as information provided at the request of a potential client. That would exempt them from advertising rules under a separate proposal by the task force although they would still be bound by other Bar rules that would require the information on the sites not be false, deceitful, or misleading. Board members said they were concerned lawyers could run on their Web sites video clips and provide information that otherwise would be prohibited in electronic or printed ads.

"I can't believe now on the cusp of this Internet revolution we're being less stringent on advertising going out to the public," said Young Lawyers Division President-elect Jamie Moses. "That will be the only means of communication within five years."

"I'm hardly on the cutting edge of Internet activity, but [search engine] Google is my Yellow Pages, so I have trouble seeing the distinction," said board member Gary Lepla.

But Morales and Bar Ethics Counsel Elizabeth Tarbert said it's not only a policy question but also a matter of resources. Current rules specify that Web sites are bound by Bar advertising rules, but Bar review of the sites is not required — and such a review would require a huge investment of manpower, they said.

Tarbert noted her office, which reviews ads, was involved in reviewing five Web sites put up by one firm. It took one staffer more than 80 hours on that project, she said, and one letter sent to the firm was 22 pages long.

Bar Executive Director John F. Harkness, Jr., said virtually all law firms with 20 or more lawyers have Web sites, as do many, if not most, smaller firms. "I have a big concern that if Web pages are subject to advertising rules, I don't see how we can provide the staff to review all of them," he said.

Morales also said the task force had reservations about banning information from the Web site that could lawfully be provided to a potential client in another setting. "The thought is we should not regulate what we do not need to regulate," he said. "The thought is that if someone goes [voluntarily] to a Web site . . . that is no different from someone calling on the phone and saying, 'Give me all the information you have about yourself.'"

That information, he added, must still be truthful and not misleading.

The 10 ad recommendations

The attempt to revise and simplify Bar advertising rules has resulted in 10 recommended simpler regulations in section 4-7 of the Rules Regulating The Florida Bar, according to Manny Morales, chair of the Advertising Task Force 2004.

When he presented the rules to the Bar Board of Governors last month, Morales provided a thumbnail sketch of how the proposed revised rules — which must be approved by the board and then the Supreme Court — would be laid out.

The complete recommendations can be found on the Bar's Web site, www.flabar.org, but here is Morales' quick summary, as given to the board:

- Rule 4-7.1 explains what is and isn't covered by the ad rules. Specifically, communications with other lawyers, family members, current clients, former clients, and information provided to potential clients at their request is not covered. The rules do remind lawyers that all communications are covered by other rules that mandate information not be dishonest, deceitful, or false.

- Rule 4-7.2 has three categories. The first is information which must be included in an ad; the second is information that may be included; and the third is information that is prohibited. Eliminated would be a requirement that a lawyer have an office in a geographic area where he or she advertises and the mandate that a lawyer disclose in the ad if he or she intends to refer a case which comes in as a result of the ad.
 - Rule 4-7.3 was changed to omit the required hiring disclosure language that had to be included in many ads. Morales said the task force felt the language no longer served any purpose.
 - Rule 4-7.4 is the 30-day prohibition on direct mail solicitations in personal injury cases, which was left intact. The task force decided not to extend that waiting period to direct mail solicitations in criminal and traffic cases.
 - Rule 4-7.5 was changed to drop the requirement that a nonlawyer spokesperson in an electronic ad be identified as a nonlawyer if it was clear from the ad's context the speaker is not a lawyer.
 - Rule 4-7.6 was changed to specify that Web sites would be treated as information provided at the request of a potential client, and hence not covered by the ad rules.
 - Rule 4-7.7 details the requirements for filing ads for Bar approval and gives lawyers who file and wait for Bar approval immunity from prosecution if a rule violation is found later.
 - Rule 4-7.8 covers the ads, which contain basic and specified information, that are exempt from filing for Bar review. The rule also expands what can be included in those "safe harbor" ads.
 - Rule 4-7.9 covers what can be put on business cards and firm letterheads, and had no significant changes. The old rule 4-7.9, which covered information that could be provided to potential clients upon their request, was eliminated but with the notice elsewhere in the rules that such information be truthful and not misleading or deceitful.
 - Rule 4-10 covers lawyer referral services and had no significant changes. One clarification said the ad must clearly identify the advertiser as a referral service if that is not clear from the service's name.
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March 1, 2005

Board to consider advertising rules

Pursuant to Standing Board Policy 1.60, the Board of Governors of The Florida Bar hereby publishes this notice of intent to consider or take final action at its April 8 meeting on the following proposed amendments to the Rules Regulating The Florida Bar. These matters are additionally governed by Rule 1-12.1, Rules Regulating The Florida Bar. Most amendments to the Rules Regulating The Florida Bar that are finally acted upon by the board must still be formally presented to the Supreme Court of Florida, with further notice and opportunity to be heard, before they are officially approved and become effective. The amendments proposed are recommended by the Advertising Task Force 2004, and the full text of the task force's recommendations is available on the Bar's Web site at www.flabar.org, under Organization, Committees, Special, Advertising Task Force 2004. Questions may be addressed to Elizabeth Clark Tarbert, Ethics Counsel, at (850) 561-5780.

4-7.1

Adds new subdivision (b) stating that subchapter 4-7 applies to Florida bar members who advertise in Florida.

Adds new subdivision (c) stating that subchapter 4-7 applies to out of state lawyers who advertise in Florida to provide authorized legal services.

Adds new subdivision (e) stating that subchapter 4-7 does not apply to communications between lawyers.

Adds new subdivision (f) stating that subchapter 4-7 does not apply to communications between a lawyer and the lawyer's own family members.

Adds new subdivision (g) stating that subchapter 4-7 does not apply to communications between a lawyer and the lawyer's own current and former clients.

Adds new subdivision (h) stating that subchapter 4-7 does not apply to communications at a prospective client's request.

Adds new subdivision (i) stating that the general prohibition against conduct involving dishonesty or misrepresentation applies to all communications by a lawyer.

Adds commentary that the lawyer advertising rules do not apply in situations addressed by proposed subdivisions (e) through (i) above.

4-7.2

Reorganizes rule to first set forth required information in proposed subdivision (a), then permissible content in proposed subdivision (b), then general regulations in proposed subdivision (c).

Deletes the requirement in subdivision (a)(2) that requires qualifying language to appear with a local telephone number where the lawyer does not have a local bona fide office.

Divides permissible content into three subdivisions to address permissible content for lawyers [proposed subdivision (b)(1)], for lawyer referral services [proposed subdivision (b)(2)], and for public service announcements [proposed subdivision (b)(3)].

Adds to permissible content of advertisements military service [proposed subdivision (b)(1)(D)], punctuation marks and common typographical marks [proposed subdivision (b)(1)(L)], the Statue of Liberty, the American flag, the American eagle, the State of Florida flag, an unadorned set of law books, the inside or outside of a courthouse, column(s), and diploma(s) [proposed subdivision (b)(1)(M)].

Consolidates and deletes redundant information in the prohibition against misleading information in subdivision (b)(2) [proposed subdivision (c)(1)].

Deletes references to "unfair" advertising in subdivision (b)(2)(E) and comment.

Deletes references to statements that are "likely to create an unjustified expectation about results the lawyer can achieve" in subdivision (b)(1)(B).

