BRING TO MEETING

REAL PROPERTY, PROBATE & TRUST LAW SECTION
(www.flabarrpptl.org)

Executive Council Meeting

AGENDA

Renaissance Vinoy Resort
St. Petersburg, Florida
Saturday, May 24, 2003
9:30 a.m. - 1:00 p.m.

THIS IS YOUR ONLY COPY

AGENDA INDEX

Real Property, Probate and Trust Law Section
EXECUTIVE COUNCIL MEETING
Renaissance Vinoy Resort, St. Petersburg

Saturday, May 24, 2003

I. **Presiding** — Steven L. Hearn, Section Chair

II. **Attendance** — John B. Neukamm, Secretary

III. **Minutes of Previous Meeting** — John Neukamm, Secretary
1. Approval of March 1, 2003, Executive Council Meeting Minutes, pp. 1 - 137

IV. **Chair's Report** — Steven L. Hearn
1. Ratification of Executive Committee Approval of Lawrence Beyer Resolution p. 138

V. **Chair-Elect's Report** — Louis B. Guttmann
1. 2003-2004 Executive Council Meeting Schedule p. 139

VI. **Liaison with Board of Governors Report** — Alan B. Bookman

VII. **Treasurer's Report** — Melissa Jay Murphy
1. July 2002 - May 9, 2003 Financial Summary p. 140

VIII. **Circuit Representative's Report** - Rohan Kelley, Director
~ Letter re: Organ Tissue, Marrow and Blood Donations as Proposed Project of the RPPTL Section p. 141

- Morris Silberman — Circuit Representatives' Judicial Liaison
- Jeffrey T. Sauer — Northern District Director
- Hugh C. Umstead — Middle District Director
- Daniel L. Adams — Southern District Director

1. First Circuit --Sally Bussell; W. Christopher Hart; Jeffrey T. Sauer
2. Second Circuit — Joseph R. Boyd; James C. Conner, Frederick R. Dudley; Russell D. Gautier
3. Third Circuit — William Haley; Guy W. Norris, Shuler Austin Peele; Clay A. Schnitker; Michael S. Smith
4. Fourth Circuit — Barry Ansbacher; Bill Blackard, Jr.
5. Fifth Circuit — Franklin Town Gaylord; Del G. Potter
6. Sixth Circuit — Robert Altman; Joseph W. Fleece, Jr.; Joseph (Jay) W. Fleece, III; Roger A. Larson; Marilyn M. Polson; Hugh C. Umstead; Robert H. Willis
7. Seventh Circuit — G. Laurence Baggett; E. Channing Coolidge; Judge Robert Pleus; Michael A. Pyle
8. Eighth Circuit — Sam W. Boone, Jr.; James Daniels Salter
9. Ninth Circuit — Russell W. Divine; Fred W. Jones; Pamela O. Price; David H. Simmons; F. Linton Sloan; Laura Sundberg; Charles D. Wilder; G. Charles Wohlust

10. Tenth Circuit — Gregory R. Deal; Bert J. Harris; Senator John F. Laurent; J. Ross Macbeth; Robert S. Swaine

11. Eleventh Circuit — Stuart H. Altman; Carlos Battle; Kenneth D. Baxter; Michael A. Berke; F. Clay Craig; Thomas Eagan; Joseph P. George, Jr.; Nelson C. Keshen; Judge Maria Korvick; Silvia B. Rojas; Donald W. Stobs, Jr.; Michael J. Swan; Diana S. C. Zeydel

12. Twelfth Circuit — Terri S. Costa; James M. Nixon; L. Howard Payne; P. Allen Schofield; Barry F. Spivey

13. Thirteenth Circuit — Lynwood Arnold; Debra Boje; Thomas N. Henderson; Greg McCoskey; Marsha G. Rydberg; Judge Susan Sexton; Brian C. Sparks; Gwynne Young

14. Fourteenth Circuit — J. Ernest Collins; Cora Nell Haggard; Charles S. Isler; Henry Alan Thompson

15. Fifteenth Circuit — John Banister; Harry Chauncey, Jr.; John W. Little, III; Glenn Mednick; Gary J. Nagle; Eugene E. Shuey; Judge John D. Wessel; Jerome L. Wolf

16. Sixteenth Circuit — Thomas D. Wright

17. Seventeenth Circuit — Daniel L. Adams; Marvin T. Bornstein; Robert B. Judd; Joseph L. Schwartz; Michelle Trca; David Weisman

18. Eighteenth Circuit — Jerry W. Allender; Richard S. Amari; Lawrence W. Carroll, Jr.; Keith Kromash; Robert William Wattwood

19. Nineteenth Circuit — Richard J. Dungey; Douglas Gonano

20. Twentieth Circuit — S. Dresden Brunner; Guy S. Emerich; William M. Pearson; Dennis R. White

IX. General Standing Committee Action Items

1. Web Site-Information Technology Committee
   a. Internet Web Site Redesign Requirements and Proposal pp. 142 - 164
2. Amicus Committee
   a. Ratification of Executive Committee Approval of Filing an Amicus in the Case of Menotte v. Raborn p. 165
3. Ancillary Business, MDP and MSP Committee
   a. Professional Ethics Committee of The Florida Bar Proposed Advisory Opinion 2-8 pp. 166 - 176

X. Report of General Standing Committees

Louis B. Guttmann, Director and Chair-elect

1. **Actionline** — Dresden Brunner, Chair; William Pearson, Vice-Chair; Patricia Hancock, Vice-Chair

2. **Ancillary Business, MDP and MSP** — Charles Robinson, Chair; Norwood Gay, Vice-Chair

3. **Amicus Coordination** — John Little, Co-Chair; Bob Goldman, Co-Chair

4. **Budget** — Melissa Jay Murphy, Chair; Pamela O. Price, Vice-Chair

5. **CLE Seminar Coordination** — Patricia P. Jones, Chair and Real Property Coordinator; James A. Herb, Vice-Chair and Probate & Trust Coordinator
   1. 03-04 Seminar Schedule p. 177-178
   2. Report p.179 -181

6. **2003 Convention Coordinator** — George J. Meyer, Chair

7. **Florida Bar Journal** — Richard R. Gans, Co-Chair, Probate & Trust Coordinator; Bill Sklar, Co-Chair, Real Property Coordinator

8. **Florida Bar News** — John Fitzgerald, Chair; Phillip Baumann, Vice-Chair

9. **Florida Lawyer's Support Services, Inc. (FLSSI)**

10. **Legislative Review** — Sandra F. Diamond, Chair; Burt Bruton, Vice-Chair
    1. Legislative Summaries pp. 182 - 193

11. **Legislative Update** — Peggy Rolando, Co-Chair; Laura Sundberg, Co-Chair; Aug 1st Deborah P. Goodall, Vice-Chair; Silvia Rojas, Vice-Chair

12. **Liaison Committees:**
    a. **ABA:** George Meyer, Ed Koren
    b. **CLE Committee:** Patricia Jones
    c. **Clerks of the Circuit Court:** Joe George
    d. **Department of Revenue:** Timothy Flanagan; Charles Ian Nash
    e. **Environmental Law Section:** Alan B. Fields
    f. **Florida Bankers Association:** Stewart Andrew Marshall, III; Julie Williamson
    g. **Judiciary:** Judge George W. Greer; Judge Melvin B. Grossman, Judge Maria Korvick, Judge Susan G. Sexton, Judge Winifred Sharp,, Judge Morris Silberman, Judge Patricia Thomas
    h. **Law Schools:** Phillip Baumann p. 194
    i. **Out of State:** Mike Stafford, Hollis Russell, Pamela Stuart
    j. **Young Lawyer's Division:** S. Katherine Frazier

13. **Model and Uniform Acts** - Charles Carver, Chair; Eloisa Rodriguiz-Dod, Vice-Chair; J. Eric "Tate" Taylor, Vice-Chair

14. **Pro Bono** — Andrew O'Malley, Chair

15. **Public Awareness & Dignity in Law** - Julie Williamson and Bob Goldman, Co-Chairs

16. **Sponsor Coordinators** — George Meyer, Chair; Charles Gehrke, Vice-Chair; Peggy Rolando, Vice-Chair

17. **Strategic Planning Meeting** — Tom Smith, Co-Chair; Bruce Stone, Co-Chair

18. **Web Site-Information Technology** — Sam W. Boone, Chair; Silvia Rojas, Vice-Chair

XI. **Report of Probate and Trust Law Division Committees**
Laird A. Lile, Division Director

1. **Charitable Planning and Organizations** — Barbara Landau, Chair; Michael P. Stafford, Vice-Chair

2. **Electronic Filing** — Rohan Kelley, Chair; Bruce Stone, Vice-Chair

3. **Estate and Trust Tax Planning** — Charles Ian Nash, Chair; Guy Emerich, Vice-Chair; Jerome Wolf, Vice-Chair

4. **Guardianship Law** — Glenn Mednick, Chair; David Carlisle, Vice-Chair
   1. Report pp. 195 - 196

5. **IRA's and Employee Benefits** — Richard S. Franklin, Chair; Bill Horowitz, Vice-Chair

6. **Liaison with Corporate Fiduciaries** — Paul E. Roman, Co-Chair, Michael A. Dribin, Co-Chair; George Lange, Corporate Fiduciary Chair
   1. 2003 Attorney/Trust Officer Liaison Conference Brochure pp 196a - 196d

7. **Liaison with Elder Law Section** — Charles F. Robinson

8. **Liaisons with Tax Section** — Lauren Detzel; Donald R. Tescher

9. **Power of Attorney & Advance Directive Law** — Michael L. Foreman, Chair; Donna-Lee Roden, Vice-Chair

10. **Principal and Income Law** — Edward F. Koren, Chair; James Ridley, Co-Vice-Chair; Donald Tescher, Co-Vice-Chair

11. **Probate and Trust Litigation** — William F. Belcher, Chair; Stacy Cole, Co-Vice-Chair; Jack A. Falk, Jr., Co-Vice-Chair

12. **Probate and Trust Professionalism** — Ross Macbeth, Co-Chair, Joel Sharp, Co-Chair; David M. Garten, Vice Chair

13. **Probate Forms** — John Arthur Jones, Chair Emeritus; William R. Platt, Chair; Donna Lee Roden, Co-Vice-Chair; Robert Willis, Co-Vice- Chair; Charles Wohlust, Co-Vice-Chair

14. **Probate Law** — Debra Boje, Chair

15. **Probate Rules** — Brian J. Felcoski, Chair
   1. Report pp 197 - 212

16. **Trust Law** — Brian J. Felcoski, Chair; Barry Spivey, Co-Vice-Chair; Laura Stephenson, Co-Vice-Chair
   1. Report pp 213 - 216

17. **Wills, Trusts and Estates Certification Review Course** — Nelson C. Keshen, Chair; David G. Armstrong, Vice-Chair

XII. **Real Property Division Action Items**
   1. Title Issues and Standards Committee
      a. Consideration of Proposed Title Standards re: Bankruptcy (chapter 2) and Judgements (chapter 9) pp 217 - 234
   2 Condominium and Planned Development Committee
      a Proposed Amendment to Florida Statues relating to MRTA pp 235 - 239

XIII. **Report of Real Property Division Committees**
Julius J. Zschau, Division Director

1. **Affordable Housing** — Marilyn Kershner, Chair; Christian F. O'Ryan, Vice-Chair

2. **Bankruptcy, Creditor Rights, Real Estate** — Marsha Rydberg, Chair; Alberto Gomez-Vidal, Vice-Chair

3. **Condominium and Planned Development** — Robert Schwartz, Chair; Michael Gelfand, Vice-Chair; Robert S. Freedman, Vice-Chair

4. **Construction Law** — Lee A. Weintraub, Chair; Bruce Alexander, Vice-Chair; Michael C. Sasso, Vice Chair

5. **FAR/BAR Committee and Liaison to FAR** — Bill Haley, Chair; Tom Henderson, Vice-Chair

6. **Development and Governmental Regulation of Real Estate** — William Sklar, Chair; Charles D. Brecker, Vice Chair; James Brown, Vice-Chair

7. **Electronic Applications in Real Estate Transactions** - Skip Strauss, Chair, Thomas Ball, Vice-Chair, Susan Spurgeon, Vice Chair

8. **Land Trusts and REITS** — Andrew O'Malley, Chair; Robert G. Stern, Vice-Chair

9. **Landlord and Tenant** — Lawrence Jay Miller, Chair; George A. Pincus, Vice-Chair; Gary P. Simon, Vice-Chair

10. **Legal Opinions** — David Brittain, Chair; Kenneth E. Thornton, Vice-Chair

11. **Liaison with FLTA** — Alan McCall, Chair; Charles Birmingham, Vice-Chair; John S. Elzeer, Vice Chair; Michael Moore, Vice-Chair

12. **Mobile Home and RV Park** — Jonathan J. Damonte, Chair; Daniel W. Perry, Vice-Chair

13. **Mortgages and Other Encumbrances** — William McCaughan, Co-Chair; Jeffrey T. Sauer, Co-Chair; Ralph R. Crabtree, Vice-Chair; Silvia B.Rojas, Co-Chair

14. **Property Rights in Real Property** — Richard J. Dungey, Chair; Fred Busack, Vice-Chair

15. **Real Estate Certification Review Course** — Silvia B. Rojas, Chair; Victoria Carter, Vice-Chair; Robert G. Stern, Vice-Chair

16. **Real Property Forms** — Lewis Ansbacher, Co-Chair; Michael Pyle, Co-Chair; Alan B. Fields, Vice-Chair

17. **Real Property Litigation** — Michael S. Smith, Chair; Lawrence Miller, Vice-Chair; Eugene E. Shuey, Vice-Chair

18. **Real Property Problems Study** — Robert Hunkapiller, Chair; Peggy Rolando, Vice-Chair; Richard Taylor, Vice-Chair
    1. Report pp 240 - 259

19. **Real Property Professionalism** — Homer Duval, Chair; Kenneth Thornton, Vice-Chair; Ruth B. Kinsolving, Vice-Chair

20. **Title Insurance and Liaisons** — Norwood Gay, Chair; Burt Bruton, Vice-Chair

21. **Title Issues and Standards** — Robert Graham, Co-Chair; Patricia Jones, Co-Chair; Stephen Reynolds, Vice-Chair

[Approved at the Executive Council meeting on _____]

MINUTES
of the

Real Property, Probate and Trust Law Section
EXECUTIVE COUNCIL MEETING
(March 1, 2002)
(Hotel Healdsburg, California)

Steven L. Hearn, Section Chair, presiding

The Section Chair, Steven L. Hearn, called the meeting to order at 8:10 a.m.

Attendance – John Neukamm, Secretary.

The attendance roster was circulated by the Secretary to be initialed by Council members in attendance at the meeting. Attendance is shown cumulatively on circulated attendance rosters. It is the responsibility of the member to bring any corrections promptly to the attention of the Secretary.

Minutes of Previous Meeting – John Neukamm, Secretary.

The Minutes of the Executive Council Meeting of November 22, 2002, were included in agenda packet. The Section Chair requested a motion to approve the Minutes and upon motion duly made, seconded and unanimously carried, the Minutes were approved.

Chair's Report – Steven L. Hearn, Chair.

The Chair reportedmaterials are included in the agenda packet concerning the December BOG meeting in New York, including the legislative agenda. He noted the proposed Clerk's amendment to the filing fee, which would allow for a paper surcharge for non-electronic filings, received significant opposition at that meeting. All other proposed Section legislation was approved after the proposed Clerk's amendment was withdrawn from consideration. He had productive meetings with current and future Bar leaders concerning the relationship between the Bar and the Section. He also reported the Long Range Planning Committee has made the following recommendations for nominations to be voted upon at the Convention (which will be included in the next issue of *ActionLine*):

Chair: Lou Guttman
Chair Elect: Laird Lile
Real Property Division Chair: Jay Zschau
Probate Division Chair: Rohan Kelly
Treasurer: Melissa Murphy
Secretary: John Neukamm
Circuit Representatives Director: George Meyer
Legislative Chair: Sandy Diamond

Chair Elect's Report – Louis B. Guttman, III, Chair-Elect.

The Chair Elect reported on the upcoming meeting schedule, as set forth in the agenda packet. However, he noted the Pensacola meeting will take place on November 7 – 9, rather than the following weekend, as set forth in the schedule. This will allow the Section to enjoy the Blue Angels show and the Pensacola Art Festival. The out-of-state meeting will take place in Hawaii during the third week of February, 2004.

Liaison with Board of Governors Report – Alan B. Bookman.

Alan reported Article V funding issues will be reviewed by the Legislature this session and that there are openings available on all JNCs.

Treasurer's Report – Melissa Jay Murphy, Treasurer.

Steve reported on behalf of Melissa that her report is included in the agenda packet.

Circuit Representative's Report – Rohan Kelley, Circuit Representatives' Director. No report.

Morris Silberman, Circuit Representatives' Judicial Liaison
Jeffrey T. Sauer, Northern District Director,
Hugh C. Umstead, Middle District Director
Daniel L. Adams, Southern District Director

General Action Items:

1. **Budget Committee–**

a. Ratification of Executive Committee Approval of Four Budget Amendments totaling $87,500. The Section Chair requested a motion to ratify the Executive Committee's approval of the four budget amendments included in the agenda packet, and upon motion duly made, seconded and unanimously carried, the amendments were approved.

b. Ratification of Executive Committee Approval of 2003 – 2004 Budget.The Section Chair requested a motion to ratify the Executive Committee's approval of the 2003 – 2004 Section budget included in the agenda packet, and upon motion duly made, seconded and unanimously carried, the budget was approved.

IX. Report of the General Standing Committees – Louis B. Guttman, III, Director and Chair-Elect.

Actionline – Dresden Brunner, Chair; William Pearson and Patricia Hancock, Co-Vice Chairs. Lou reported Dresden has put together a production schedule and is doing a great job.

Ancillary Business, MDP and MSP – Charles Robinson, Chair; Norwood Gay, Vice Chair. Ruth Kinsolving reported the Florida Bar's MJP Committee is about to issue its final report to address temporary appearance by out-of-state litigation and transactional lawyers in Florida. She will submit a copy of that report for inclusion in the Minutes once it is issued. Norwood reported on the Draft Advisory Opinion 02-8 included in the agenda packet.

Amicus Coordination – John Little and Bob Goldman, Co-Chairs. No cases to report.

Budget – Melissa Jay Murphy, Chair; Pamela O. Price, Vice Chair. No further report.

CLE Seminar Coordination – Pat Jones, Chair and Real Property Coordinator; James A. Herb, Vice Chair and Probate & Trust Coordinator. – The following information was included with the agenda packet:

a. 2003 – 2004 Seminar Schedule
b. Estate & Trust Litigation Seminar Brochure
c. Overview of Real Property Litigation Issues Seminar Brochure
d. Representing the State Licensed Builder Seminar Brochure
e. 2003 Wills, Trusts & Estates/Real Estate Certification Review Course Brochures.

As the Section's liason to the Bar's CLE Committee, Pat also reported the Bar's CLE Committee is putting together a program workshop in St. Augustine on April 26 – 28 to provide information on putting together a program or seminar, including alternate format issues.

Convention 2003 Coordinator – George J. Meyer, Chair. Steve reported the Convention will take place at the Vinoy in St. Pete and will include a formal event on Friday evening.

Florida Bar Journal – Richard R. Gans, Chair and Probate & Trust Coordinator; Bill Sklar, Co-Chair and Real Property Coordinator. No report.

Florida Bar News – John Fitzgerald, Chair; Phillip Baumann, Vice-Chair. No report.

Florida Lawyer's Support Services, Inc. (FLSSI) - No report.

Legislative Review – Sandra F. Diamond, Chair; Burt Bruton, Vice-Chair. – Information on the Intestacy Statute (F.S. §732.103) was attached to the agenda packet. Sandyreported the Legislative session is about to begin. Pete and members of his firm could not attend this meeting due to their need to be in Tallahassee. Sandy reported on the status of proposed Section legislation, some of which has already been filed.

Legislative Update – Peggy Rolando and Laura Sundberg, Co-Chairs; Deborah P. Goodall and Silvia Rojas, Co-Vice-Chairs. Peggy reported the Committee is hoping there will be legislation so there will be something to talk about at the Legislative Update Seminar.

Liaisons – Bob Willis, Coordinator. No reports.

a. ABA: George Meyer and Ed Koren.

b. CLE Committee: Patricia Jones

c. Clerks of the Circuit Court: Joe George.

d. Department of Revenue: Timothy Flanagan.

e. Environmental Law Section: Alan B. Fields.

f. Florida Bankers Association: Stewart Andrew Marshall, III, and Julie Williamson.

g. Judiciary: Judge Melvin B. Grossman, Judge Susan G. Sexton, Judge Winifred Sharp, Judge Morris Silberman, Judge Patricia Thomas, and Judge George Greer.

h. Law Schools: Phillip Baumann.

i. Out of State: Mike Stafford, Hollis Russell, Pamela Stuart.

j. Young Lawyers Divison: S. Katherine Frazier.

Model and Uniform Acts – Charles Carver, Chair; Eloisa Rodriguiz-Dod and J. Eric "Tate" Taylor, Co-Vice-Chairs. No report.

Pro-Bono – Andrew O'Malley, Chair. Drew reported the affordable housing lawyers are always looking for attorneys to provide pro bono assistance.

Public Awareness and Dignity in Law - Julie Williams and Robert Goldman, Co-Chairs. No report.

Sponsor Coordinators – George Meyer, Chair; Charles Gehrke and Peggy Rolando, Co-Vice-Chairs. Peggy reported that she and George are in the process of contacting existing sponsors to re-enlist them; they are also looking for new sponsors.

Strategic Planning – Tom Smith and Bruce Stone, Co-Chairs. No report.

Web Site/Information Technology – Sam W. Boone, Chair; Silvia Rojas; Vice Chair. Sam reported the Strategic Planning meeting focused on technology issues and the desire to utilize technology to disseminate information to Section members. There was a very successfully launch of *ActionLine* via email; only 2 of 5,000 recipients asked to be removed from the email list.

X. **Real Property Division Action Items:**

1. **Title Issues and Standards Committee** -Uniform Title Standards Revisions to Chapters 1, 2 and a portion of Chapter 3. Pat Jones explained the Committee's decision to bring the Title Standards for consideration at the out-of-state meeting. She provided some history on the status of the revisions to the Title Standards, including her Committee's frustration about the pace of the revisions to those Standards. Her Committee's goal is to recommend three standards for approval at each Executive Council meeting and is expecting to post the updated Standards on the Section web-site. Based upon Marsha Rydberg's objection to some of the bankruptcy standards, Pat withdrew Chapter 2 from consideration. The Committee's motion to approve the remaining proposed Standards was approved.

XI. **Report of the Real Property Division Committees – Julius J. Zschau, Division Director.**

1. **Affordable Housing** – Marilyn Kershner, Chair; Christian O'Ryan, Vice Chair. No report.

2. **Bankruptcy, Creditor Rights and Real Estate** – Marsha Rydberg, Chair; Alberto Gomez-Vidal, Vice Chair. No report.

3. **Condominium and Planned Development** – Robert Schwartz, Chair; Michael Gelfand and Robert S. Freedman, Co-Vice-Chairs. No report.

4. **Construction Law** – Lee A. Weintraub, Chair; Bruce Alexander and Michael C. Sasso, Co-Vice-Chairs. Lee reported the Committee's annual workshop will take place on March 27 and 28 in Ft. Lauderdale. He provided an update on the Committee's efforts to obtain certification by September.

5. **FAR/BAR Committee and Liaison to FAR** – Bill Haley, Chair; Tom Henderson, Vice Chair. Bill reported the Committee has been meeting to review the contract form. He explained the Committee has been asked to develop a separate "free look" contract. Based upon a "straw poll," most of the Council members were opposed to such a form. He also reported on the nature of various legislation proposed by real estate brokers.

6. **Development and Governmental Regulation of Real Estate** – William Sklar, Chair; Charles D. Brecker and James Brown, Co-Vice-Chairs. No report.

7. **Electronic Applications in Real Estate Transactions** – Skip Strauss, Chair; Thomas Ball and Susan Spurgeon, Vice Chairs. No report.

8. **Land Trusts and REITS** – Andrew O'Malley, Chair; Robert G. Stern, Vice Chair. No report.

9. **Landlord and Tenant** – Lawrence Jay Miller, Chair; George A. Pincus and Gary P. Simon Co-Vice-Chairs. No report.

10. **Legal Opinions** – David Brittain, Chair; Kenneth E. Thornton, Vice Chair. No report.

11. **Liaison with FLTA** – Alan McCall, Chair; John S. Elzeer and Charles Birmingham, Co-Vice-Chairs. Alan reported FLTA met recently in Tallahassee and is proposing legislation to

provide that junior mortgages and home equity loans can only be insured through approved forms. He also described a new bulletin to address illegal kickbacks. Jay welcomed Michael Moore, the Committee's Vice Chair, as a new Council member.

12. **Mobile Home and RV Park** – Jonathan J. Damonte, Chair; Daniel W. Perry, Vice Chair. No report.

13. **Mortgages and Other Encumbrances** – William McCaughan, Silvia B. Rojas and Jeffrey T. Sauer, Co-Chairs, Ralph R. Crabtree Vice Chair. Jeff reported on Committee meetings and an upcoming seminar.

14. **Property Rights in Real Property** – Richard J. Dungey, Chair; Fred Busack, Vice Chair. No report.

15. **Real Estate Certification Review Courses** – Sylvia B. Rojas, Chair; Victoria Carter and Robert G. Stern, Co-Vice-Chairs. Sylvia reported the seminar brochures are available and all speakers are in place.

16. **Real Property Forms** – Lewis Ansbacher and Michael Pyle, Co-Chairs; Alan B. Fields, Vice-Chair. No report.

17. **Real Property Litigation** – Michael S. Smith, Chair; Lawrence Miller and Eugene E. Shuey, Co-Vice-Chairs. No report.

18. **Real Property Problems Study** – Robert Hunkapillar, Chair; Peggy Rolando and Richard Taylor, Co-Vice-Chairs. No report.

19. **Real Property Professionalism** – Homer Duvall, Chair; Ruth B. Kinsolving and Kenneth Thornton, Co-Vice Chairs. No report.

20. **Title Insurance and Liaisons** – Norwood Gay, Chair; Burt Burton, Vice-Chair. Information concerning the Draft Advisory Opinion discussed during the Ancillary Business Committee's report was included in the agenda packet. No further report.

21. **Title Issues and Standards** – Robert Graham and Patricia Jones, Co-Chairs; Stephen Reynolds, Vice-Chair. No report.

XII. Report of the Probate and Trust Law Division Committees – Laird A. Lile, Division Director.

1. **Charitable Organizations and Planning Committee** – Barbara Landau, Chair, Michael P. Stafford, Vice-Chair. The Committee's report was included in the agenda packet.

2. **Electronic Court Filing**– Rohan Kelley, Chair; Bruce Stone, Vice-Chair. Rohan reported $10,000 was previously appropriated to allow the Committee to proceed with its project. He provided a status report to the Council, including his meetings with the Clerks in Tallahassee. He questioned whether the Section should proceed, in light of the withdrawl of the Section's support of the Clerk's legislation concerning filing fees. The sense of the members in attendance was that he should proceed as previously authorized but that he would need to obtain a replacement to spearhead the project due to his impending duties as Probate Law Chair.

3. **Estate and Trust Tax Planning** – Charles Nash, Chair; Jerome Wolf and Guy Emerich, Co-Vice-Chairs. A report on F.S. §222.22 was included in the agenda package. No further report.

4. **Guardianship Law** – Glen Mendick, Chair; David Carlisle, Vice Chair. No report.

5. **Qualified Plans and Employee Benefits** – Richard S. Franklin, Chair; William witz, Vice Chair. No report.

6. **Liaison with Corporate Fiduciaries** – Paul E. Roman and Michael A. Dribin, Co-Chairs; George Lange, Corporate Fiduciary Chair. No report.

7. **Liaison with Elder Law Section** – Charles F. Robinson. No report.

8. **Liaison with Tax Section** – Lauren Detzel, Donald R. Tescher. No report.

9. **Power of Attorney and Advance Directive Law** – Michael L. Foreman, Chair; Donna Lee Roden, Vice-Chair. No report.

10. **Principal and Income Law** – Edward F. Koren, Chair; James Ridley and Donald Tescher, Co-Vice-Chairs. No report.

11. **Probate and Trust Litigation** – William F. Belcher, Chair; Stacy Cole and Jack A. Falk, Co-Vice-Chairs. The Committee's report was included in the agenda packet. Laird also complimented Fletcher on putting together a fantastic seminar.

12. **Probate and Trust Professionalism** – Ross Macbeth and Joel Sharp, Co-Chairs; David Garten, Vice Chair. No report.

13. **Probate Forms** – John Arthur Jones, Chair Emeritus; William R. Platt, Chair; Donna Lee Roden, Charles Wolhust and Robert Willis, Co-Vice-Chairs. No report.

14. **Probate Law** – Deborah Boje, Chair. No report.Laird noted Richard Warner has resigned from the Council but will be encouraged to re-join when he is ready to do so.

15. **Probate Rules** – Brian J. Felcoski, Chair. The Committee's report was included in the agenda packet.

16. **Trust Law** – Brian J. Felcoski, Chair; Barry Spivey and Laura Stephenson , Co-Vice Chairs. The Committee's report was included in the agenda packet.

17. **Wills, Trusts and Estates Certification Review Course** –Nelson C. Keshen, Chair, David G. Armstrong, Vice-Chair. No report.

There being no further business, the meeting was adjourned at 10:15 a.m.

Respectfully Submitted,

John Neukamm,
Secretary

Report of the Special Commission on the Multijurisdictional Practice of Law 2002

To:
Tod A. Aronovitz
President
The Florida Bar

March 17, 2003

TABLE OF CONTENTS

I. HISTORY, COMPOSITION AND WORK OF FLORIDA MJP COMMISSION II

In July 2000, Martha Barnett, then president of the ABA, appointed a commission to study the multijurisdictional practice of law and sought input from state bars and interested parties. The multijurisdictional practice of law (MJP) can best be defined as a lawyer providing legal services in a jurisdiction where that lawyer is not licensed to practice law. The legal services can be in any area of the law and may take place at any stage of the representation. The client can either be from the state where the lawyer is licensed (the home state) or where the lawyer wishes to practice or provide the services (the host state). The activity usually takes place on a temporary or occasional basis but at times may be regular and permanent.

In response to the ABA's request for input, Terrence Russell established The Florida Bar Special Commission on the Multijurisdictional Practice of Law ("Commission I"). The ABA issued an interim report in November, 2001. Commission I studied the report and, in March, 2002, made several recommendations to the Board of Governors all of which were adopted by the Board. The recommendations made by Commission I and approved by the Board can be found in Appendix "A." Thereafter, in August, 2002, the ABA adopted a

final MJP report and recommendations which varied in some respects from the interim report. The ABA's final recommendations can be found in Appendix "B."