Adds prohibition against statements that "guarantee results" in proposed subdivision (c)(1)(H).

Consolidates the prohibitions against misleading illustrations and misleading visual and verbal portrayals in proposed subdivision (c)(3) [existing subdivisions (b)(3) and (c)(1)].

Deletes the prohibition against advertising for cases in an area of practice that the lawyer does not currently practice in subdivision (b)(5).

Deletes as redundant the prohibition against requiring all ads to conform to the requirements of advertising areas of practice in subdivision (c)(2).

Adds a prohibition against using terms such as "expert" or "expertise" unless the lawyer is board certified in proposed subdivision (c)(5) and comment [existing subdivision (c)(3)].

Deletes requirement of a disclosure that the lawyer intends to refer cases to another lawyer in subdivision (c)(8).

Deletes requirement that required information appear in type size at least one quarter the size of the largest type used in the advertisement, leaving the requirement that all required information be clearly legible in proposed subdivision (c)(10) [existing subdivision (c)(11)].

Reorganizes general regulations to move all issues regarding content to the beginning of the rule and other prohibitions to the end of the rule, renumbering provisions of the rule.

4-7.3

Deletes the required hiring disclosure in subdivision (b) and comment.

4-7.4

Adds the term "unsolicited" to "written communication" in subdivision (b) title and subdivision (b)(1).

Deletes prohibition against "unfair" statements or claims in subdivision (b)(1)(E).

Moves record retention requirement provision from subdivision (b)(2)(C) to 4-7.7.

Adds definition of "prior professional relationship" in the comment.

Adds commentary addressing the standard to be used on the required disclosure of how the lawyer obtained the information prompting an unsolicited direct mail in a specific matter in the comment.

4-7.5

Deletes requirement that a nonlawyer spokesperson provide an affirmative disclosure that the person is not a lawyer and not a member of the firm except in ads where it is unclear from the context that the spokesperson is not a lawyer in subdivision (b)(2)(B) and comment.

Deletes provision defining “member” of a law firm in the comment as obsolete in light of prior changes to the rule.

4-7.6

Deletes requirement that websites sponsored by a lawyer disclose all jurisdictions where the lawyer is licensed to practice in subdivision (b)(1).

Deletes requirement that websites sponsored by a lawyer disclose 1 or more bona fide offices in subdivision (b)(2).

Adds that direct mail sent electronically is subject to rule 4-7.2 in subdivision (c)(1).

Adds that direct mail sent electronically must contain a subject line that begins with the words “LEGAL ADVERTISEMENT” in subdivision (c)(3).

Adds that examples of computer-accessed communications include pop-up ads and banner ads in the comment.

4-7.7

Changes references to the Standing Committee on Advertising or the committee to “The Florida Bar” throughout the rule.

Adds that filings must be made to Florida Bar headquarters address in subdivision (a).

Adds that a lawyer cannot obtain an advisory opinion regarding communications that are not subject to subchapter 4-7 in subdivision (a).

Adds that a complete filing must include an accurate English translation if the ad appears in another language in subdivision (b)(3).

Makes findings of compliance by The Florida Bar binding on The Florida Bar in grievance proceedings, except where misrepresentations are not apparent on the face of the ad in subdivision (f).

Adds provision regarding retention of direct written communications to subdivision (h).

Adds commentary regarding a safe harbor to encourage lawyers to file their ads and receive approval in advance of using the ads in the comment.

4-7.8

Adds that a public service announcement may contain any permissible content of advertising in subdivision (b).

Deletes as redundant that communications sent only to existing clients, former clients or other lawyers are exempt from filing in subdivision (d).

Deletes as redundant that communications at a prospective client’s request are exempt from filing in subdivision (e).

Deletes as redundant that websites sponsored by a lawyer or law firm are exempt in subdivision (g).

4-7.9

Deletes rule in its entirety as redundant in light of proposed Rule 4-7.1(h).

4-7.10

Renumbers rule to 4-7.9, but no substantive changes.

4-7.11

Renumbers rule to 4-7.10.

Adds that lawyer referral services must affirmatively state that they are lawyer referral services in proposed subdivision (a)(10).

Rules throughout subchapter 4-7 are renumbered according to the proposed amendments above, requiring renumbering of references to rules throughout subchapter 4-7.

The following attorney advertising rules proposals in subchapter 4-7, although not included in the task force’s recommendations, may also be considered:

4-7.4

Extends 30 day ban on unsolicited written communications to criminal cases in subdivision (b)(1)(A) and comment.

Adds requirement that a lawyer check with the clerk of court to determine if a prospective client is represented by counsel before sending direct mail in proposed subdivision (b)(3) and comment.

4-7.6

Subjects websites to the requirements of rule 4-7.2 governing lawyer advertising in subdivision (b) and comment.

4-7.7

Requires that advertisements in one or more advertising media be filed for review and receive Florida Bar approval prior to dissemination.

March 15, 2005

Legislators face variety of issues

New judges, constitutional revisions, procedural rules all on the table

By Gary Blankenship

Senior Editor

Constitutional issues, past and future, and more judges will be on the Florida Legislature's agenda for its 2005 Regular Session.

Lawmakers, after several weeks of committee meetings in January and February, opened the 60-day session on March 8 (after this *News* went to press). It is scheduled to adjourn on May 6.

Some core issues of interest to Bar members appear not to be on the agenda. There are no proposed constitutional amendments to remove The Florida Bar from the Supreme Court's oversight, and there are no bills to impose a sales tax on legal, or any other, currently untaxed services.

But there are plenty of issues major and minor that will affect the court system and lawyers and their practices.

"We would expect most of the normal issues that traditionally deal with the independence of the judiciary to be brought up and discussed, primarily the rule-making authority of the court," said Steve Metz, the Bar's legislative counsel. "But we feel confident that given a fair hearing and debate, that the legislature will realize there is a healthy tension there and a proper balance.

"I don't anticipate any attacks on The Florida Bar or the ability of the court to regulate lawyers," he added. "I do think there will be a healthy discussion about advertising and whether or not there is legislation that can increase the regulation of advertising without running afoul of the constitution."

Things are also looking up for the court system with an easing of the state's financial condition. "One very encouraging thing is the universal acceptance in the House and Senate of the need for new judges," Metz said. For the past two years, no new judges have been approved, and this year the Supreme Court has asked for 110 new judges.

Legislative leaders say they expect a busy year, including enacting implementing legislation for constitutional amendments approved last November, particularly relating to medical records and doctor discipline — amendments pushed by the Academy of Florida Trial Lawyers.

There are also several proposed amendments aimed at the citizen initiative process and also a proposed streamlining of the Florida Constitution by removing "statutory" type provisions that have been added by amendment over the years.

In addition to that, bills have been filed to again look at the procedural rule-making powers of the Supreme Court, and some lawmakers say those will at least be debated.

On the fiscal side, expected increases in state revenues could mean not only more judges, but other improvements for the courts and their employees.

“Clearly, we’re going to be focusing much needed attention on additional funding for trial court judges,” said Rep. Dudley Goodlette, R-Naples, chair of the influential Rules and Calendar Council. “There are going to be some constitutional issues that we’ll be dealing with.”