In order to study the final report and make recommendations for rule changes, President Tod Aronovitz appointed a second MJP Commission ("Commission II). Commission II's mission was to study the report and make recommendations for rule changes in light of the policies adopted by the Board in March, 2002. Commission II is comprised of the following members:

John A. Yanchunis, Chair
Tampa, Florida

Anthony Abate
Sarasota, Florida

Edward Robert Blumberg
Miami, Florida

Mr. Alan C. Brandt, Jr.
Fort Lauderdale, Florida

Michele Kane Cummings
Fort Lauderdale, Florida

Thomas M. Ervin, Jr.
Tallahassee, Florida

Linnes Finney, Jr.
Fort Pierce, Florida

Marvin C. Gutter
Boca Raton, Florida

William Kalish
Tampa, Florida

Ruth Barnes Kinsolving
Tampa, Florida

Albert J. Krieger
Miami, Florida

Bruce Douglas Lamb
Tampa, Florida

David Milian
Miami, Florida

Tom Pobjecky,
Florida Board of Bar Examiners
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The Commission's first meeting was in September, 2002 and was an organizational meeting to discuss the issues and to set future meetings. The Commission next met in October, 2002. At that time, Chair Yanchunis divided the Commission into three subcommittees. The first subcommittee was assigned the task of looking at the recommended amendments to Model Rule 5.5, Florida Bar rule 4-5.5. Subcommittee two was assigned the disciplinary aspects of the recommendations. Subcommittee three was asked to review the *pro hac vice* rules, the recommended rule on admission on motion and the issue of foreign lawyers.

All three subcommittees met by conference call. In January, 2003, the entire Commission met and reviewed the recommendations of the various subcommittees. All were approved in concept with subcommittee one being asked to consider additional changes in light of what the other subcommittees had recommended. The Commission next met on February 21, 2003. At that time, the rules and amendments which are attached to this report and discussed below were

approved and are now being recommended for adoption. [1]

II. EXECUTIVE SUMMARY

The Special Commission on the Multijurisdictional Practice of Law 2002 (Commission II) was established by President Tod Aronovitz after the American Bar Association adopted several recommendations regarding the multijurisdictional practice of law in August, 2002. The multijurisdictional practice of law can best be defined as a lawyer providing legal services in a jurisdiction where that lawyer is not licensed to practice law. Commission II built on the work the first Special Commission on the Multijurisdictional Practice of Law whose recommendations were approved by the Board of Governors in March, 2002.

As Commission II had several rules and recommendations to review, Chair Yanchunis divided the Commission into three subcommittees. The first subcommittee was assigned the task of looking at the recommended amendments to Model Rule 5.5, Florida Bar rule 4-5.5 which would allow limited

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[1] Due to the deadline for distribution of materials to the Board, the Commission was not able to seek comments or input from interested committees at the time of the writing of the report. However, the report is being circulated to the Florida Board of Bar Examiners, the Young Lawyer's Division, the Special Committee to Review the ABA Model Rules 2002, the Professional Ethics Committee and the chair and vice-chair of the Rules of Judicial Administration Committee. The Commission hopes to have any comments of interested committees prior to the first official reading of the rules.

multijurisdictional practice in certain situations. Subcommittee two was assigned the disciplinary aspects of the recommendations. Subcommittee three was asked to review the *pro hac vice* rules, the recommended rule on admission on motion and the issue of foreign lawyers. The subcommittees and full Commission met several times before approving the recommendations made it this report.

The recommendations from the first subcommittee amend rule 4-5.5 to allow an out-of-state lawyer who has not been disbarred or suspended from the practice of law in any jurisdiction or who has not been held in contempt in Florida due to misconduct when engaging in conduct permitted by the rule to come to Florida to provide legal services on a temporary basis. The services may be conducted if local counsel is associated, if the services occur in matters prior to *pro hac vice* admission if such admission is reasonably expected to be granted, if the services occur in alternative dispute resolution proceedings if certain conditions are met and if the services occur in transactional work if certain conditions are met. In all of the situations, the services may only be provided on a temporary basis.

Recognizing that if rules are going to allow out-of-state lawyers to come to Florida on a temporary basis, there must be a mechanism to bind the lawyer to Florida's Code of Professional Responsibility and to disciple the out-of-state

lawyer for ethical breaches. The recommendations of Commission II amend the disciplinary rules to allow for jurisdiction and discipline.

The final area Commission II considered involves admission before the courts *pro hac vice*, admission to The Florida Bar on motion and activities of attorneys licensed in foreign countries. Finding that the *pro hac vice* rule could be abused, Commission II is recommending a limitation on the number of times the out-of-state lawyer may move to appear in Florida in a 365-day period. As the out-of-state lawyer is subject to discipline for any ethical violations, Commission II is recommending the imposition of a filing fee for *pro hac vice* requests in part to fund the disciplinary system and Clients' Security Fund. Because of the importance of state regulation over the admission of lawyers, Commission II is recommending against the adoption of an admission on motion rule. The Commission is also recommending that no changes be made to The Florida Bar's Foreign Legal Consultancy rule.

All of the recommendations being made by Commission II continue support of state judicial licensing and regulation of lawyers. At the same time, the recommendations recognize the multijurisdictional nature of the practice of law today. The recommendations balance both of these interests while at the same time protecting the public, the legal profession and the judiciary in Florida.

III. DISCUSSION OF RECOMMENDATIONS

The ABA report and recommendations are based on the premise of continued support of state judicial licensing and regulation of lawyers. The Florida Bar endorsed this recommendation and continues to do so. The recommendations made by Commission II follow this premise while at the same time recognizing the reality of the multijurisdictional nature of the practice of law today.

The recommendations fall within four categories: 1) the multijurisdictional practice of law; 2) reciprocal discipline; 3) *pro hac vice* admission; and rules recommended by the ABA but not adopted by either Commission I or Commission II. All of the recommendations are discussed below.

MULTIJURISDICTIONAL PRACTICE
Proposed Amendments to Rule of Professional Conduct 4-5.5; Unlicensed Practice of Law

In order to allow for the multijurisdictional nature of the practice of law, the ABA recommends several changes to Model Rule 5.5, the counterpart to Florida Bar rule 4-5.5. The interim report of the ABA referred to many of the recommended changes to Model Rule 5.5 as "safe harbors." The "safe harbors" established limited areas where lawyers from other states could come in to the host state on a temporary basis to practice law. While the final report does not use the

"safe harbor" terminology, the principles remain the same – allowing the limited practice of law in the host state on a temporary basis.

Subcommittee one studied the ABA recommendations and proposed several amendments to rule 4-5.5, including the addition of comment language. After much debate and discussion, the amendments were approved by the full Commission. For the most part, Commission II followed the recommendations of Commission I. Differences are discussed. The rule with amendments follows: (The full text of the amendment with the comment language can be found in Appendix "C.")

Rule 4-5.5 Unlicensed Practice of Law, Multijurisdictional Practice of Law

(a) A lawyer shall not: ~~(a)~~ practice law in a jurisdiction, other than the lawyer's home state, ~~where doing so violates~~ in violation of the regulation of the legal profession in that jurisdiction or in violation of the regulation of the legal profession in the lawyer's home state; ~~or~~ or assist another in doing so.

~~(b) assist a person who is not a member of the bar in the performance of activity that constitutes the unlicensed practice of law.~~

(b) A lawyer who is not admitted to practice in Florida shall not:

(1) except as authorized by other law, establish an office or other regular presence in Florida for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in Florida.

(c) A lawyer admitted and authorized to practice law in another United States jurisdiction, and (i) not disbarred or suspended from practice in any jurisdiction or (ii) disciplined or held in contempt in Florida by reason of misconduct committed while engaged in the practice of law permitted pursuant to this rule, may provide legal services on a temporary basis in Florida that:

(1) are undertaken in association with a lawyer who is admitted to practice

in Florida and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services are:

(i) performed for a client who resides in or has an office in the lawyer's home state, or

(ii) where the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice, and

(iii) the services are not services for which the forum requires *pro hac vice* admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and

(i) are performed for a client who resides in or has an office in the jurisdiction in which the lawyer is authorized to practice or

(ii) arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

Discussion of Amendments to Title and Subparagraph A and B

The amendment to the title of the rule alerts the reader that the rule also applies to the multijurisdictional practice of law. However, subparagraph (a) keeps intact the general principle that a lawyer cannot practice law in a jurisdiction in which the lawyer is not licensed or otherwise authorized or assist another in doing so.

Subparagraph (b) keeps intact the general principle that a lawyer admitted in a state other than Florida cannot establish an office or other regular presence in Florida or hold out to the public that the lawyer is admitted to practice law in

Florida. However, the subparagraph also recognizes that there may be times when other law, such as Federal rule or regulation, allows a lawyer to have a regular presence in Florida. For example, Federal regulations allow a lawyer admitted in any state or territory to practice Federal patent law before the office of Patent and Trademark. As this activity is specifically allowed, Florida cannot enjoin the activity as the unlicensed practice of law. [2] As Florida cannot enjoin the practice as the unlicensed practice of law, the rule does not prohibit the activity.

Discussion of Amendments to Subparagraph C

Subparagraph (c) sets forth what the interim ABA report called "safe harbors" while incorporating the recommendations of Commission I. The first section allows a lawyer who has not been disbarred or suspended from the practice of law in *any* jurisdiction or who has not been held in contempt in Florida due to misconduct when engaging in conduct permitted by the rule to come to Florida to provide legal services on a temporary basis. The rule therefore requires that several conditions be met in order for the lawyer to come to Florida. If these conditions are met, the lawyer can come to Florida on a temporary basis to engage in the practice of law if the activity falls within one of the enumerated categories. [3]

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[2] *The Florida Bar v. Sperry*, 373 U.S. 379 (1963).

[3] The categories of practice allowed by the Commission's recommendations differ from the categories allowed by the ABA's recommendations. The comment to the ABA's rule

The first category allows the out-of-state lawyer to come to Florida on a temporary basis if the out-of-state lawyer associates a member of The Florida Bar who actively participates in the matter. The comment makes it clear that the Florida lawyer could not act merely as a conduit but must share actual responsibility for the representation and actively participate. This comment language is from the Commission I report. [4]

The second category is pre-*pro hac vice* admission activity where the lawyer is authorized by law to appear or reasonably expects to be authorized. Examples of allowable conduct given in the comment include meetings with client, interviews of potential witnesses and taking depositions. Although the language is the same as the language proposed by the ABA, Commission II declined to adopt a paragraph of the ABA's comment which would have extended the authorization to an associated lawyer who does not expect to appear *pro hac vice* or to subordinate lawyers. Commission II felt that this language was too broad.

The third category allows an out-of-state lawyer to render legal services in a pending or potential arbitration, mediation or other alternative dispute resolution if

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provides that the list is an *illustrative* list and other activities may be allowed. The Commission deleted this language from the comment thereby making the list an *exclusive* list.

[4] Two members of the Commission voted against the inclusion of the word "active" in the rule. However, a majority of the Commission participating was in favor of including the word in the rule.

one of two conditions are met: 1) the services have to be preformed for a client who resides in or has an office in the lawyer's home state, or 2) the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. The first condition was included in the ABA's interim report but, although included in the comment, deleted from the rule language of the final report. Commission I endorsed the first nexus, therefore, it was added to the rule. The second condition was made by the ABA in the final report but differs from the nexus requirement made by the ABA in the interim report and approved by Commission I. In both of those reports, the second nexus required that the services be related to a matter in the lawyer's home state. As currently worded, the services have to be related to the lawyer's practice, thereby broadening the scope of the services. While giving deference to Commission I, Commission II agreed with the ABA's language and recommends adoption of the broader authorization as more realistically reflecting multijurisdictional practice. [5]

The fourth and final category allows an out-of-state lawyer to provide transactional work in Florida if the same nexus requirements as discussed above

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[5] The Commission's recommendations also vary from the ABA's recommendations in the number of times an out-of-state lawyer would be allowed to come to Florida to represent an individual in an arbitration proceeding. This recommendation is discussed more fully in the section of the report discussing the changes to Florida Rule of Judicial Administration 2.061.

are met. This recommendation deviates from the ABA's recommendation and the Commission I recommendation in the same respects as discussed above. Once again, Commission II agrees with the new language and recommends its adoption.

There are two matters which were included in the ABA report which are not included in the proposed amendments to rule 4-5.5. The ABA's rule would allow an out-of-state lawyer to come to Florida on a regular or permanent basis to provide legal services to the lawyer's employer or corporate affiliates. In keeping with the recommendation of Commission I, Commission II felt that this rule was not necessary in light of The Florida Bar's Authorized House Counsel Rule. The ABA's rule also contains language that would allow the out-of-state lawyer to come to Florida on a regular or permanent basis to provide services the lawyer is authorized to provide by federal law or the law of Florida. Commission I found this language redundant and not necessary. Commission II agrees and is not recommending that it be included. [6]

The amendments to rule 4-5.5 and the comment incorporate the principles set forth in the report of Commission I. These principles were approved by the Board of Governors in March, 2002. Although some changes have been made,

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[6] Whether this language should be included was an area of much debate and was studied in depth by the subcommittee assigned to this rule and by the full Commission.

Commission II believes that the amendments serve the public while at the same time protecting the public and the integrity of the Florida's judicial system. For the reasons discussed above, Commission II recommends approval of the amendments to rule 4-5.5 and to the comment as set forth in Appendix "C".

RECIPROCAL DISCIPLINE

Proposed Amendments to Rule 3-4.6; Disciplinary Authority, Rule 3-4.1; Notice And Knowledge of Rules And Rule 3-7.2 Procedures Upon Criminal or Professional Misconduct; Discipline Upon Determination or Judgment of Guilt of Criminal Misconduct and Rule 3-2.1 Definitions

As found by Commission I and the Board, without a scheme for meaningful discipline of a lawyer both in the host state and, more importantly, in the home state, the amendments recommended for adoption above do not afford any protection for the courts, lawyers and people of the host state. A lawyer must know that any breach of professional responsibility in the host state will also lead to discipline in the home state. To reach this goal, Commission II is proposing amendments to rules 3-4.1, 3-4.6, 3-7.2 and 3-2.1.

Discussion of Proposed Amendments to 3-4.1; Notice and Knowledge of Rules

Rule 3-4.1 as currently written, provides for jurisdiction over members of other state bars who are in Florida on a *pro hac vice* basis. As the amendments to rule 4-5.5 being recommended by Commission II allows a greater range of practice, rule 3-4.1 needs to be amended to cover the broader range of activities to

allow for jurisdiction and discipline. Therefore, Commission II is recommending the following amendments to rule 3-4.1, a copy of which is in Appendix "D":

Rule 3-4.1 Notice And Knowledge of Rules; Jurisdiction Over Attorneys of Other States

Every member of The Florida Bar and every attorney of another state who ~~is admitted to practice for the purpose of a specific case before a court of record of this state~~ provides or offers to provide any legal services in this state is within the jurisdiction and subject to the disciplinary authority of this court and its agencies under this rule and is charged with notice and held to know the provisions of this rule and the standards of ethical and professional conduct prescribed by this court. ~~Jurisdiction over an attorney of another state who is not a member of The Florida Bar shall be limited to conduct as an attorney in relation to the business for which the attorney was permitted to practice in this state and the privilege in the future to practice law in the state of Florida.~~

Discussion of Proposed Amendments to Rule 3-4.6; Disciplinary Authority

The ABA proposes an amendment to subsection (a) of Model Rule 8.5 making it clear that a lawyer is subject to discipline no matter where the conduct which is the subject of discipline occurred. In other words, a member of The Florida Bar who engages in unethical conduct in another state is subject to discipline in Florida. The amendment also makes it clear that a lawyer licensed in another jurisdiction is subject to discipline in the host state for any ethical violations.