Rep. David Simmons, R-Altamonte Springs, chair of the House Judiciary Committee, gave a list of likely priorities and issues.

That includes implementing legislation for Amendments 7 and 8, approved by voters last year. The former gives patients access to adverse medical reports on doctors and hospitals and the latter provides for the license revocation of any doctor who has been disciplined three times by the state.

Simmons noted there is controversy about whether any implementing laws are needed, but that courts are already weighing in that some statutory guidance is needed.

“My committee is within the ambit of its responsibility and jurisdiction to deal with it,” he said. “So we’re going to do implementing legislation with respect to both 7 and 8. . . . I hope that there will be a resolution and a convergence of interests of both the trial lawyers and the medical profession in getting good policy, and good policy means a proper implementation of 7 and 8.”

There will also likely be three or four amendments proposed dealing with the citizen initiative process for constitutional amendments (something the Bar is studying as well). Those include, Simmons said, requiring any amendment — whether initiative or placed on the ballot by the legislature — to be approved by 60 percent of the voters, requiring a fiscal impact disclosure for any amendment that would surpass a certain projected cost, and limiting amendments to certain subjects and having the Supreme Court review amendments for compliance.

The changes are needed, Simmons said, because special interests have hijacked the initiative process with slick promotion campaigns that may actually have little to do with the actual impact of the proposed amendment.

“Darn near anything will pass now,” he said. “What they didn’t have when this (the initiative process) was put into the constitution they have now, which is mass media with the ability to reach everyone with very slick advertising and get it done.

“What is truly missing . . . is a deliberative process and a debate process. You cannot debate something in 30-second sound bites.”

In conjunction with the initiative amendments, Goodlette said he has introduced a bill calling for statutory changes, including more disclosure from initiative backers including that signature gatherers must reveal when they are paid to collect signatures.

Simmons also said he supports Winter Park Republican Sen. Daniel Webster’s effort to streamline the Florida Constitution by removing unnecessary provisions that should be in statute rather than the state’s basic charter.

“I hope we will have the opportunity to have joint meetings to begin an article-by- article review of the constitution, so we can put a streamlined constitution . . . on the ballot in 2006,” he said.

Procedural Rules

Noting bills have been filed in both the House and Senate to have the legislature create a judicial council

to take over court procedural rule-writing authority from the Supreme Court, Simmons expects that to be at least studied, perhaps with an emphasis on criminal procedural rules.

But Webster, the Senate Judiciary Committee chair, said he doesn't see the upper chamber moving on that issue, although he knows some lawmakers are concerned the Supreme Court has overstepped its authority.

"I don't think that I'm to the point of saying we're going to do that," he said. "I know it's an issue, but I'm not ready to go there yet."

Other issues Simmons expects his committee to examine include:

- Premises liability. "Some appellate judges have stated they believe we have moved to strict liability de facto," he said. "We're going to review that and see if there's some way of making it more fair."
- Questions related to streetlight maintenance and liability.
- Fixing glitches with the Revision 7 transfer that saw the state take over most trial court funding from the counties. Simmons said that will include substantive issues on disputes that have arisen between counties, court clerks, and judges.

On the Senate side, Webster said the Judiciary Committee will consider the constitutional streamlining and amendments to change the initiative process. He noted he has long supported an amendment to allow the Supreme Court to review proposed constitutional changes to ensure they belong in that document.

Those might be limited to the separation of powers between branches and levels of government, the rights of people, duties of public officers, and the like, he said.

"Anything external to that may not be a bad idea, but maybe we should have a statutory initiative to accommodate those ideas," Webster said.

The committee will also take up Gov. Jeb Bush's proposed litigation reform package. Webster said that includes looking at premises liability, giving sellers immunity from products liability as long as they had no part in manufacturing a defective product, and limiting plaintiffs in a state class action suit to state residents, unless an out-of-state resident has no recourse in his or her home state.

The committee will also have a Revision 7 glitch bill and look at the streetlight liability. Webster said the committee, at the request of Senate President Tom Lee, R-Brandon, will look at a policy to compensate people who are wrongly convicted and serve time and later are freed without requiring them to go through the claims bill process. That stemmed from the Wilton Dedge case, where Dedge spent more than 20 years in prison on a rape charge before being exonerated by DNA testing. (See story on page 11 in this *News*.)

Lawyer Advertising

Webster said his committee, probably early in the session, will look at a proposed law to regulate lawyer advertising.

Simmons, who championed that issue last year when it passed the House but died in the Senate, said he's not pushing it this year. This session, legislation has been introduced by Rep. Jeff Kottkamp, R-Cape Coral, and Sen. Skip Campbell, D-Tamarac.

Simmons, though, said he promised the Bar he wouldn't push his own measure while its Advertising Task

Force 2004 was studying the issue. The Bar Board of Governors is scheduled to act on the task force's recommendations at its April 8 meeting.

"I would hope the Bar would realize that if it doesn't do something, then the whole process is going to be open for review by the legislature," he said. "I hope the Bar takes action and does what is right."

Another measure facing an uncertain future is a proposal to allow gay foster parents to adopt, irregardless of a state law banning gays from adopting, if a bond has formed with the child and a judge determines it is in the best interest of the child. The Family Law Section, which was earlier turned down on its request to lobby for the repeal of the homosexual adoption ban, is asking the Bar Board of Governors to allow it to support the new bills. That also is expected on the board's April 8 agenda.

"It remains to be seen how quickly that bill would move through the process," Goodlette said. "My guess is there would be some obstacles to that bill proceeding."

Goodlette, Simmons, and Sen. Rod Smith, D-Gainesville, all said there is support in both chambers for approval of all or most of the 110 new judges requested by the court.

"Clearly, we're going to be focusing much needed attention on additional funding for trial court judges," Goodlette said. "That is a high priority with the House and Senate."

Smith said that support is likely to extend to other court issues, such as increasing staff and salaries for state attorneys and public defenders.

"We can't increase the number of judges and not increase the state attorney and public defender budgets. That would be irresponsible," he said. "Salary increases for prosecutors and public defenders and for people who are providing juvenile services, I think those are on the table in the Justice Appropriations Committee and will be dealt with."

He also agreed with Webster that the Senate is unlikely to change the Supreme Court's procedural rule-making prerogatives. "There's been some talk about . . . some sort of statutory address of those rules. I think that's unlikely to come to fruition," Smith said. "We're at a decided disadvantage in dealing with questions of procedure, because we're not in the courts every day."

Court Priorities

Expectations that funding may be relaxed after several tight budget years is good news for the court system. State Courts Administrator Lisa Goodner said the courts have several priorities, mostly related to budget issues.

First is getting the new judges sought by the court.

"That is obviously a high priority issue to deal with the deficit that has been created by the lack of funding for new judges over the past few years," she said.

Along with that, the courts want 33 new trial law clerks, to keep up with the one clerk for every three judge ratio that has been set in recent years.

And, about 15 years after the Supreme Court building was renovated, there are some significant and routine maintenance needs that will call for about \$6 million.

Another priority will be addressing salary-related budget issues. Goodner said last year the court system did not get enough appropriations to meet its salary obligations, and had to leave vacancies unfilled in order to save enough money to pay employees.

Other goals are:

- Working to resolve remaining glitches with the Revision 7 transition. That includes seeking about \$7.5 million additional funds for court reporting services.

“This would transition toward a more efficient model of court reporting and increase the use of digital technology to produce a record,” Goodner said. “That’s a big one we’re still looking for.”

- Getting funding to pay for maintenance agreements and leases on equipment being turned over by counties to the state as part of Revision 7.

- Getting additional funding to bring mediation court services up to the level they were before Revision 7.

- Getting funding for the “judicial inquiry system,” which allows judges on the bench to link through computers to information they need, such as cases in other circuits involving someone before them, state Department of Corrections records, or a party’s criminal history. “It doesn’t give judges access to any information they are not specifically authorized by law to have,” Goodner said, but does give them much quicker access to information they routinely need. Funding for that has twice been approved, but then either cut in a budget crisis or vetoed.

- Getting better pay and benefits for court employees, particularly at the Supreme Court. Goodner said salaries and benefits not only lag behind the private sector, but other government agencies as well, making it difficult to find and retain qualified staff.

- Working on a family court efficiency act to streamline operations of family courts.

- Passing a drug court bill to enhance operations.

- Passing a bill to create a court interpreter certification program.

Sections’ Efforts Praised

While the state budget and constitutional amendments may get more headlines and media attention, Goodlette there are many less publicized issues that will be addressed during the 60-day session, and he said Bar sections frequently play vital roles in that work.

Goodlette noted he is co-sponsoring one bill sought by the Real Property, Probate and Trust Law Section, while the Business Law Section is active on a rewrite of the state’s business entities law.

“I think the sections of the Bar continue to provide meaningful input and important real leadership on substantive areas of the law,” he said. “I would like to have members of the Bar who contribute to the sections help the legislature. I would like to express appreciation and encourage them to continue to provide that kind of in-depth, of invaluable assistance.”

March 15, 2005

Letters

Advertising Rules

I continue to be both astounded and confounded by the comments of Board of Governors members

Robert Rush and David Rothman and their continued suggestion that the present advertising rules be changed to include a 30-day delay in direct mail solicitations in criminal cases.

The Advertising Task Force exhaustively reviewed comment from the public and Bar members and unanimously voted not to recommend a change. The testimony received demonstrated how valuable the direct mail was when it came to advising people of important rights and deadlines that would otherwise be missed in those first critical 30 days. The information received by the committee in Miami demonstrated the great differences that exist between criminal and civil cases and the dire need in the latter to immediately secure counsel.

Mr. Rush's most recent comment that "the theory that a criminal defendant in jail doesn't know that he needs a lawyer is ridiculous" misses the point. Many people may know they need a lawyer but not know how critical it is to secure counsel immediately and, more importantly, how to find a qualified, affordable attorney. Any lawyer who practices criminal law that doesn't realize how critical the first 30 days can be is not representing his or her client to the utmost. Once an arrest has been made, the clock is ticking and decisions are being made by both the prosecutor and any competent defense attorney. Anything that hinders or delays the hiring of an attorney is not only contrary to the interests of the client but also raises serious constitutional questions. In *Ficker v. Curran*, the Fourth Circuit Court of Appeal addressed the very distinct differences between banning solicitation in civil and criminal cases and distinguished the restrictions imposed by the Bar in accident cases and should be read by all seeking to change the rule.

When task force members were asked in Miami, "Is there anyone who would not want their criminal case investigated by their attorney in the first 30 days?" not a single hand went up. No one spoke in favor of changing the rule and the unanimous vote of the committee was not to extend the ban.

I question the motive of those who still seek to stop direct mail. It is not in the interest of the clients or the public and an extension of the "ban" would only serve to protect the purely economic interests of the so-called "established" attorneys. The move to extend this "ban" is purely a move to stifle competition and to stop the young and newly admitted attorneys from drawing clients.

I have been a member of the Bar for over 30 years and have practiced both before and after direct mail advertising. It provides a valuable service and is a welcome alternative to the costly Yellow Pages. Since direct mail communications are already submitted to the Bar for approval, there is no logical reason to delay their mailing. I am concerned that some members of the board may be urged to disregard the hard work and the committee's recommendation and instead recommend extending the ban. This would serve only the interests of a selfish few and not be in the interests of the general public and the young members of the Bar.

Peter Aiken
Ft. Myers

April 1, 2005

Ad rules, no new fees budget on the agenda

Board of Governors also to take up revenue splits and gay adoptions at its Tallahassee meeting

Proposed new advertising rules and a possible alteration of how revenues are split between the Bar and its sections are on the agenda for the Bar Board of Governors' April 8 meeting. The board is also expected to revisit the gay adoption issue, although in a somewhat different form.

And if that won't keep it busy, the board will get the 2005-06 budget — which calls for no increase in

annual fees — to consider and pass on first reading.

The Advertising Task Force 2004 has been working since early last year reviewing Bar ad rules and taking public testimony. The task force presented its final recommendations to the board at its January 28 meeting.

Among the recommendations, the task force proposed a voluntary ad screening program. That would give lawyers immunity from prosecution if they submit their ads for review and don't publish until the Bar approves them, and then a rule violation was later discovered. The task force also recommended against a proposal that would have extended the 30-day waiting period for direct mail solicitations to criminal and traffic cases.

Board members, though, have said they may consider alternatives to both of those proposals. One would be a requirement that all ads that contain more than basic, approved information be submitted to the Bar for approval before those ads are published or aired. Some also favored extending the direct mail solicitation waiting period to criminal and traffic cases.

Another potential point of debate is the task force's recommendation that lawyer Internet Web sites be treated as information provided at the request of a potential client. That would exempt the sites from the ad rules, although they would still be bound by general rules that prohibit them from being false, misleading, or deceptive.

But some board members have said they favor regulating Web sites, likening them to Yellow Pages ads and saying in a technological age they could be even more heavily used by consumers in the future.

The issue with the sections is over how revenues for CLE courses are split and how the Bar supports section operations in other ways. A report to the board in January noted that the Bar loses hundreds of thousands of dollars annually in direct and indirect administrative support for the sections, more than is made from CLE profits. The report also noted that a couple years ago, the Bar lost more than \$200,000 on section CLE operations, although policies have been changed to make that less likely.

Section officials have advocated that there be no change, noting that the Bar — not sections — controls the administrative expenses it is worried about.

Board members in January said they are interested in a solution amenable to the sections, but want the Bar to lose less money in supporting sections. They noted that most Bar members do not belong to sections and it's not fair to use their membership fees to extensively subsidize sections.

No less contentious is the issue of gay adoption. At its December meeting, after extensive debate, the board rejected 31-13 a request by the Family Law Section, Public Interest Law Section, and Equal Opportunities Law Section to support the repeal of a state law that bans homosexuals from adopting.

Under Bar policies, once a proposed position has been rejected, a section cannot again request it during that legislative year.

But the Family Law Section is now seeking permission to lobby for a more limited bill that has been introduced in the House. Instead of repealing the ban, it would provide that the statute did not apply in the case where a foster parent or parents had cared for the child for 36 months, had formed a bond, and a judge found it was in the best interests of the child.

A similar bill has been introduced in the Senate, but without the 36-month requirement.