Florida Bar rules 3-4.6 and 3-7.2 already subject a Florida lawyer to discipline for activities that took place outside of Florida. Therefore, the

substance of the proposed amendments to subsection (a) already exists in Florida. However, Commission II is recommending the following language be added to subsection (a) of rule 3-4.6 to make this clearer:

Rule 3-4.6 Discipline by Foreign or Federal Jurisdiction

(a) Disciplinary Authority. An attorney admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the attorney's conduct occurs. An attorney may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

The ABA also proposed an amendment to subsection (b) to set forth choice of law provisions. The Florida Bar does not have a counterpart to subsection (b). The amendments to rule 3-4.6 being proposed by Commission II add a choice of law provision similar to that proposed by the ABA while at the same time incorporating the recommendations of Commission I. The major change from the ABA proposal is the deletion of the following language which Commission II felt did not belong in the rule: "An attorney shall not be subject to discipline if the attorney's conduct conforms to the rules of a jurisdiction where the attorney's conduct will occur." The language being proposed by Commission II is:

Rule 3-4.6 Discipline by Foreign or Federal Jurisdiction; Choice of Law

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal

provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the attorney's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct.

As a whole, the amended rule reads (the full text of all of the amendments relating to reciprocal discipline can be found in Appendix "E"):

Rule 3-4.6 Discipline by Foreign or Federal Jurisdiction; Choice of Law

(a) Disciplinary Authority. An attorney admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the attorney's conduct occurs. An attorney may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct. A final adjudication in a disciplinary proceeding by a court or other authorized disciplinary agency of another jurisdiction, state or federal, that an attorney licensed to practice in that jurisdiction is guilty of misconduct justifying disciplinary action shall be considered as conclusive proof of such misconduct in a disciplinary proceeding under this rule.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the attorney's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct.

Discussion of Proposed Amendment to Rule 3-7.2 Procedures upon Criminal or Professional Misconduct; Discipline upon Determination or Judgment of Guilt of Criminal Misconduct and Rule 3-2.1, Definitions

The ABA proposed several amendments to rules 6 and 22 of the Model Rules of Disciplinary Enforcement. The Florida Bar has not adopted the ABA

Model Rules of Lawyer Disciplinary Enforcement although many of the concepts are incorporated into the Rules Regulating The Florida Bar.

Model Rule 6 basically provides for jurisdiction over admitted members and members licensed in other states. The crux of the rule is included in rules 3-4.6 and 3-4.1 as recommended for amendment. Therefore, Commission II is not recommending additional changes.

Rule 22 sets forth the mechanics for imposing reciprocal discipline. It sets forth the procedures the home state must follow in imposing discipline on a member who was disciplined in a host state. Florida already allows for reciprocal discipline and already has procedures in place. What follows is a discussion of the subparts of Rule 22, a comparison to Florida's rules and the amendment being proposed by Commission II.

Subsection A of the ABA rule requires the member lawyer to inform disciplinary counsel of the discipline imposed in the host state. Disciplinary counsel then contacts the host state for the order and files it with the Court. Rule 3-7.2(j) of the Rules Regulating The Florida Bar requires the disciplined member to provide a copy of the order directly with the Supreme Court of Florida. A proposed amendment is being suggested that would also require the member to provide notice to The Florida Bar. A copy of the rule with amendments can be

found in Appendix "F". No other changes are being proposed as Commission II felt that the burden of providing a copy should remain on the member rather than being placed on bar counsel. The subsection as amended would read:

Misconduct; Discipline Upon Determination or Judgment of Guilt of Criminal Misconduct

(j) Professional Misconduct in Foreign Jurisdiction.

(1) *Notice of Discipline by a Foreign Jurisdiction*. A member of The Florida Bar who has submitted a disciplinary resignation or otherwise surrendered a license to practice law in lieu of disciplinary sanction, or has been disbarred or suspended from the practice of law by a court or other authorized disciplinary agency of another state or by a federal court shall within 30 days after the effective date of disbarment or suspension file with the Supreme Court of Florida and the executive director of The Florida Bar a copy of the order or judgment effecting such disbarment or suspension.

ABA subsection B requires the court of the home state to issue an order asking for a response. Rule 3-7.2(j) states that if a member is disciplined in another state, The Florida Bar can proceed to referee level without a finding of probable cause. This allows all of The Florida Bar's disciplinary rules and procedures to be utilized. Moreover, as the lawyer is a member of The Florida Bar, the rules apply regardless of what the host state has done. Commission II felt that no amendment to rule 3-7.2 was necessary as all of the Florida rules apply, including the rules requiring a response. However, Commission II believes a definition of "final adjudication" as used in 3-7.2 would be helpful to lawyers and

disciplinary counsel. Therefore, Commission II proposed that the following language be added to the definition section of rule 3-2.1 (the full text of rule 3-2.1 appears in Appendix "G"): (q) Final Adjudication. A decision by the authorized disciplinary authority or court issuing a sanction for professional misconduct that is not subject to judicial review except on direct appeal to the Supreme Court of the United States.

ABA subsection C requires a stay of the home state discipline if a stay is imposed by the host state. Florida's rules require the disciplined lawyer to notify the Court (and Bar if amended) within 30 days of the effective date of the discipline. Therefore, if the discipline is stayed in the host state, there would be no requirement to notify The Florida Bar. Commission II felt that no amendment was necessary.

ABA subsection D requires that the same discipline be imposed in the home state as imposed in the host state unless disciplinary counsel or the disciplined lawyer can show it should not be based on one of the reasons stated in (1) - (4). Commission I disagreed with this language as it required *identical* discipline to be imposed. Commission I felt that discipline should be imposed in accordance with the public policy of the home state. The Florida Bar's rules already allow for this. As stated above, once the bar member falls within the disciplinary system, all of

the Florida rules of procedure come into play. This includes leeway to impose, or recommend, the appropriate discipline. In keeping with the recommendations of Commission I, no amendment is being proposed.

ABA subsection E provides that the misconduct is conclusively established for purposes of the home state disciplinary process. The Florida Bar rules already provide for this in 3-7.2(j) wherein it states that a finding of probable cause is not necessary. Consequently, no amendment is being proposed.

Commission II is not recommending a great deal of changes to the disciplinary rules because the gist and intent of the ABA recommendations are already part of Florida's rules. Florida's rules currently put members of The Florida Bar on notice as to discipline and allow for discipline for conduct taking place outside of Florida. The amendments put out-of-state lawyers who are in Florida on a temporary basis on the same notice and subject to the same discipline. At the same time, The Florida Bar is given discretion as to the type of discipline to impose on its members. As the amendments continue and strengthen The Florida Bar's ability to impose discipline, Commission II recommends approval of the amendments to rules 3-4.6, 3-4.1, 3-7.2 and 3-2.1 as set forth in Appendices "D" through "G."

PRO HAC VICE ADMISSION

Discussion of Proposed Amendments to Rule 2.061 Foreign Attorneys, Rule 1-3.10 Appearance by Non-Florida Lawyers and Proposed New Rule 1-3.11

In studying the multijurisdictional practice of law, the ABA felt that it would be helpful if the states approached *pro hac vice* admission on a uniform basis. For this reason, the ABA proposed the adoption of a model rule on *pro hac vice* admission. Commission I reviewed the model rule and declined to recommend its adoption. Commission I felt that the existing Florida rule offered more protection.

Following the direction of Commission I, Commission II declines to recommend adoption of the ABA's model rule. However, in order to afford better protection to the public, the bar and the judicial system, Commission II is recommending several amendments to rule 2.061 of the Florida Rules of Judicial Administration, rule 1-3.10 of the Rules Regulating The Florida Bar and the addition of a new rule, rule 1-3.11 regarding appearance in arbitration proceedings.

Discussion of Proposed Amendments to Rule 2.061 Foreign Attorneys and Rule 1-3.10 Appearance by Non-Florida Lawyers

Rule 2.061 of the Florida Rules of Judicial Administration governs *pro hac vice* appearances in Florida courts. Rule 1-3.10 of the Rules Regulating The

Florida Bar is the Bar's counterpart to rule 2.061. Amendments to one necessitate amendments to the other. The rules with amendments can be found in Appendices "H" (2.061) and "I" (1-3.10).

Rule 2.061 allows a lawyer admitted and in good standing in another state to appear on behalf of a client in a Florida court. The rule sets forth certain restrictions including a prohibition against establishing a "general practice" before the Florida courts. As currently worded, a lawyer is presumed to be engaged in a "general practice" if the lawyer makes more than 3 appearances within a 365-day period in separate and unrelated representations. However, the rule gives the court discretion to allow more than 3 appearances upon a showing that the appearances are not a "general practice," or that denial will work a substantial hardship on the client. Commission II was concerned that the exception allowing for the exercise of discretion was taking over the rule. In other words, out-of-state lawyers were being allowed to appear more than 3 times in a 365-day period. Therefore, Commission II is recommending that the language allowing the judge to exercise discretion be deleted. The rule would therefore limit the number of appearance to 3 appearances within a 365-day period in separate and unrelated representations. The same change is made in rule 1-3.10.

A second amendment being proposed by the Commission would require the

movant to file a copy of the motion that was filed with the trial court with The Florida Bar and to pay on a per case basis a nonrefundable $250.00 fee to The Florida Bar. Although not specified in the rule, $25.00 of the fee would be earmarked for the Clients' Security Fund. The court may waive the fee in cases involving indigent clients.

The reason for the imposition of the fee is simple – an out-of-state lawyer admitted to appear *pro hac vice* in a Florida court effectively becomes a member of The Florida Bar for the purposes of that case and is subject to discipline if the lawyer engages in unethical conduct. The cost of that discipline, however, is born by members of The Florida Bar and not by the out-of-state lawyer. The fee is an effort to defray these costs as well as to make a contribution to the Clients' Security Fund should a claim be made based on the lawyer's behavior. Again, the same changes are reflected in rule 1-3.10.

The imposition of a fee in *pro hac vice* admissions and the amount recommended is not without precedent. Nineteen states currently charge a fee. The amount charged ranges from $90.00 (Indiana) to $348.50 (Arizona). A chart showing the states that charge and the amount charges is included in Appendix "J."

Currently, there is no information on how may *pro hac vice* motions are

filed or granted in Florida. Requiring a copy of the motion to be filed with The Florida Bar will enable the Bar to begin collecting data in this regard. Moreover, it will enable the Bar to inform the court if the movant has exceeded the number of appearances allowed by the rule. The Commission anticipates that The Florida Bar will have to hire staff to enter data to accomplish the data entry. The $250.00 fee will go in part to pay for this program and personnel.

In order to make data entry more uniform, the Commission is proposing a form Verified Motion for Admission to Appear *Pro Hac Vice* Pursuant to Florida Rule of Judicial Administration 2.061, a copy of which is attached in Appendix "K." The form tracks the rule and contains blanks for all of the information required by the rule. It will aid the practitioner in complying with the rule and aid the Bar in entering the necessary data.

The other changes to rule 2.061 and 1-3.10 are technical in nature and conform the rules to terminology used by the Bar. Rule 1-3.10 is further amended to track rule 2.061. Although the language has not substantially changed, the order and numbering has been changed to that of the Judicial Administration rule.

Discussion of Proposed New Rule 1-3.11

In light of the amendments being proposed to rule 2.061, the Commission asked subcommittee one to consider whether similar language regarding the

number of appearances and/or the imposition of a fee should be imposed in arbitrations or transactional work. As discussed above, the amendments to rule 4-5.5 would allow an out-of-state lawyer to come to Florida on a temporary basis to represent an individual in an arbitration proceeding or in transactional work if certain requirements are met. Subcommittee one discussed the issue at great length and came to the conclusion that a limitation, in addition to the limitation that the activity be performed on a temporary basis, or fee should not be imposed in transactional work. Reasons for the subcommittee's actions are that unlike appearances in court, it is difficult to determine the defining event which would show the beginning of the transaction. It is also difficult to count transactions. Moreover, as there is no court overseeing the process, it would be more difficult to police. The subcommittee was also of the opinion that the recommended amendments to rule 4-5.5 and the other rules being proposed by the Commission contain sufficient safeguards to protect the public. Adding a limitation and fee does not add greater protection and could potentially cause more problems than it might solve. The full Commission agreed with the subcommittee's recommendation.

Unlike transactional work, the subcommittee felt that a limitation and fee

should be imposed in appearances in arbitration proceedings. [7] Accordingly, the Commission is recommending that the number of appearances in an arbitration proceeding be limited to 3 in a 365-day period. The limitation is imposed in the comment to rule 4-5.5. The specific language reads " For the purposes of this rule, a lawyer who is not admitted to practice law in Florida who files more than 3 demands for arbitration or responses to arbitration in separate and unrelated arbitration proceedings in a 365-day period shall be presumed to be providing legal services on a regular, not temporary, basis." As rule 4-5.5 only allows for a temporary appearance, more than 3 appearances in a 365-day period would not be allowed. Any complaints received regarding an out-of-state lawyer appearing more than the number of times allowed by the rule would be processed by The Florida Bar in the same fashion as other complaints received by the Bar.

A new rule was necessary in order to impose a fee on the appearance. The new rule is 1-3.11 and applies to appearances in arbitration proceedings only. [8]

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[7] Although the amendment to rule 4-5.5 allows appearance in arbitration, mediation and other alternative dispute resolution matters, the subcommittee and Commission believe that the limitation and fee should only be imposed in arbitration proceedings. This is due in part to the fact that unlike mediation and other forms of alternative dispute resolution proceedings, an arbitration has a more definite beginning and end making it easier to impose the limitation and fee.

[8] The addition of 1-3.11 required that rule 1-3.10 be limited to appearances in court. The language of the rule is being amended to reflect this change.

The rule requires the filing of a statement with The Florida Bar and the payment of a nonrefundable $250.00 fee which may be waived for indigent clients. The fee is payable on a per arbitration (appearance) basis. The text of the new rule can be found in Appendix "L." [9]

Just as with charging a fee for *pro hac vice* admission, there is precedent for charging a fee for appearances in arbitration proceedings. California Rule of Court 983.4 requires an out-of-state lawyer to pay a $50.00 fee to the Bar in order to appear in an arbitration proceeding in California.

The timeliness of the discussion regarding an out-of-state lawyer appearing in an arbitration in Florida came to light at the Commission's last meeting. The day before the meeting, the Supreme Court of Florida issued an order in *The Florida Bar v. Rapoport*, No. SC01-73, 2003 WL 359303 (Fla. Feb. 20, 2003). The case involved an out-of-state lawyer who resides in Florida and was in the business of representing individuals in security arbitration proceedings in Florida. The Florida Bar sought an injunction to prevent the lawyer from engaging in the unlicensed practice of law. The Bar argued that the Court's 1997 opinion preventing nonlawyers from representing individuals in securities arbitration

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[9] One member of the Commission voted against the amendments to rules 2.061, 1-3.10 and 1-3.11 only as to the imposition of a fee.

matters applied to out-of-state lawyers. [10] The Court agreed and issued an injunction preventing Rapoport from engaging in the unlicensed practice of law. It should be noted that if the Board approves and the Court adopts the recommendations of Commission II, Rapoport would not be allowed to resume his practice as he was doing it on a regular rather than temporary basis and he was advertising his services in Florida. [11]

Commission II recognizes that some of the amendments being proposed to the *pro hac vice* rules could be somewhat controversial. However, the Commission believes the amendments not only protect the public from unlimited representation by lawyers who are not members of The Florida Bar, but also protect the disciplinary system of The Florida Bar. Lawyers allowed the privilege to practice before the Florida courts and in arbitration proceedings in Florida should be required to contribute to the Bar's disciplinary system and Clients' Security Fund. Accordingly, Commission II recommends approval of the amendments to rule 2.061 of the Florida Rules of Judicial Administration with the form motion and rule 1-3.10 of the Rules Regulating The Florida Bar as set forth

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[10] *The Florida Bar re: Advisory Opinion on Nonlawyer Representation in Securities Arbitration*, 696 So. 2d 1178 (Fla. 1997); Rule 10-2.1(c), Rules Regulating The Florida Bar.