Under Bar policies, sections — which have a voluntary membership and use their own money — are

given a wide latitude on issues they want to lobby. Sections, though, must identify that they are representing only the section and not the entire Bar and cannot take a position opposite a Bar-wide position.

Another legislative issue, tabled at the last meeting, is a proposal from the Bar's Special Committee on Constitutional Amendments. The committee recommended that all amendments, whether proposed by amendment or by initiative petition, be reviewed by the Supreme Court to ensure they belong in the state's basic governing charter. According to the committee's motion, those amendments should deal with existing sections of the constitution, with the structure of state government, or basic rights of citizens.

On fiscal matters, the board will get its first look at the 2005-06 budget. Tentative numbers project that no increase in annual fees will be needed. Tentative numbers project that the Bar will have an income of around \$30.5 million with a budget surplus of around \$500,000.

The board will pass the budget, with any amendments, on first reading and then publish in the *Bar News*. Any comments from Bar members will be considered at the board's June 3 meeting, when the budget will receive final approval and then be forwarded to the Supreme Court.

Activities related to the April 8 meeting will include the Supreme Court's annual pro bono awards, presented at the court the day before the board meeting. Also, Supreme Court Chief Justice Barbara Pariente is expected to make brief remarks at the board meeting.

April 1, 2005

Legislature sets sights on lawyer advertising

By Gary Blankenship

Senior Editor

A bill requiring advertising lawyers — including out-of-state attorneys who advertise in Florida — to file an affidavit that they are following Florida Bar advertising rules has cleared a Senate committee.

SB 192, introduced by Sen. Skip Campbell, D-Tamarac, cleared the Senate Judiciary Committee by an 8-0 vote on March 9 following a debate and testimony by Bar President Kelly Overstreet Johnson and Bar Unlicensed Practice of Law Counsel Lori Holcomb.

Campbell, a lawyer and former member of the Bar Board of Governors, said the bill requires lawyers to file an affidavit that they have read the Bar advertising rules and are following them.

"I believe it will bring some stability back to practicing law and it will bring back some professionalism to the practice of law," Campbell said. "It allows reasonable advertising in a constitutional way that will not demean the practice of law."

The bill would require the affidavit be filed with the broadcaster or publisher of the lawyer ad, and the publisher in turn would be required to forward the ad and affidavit to the Bar within 30 days. A second provision requires out-of-state lawyers who advertise in Florida to file an affidavit that certifies they have read the Florida rules and are complying with them. Also, lawyer referral services must disclose that lawyers pay to belong to the service and that the service itself does not provide legal assistance.

Holcomb said the bill will reach lawyers who are outside the Bar's jurisdiction. Those include attorneys licensed in other jurisdictions but who practice before the IRS, immigration court, or other federal venues where they are allowed to appear without being licensed in Florida. Those lawyers are not bound by the

restrictions of Florida Bar rules because they are not licensed here, and frequently violate those rules, she said.

Johnson told the committee that The Florida Bar has the toughest advertising regulations in the country and is always looking for ways to make them more stringent. She also noted the Board of Governors, at its April 8 meeting, will be considering further recommendations from a special advertising task force.

"I have listened and we share your frustrations," she said. "The Bar is constantly looking at how we can toughen the restrictions on lawyer advertising. . . . The bill does address out-of-state attorneys where the Bar hasn't been able to regulate."

The Bar does have a legislative position that it will support the most restrictive advertising legislation that will pass constitutional muster. Johnson told the panel she hadn't had time to consult with the Bar's outside counsel, Barry Richard, about the constitutionality of SB 192.

The bill was drastically changed from proposals filed last year which attempted to directly limit the content of ads and imposed penalties. Like last year's bill, SB 192 creates a civil \$1,000 fine for the first violation and \$10,000 for each subsequent violation. It also authorizes the Bar and the Attorney General's Office to go to court to enforce the law, and to seek costs as well as the fines.

Regardless of what happens to the bill, attorney advertising may stay an issue at the legislature.

Sen. Alex Villalobos, R-Miami, who is scheduled to become Senate president in 2008, said he wants to see more action by the Bar, and if necessary, the legislature.

"I'm very glad that The Florida Bar is the most restrictive [state bar], but there's a difference between what is constitutional and how far the Bar is willing to go," he said. "I guess my message is to really consider tightening this up some more, even though you are the most restrictive, because if you don't we will.

"We will continue to push that envelope further and further, but we would like to give you a chance first."

May 1, 2005

Board approves stricter advertising rules

Lawyer Web sites, radio, and television ads would face greater Bar oversight

By Gary Blankenship

Senior Editor

Virtually every radio and TV lawyer ad would have to be approved by The Florida Bar before it aired under recommended new advertising rules approved by the Board of Governors at its April 8 meeting.

In addition, all Web sites would fall under Bar advertising rules, and the board rejected a suggested rule mandating delays in direct mail solicitations in criminal cases.

The rule changes will now be submitted to the Supreme Court for review.

The board took those actions as it reviewed the final recommendations from the Advertising Task Force 2004. The board accepted most of the task force's suggestions, but changed several, including the review of electronic ads.

The task force had proposed an incentive policy whereby lawyers who waited to publish or air their ads

until the Bar reviewed them would receive immunity from any future-discovered violations of the advertising rules. That would not apply if the lawyer deliberately lied in the ad and concealed it from the Bar. The Bar would have 15 days to approve the ad, or request further information from the lawyer.

The board approved that condition for printed media and direct mail ads, but voted to require prior approval for radio and TV ads. That standard would not apply to ads that conform with a “safe harbor” provision and provide only basic “tombstone” information and consequently do not have to be submitted for Bar review. Almost no radio or TV ads have fallen within the safe harbor provisions.

The action on ad review came in executive session as the board received legal advice on that issue.

Direct mail solicitations in criminal cases got more feedback than any other issue considered by the task force, according to its chair, Manny Morales. And, he noted, all but one or two of those who contacted the Bar opposed any restriction.

The panel considered proposals to extend the 30-day ban on direct mail solicitation in personal injury cases to criminal and traffic cases. But the task force unanimously rejected that proposal and wound up making only minor editorial changes to Rule 4-7.4 on contact with potential clients. Bar Ethics Counsel Elizabeth Tarbert said court rulings in other states struck down similar provisions. (The U.S. Supreme Court has upheld the Bar’s 30-day waiting period on direct mail solicitation in personal injury cases.)

Board member Robert Rush was one of three board members who suggested an alternative in which lawyers wait five days for such a mailing and then be prohibited if another attorney has filed a notice of appearance.

He said there are two problems with the present system. One is many people facing a criminal charge are being inundated with solicitations they don’t want, and many of those people already have an attorney.

“It’s a very minimal delay, but I think it’s an important step,” Rush said. “Really, we’re chasing down criminal cases now the way the lawyers got a reputation for chasing down personal injury cases.”

Board member Warren Lindsey agreed.

“I think it’s very important not to interfere with the existing attorney-client relationship,” he said. “It would be a mistake for our board not to have an advertising lawyer check to see if a person is already represented.”

But board member Hank Coxe said the first 48 hours after charges have been filed can be critical.

“I don’t think you can have a system that says you have to check with the clerk’s office [to see if a client is represented before mailing a solicitation],” he said.

Young Lawyers Division President Michael Faehner said many young lawyers and those opening their own practices after working for state attorneys or public defenders rely on such direct mail advertising. Eliminating it, he argued, would favor older, more established lawyers and law firms.

“Most of the advertising is tasteful,” Faehner said. “We’re telling the public what their rights are, along with price advertising.”

The board by a large majority rejected the proposed five-day waiting period.

On lawyer Web sites, Morales said the task force recommended that those be treated as communications made at the request of a potential client. That would mean they would be exempt from advertising rules,

but still governed by other Bar rules that would prohibit them from being deceptive, misleading, or dishonest.

He warned that making Web sites subject to the ad rules would create an enforcement problem because the Bar doesn't have the staff to review them. A Web site, printed out, can involve hundreds of pages of documents.

Tarbert, in response to a question, also said making Web sites subject to the rules would change the status quo. Currently Web sites are covered by most existing Bar ad rules except that law firms can talk about past results and make statements characterizing their quality of legal services. Those would be prohibited under the proposed new rules. Web sites would continue to be exempt from filing requirements.

Board members, though, said it would be inconsistent not to include Web sites under the ad rules. Board member Gary Leppa noted that the Disciplinary Procedure Committee reviewed the issue and voted 5-2 that Web sites should be covered.

"We could not see the difference between the initiative of clicking or Googling and the initiative of picking up Yellow Pages [to find a lawyer]," he said. "You're right, it [enforcement] is a practical problem; it's a horrible practical problem. But we're talking about supporting a recommendation [from the task force] that is an affirmative statement that says a Web site is not an advertisement and is not subject to the rules. We can't do that."

"It is not logical to exempt this area of communications," board member Scott Hawkins added. "It is not logical to say just because we have difficulty enforcing it, you should not regulate it."

The board voted that Web sites are subject to all ad rules, except the requirement that they be filed with the Bar for review. Bar President Kelly Overstreet Johnson said the enforcement issue will have to be studied further.

On other ad rules issues, the board:

- Rejected the task force's recommendation to drop a requirement that attorneys only advertise in areas where they practice. Morales said the task force felt there was no practical way to enforce that provision, but board members argued it was important that lawyers be truthful with their abilities in their ads. Morales also noted that provision was aimed at attorneys who advertise for cases that they intend to refer out.

"The public has the right to receive information about lawyers; it's not the lawyers' right to advertise," said board member Tim Sullivan. "If a lawyer wants to start practicing in personal injury work and goes and studies up and then advertises, that's okay. They practice in that area even if it's their first case. But not people who just refer cases and don't apply themselves to learn the law."

Board member Harold Melville agreed, saying, "When you advertise, you are making a representation that you are competent in that area. I don't think it's that hard to enforce."

- Rejected the task force recommendation, for the same reasons, to drop language that lawyers must disclose in an ad if they intend to refer cases generated by the ad.

- Agreed with the task force recommendation to drop disclosure language required in print ads that the decision on hiring a lawyer should not be based entirely on an ad. Morales said the task force felt the language, which is not required in electronic ads, no longer served any useful purpose.

- Agreed with the task force that a nonlawyer spokesperson in a radio or TV ad does not have to be identified as a nonlawyer if it is clear from the ad that person is not an attorney.
 - Agreed with the task force that a provision should be added making the rules apply to out-of-state attorneys who advertise in Florida.
 - Agreed with the task force on adding language clarifying that advertising rules do not apply to communications between attorneys, between attorneys and family members, between attorneys and current or former clients, and for communications provided at the request of a potential client. Those communications, though, are covered by other Bar rules that such information cannot be false, misleading, or deceitful.
 - Accepted the task force recommendation to expand the safe harbor provisions on what could be included in an ad that did not have to be submitted for Bar review. The board also approved a rearranging of a general rule on ads that creates three categories: information that must be included in ads, information that may be included, and information that cannot be included in ads.
 - Accepting the task force recommendation that lawyer referral services must clearly identify themselves as referral services in their ads.
-

May 15, 2005

Board to take up fees, ads, budget, and section funding

A member-generated petition to amend Bar rules on contingency fees in medical malpractice cases, a decision on section funding issues, and revisiting issues stemming from advertising rule revisions will be on the Board of Governors agenda for its June 3 meeting in Palm Beach.

The board will also take a final look at the 2005-06 Bar budget, make several appointments, get a report on the just-ended legislative session, and hear comments “for the good of the order” from retiring members.

The contingency fee rule amendment came on a petition to be filed with the Supreme Court by former Justice Stephen Grimes and 53 other Bar members, at the behest of the Florida Medical Association.

The petition asks that Bar rules be amended to reflect a constitutional amendment approved by voters last November. That amendment limits contingency fees in medical malpractice cases to 30 percent of the first \$250,000 awarded, not counting costs, and 10 percent above that amount. The FMA has been concerned that lawyers have been getting clients to sign a waiver of their constitutional rights on that issue. Grimes filed a notice with the Bar last month that he intends to file the petition — signed by more than 50 members — with the court on June 29. (See story in the *April 30 News*.)

The Disciplinary Procedure Committee first will consider the petition and report to the board. Anyone wishing to comment to the DPC should send those comments to Tony Boggs, The Florida Bar, 651 E. Jefferson St., Tallahassee 32399-2300. Comments may be faxed to Boggs at (850) 561-5665 or via e-mail to tboggs@flabar.org. Comments must be received by May 19.

At its April 8 meeting, board members got a report and recommendations on section finances. A special committee that has been studying the issue recommended the Bar get an additional \$5 per member of section dues, to offset losses the Bar has incurred in section administrative support.

The committee also suggested revamping the way CLE course revenues are split between the Bar and

sections in such a way that could increase income for sections.

The committee was still presenting its proposals to sections when the board last met, and Bar President Kelly Overstreet Johnson said she expected that would be finished by the June gathering and the board could make a decision. (See story, page 15.)

The board at its last meeting approved an extensive rewrite of Bar advertising rules, based on the recommendations of the Advertising Task Force 2004 and aimed at both simplifying ad rules and tightening them up. The rules now go to the Supreme Court.

The board is expected to discuss ramifications of two major proposed changes in the rules: requiring review and approval from the Bar before radio and TV ads can be aired and making all lawyer and law firm Web sites subject to advertising rules, except the requirement to file them with the Bar for review. (See story, page 1, in the April 30 *Bar News*.)

On the budget, the board will consider any member objections to the proposed 2005-06 spending plan it approved in April, and any last minute changes.

The legislative session was scheduled to end May 6, as this *News* went to press. The Bar was active, supporting increased funding for the Civil Legal Assistance Act, more funding for the courts, and an increased number of judges while opposing attempts to interfere with the Supreme Court's procedural rulemaking authority and any undermining of the independence of the judiciary.

Legislation Committee Chair Sharon Langer and legislative counsel Steve Metz are expected to report on the session and a variety of issues the Bar monitored.

Appointments to be made include:

- Five lawyers for three-year terms on the Florida Lawyers Assistance, Inc., board.
- Three lawyers for two-year terms and one lawyer for a one-year term to the ABA House of Delegates.
- Six lawyers to serve terms on the Florida Legal Services Board of Directors.
- One lawyer to serve an unexpired term that ends December 31, 2006, on the Judicial Qualifications Commission.
- Two attorneys, one each from the territorial jurisdictions of the Second and Fourth DCAs, to serve four-year terms on the Statewide Nominating Commission for Compensation Claims Judges.
- Three lawyers for nomination to the Supreme Court to serve five-year terms on the Florida Board of Bar Examiners.