[11] The issue of the out-of-state lawyer advertising services in Florida is addressed in the comment to rule 4-5.5.

in Appendices "H," "I" and "K." [12] The Commission also recommends approval of rule 1-3.11 to be included in the Rules Regulating The Florida Bar as set forth in Appendix "L."

ABA RECOMMENDATIONS NOT ADOPTED BY COMMISSION II

There are four recommendations made by the ABA which both Commissions I and II recommend not be adopted in Florida. The first encourages jurisdictions to use the National Regulatory Data Bank, urges jurisdictions to adopt the International Standard Lawyer Numbering System® and urges jurisdictions to require the lawyers admitted in their jurisdiction to report any change of status. The first and third aspects of this recommendation do not require action on the part of the Bar and, for the most part, are being implemented. Commission II studied the second aspect involving the use of the standard numbering system as it could have a fiscal impact on The Florida Bar. The Commission felt that no change in the numbering system was necessary at this time. Should most of the other states adopt this system, the issue can be revisited.

The second recommendation encourages the states to adopt the ABA's

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[12] Rule 2.130 of the Florida Rules of Judicial Administration sets forth the procedure for amending those rules. Although the rule establishes a committee to review proposed rules and amendments, the rule also allows "any person" to propose amendments. Therefore, the Board of Governors has the authority to propose amendments to the Rules of Judicial Administration.

Model Rule on Admission on Motion. Commission I studied this issue and came to the conclusion that Florida should not adopt the admission on motion rule. Commission I endorsed the principle that jurisdictions should continue to exercise their licensing authority on an individual basis in determining the competency of their lawyers and agreed with the Supreme Court of Florida where it held that,

> [w]e see it clearly as our duty to admit to this special position of obligation and trust only those applicants, whether from Florida schools or elsewhere, who can satisfactorily demonstrate their credentials through a test of competence given under our supervision and control. [13]

The Board agreed with the recommendation and reasoning of Commission I. Commission II sees no reason to change this.

The third recommendation encourages the states to adopt the ABA's Model Rule for the Licensing of Legal Consultants. Commission I also studied this recommendation and compared the ABA's rule with The Florida Bar's Foreign Legal Consultancy Rule. Commission I found that Florida's rule, found in Chapter 16 of the Rules Regulating The Florida Bar, has more stringent certification requirements and is more limiting that the ABA Model Rule for the Licensing of Legal Consultants. For these reasons, Commission I recommended against the adoption of the ABA model rule. Commission II agrees.

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[13] *In re: Russell*, 236 So. 2d 767 (Fla. 1970).

The final recommendation encourages the states to adopt the ABA's Model Rule for Temporary Practice by Foreign Lawyers. Commission I also studied this issue. Commission I recommended against adopting a rule which would allow the temporary presence of a foreign lawyer. Florida's rule allows a permanent presence only. Allowing a permanent presence leads to a level of protection that is not present when the lawyer is here on a temporary basis. Eliminating this level of protection by allowing a temporary presence when a permanent presence may be obtained does not serve the public interest. Commission II agrees with the recommendation of Commission I and does not recommend that a rule allowing for temporary presence of a foreign lawyer be adopted.

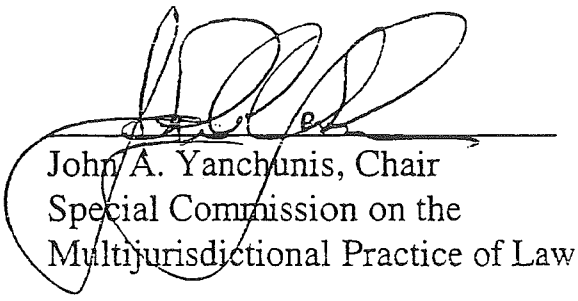
CONCLUSION

As recognized by Commission I and the Board, long ago the Supreme Court of Florida acknowledged the need to adapt the regulations regarding the unlicensed practice of law in response to "the everchanging business and social order." [14] The current rules regarding lawyers practicing law in other states have not kept up with the practice of law as it exists today. Commission II believes that the recommendations for rule amendments made in this report strike the balance between protecting the public and recognizing the realities of the

[14] *The Florida Bar v. Brumbaugh*, 355 So. 2d 1186 (Fla. 1980).

multijurisdictional nature of the modern practice of law. Wherefore, the Special Commission on the Multijurisdictional Practice of Law 2002 respectfully requests approval of the amendments as recommended above and attached hereto.

Respectfully submitted,



John A. Yanchunis, Chair
Special Commission on the
Multijurisdictional Practice of Law 2002

APPENDIX A

MJP Commission I Recommendations

THE FOLLOWING IS AN EXCERPT OF THE RECOMMENDATIONS OF COMMISSION I APPROVED BY THE BOARD OF GOVERNORS IN MARCH, 2002

After much study and debate, the Commission makes the following recommendations to the Board of Governors of The Florida Bar. All of the endorsements and recommendations discussed in this report are made with the understanding that they will be most effective if they are implemented by the various states. It may be possible to have some variation in what is actually adopted, but the central principles must be the same.

List of Commission Recommendations

Recommendation 1: The Commission endorses the ABA recommendation to continue to affirm its support for the principle of state judicial licensing and regulation of lawyers.

Recommendation 2: The Commission does not endorse the amendment of Rule 5.5(b) of the Model Rules of Professional Conduct (Unauthorized Practice of Law) proposed by the ABA.

Recommendation 3: The Commission modifies the ABA recommendation to adopt proposed Model Rule 5.5(c) - (e) to identify "safe harbors" allowing a lawyer to practice in another state. The Commission would make the list of "safe harbors" exclusive and would add a provision preventing lawyers who are no longer eligible to practice in the host state from practicing under a "safe harbor."

1. The Commission endorses the ABA recommendation to adopt proposed Model Rule 5.5(c)(1) to allow work as co-counsel with a lawyer admitted to practice in the jurisdiction if it is made clear that the local lawyer share actual responsibility for the representation.

2. The Commission endorses the ABA recommendation to adopt proposed Model Rule 5.5(c)(2) to allow lawyers to perform professional services that any non-lawyer is legally permitted to render as long as it is made clear that the lawyer is performing the services as a lawyer and remains subject to the Rules of Professional Conduct.

3. The Commission endorses the ABA recommendation to adopt proposed Model Rule 5.5(c)(3) to allow lawyers to perform work ancillary to pending or prospective litigation if the lawyer is authorized by law to appear in the proceeding or reasonably expects to be so authorized.

4. The Commission does not endorse the recommendation of the ABA to adopt proposed Model Rule 5.5(c)(4) to allow representation of a client in any arbitration, mediation or other ADR setting. The Commission endorses adopting a "safe harbor" which would allow representation in ADR matters if a nexus is established.

5. The Commission endorses the ABA recommendation to adopt proposed Model Rule 5.5(c)(5) to allow transactional representation, counseling and other non-litigation work where the work is performed for a client who resides in or has an office in the lawyer's home state or where the work arises out of or is reasonably related to a matter that has a substantial connection to the lawyer's home state.

6. The Commission does not endorse the ABA recommendation to adopt proposed Model Rule 5.5(c)(6) to allow lawyers to provide temporary services involving primarily federal law, international law, the law of a foreign nation or the law of the lawyer's home state.

7. The Commission does not endorse the ABA recommendation regarding corporate counsel and instead recommends that a rule similar to The Florida Bar's Authorized House Counsel rule be adopted as providing more protection to the public.

8. The Commission does not endorse the ABA recommendation to adopt proposed Model Rule 5.5(d)(2) to provide that a lawyer may perform legal services in a jurisdiction in which the lawyer is not licensed

when authorized to do so by federal law or by the law or a court rule as the rule is not needed.

9. The Commission endorses the ABA recommendation, to adopt proposed Model Rule 5.5(e) to prohibit a lawyer from establishing an office, maintaining a continuous presence, or holding out as authorized to practice law in a jurisdiction in which the lawyer is not admitted, unless permitted to do so by law or this rule, with some changes to further strengthen the rule.

Recommendation 4: The Commission does not endorse the ABA recommendation to adopt a model "admission on motion" rule.

Recommendation 5: The Commission supports the concept of a foreign legal consultant rule but does not endorse the rule proposed by the ABA and does not endorse amending the rules to allow for a temporary presence.

Recommendation 6: The Commission supports the concept of a model *pro hac vice* rule but does not endorse the adoption of the rule proposed by the ABA.

Recommendation 7: The Commission endorses the ABA recommendation to adopt and promote measures to enhance professional regulation and disciplinary enforcement with respect to lawyers who, pursuant to the above recommendations, practice law in jurisdictions other than those in which they are licensed.

1. The Commission agrees with the ABA recommendation to amend Rule 8.5 of The Model Rules of Professional Conduct in order to better address multijurisdictional law practice with some modification of the proposal.

2. The Commission considers the ABA recommendation to amend Rules 6 and 22 of the Model Rules of Disciplinary Enforcement a good first step in promulgating rules to promote effective disciplinary enforcement when lawyers engage in multijurisdictional practice of

law. The Commission recommends a modification of the proposal.

3. The Commission endorses the recommendation that the ABA take steps to promote interstate disciplinary enforcement mechanisms.

Recommendation 8: The Commission endorses the ABA recommendation to establish a Coordinating Committee on Multijurisdictional Practice to monitor changes in law practice and the impact of regulatory reform, and to identify additional reform that may be needed.

Unless noted otherwise, all actions were by unanimous vote of the members attending. The recommendations are discussed in more detail below.

APPENDIX B

ABA's Final Recommendations

Report 201A

AMERICAN BAR ASSOCIATION
COMMISSION ON MULTIJURISDICTIONAL PRACTICE
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, that the American Bar Association affirms its support for the principle of state judicial regulation of the practice of law.

Report 201B

AMERICAN BAR ASSOCIATION
COMMISSION ON MULTIJURISDICTIONAL PRACTICE
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, that the American Bar Association adopts the proposed amendments, dated August 2002, to Rule 5.5 of the ABA *Model Rules of Professional Conduct* as follows:

RULE 5.5: UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

(a) A lawyer shall not: ~~(a)~~ practice law in a jurisdiction ~~where doing so violates~~ in violation of the regulation of the legal profession in that jurisdiction;, or ~~(b)~~ assist ~~a person who is not a member of the bar~~ another in ~~the performance of activity that constitutes the unauthorized practice of law~~ doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires *pro hac vice* admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

Comment

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person.

~~[1]~~ [2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. ~~Paragraph (b)~~ This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3.

[3] ~~Likewise, it does not prohibit lawyers from providing~~ A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed *pro se*.

[4] Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in this jurisdiction violates paragraph (b) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1(a) and 7.5(b).

[5] There are occasions in which a lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

[6] There is no single test to determine whether a lawyer's services are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under paragraph (c). Services may be "temporary" even though the lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

[7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United States. The word "admitted" in paragraph (c) contemplates that the lawyer is

authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who while technically admitted is not authorized to practice, because, for example, the lawyer is on inactive status.

[8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction. For this paragraph to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

[9] Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission *pro hac vice* or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), a lawyer does not violate this Rule when the lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain admission *pro hac vice* before appearing before a tribunal or administrative agency, this Rule requires the lawyer to obtain that authority.

[10] Paragraph (c)(2) also provides that a lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted *pro hac vice*. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

[11] When a lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate lawyers may conduct research, review documents, and attend meetings with witnesses in support of the lawyer responsible for the litigation.

[12] Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission *pro hac vice* in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

[13] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

[14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a relationship. The lawyer's client may have been previously represented by the lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the lawyer

is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law.

[15] Paragraph (d) identifies two circumstances in which a lawyer who is admitted to practice in another United States jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a lawyer who is admitted to practice law in another jurisdiction and who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

[16] Paragraph (d)(1) applies to a lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The lawyer's ability to represent the employer outside the jurisdiction in which the lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's work.

[17] If an employed lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the lawyer may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education.

[18] Paragraph (d)(2) recognizes that a lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent.

[19] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5(a).

[20] In some circumstances, a lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the lawyer is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. See Rule 1.4(b).

[21] Paragraphs (c) and (d) do not authorize communications advertising legal services to prospective clients in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services to prospective clients in this jurisdiction is governed by Rules 7.1 to 7.5.

Report 201C

AMERICAN BAR ASSOCIATION
COMMISSION ON MULTIJURISDICTIONAL PRACTICE
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, that the American Bar Association adopts the proposed amendments, dated August 2002, to Rule 8.5 of the ABA *Model Rules of Professional Conduct* as follows:

RULE 8.5 DISCIPLINARY AUTHORITY; CHOICE OF LAW

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction ~~where the lawyer is admitted~~ for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a ~~proceeding in~~ matter pending before a ~~court before which a lawyer has been admitted to practice (either generally or for purposes of that proceeding)~~ tribunal, the rules ~~to be applied shall be the rules~~ of the jurisdiction in which the ~~court~~ tribunal sits, unless the rules of the ~~court~~ tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur

~~(i) if the lawyer is licensed to practice only in this jurisdiction, the rules to be applied shall be the rules of this jurisdiction, and~~

~~(ii) if the lawyer is licensed to practice in this and another jurisdiction, the rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is licensed to practice, the rules of that jurisdiction shall be applied to that conduct.~~

Comment

Disciplinary Authority

[1] ~~Paragraph (a) restates~~ It is longstanding law that the conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction. Extension of the disciplinary authority of this jurisdiction to other lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction. Reciprocal ~~enforcement of a jurisdiction's disciplinary findings and sanctions~~ will further advance the purposes of this Rule. See, Rules 6 and 22, ABA *Model Rules for Lawyer Disciplinary Enforcement*. A lawyer who is subject to the disciplinary authority of this jurisdiction under Rule 8.5(a) appoints an official to be designated by this Court to receive service of process in this jurisdiction. The fact that the lawyer is subject to the disciplinary authority of this jurisdiction may be a factor in determining whether personal jurisdiction may be asserted over the lawyer for civil matters.

Choice of Law

[2] A lawyer may be potentially subject to more than one set of rules of professional conduct which impose different obligations. The lawyer may be licensed to practice in more than one jurisdiction with differing rules, or may be admitted to practice before a particular court with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice. ~~In the past, decisions have not developed clear or consistent guidance as to which rules apply in such circumstances.~~ Additionally, the lawyer's conduct may involve significant contacts with more than one jurisdiction.

[3] Paragraph (b) seeks to resolve such potential conflicts. Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as well as the bodies having authority to regulate the profession). Accordingly, it takes the approach of (i) providing that any particular conduct of a lawyer shall be subject to only one set of rules of professional conduct, ~~and~~ (ii) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions, and (iii) providing protection from discipline for lawyers who act reasonably in the face of uncertainty.

[4] Paragraph (b)(1) provides that as to a lawyer's conduct relating to a proceeding ~~in~~ pending before a ~~court before which the lawyer is admitted to practice (either generally or pro hac vice)~~ tribunal, the lawyer shall be subject only to the rules of ~~professional conduct of that court~~ the jurisdiction in which the tribunal sits unless the rules of the tribunal, including its choice of law rule, provide otherwise. As to all other conduct, including conduct in anticipation of a proceeding not yet pending before a tribunal, paragraph (b)(2) provides that a lawyer ~~licensed to practice only in this jurisdiction shall be subject to the rules of professional conduct of this jurisdiction, and that a lawyer licensed in multiple jurisdictions shall be subject only to the rules of the jurisdiction where he or she (as an individual, not his or her firm) principally practices, but with one exception: if particular conduct clearly has its predominant effect in another admitting jurisdiction, then only the rules of that jurisdiction shall apply. The intention is for the latter exception to be a narrow one. It would be~~

~~appropriately applied, for example, to a situation in which a lawyer admitted in, and principally practicing in, State A, but also admitted in State B, handled an acquisition by a company whose headquarters and operations were in State B of another, similar such company. The exception would not appropriately be applied, on the other hand, if the lawyer handled an acquisition by a company whose headquarters and operations were in State A of a company whose headquarters and main operations were in State A, but which also had some operations in State B~~ shall be subject to the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in another jurisdiction, the rules of that jurisdiction shall be applied to the conduct. In the case of conduct in anticipation of a proceeding that is likely to be before a tribunal, the predominant effect of such conduct could be where the conduct occurred, where the tribunal sits or in another jurisdiction.

[5] When a lawyer's conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the lawyer's conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur, the lawyer shall not be subject to discipline under this Rule.

~~[5]~~ [6] If two admitting jurisdictions were to proceed against a lawyer for the same conduct, they should, applying this rule, identify the same governing ethics rules. They should take all appropriate steps to see that they do apply the same rule to the same conduct, and in all events should avoid proceeding against a lawyer on the basis of two inconsistent rules.

~~[6]~~ [7] The choice of law provision ~~is not intended to apply to~~ applies to lawyers engaged in transnational practice, unless international law, treaties or other agreements between competent regulatory authorities in the affected jurisdictions provide otherwise. ~~Choice of law in this context should be the subject of agreements between jurisdictions or of appropriate international law.~~

Report 201D

AMERICAN BAR ASSOCIATION
COMMISSION ON MULTIJURISDICTIONAL PRACTICE
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, that the American Bar Association adopts the proposed amendments, dated August 2002, to Rules 6 and 22 of the ABA *Model Rules of Lawyer Disciplinary Enforcement* as follows:

RULE 6. JURISDICTION.

A. Lawyers Admitted to Practice. Any lawyer admitted to practice law in this ~~state~~, jurisdiction, including any formerly admitted lawyer with respect to acts committed prior to resignation, suspension, disbarment, or transfer to inactive status, or with respect to acts subsequent thereto which amount to the practice of law or constitute a violation of these Rules or of the Rules of Professional Conduct [Code of Professional Responsibility] or any Rules or Code subsequently adopted by the court in lieu thereof, and any lawyer specially admitted by a court of this ~~state~~ jurisdiction for a particular proceeding ~~[~~; and any lawyer not admitted in this ~~state~~ jurisdiction who practices law or renders or offers to render any legal services in this ~~state~~] jurisdiction, is subject to the disciplinary jurisdiction of this court and the board.

RULE 22. RECIPROCAL DISCIPLINE AND RECIPROCAL DISABILITY INACTIVE STATUS.

A. Disciplinary Counsel Duty to Obtain Order of Discipline or Disability Inactive Status from Other Jurisdiction. Upon being disciplined or transferred to disability inactive status in another jurisdiction, a lawyer admitted to practice in [this ~~state~~ jurisdiction] shall promptly inform disciplinary counsel of the discipline or transfer. Upon notification from any source that a lawyer within the jurisdiction of the agency has been disciplined or transferred to disability inactive status in another jurisdiction, disciplinary counsel shall obtain a certified copy of the disciplinary order and file it with the board and with the court.

B. Notice Served Upon Respondent. Upon receipt of a certified copy of an order demonstrating that a lawyer admitted to practice in [name of ~~state~~ jurisdiction] has been disciplined or transferred to disability inactive status in another jurisdiction, the court shall forthwith issue a notice directed to the lawyer and to disciplinary counsel containing:

(1) A copy of the order from the other jurisdiction; and

(2)An order directing that the lawyer or disciplinary counsel inform the court, within [thirty] days from service of the notice, of any claim by the lawyer or disciplinary counsel predicated

upon the grounds set forth in paragraph D, that the imposition of the identical discipline or disability inactive status in this ~~state~~ jurisdiction would be unwarranted and the reasons for that claim.

C. Effect of Stay in Other Jurisdiction. In the event the discipline or transfer imposed in the other jurisdiction has been stayed there, any reciprocal discipline or transfer imposed in this ~~state~~ jurisdiction shall be deferred until the stay expires.

~~D. Discipline to be Imposed. Upon the expiration of [thirty] days from service of the~~ notice pursuant to the provisions of paragraph B, this court shall impose the identical discipline or disability inactive status unless disciplinary counsel or the lawyer demonstrates, or this court finds that it clearly appears upon the face of the record from which the discipline is predicated, that:

(1) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(2) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the court could not, consistent with its duty, accept as final the conclusion on that subject; or

~~(4)~~ (3) The ~~imposition of the same~~ discipline ~~by the court~~ imposed would result in grave injustice ~~or~~; or be offensive to the public policy of the jurisdiction; or

~~(4) The misconduct established warrants substantially different discipline in this state; or~~

~~(5)~~ (4) The reason for the original transfer to disability inactive status no longer exists.

If this court determines that any of those elements exists, this court shall enter such other order as it deems appropriate. The burden is on the party seeking different discipline in this jurisdiction to demonstrate that the imposition of the same discipline is not appropriate.

E. Conclusiveness of Adjudication in Other Jurisdictions. In all other aspects, a final adjudication in another jurisdiction that a lawyer, whether or not admitted in that jurisdiction, has been guilty of misconduct or should be transferred to disability inactive status shall establish conclusively the misconduct or the disability for purposes of a disciplinary or disability proceeding in this state.

Commentary

If a lawyer suspended or disbarred in one jurisdiction is also admitted in another jurisdiction and no action can be taken against the lawyer until a new disciplinary proceeding is instituted, tried, and concluded, the public in the second jurisdiction is left unprotected against a lawyer who has been judicially determined to be unfit. Any procedure which so exposes innocent clients to harm cannot be justified. The spectacle of a lawyer disbarred in one jurisdiction yet permitted to practice elsewhere exposes the profession to criticism and undermines public confidence in the administration of justice.

Disciplinary counsel in the forum jurisdiction should be notified by disciplinary counsel of the jurisdiction where the original discipline or disability inactive status was imposed. Upon receipt of such information, disciplinary counsel should promptly obtain and serve upon the lawyer an order to show cause why identical discipline or disability inactive status should not be imposed in the forum ~~state~~ jurisdiction. The certified copy of the order in the original jurisdiction should be incorporated into the order to show cause.

The imposition of discipline or disability inactive status in one jurisdiction does not mean that every other jurisdiction in which the lawyer is admitted must necessarily impose discipline or disability inactive status. The agency has jurisdiction to recommend reciprocal discipline or disability inactive status on the basis of public discipline or disability inactive status imposed by a ~~state~~ jurisdiction in which the respondent is licensed.

A judicial determination of misconduct or disability by the respondent in another ~~state~~ jurisdiction is conclusive, and not subject to relitigation in the forum ~~state~~ jurisdiction. The court should impose identical discipline or disability inactive status unless it determines, after review limited to the record of the proceedings in the foreign jurisdiction, that one of the grounds specified in paragraph D exists. This Rule applies whether or not the respondent is admitted to practice in that jurisdiction. See also, Model Rule 8.5, Comment [1], Model Rules of Professional Conduct.

forum ~~state~~ jurisdiction. The certified copy of the order in the original jurisdiction should be incorporated into the order to show cause.

The imposition of discipline or disability inactive status in one jurisdiction does not mean that every other jurisdiction in which the lawyer is admitted must necessarily impose discipline or disability inactive status. The agency has jurisdiction to recommend reciprocal discipline or disability inactive status on the basis of public discipline or disability inactive status imposed by a ~~state~~ jurisdiction in which the respondent is licensed.

A judicial determination of misconduct or disability by the respondent in another ~~state~~ jurisdiction is conclusive, and not subject to relitigation in the forum ~~state~~ jurisdiction. The court should impose identical discipline or disability inactive status unless it determines, after review limited to the record of the proceedings in the foreign jurisdiction, that one of the grounds specified in paragraph D exists. This Rule applies whether or not the respondent is admitted to practice in that jurisdiction. See also, Model Rule 8.5, Comment [1], Model Rules of Professional Conduct.

Report 201E

AMERICAN BAR ASSOCIATION
COMMISSION ON MULTIJURISDICTIONAL PRACTICE
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, that the American Bar Association encourages the use of the National Lawyer Regulatory Data Bank to promote interstate disciplinary enforcement mechanisms and urges jurisdictions to adopt the International Standard Lawyer Numbering System®.

FURTHER RESOLVED, that the American Bar Association urges jurisdictions to require lawyers to report to the lawyer regulatory agency in the jurisdiction in which they are licensed, all other jurisdictions in which they are licensed and any status changes in those other jurisdictions.

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Report 201F

AMERICAN BAR ASSOCIATION
COMMISSION ON MULTIJURISDICTIONAL PRACTICE
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, the American Bar Association adopts the proposed *Model Rule on Pro Hac Vice Admission*, dated August 2002:

Model Rule on Pro Hac Vice Admission

I. Admission In Pending Litigation Before A Court Or Agency

A. Definitions

1. An "out-of-state" lawyer is a person not admitted to practice law in this state but who is admitted in another state or territory of the United States or of the District of Columbia and not disbarred or suspended from practice in any jurisdiction.

2. An out-of-state lawyer is "eligible" for admission pro hac vice if that lawyer:

a. lawfully practices solely on behalf of the lawyer's employer and its commonly owned organizational affiliates, regardless of where such lawyer may reside or work; or

b. neither resides nor is regularly employed at an office in this state; or

c. resides in this state but (i) lawfully practices from offices in one or more other states and (ii) practices no more than temporarily in this state, whether pursuant to admission pro hac vice or in other lawful ways.

3. A "client" is a person or entity for whom the out-of-state lawyer has rendered services or by whom the lawyer has been retained prior to the lawyer's performance of services in this state.

4. An "alternative dispute resolution" ("ADR") proceeding includes all types of arbitration or mediation, and all other forms of alternative dispute resolution, whether arranged by the parties or otherwise.

5. "This state" refers to [state or other jurisdiction promulgating this rule]. This Rule does not govern proceedings before a federal court or federal agency located in this state unless that body adopts or incorporates this Rule.

B. Authority of Court or Agency To Permit Appearance By Out-of-State Lawyer ~~and In-State Lawyer's Duties Generally~~

1. Court Proceeding. A court of this state may, in its discretion, admit an eligible out-of-state lawyer retained to appear in a particular proceeding pending before such court to appear pro hac vice as counsel in that proceeding.

2. Administrative Agency Proceeding. If practice before an agency of this state is limited to lawyers, the agency may, using the same standards and procedures as a court,

admit an eligible out-of-state lawyer who has been retained to appear in a particular agency proceeding to appear as counsel in that proceeding pro hac vice.

C. In-State Lawyer's Duties. When an out-of-state lawyer appears for a client in a proceeding pending in this state, either in the role of co-counsel of record with the in-state lawyer, or in an advisory or consultative role, the in-state lawyer who is co-counsel or counsel of record for that client in the proceeding remains responsible to the client and responsible for the conduct of the proceeding before the court or agency. It is the duty of the in-state lawyer to advise the client of the in-state lawyer's independent judgment on contemplated actions in the proceeding if that judgment differs from that of the out-of-state lawyer.

D. Application Procedure

1. Verified Application. An eligible out-of-state lawyer seeking to appear in a proceeding pending in this state as counsel pro hac vice shall file a verified application with the court where the litigation is filed. The application shall be served on all parties who have appeared in the case and the [lawyer regulatory authority]. The application shall include proof of service. The court has the discretion to grant or deny the application summarily if there is no opposition.

2. Objection to Application. The [lawyer regulatory authority] or a party to the proceeding may file an objection to the application or seek the court's imposition of conditions to its being granted. The [lawyer regulatory authority] or objecting party must file with its objection a verified affidavit containing or describing information establishing a factual basis for the objection. The [lawyer regulatory authority] or objecting party may seek denial of the application or modification of it. If the application has already been granted, the [lawyer regulatory authority] or objecting party may move that the pro hac vice admission be withdrawn.

3. Standard for Admission and Revocation of Admission. The courts and agencies of this state have discretion as to whether to grant applications for admission pro hac vice. An application ordinarily should be granted unless the court or agency finds reason to believe that such admission:

a. may be detrimental to the prompt, fair and efficient administration of justice,

b. may be detrimental to legitimate interests of parties to the proceedings other than the client(s) the applicant proposes to represent,

c. one or more of the clients the applicant proposes to represent may be at risk of receiving inadequate representation and cannot adequately appreciate that risk, or

d. the applicant has engaged in such frequent appearances as to constitute regular practice in this state.

4. Revocation of Admission. Admission to appear as counsel pro hac vice in a proceeding may be revoked for any of the reasons listed in Section I.D.3 above.

E. Application

1. Required Information. An application shall state the information listed on Appendix A to this rule. The applicant may also include any other matters supporting admission pro hac vice.

2. Application Fee. An applicant for permission to appear as counsel pro hac vice under this Rule shall pay a non-refundable fee as set by the [lawyer regulatory authority] at the time of filing the application.

3. Exemption for Pro Bono Representation. An applicant shall not be required to pay the fee established by I.E.2 above if the applicant will not charge an attorney fee to the client(s) and is:

a. employed or associated with a pro bono project or nonprofit legal services organization in a civil case involving the client(s) of such programs: or

b. involved in a criminal case or a habeas proceeding for an indigent defendant.

F. Authority of the [Lawyer Regulatory Authority] and Court: Application of Ethical Rules, Discipline, Contempt, and Sanctions

1. Authority Over Out-of-State Lawyer and Applicant.

a. During pendency of an application for admission pro hac vice and upon the granting of such application, an out-of-state lawyer submits to the authority of the courts and the [lawyer regulatory authority] of this state for all conduct relating in any way to the proceeding in which the out-of-state lawyer seeks to appear. The applicant or out-of-state lawyer who has obtained pro hac vice admission in a proceeding submits to this authority for all that lawyer's conduct (i) within the state while the proceeding is pending or (ii) arising out of or relating to the application or the proceeding. An applicant or out-of-state lawyer who has pro hac vice authority for a proceeding may be disciplined in the same manner as an in-state lawyer.

b. The court's and [lawyer regulatory authority's] authority includes, without limitation, the court's and [lawyer regulatory authority's] rules of professional conduct, rules of discipline, contempt and sanctions orders, local court rules, and court policies and procedures.

2. Familiarity With Rules. An applicant shall become familiar with the rules of professional conduct, rules of discipline of the [lawyer regulatory authority], local court rules, and policies and procedures of the court before which the applicant seeks to practice.

II. Out-of-State Proceedings, Potential In-State and Out-of-State Proceedings, and All ADR

A. In-State Ancillary Proceeding Related to Pending Out-of-State Proceeding. In connection with proceedings pending outside this state, an out-of-state lawyer admitted to appear in that proceeding may render in this state legal services regarding or in aid of such proceeding.

B. Consultation by Out-of-State Lawyer

1. Consultation with In-State Lawyer. An out-of-state lawyer may consult in this state with an in-state lawyer concerning the in-state's lawyer's client's pending or potential proceeding in this state.

2. Consultation with Potential Client. At the request of a person in this state contemplating a proceeding or involved in a pending proceeding, irrespective of where the proceeding is located, an out-of-state lawyer may consult in this state with that person about that person's possible retention of the out-of-state lawyer in connection with the proceeding.

C. Preparation for In-State Proceeding. On behalf of a client in this state or elsewhere, the out-of-state lawyer may render legal services in this state in preparation for a potential proceeding to be filed in this state, provided that the out-of-state lawyer reasonably believes he is eligible for admission pro hac vice in this state.

D. Preparation for Out-of-State Proceeding. In connection with a potential proceeding to be filed outside this state, an out-of-state lawyer may render legal services in this state for a client or potential client located in this state, provided that the out-of-state lawyer is admitted or reasonably believes the lawyer is eligible for admission generally or pro hac vice in the jurisdiction where the proceeding is anticipated to be filed.