The meeting will conclude with a chance for retiring board members to comment on challenges facing the Bar and actions they think the Bar should take. "Comments for the good of the order" are designed to allow the departing members to make no-strings-attached suggestions for improving the Bar.

July 1, 2005

Board revisits Web site advertising regulations

The question is whether firm sites should be treated as advertising or information requested by potential clients

By Gary Blankenship

Senior Editor

The Bar Board of Governors has reconsidered a proposed advertising rule amendment on attorney Web sites and decided to make no change for the present while a new committee studies the issue.

The board acted at its June 3 meeting in Palm Beach after hearing from a special committee appointed by outgoing Bar President Kelly Overstreet Johnson.

The issue arose following board action at its April meeting on recommendations from the Advertising Task Force 2004.

Currently, Bar rules treat Web sites as information provided at the request of a potential client, and exempts the sites from the prohibition about discussing results of past cases or making statements characterizing the firm's quality of legal services. Firms are also exempted from the requirement of filing the Web sites with the Bar for review.

The task force had recommended exempting Web sites from all ad regulations, although they would still fall under rules requiring that communications not be false, misleading, or deceitful. Board members in April, however, rejected that, saying in an increasingly technological world Web sites are likely to be the Yellow Pages of the future.

The board instead approved a motion that the sites be subject to all advertising rules, except the requirement that they be filed with the Bar for review.

Manny Morales, who chaired the Advertising Task Force 2004 and the special committee appointed by Johnson, said no one appreciated what a drastic change was made from the current rule when the board motion replaced the task force's recommendation.

"We decided that what we ought to do is maintain the status quo, which is Web sites are subject to the advertising rules with two exceptions, which allows . . . references to past results and statements that characterize the quality of a lawyer's services," Morales said. The panel also recommended that another committee be created just to study regulation of Web sites, he said.

Board member Mike Glazer, who also served on the special committee, agreed the effect of the April vote went further than anyone intended.

"You can list the cases that you've won [under the current rule] which you wouldn't be able to do under the vote we took last time," he said. "You can say, 'We'll do a nice job for you,' and you couldn't do that under what we did last time.

"The sense of this committee was we need to get back to where we were and let's get another group that will focus specifically on this and bring recommendations back in the next Bar year."

Board member Ian Comisky warned that regulating Web sites will be complex, involving questions of multijurisdictional practice and raising questions about where the sites for multi-state firms are located.

Board member Murray Silverstein, who, along with board member Robert Rush and Young Lawyers Division incoming President Jamie Moses made the motion at the April meeting that Web sites should be subject to ad rules, said the three agreed with the special committee's recommendation. He said the intent was to have Web sites included in the advertising rules.

The board voted to reconsider its April vote on that issue and then unanimously accepted the special committee's recommendation.

Incoming Bar President Alan Bookman told the board he welcomed suggestions on who should serve on the new committee that will study Web site regulation. He said that panel would include board members Chobee Ebbets, who was vice chair of the advertising task force, Mayanne Downs, and Comisky.

Morales cautioned that the new committee faces a tough task, saying, "If regulating lawyer advertising is like herding cats, regulating lawyer advertising on the Web is like herding wild, wild cats."

On a related issue, the board approved a technical change to proposed new rule 4-7.2(c)(1)(G), which would prohibit lawyers from making statements that "guarantee results." The board approved the committee's suggestion to switch "guarantee" to "promise." The proposed new rule replaces a section which prohibits a lawyer from making statements that create an "unjustified expectation about the results the lawyer can achieve."

July 15, 2005

Johnson calls her year 'challenging and difficult'

But there were many successes along the way

By Jan Pudlow

Senior Editor

Kelly Overstreet Johnson's year as Bar president was marred by four hurricanes, the untimely death of board member and friend Henry Latimer, and constant attacks on the judiciary peaking during the Terri Schiavo end-of-life controversy.

While calling it "a challenging and difficult year," during her State of The Florida Bar Address at the General Assembly of the Annual Meeting June 24, Johnson said it was also a successful term in many ways.

She noted legislative victories that included the first new judges in three years, the completion of work by the Advertising Task Force, funding for children's legal needs through the new "Kids Deserve Justice" specialty license plates, the creation of a Member Outreach Committee, the redesign of the Bar's Web site, and a new member benefit of free online basic legal research.

Before detailing those accomplishments, Johnson spoke grimly of "unparalleled levels of criticism and political rhetoric" aimed at the judiciary in Florida and across the nation.

"The final disposition of the Schiavo case and attacks on Judge George Greer were without precedent," Johnson said. "It is the first time I recall a judge having to leave his house, have 24-hour security, and be kicked out of his church for following the law and doing his job."

Joining many other state bar presidents and ABA President Robert Grey, Johnson issued a strong statement on the importance of the independence of the judiciary.

"We must continue with these efforts to educate, inform, and explain. The public doesn't understand our system. It should be scary to all of us that many of the public believe judges make rulings based on their personal viewpoints and not precedent. That needs to change," Johnson said.

Turning to the topic that took her to a dozen newspaper editorial boards advocating needed changes to

the judicial nominating commission process, Johnson said, “We need to continue our efforts to get the best people to apply for and serve on our JNCs and on the bench. We need to work hard to do away with the perception, if not the reality, that our JNC system, as it was designed, no longer exists. It is no longer fair and balanced, and instead it is more about partisan politics than credentials.”

While she is optimistic editorial writers understand the need for checks and balances, Johnson said more needs to be done to educate the public. That’s why she created the Special Committee on Judicial Independence, now a permanent, standing committee of the Bar.

Legislative Victories

One legislative success was obtaining new clarifying language to allow for judicial oversight when dealing with administrative functions performed by the clerks of court.

“This issue was critically important to our chief judges. The chief judges must be able to direct those functions which impact the court system, and this language will accomplish that,” said Johnson, especially thanking Sen. Rod Smith, D-Gainesville, and Rep. Joe Negron, R-Stuart, for their help in resolving that issue.

While a movement to strip the court of some or all of its procedural rulemaking authority was beaten back this year, Johnson warned it will likely come back next legislative session.

And while the Supreme Court certified a need for 110 judges and only 55 were funded this year, there is a promise the remaining half will be funded next year. Additionally, there was a pay raise for judges who had not seen one since 2003.

“It wasn’t everything we wanted and needed, but it was a good start,” Johnson said. “We must remember to be ever-vigilant. The Bar and the courts continue to be targets. We must take steps to be proactive instead of reactive.”

Advertising Rules

After more than a year studying rules, taking testimony, and vigorously debating rule changes, the diverse Advertising Task Force chaired by Manny Morales completed its work.

The recommended proposals will be submitted to the Florida Supreme Court for approval.

“It is my hope that these changes will make our advertising rules easier to follow and will define more clearly what is allowed and not allowed under our rules,” Johnson said.