E. Services Rendered Outside This State for In-State Client. An out-of-state lawyer may render legal services while the lawyer is physically outside this state when requested by a client located within this state in connection with a potential or pending proceeding filed in or outside this state.

F. Alternative Dispute Resolution ("ADR") Procedures. An out-of-state lawyer may render legal services to prepare for and participate in an ADR procedure regardless of where the ADR procedure is expected to take or actually takes place.

G. No Solicitation. An out-of-state lawyer rendering services in this state in compliance with this Rule or here for other reasons is not authorized by anything in this rule to hold out to the public or otherwise represent that the lawyer is admitted to practice in this jurisdiction. Nothing in this Rule authorizes out-of-state lawyers to solicit, advertise, or otherwise hold themselves out in publications as available to assist in litigation in this state.

H. Temporary Practice. An out-of-state lawyer will only be eligible for admission pro hac vice or to practice in another lawful way only on a temporary basis.

I. Authorized Services. The foregoing services may be undertaken by the out-of-state lawyer in connection with a potential proceeding in which the lawyer reasonably expects to be admitted pro hac vice, even if ultimately no proceeding is filed or if pro hac vice admission is denied.

APPENDIX A

The out-of-state lawyer application shall include:

1. the applicant's residence and business address;
2. the name, address and phone number of each client sought to be represented;
3. the courts before which applicant has been admitted to practice and the respective period(s) of admission;
4. whether the applicant (a) has been denied admission pro hac vice in this state, (b) had admission pro hac vice revoked in this state, or (c) has otherwise formally been disciplined or sanctioned by any court in this state. If so, specify the nature of the allegations; the name of the authority bringing such proceedings; the caption of the proceedings, the date filed, and what findings were made and what action was taken in connection with those proceedings;
5. whether any formal, written disciplinary proceeding has ever been brought against the applicant by a disciplinary authority in any other jurisdiction within the last five (5) years and, as to each such proceeding: the nature of the allegations; the name of

the person or authority bringing such proceedings; the date the proceedings were initiated and finally concluded; the style of the proceedings; and the findings made and actions taken in connection with those proceedings;

6. whether the applicant has been held formally in contempt or otherwise sanctioned by any court in a written order in the last five (5) years for disobedience to its rules or orders, and, if so: the nature of the allegations; the name of the court before which such proceedings were conducted; the date of the contempt order or sanction, the caption of the proceedings, and the substance of the court's rulings (a copy of the written order or transcript of the oral rulings shall be attached to the application);

7. the name and address of each court or agency and a full identification of each proceeding in which the applicant has filed an application to appear pro hac vice in this state within the preceding two years; the date of each application; and the outcome of the application;

8. an averment as to the applicant's familiarity with the rules of professional conduct, rules of discipline of the [lawyer regulatory authority], local rules and court procedures of the court before which the applicant seeks to practice; and

9. the name, address, telephone number and bar number of an active member in good standing of the bar of this state who will sponsor the applicant's pro hac vice request. ~~The bar member will be the lawyer of record for the client(s) the applicant seeks to represent.~~ The bar member shall appear of record together with the out-of-state lawyer.

10. Optional: the applicant's prior or continuing representation in other matters of one or more of the clients the applicant proposes to represent and any relationship between such other matter(s) and the proceeding for which applicant seeks admission.

11. Optional: any special experience, expertise, or other factor deemed to make it particularly desirable that the applicant be permitted to represent the client(s) the applicant proposes to represent in the particular cause.

Report 201G

AMERICAN BAR ASSOCIATION
COMMISSION ON MULTIJURISDICTIONAL PRACTICE
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, that the American Bar Association adopts the proposed *Model Rule on Admission by Motion*, dated August 2002:

Model Rule on Admission by Motion

1. An applicant who meets the requirements of (a) through (h) of this Rule may, upon motion, be admitted to the practice of law in this jurisdiction.

The applicant shall:

(a) have been admitted to practice law in another state, territory, or the District of Columbia;

(b) hold a first professional degree in law (J.D. or LL.B.) from a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association at the time the graduate matriculated; ~~degree was conferred;~~

(c) have been primarily engaged in the active practice of law in one or more states, territories or the District of Columbia for five of the seven years immediately preceding the date upon which the application is filed;

~~submit evidence of a passing score on the Multistate Professional Responsibility Examination as it is established in this jurisdiction;~~

(d) establish that the applicant is currently a member in good standing in all jurisdictions where admitted;

(e) establish that the applicant is not currently subject to lawyer discipline or the subject of a pending disciplinary matter in any other jurisdiction;

(f) establish that the applicant possesses the character and fitness to practice law in this jurisdiction; and

(g) designate the Clerk of the jurisdiction's highest court for service of process.

8. For the purposes of this rule, the "active practice of law" shall include the following activities, if performed in a jurisdiction in which the applicant is admitted, or if performed in a jurisdiction that affirmatively permits such activity by a lawyer not admitted to practice; however, in no event shall activities listed under (2)(e) and (f) that were performed in advance of bar admission in the jurisdiction to which application is being made be accepted toward the durational requirement:

(b)

(a) Representation of one or more clients in the ~~private~~ practice of law;
(c) Service as a lawyer with a local, state, or federal agency, including military service;
(d) Teaching law at a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association;
(e) Service as a judge in a federal, state, territorial or local court of record;
(f) Service as a judicial law clerk; or
(g) Service as corporate counsel.

8. For the purposes of this Rule, the active practice of law shall not include work that, as undertaken, constituted the unauthorized practice of law in the jurisdiction in which it was performed or in the jurisdiction in which the clients receiving the unauthorized services were located.

9. An applicant who has failed a bar examination administered in this jurisdiction within five years of the date of filing an application under this rule shall not be eligible for admission on motion.

Report 201 H

AMERICAN BAR ASSOCIATION
COMMISSION ON MULTIJURISDICTIONAL PRACTICE
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, that the American Bar Association encourage jurisdictions to adopt the ABA *Model Rule for the Licensing of Legal Consultants*, dated August 1993.

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PLEASE NOTE – THERE IS NO RECOMMENDATION NUMBERED 201 I

Report 201J

AMERICAN BAR ASSOCIATION
COMMISSION ON MULTIJURISDICTIONAL PRACTICE
REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

RESOLVED, that the American Bar Association adopts the proposed *Model Rule for Temporary Practice by Foreign Lawyers*, dated August 2002:

Model Rule for Temporary Practice by Foreign Lawyers

(a) A lawyer who is admitted only in a non-United States jurisdiction shall not, except as authorized by this Rule or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law, or hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. Such a lawyer does not engage in the unauthorized practice of law in this jurisdiction when on a temporary basis the lawyer performs services in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal held or to be held in a jurisdiction outside the United States if the lawyer, or a person the lawyer is assisting, is authorized by law or by order of the tribunal to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation or other alternative dispute resolution proceeding held or to be held in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice;

(4) are not within paragraphs (2) or (3) and

(i) are performed for a client who resides or has an office in a jurisdiction in which the lawyer is authorized to practice to the extent of that authorization; or

(ii) arise out of or are reasonably related to a matter that has a substantial connection to a jurisdiction in which the lawyer is authorized to practice to the extent of that authorization; or

(5) are governed primarily by international law or the law of a non-United States jurisdiction.

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(b) For purposes of this grant of authority, the lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and subject to effective regulation and discipline by a duly constituted professional body or a public authority.

APPENDIX C

Amendment to Rule 4-5.5

RULE 4-5.5 UNLICENSED PRACTICE OF LAW, MULTIJURISDICTIONAL PRACTICE OF LAW

(a) A lawyer shall not: ~~(a)~~ practice law in a jurisdiction, other than the lawyer's home state, ~~where doing so violates~~ in violation of the regulation of the legal profession in that jurisdiction or in violation of the regulation of the legal profession in the lawyer's home state; ~~or~~ or assist another in doing so.

~~(b) assist a person who is not a member of the bar in the performance of activity that constitutes the unlicensed practice of law.~~

(b) A lawyer who is not admitted to practice in Florida shall not:

(1) except as authorized by other law, establish an office or other regular presence in Florida for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in Florida.

(c) A lawyer admitted and authorized to practice law in another United States jurisdiction, and (i) not disbarred or suspended from practice in any jurisdiction or (ii) disciplined or held in contempt in Florida by reason of misconduct committed while engaged in the practice of law permitted pursuant to this rule, may provide legal services on a temporary basis in Florida that:

(1) are undertaken in association with a lawyer who is admitted to practice

in Florida and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services are:

(i) performed for a client who resides in or has an office in the lawyer's home state, or

(ii) where the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice, and

(iii) the services are not services for which the forum requires *pro hac vice* admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and

(i) are performed for a client who resides in or has an office in the jurisdiction in which the lawyer is authorized to practice or

(ii) arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

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Comment

Paragraph (a) applies to unlicensed practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person. A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Regardless of whether the lawyer is admitted to practice law on a regular basis or is practicing as the result of an authorization granted by court rule or order or by the law, the lawyer must comply with the standards of ethical and professional conduct set forth in these Rules Regulating The Florida Bar.

The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. ~~Subdivision (b)~~ This rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See rule 4-5.3.

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Likewise, it does not prohibit lawyers from providing professional advice and instruction to nonlawyers whose employment requires knowledge of law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants, and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

Other than as authorized by law, a lawyer who is not admitted to practice in Florida violates paragraph (b) if the lawyer establishes an office or other regular presence in Florida for the practice of law. Presence may be regular even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in Florida.

There are occasions in which a lawyer admitted and authorized to practice in another United States jurisdiction may provide legal services on a temporary basis in Florida under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies such circumstances. This rule does not authorize a lawyer to establish an office or other regular presence in Florida without being admitted to practice generally here. Furthermore, no lawyer is

authorized to provide legal services pursuant to this rule if the lawyer (1) is disbarred or suspended from practice in any jurisdiction or (2) has been disciplined or held in contempt in Florida by reason of misconduct committed while engaged in the practice of law permitted pursuant to this rule. The contempt must be final and not reversed or abated.

There is no single test to determine whether a lawyer's services are provided on a "temporary basis" in Florida, and may therefore be permissible under paragraph (c). Services may be "temporary" even though the lawyer provides services in Florida on a recurring basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

Paragraph (c) applies to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United States. The word "admitted" in paragraph (c) contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who while technically admitted is not authorized to practice, because, for example, the lawyer is on inactive status.

Paragraph (c)(1) recognizes that the interests of clients and the

public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in Florida. For this paragraph to apply, the lawyer admitted to practice in Florida could not serve merely as a conduit for the out-of-state lawyer, but would have to share actual responsibility for the representation and actively participate in the representation.

Lawyers not admitted to practice generally in Florida may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission *pro hac vice* or pursuant to formal rules of the agency. Under paragraph (c)(2), a lawyer does not violate this rule when the lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of Florida requires a lawyer who is not admitted to practice in Florida to obtain admission *pro hac vice* before appearing before a tribunal or to obtain admission pursuant to applicable rule(s) before appearing before an administrative agency, this rule requires the lawyer to obtain that authority.

Paragraph (c)(2) also provides that a lawyer rendering services in Florida on a temporary basis does not violate this rule when the lawyer

engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted *pro hac vice*. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in Florida in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear, including taking depositions in Florida.

Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in Florida if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services are preformed for a client who resides in or has an office in the lawyer's home state or if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission *pro hac vice* in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require. For the purposes of

this rule, a lawyer who is not admitted to practice law in Florida who files more than 3 demands for arbitration or responses to arbitration in separate and unrelated arbitration proceedings in a 365 day period shall be presumed to be providing legal services on a regular, not temporary, basis.

Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide certain legal services on a temporary basis in Florida that are performed for a client who resides or has an office in the jurisdiction in which the lawyer is authorized to practice or arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers. When performing services which may be performed by nonlawyers, the lawyer remains subject to the Rules of Professional Conduct.

Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a relationship. The lawyer's client may have been previously represented by the lawyer, or

may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized expertise developed through regular practice of law in a body of law that is applicable to the client's particular matter.

A lawyer who practices law in Florida pursuant to paragraph (c) or otherwise is subject to the disciplinary authority of Florida. A lawyer who practices law in Florida pursuant to paragraph (c) must inform the client that the lawyer is not licensed to practice law in Florida.

The Supreme Court of Florida has determined that it constitutes the unlicensed practice of law for a lawyer admitted to practice law in a jurisdiction other than Florida to advertise to provide legal services in Florida

which the lawyer is not authorized to provide. Paragraph (c) does not authorize advertising legal services to prospective clients in Florida by lawyers who are admitted to practice in jurisdictions other than Florida. Whether and how lawyers may communicate the availability of their services to prospective clients in Florida is governed by Rules 4-7.1 through 4-7.11.

A lawyer who practices law in Florida is subject to the disciplinary authority of Florida.

APPENDIX D

Amendment to Rule 3-4.1

RULE 3-4.1 NOTICE AND KNOWLEDGE OF RULES; JURISDICTION OVER ATTORNEYS OF OTHER STATES

Every member of The Florida Bar and every attorney of another state who ~~is admitted to practice for the purpose of a specific case before a court of record of this state~~ provides or offers to provide any legal services in this state is within the jurisdiction and subject to the disciplinary authority of this court and its agencies under this rule and is charged with notice and held to know the provisions of this rule and the standards of ethical and professional conduct prescribed by this court. ~~Jurisdiction over an attorney of another state who is not a member of The Florida Bar shall be limited to conduct as an attorney in relation to the business for which the attorney was permitted to practice in this state and the privilege in the future to practice law in the state of Florida.~~

APPENDIX E

Amendment to Rule 3-4.6

RULE 3-4.6 DISCIPLINE BY FOREIGN OR FEDERAL JURISDICTION; CHOICE OF LAW

(a) Disciplinary Authority. An attorney admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the attorney's conduct occurs. An attorney may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct. A final adjudication in a disciplinary proceeding by a court or other authorized disciplinary agency of another jurisdiction, state or federal, that an attorney licensed to practice in that jurisdiction is guilty of misconduct justifying disciplinary action shall be considered as conclusive proof of such misconduct in a disciplinary proceeding under this rule.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the attorney's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct.

APPENDIX F

Amendment to Rule 3-7.2

RULE 3-7.2 PROCEDURES UPON CRIMINAL OR PROFESSIONAL MISCONDUCT; DISCIPLINE UPON DETERMINATION OR JUDGMENT OF GUILT OF CRIMINAL MISCONDUCT

(j) Professional Misconduct in Foreign Jurisdiction.

(1) ~~*Notice of Discipline by a Foreign Jurisdiction.* A member of The~~ Florida Bar who has submitted a disciplinary resignation or otherwise surrendered a license to practice law in lieu of disciplinary sanction, or has been disbarred or suspended from the practice of law by a court or other authorized disciplinary agency of another state or by a federal court shall within 30 days after the effective date of disbarment or suspension file with the Supreme Court of Florida and the executive director of The Florida Bar a copy of the order or judgment effecting such disbarment or suspension.

(2) *Adjudication or Discipline by a Foreign Jurisdiction.* In cases of a final adjudication by a court or other authorized disciplinary agency of another jurisdiction, such adjudication of misconduct shall be sufficient basis for the filing of a complaint by The Florida Bar and assignment for hearing before a referee without a finding of probable cause under these rules.

APPENDIX G

Amendment to Rule 3-2.1

3-2. DEFINITIONS

RULE 3-2.1 GENERALLY

Wherever used in these rules the following words or terms shall have the meaning herein set forth unless the use thereof shall clearly indicate a different meaning:

(a) Bar Counsel. A member of The Florida Bar representing The Florida Bar in any proceeding under these rules.