“Most significantly, the proposed changes require that all radio and TV ads be submitted and approved by the Bar before they are aired. It is a significant change from our current rules which merely require filing at the time the ad is run. There will be a 15-day turnaround by the Bar. We believe that is sufficient to satisfy any constitutional concerns.

“Advertising is the single thing most people point to as harming the public’s perception of lawyers and the court system. Making sure lawyer ads comply with our rules before they air can only help.”

Children’s Legal Needs

Giving thanks to former Bar President Ed Blumberg for giving her the idea, Johnson touted the new “Kids Deserve Justice” specialty license plates as a chance to make a difference in a lot of children’s lives.

The \$25 extra fee for the plate goes to The Florida Bar Foundation — with no administrative costs deducted — and supports legal services that help lower-income, disabled, abused, and neglected children.

“This is an excellent way for all lawyers to support the need for children’s legal services,” Johnson said. “I hope you will all join me in purchasing one of these plates.”

Member Outreach

Johnson created the Member Outreach Committee, a permanent standing committee chaired this year by President-elect Hank Coxe.

“Its focus is on inclusion and alleviation of apathy within membership of the Bar, as well as the implementation and coordination of recommendations from diversity symposiums, and between the many sections and committees of the Bar,” Johnson said.

“We are seeing results from our outreach efforts. For the first time, more than 1,500 members submitted committee preference forms, up from 600 the previous year. The committee has made progress in reaching out to our Bar members, and more is expected.”

Member Benefits

Johnson was proud to describe two “outstanding” membership benefits added this year:

- The redesign of The Florida Bar’s Web site — floridabar.org — to make it more user-friendly to navigate.
- Basic legal research online with fastcase available to Bar members at no cost.

“It is one of the most significant member benefits ever offered and one I am very happy to be able to introduce,” Johnson said.

Johnson closed her remarks by saying the Bar “will be left in very capable hands” and she expects a “seamless transition” with President Alan Bookman and President-elect Coxe, who have been longtime Board of Governors members.

With a special nod to her husband of 25 years Hal Johnson, sitting with 4-year-old twin daughters Haley and Alex, Johnson smiled when she said, “Hal has been my number one cheerleader, but he is also going to be the one that is going to be cheering the loudest in an hour or so when I am ‘immediate past president.’”

July 15, 2005

Judge Greer, others honored for professional commitment

A number of Florida Bar members were recognized at The Florida Bar’s recent Annual Meeting in Orlando. Among the awards presented were:

President’s Award of Merit Presented to Judge George Greer

So that he could receive the award in front of his peers, the Judicial Luncheon was the setting for Sixth Circuit Judge George Greer, the trial judge in the Terri Schiavo case, to receive the President’s Award of Merit.

“Those who know Judge Greer and practice in front of him believe he is the ideal jurist,” said President Kelly Overstreet Johnson. “He is fair, he is impartial, and his rulings are based on law, not emotions and

not politics.

“Despite a stellar career, Judge Greer’s knowledge and integrity were monitored and commented upon by the world at large, as he weighed the facts of an extremely difficult case, and applied the law as he saw it. Yet Judge Greer, a hardworking judge committed to the rule of law, to the independence of the judiciary, and to the fundamentals of American democracy, received as a result of his efforts hate mail and death threats resulting in 24-hour security, had to move out of his home, and was asked to leave his church, all in the course of doing his job.

“For his longstanding dedication to our system of justice, for his work in the Terri Schiavo case, and for the personal hardships he has suffered as a result, it is my great honor to present Judge George Greer with the President’s Award of Merit.”

Participants at the Judicial Luncheon responded with a rousing standing ovation.

In accepting the award, Judge Greer said: “When you honor me today, you really honor the entire judiciary.”

President’s Award of Merit Presented to Jerry Beer

Beer was described by Johnson as an outstanding tax lawyer, wonderful husband and father, friend, and dedicated Board of Governors member who toiled to come up with a workable change to the methodology for section subsidies by the Bar.

“This was a very difficult and time-consuming job, requiring input and suggestions from many people,” Johnson said. “Jerry spent hundreds of hours analyzing and comparing different ways of computing how the subsidies could work. Jerry did a great job and ultimately the board accepted Jerry’s recommendations in a fashion that most of those involved thought was fair.”

Beer’s award recognized his “leadership during eight years of service on the Board of Governors, including two terms as chair of the Budget Committee, and service on the Executive Committee, and for your wise counsel, loyalty, and friendship.”

President’s Award of Merit Presented to Manny Morales

President Johnson witnessed Morales’ perspectives, leadership abilities, and extraordinary sense of humor as a member of the Bar Board of Governors.

“He needed all of those skills when he agreed to chair the 2004 Advertising Task Force,” she said, adding that she purposely appointed a committee with many diverse points of view on advertising—“from those who thought advertising should be banned to those who thought there should be no restrictions whatsoever.”

The award was presented to Manuel Morales for “your extraordinary service and outstanding leadership in the study of lawyer advertising rules and suggested changes thereto. Your efforts have strengthened protection of the citizens of Florida while balancing the rights afforded commercial speech. Your absolute and unwavering dedication to The Florida Bar, and to the lawyers and citizens of our state, deserves our highest commendation and sincere gratitude.”

G. Kirk Haas Award Presented to Ray Abadin

“Ray has worked extremely hard the last several years to improve communications and cooperation between the Cuban American Bar Association and The Florida Bar,” President Johnson said.

“He is immediate past president of CABA, and was instrumental in helping me reach out to minorities and get them involved in The Florida Bar. Ray also chaired this year’s very successful diversity symposium,

which brought together representatives of minority and specialty bars from across the state to learn about diversity in legal employment and to dialogue with Bar leadership about inclusion issues.”

Abadin is the current chair of CABA’s foundation, which administers endowed scholarships at three law schools, as well as raises money to create additional scholarship funds for minority law students.

The Government Law Section Claude Pepper Outstanding Government Lawyer Award Presented to Jack Shreve

In the nomination for this award, Jack Shreve was described as “one of the finest public servants that Florida has ever known and among the state’s most outstanding lawyers for the past quarter-century.”

Shreve, who currently serves as senior general counsel for consumer affairs in the Office of the Attorney General, was awarded the Claude Pepper Outstanding Government Award, which recognizes extraordinary and exemplary contributions by practicing government lawyers.

Following law school, Shreve was a prosecutor in Brevard County and a city attorney for Cocoa Beach before being elected to the House of Representatives, where he served with distinction for two terms from 1970-74. He then joined the Florida Department of State as public counsel, where for 25 years he advocated for Floridians in utility-related matters. After his retirement in 2003, Attorney General Charlie Crist asked him to become an advisor on consumer affairs issues.

LOU FROST, who retired last year after serving for 36 years as the Fourth Circuit Public Defender, received the Criminal Law Section’s Selig Goldin Award during the Bar’s Annual Meeting from section Chair Paul Zacks. Frost has worked in the public defender’s office since the 1963 *Gideon* decision, and was appointed as the Fourth Circuit public defender by Gov. Claude Kirk in 1968. He was never opposed in 10 runs for reelection. Frost helped set up public defender offices around the country, has been active in the Criminal Law Section, and has seen alumni from his office go on to 20 circuit and county judgeships, two federal district judgeships, and one seat on the Florida Supreme Court.