(b) The Board or the Board of Governors. The board of governors of The Florida Bar.

(c) Complainant or Complaining Witness. Any person who has complained of the conduct of any member of The Florida Bar to any officer or agency of The Florida Bar.

(d) This Court or the Court. The Supreme Court of Florida.

(e) Court of this State. A state court authorized and established by the constitution or laws of the state of Florida.

(f) Diversion to Practice and Professionalism Enhancement Programs. The removal of a disciplinary matter from the disciplinary system and placement of the matter in a skills enhancement program in lieu of a disciplinary sanction.

(g) **Executive Committee.** The executive committee of the board of governors of The Florida Bar.

(h) **Executive Director.** The executive director of The Florida Bar.

(i) **Practice and Professionalism Enhancement Programs.** Programs operated either as a diversion from disciplinary action or as a part of a disciplinary sanction that are intended to provide educational opportunities to members of the bar for enhancing skills and avoiding misconduct allegations.

(j) **Probable Cause.** A finding by an authorized agency that there is cause to believe that a member of The Florida Bar is guilty of misconduct justifying disciplinary action.

(k) **Referral to Practice and Professionalism Enhancement Programs.** Placement of a lawyer in skills enhancement programs as a disciplinary sanction.

(*l*) **Referee.** A judge or retired judge appointed to conduct proceedings as provided under these rules.

(m) **Respondent.** A member of The Florida Bar or an attorney subject to these rules who is accused of misconduct or whose conduct is under investigation.

(n) **Staff Counsel.** The director of the legal division and an employee of The Florida Bar.

(*o*) **Chief Branch Discipline Counsel.** Chief branch discipline counsel is the counsel in charge of a branch office of The Florida Bar. Any counsel employed by The Florida Bar may serve as chief branch discipline counsel at the direction of the regularly assigned chief branch discipline counsel or staff counsel.

(p) **Designated Reviewer.** The designated reviewer is a member of the board of governors responsible for review and other specific duties as assigned by the board of governors with respect to a particular grievance committee or matter. If a designated reviewer recuses or is unavailable, any other board member may serve as designated reviewer in that matter. The designated reviewer will be selected, from time to time, by the board members from the circuit of such grievance committee. In circuits having an unequal number of grievance committees and board members, review responsibility will be reassigned, from time to time, to equalize workloads. On such reassignments responsibility for all pending cases from a particular committee passes to the new designated reviewer. The chief branch discipline counsel will be given written notice of changes in the designated reviewing members for a particular committee.

(q) **Final Adjudication.** A decision by the authorized disciplinary authority or court issuing a sanction for professional misconduct that is not subject to judicial review except on direct appeal to the Supreme Court of the United States.

APPENDIX H

Amendment to Florida Rule of Judicial Administration 2.061

RULE 2.061.- FOREIGN ATTORNEYS

(a) **Eligibility.** Upon filing a verified motion with the court ~~showing that the attorney is an active member in good standing of the bar of another state, such~~ an attorney who is an active member in good standing of the bar of another state and currently eligible to practice law in a state other than Florida may be permitted to appear in particular cases in a Florida court upon such conditions as the court may deem appropriate, provided that a member of The Florida Bar in good standing is associated as an attorney of record. In determining whether to permit a foreign attorney to appear pursuant to this rule, the court may consider, among other things, information provided under subdivision (b)(3) concerning discipline in other jurisdictions. No attorney is authorized to appear pursuant to this rule if the attorney (1) is a Florida resident; (2) is ~~an inactive or suspended member of The Florida Bar, or has been disbarred or has received a disciplinary resignation from The Florida Bar~~ is a member of The Florida Bar but is ineligible to practice law; (3) has previously been disciplined or held in contempt by reason of misconduct committed while engaged in representation permitted pursuant to this rule, provided however, the contempt is final and has not been reversed or abated; (4) has failed to provide notice to The Florida Bar or pay the filing fee as required in subdivision (b)(7) or ~~(4)~~ (5) is engaged in a "general practice" before Florida courts. For purposes of this rule, more than 3 appearances within a 365-day period in separate and unrelated representations shall be presumed to be a "general practice."~~, provided, however, that the court shall have discretion to allow other appearances upon a showing that the appearances are not a "general practice," or that denial will work a substantial hardship on the client.~~ In cases involving

indigent clients, the court may waive the filing fee for good cause shown.

(b) **Contents of Verified Motion.** A form verified motion accompanies this rule and shall be utilized by the foreign attorney. The verified motion required by subdivision (a) shall include:

(1) a statement identifying all jurisdictions in which the attorney is an active member in good standing and currently eligible to practice law;

(2) a statement identifying by date, case name, and case number all other matters in Florida state courts in which pro hac vice admission has been sought in the preceding 5 years, and whether such admission was granted or denied;

(3) a statement identifying all jurisdictions in which the attorney has been disciplined in any manner in the preceding 5 years and the sanction imposed, or in which the attorney has pending any disciplinary proceeding, including the date of the disciplinary action, the nature of the violation~~, and the penalty imposed~~;

(4) a statement identifying the date on which the legal representation at issue commenced, and the party or parties represented;

(5) a statement that all applicable provisions of these rules and the Rules Regulating The Florida Bar have been read, and that the verified motion

complies with those rules;

(6) the name, record bar address, and membership status of the Florida Bar member or members associated for purposes of the representation;

(7) a certificate indicating service of the verified motion upon all counsel of record in the matter in which leave to appear pro hac vice is sought and upon The Florida Bar at its Tallahassee office accompanied by a nonrefundable $250.00 filing fee made payable to The Florida Bar or notice of the waiver of the fee; and

(8) a verification by the attorney seeking to appear pursuant to this rule and the signature of the Florida Bar member or members associated for purposes of the representation.

APPENDIX I

Amendment to Rule 1-3.10

RULE 1-3.10 APPEARANCES BY NON-FLORIDA LAWYERS IN A FLORIDA COURT

(a) **Non-Florida Lawyers ~~With Professional Business in Florida~~ Appearing in a Florida Court**. A practicing lawyer of another state, in good standing and currently eligible to practice, may, upon association of a member of The Florida Bar, in good standing, and verified motion be permitted to practice upon such conditions as the court deems appropriate under the circumstances of the case. Such lawyer shall comply with the applicable portions of this rule and the Florida Rules of Judicial Administration.

(1) *Application of Rules Regulating The Florida Bar.* Lawyers permitted to appear by this rule shall be subject to these Rules Regulating The Florida Bar while engaged in the permitted representation.

(2) *General Practice Prohibited.* Non-Florida lawyers shall not be permitted to engage in a general practice before Florida courts. For purposes of this rule more than 3 appearances within a 365-day period in separate and unrelated representations shall be presumed to be a "general practice~~,~~." ~~provided, however, that the court shall have discretion to allow other appearances upon a showing that the appearances are not a "general practice" or that denial will work a substantial hardship on the client.~~

(3) *Effect of Professional Discipline or Contempt.* Non-Florida lawyers who have been disciplined or held in contempt by reason of misconduct

committed while engaged in representation that is permitted by this rule shall thereafter be denied admission under this rule and the applicable provisions of the Florida Rules of Judicial Administration.

~~(4) *Inactive, Suspended, and Former Members of The Florida Bar Prohibited.* This rule and the applicable portions of the Florida Rules of Judicial Administration shall not be construed to permit the admission of inactive, suspended, and former members of The Florida Bar to courts of record in this state. Inactive, suspended, and former members of The Florida Bar who seek admission under this rule and the applicable provisions of the Florida Rules of Judicial Administration shall disclose current Florida Bar membership status to the courts. Failure to make such disclosure shall serve as a basis for denial of leave to appear and a bar to future appearances in Florida courts of record under this rule and the applicable portions of the Florida Rules of Judicial Administration.~~

(b) Lawyers Prohibited From Appearing. No lawyer is authorized to appear pursuant to this rule or the applicable portions of the Florida Rules of Judicial Administration if the lawyer:

(1) is disbarred or suspended from practice in any jurisdiction;

(2) is a Florida resident;

(3) is a member of The Florida Bar but ineligible to practice law;

(4) has previously been disciplined or held in contempt by reason of misconduct committed while engaged in representation permitted pursuant to this rule;

(5) has failed to provide notice to The Florida Bar or pay the filing fee as

required by this rule or

(6) is engaged in a "general practice" as defined elsewhere in this rule.

~~(b)~~ (c) **Content of Verified Motion for Leave to Appear.** Any verified motion filed under this rule or the applicable provisions of the Florida Rules of Judicial Administration shall include:

~~(1) a statement of the current Florida Bar membership status of the lawyer, if any;~~

~~(2) a statement indicating the lawyer is currently a member in good standing of a jurisdiction other than Florida;~~

~~(3) a statement indicating the date the legal representation at issue commenced and the party(ies) represented;~~

~~(4) a statement identifying, by date, case name, and case number, all other matters in which temporary admission has been sought in the state of Florida in the prior 5 years and whether such admission has been granted or denied;~~

~~(5) a statement that all provisions of this rule and the applicable provisions of the Florida Rules of Judicial Administration have been read and that the motion for leave to appear is filed in compliance therewith;~~

~~(6) the name, record bar address, and membership status of the~~

~~member(s) of The Florida Bar associated for purposes of the representation; and~~

~~(7) a certificate indicating service of the verified motion upon all counsel of record in the matter in which leave to appear is sought.~~

(1) a statement identifying all jurisdictions in which the is lawyer currently eligible to practice law;

(2) a statement identifying by date, case name, and case number all other matters in Florida state courts in which pro hac vice admission has been sought in the preceding 5 years, and whether such admission was granted or denied;

(3) a statement identifying all jurisdictions in which the lawyer has been disciplined in any manner in the preceding 5 years and the sanction imposed, or in which the lawyer has pending any disciplinary proceeding, including the date of the disciplinary action and the nature of the violation;

(4) a statement identifying the date on which the legal representation at issue commenced, and the party or parties represented;

(5) a statement that all applicable provisions of this rule and the applicable provisions of the Florida Rules of Judicial Administration have been read, and that the verified motion complies with those rules;

(6) the name, record bar address, and membership status of the Florida Bar member or members associated for purposes of the representation;

(7) a certificate indicating service of the verified motion upon all counsel of record in the matter in which leave to appear pro hac vice is sought and upon The Florida Bar at its Tallahassee office accompanied by a nonrefundable $250.00 filing fee made payable to The Florida Bar or notice of the waiver of the fee; and

(8) a verification by the lawyer seeking to appear pursuant to this rule or the applicable provisions of the Florida Rules of Judicial Administration and the signature of the Florida Bar member or members associated for purposes of the representation.

G:\MJP 2\1-3.10 new title.wpd

APPENDIX J

Pro Hac Vice Fee Chart by States

State	Pro Hac Vice Fee
Alabama	$100.00
Alaska	$250.00 per case per year
Arizona	$348.50
California	$50.00 per case
Colorado	Fee $250.00
Delaware	$300.00 per attorney, per case, per year
Hawaii	$200.00
Idaho	$200.00
Indiana	$90.00
Montana	$100.00
Nevada	$350.00 per case, per year
New Jersey	Varies; up to $175.00 per year
North Dakota	$100.00
Oregon	$250.00 per case, per year
South Carolina	$100.00
South Dakota	$100.00
Utah	$175.00
Washington, D.C.	$100.00
West Virginia	$100.00

APPENDIX K

Verified Motion for Admission to Appear Pro Hac Vice

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT,
IN AND FOR _____, COUNTY, FLORIDA

_____ Case No._____
Plaintiff

Division _____

VS.

_____
Defendant

VERIFIED MOTION FOR ADMISSION TO APPEAR *PRO HAC VICE* PURSUANT TO FLORIDA RULE OF JUDICIAL ADMINISTRATION 2.061

Comes now_____, Movant herein, and respectfully represents the following:

1. Movant resides at _____
(Street Address)

_____, _____, _____
(City) (County) (State)

_____, _____ and is not a resident of
(Zip Code) (Telephone with area code)

the State of Florida.

2. Movant is an attorney and a member of the law firm of (or practices law under the name of) _____, with offices at _____, _____,
(Street Address) (City)

_____, _____, _____, _____.
(County) (State) (Zip Code) (Telephone)

3. Movant has been retained personally or as a member of the above named law firm on _____ by _____
(Date Representation Commenced) (Name of Party or Parties)

_____
to provide legal representation in connection with the above-styled matter now pending before

the above-named court of the State of Florida.

4. Movant is an active member in good standing and currently eligible to practice law in the following jurisdiction(s): (attach additional sheet if necessary)

_____

_____

_____

_____

_____

5. There are no disciplinary proceedings pending against Movant, except as provided below (give jurisdiction of disciplinary action, date of disciplinary action, nature of the violation and the sanction, if any, imposed):
(attach additional sheet if necessary)

_____

_____

_____

_____

_____

6. Within the past five (5) years, Movant has not been subject to any disciplinary proceedings, except as provided below (give jurisdiction of disciplinary action, date of disciplinary action, nature of the violation and the sanction, if any, imposed):
(attach additional sheet if necessary)

_____

_____

_____

_____

_____

7. Movant has never been subject to any suspension proceedings, except as provided below (give jurisdiction of disciplinary action, date of disciplinary action, nature of the violation and the sanction, if any, imposed):

(attach additional sheet if necessary)

_____

_____

_____

_____

_____

8. Movant has never been subject to any disbarment proceedings, except as provided below (give jurisdiction of disciplinary action, date of disciplinary action, nature of the violation and the sanction, if any, imposed):

(attach additional sheet if necessary)

_____

_____

_____

_____

_____

9. Movant, either by resignation, withdrawal, or otherwise, never has terminated or attempted to terminate Movant's office as an attorney in order to avoid administrative, disciplinary, disbarment, or suspension proceedings.

10. Movant is not an inactive member of The Florida Bar.

11. Movant is not now and has never been a member of The Florida Bar.

12. Movant is not a suspended member of The Florida Bar.

13. Movant is not a disbarred member of The Florida Bar nor has Movant received a disciplinary resignation from The Florida Bar.

14. Movant has not previously been disciplined or held in contempt by reason of misconduct committed while engaged in representation pursuant to Florida Rule of Judicial Administration 2.061, except as provided below (give date of disciplinary action or contempt, reasons therefor, and court imposing contempt):

(attach additional sheet if necessary)

_____

_____

_____

_____

_____

15. Movant has filed motion(s) to appear as counsel in Florida state courts during the past five (5) years in the following matters: (attach additional sheet if necessary)

Date of Motion Case Name Case Number Court Motion Granted/Denied

_____

_____

_____

_____

_____

16. Local counsel of record associated with Movant in this matter is

_____ who is an active member in good standing of The Florida
(Name and Florida Bar Number)

Bar and has offices at _____,
(Street Address)

_____, _____, Florida, _____
(City) (County) (Zip Code)

_____.
(Telephone with area code)

(If local counsel is not an active member of The Florida Bar in good standing, please provide information as to local counsel's membership status._____)

17. Movant has read the applicable provisions of Florida Rule of Judicial Administration 2.061 and Rule 1-3.10 of the Rules Regulating The Florida Bar and certifies that this verified motion complies with those rules.

18. Movant agrees to comply with the provisions of the Florida Rules of Professional Conduct and consents to the jurisdiction of the courts and the Bar of the State of Florida.

WHEREFORE, Movant respectfully requests permission to appear in this court for this cause only.

DATED this _____ day of _____, 20____.

_____
Movant

STATE OF _____

COUNTY OF _____

I, _____, do hereby swear or affirm under penalty of perjury that I am the Movant in the above-styled matter; that I have read the foregoing Motion and know the contents thereof, and the contents are true of my own knowledge and belief.

_____
Movant/Affiant

The foregoing instrument was acknowledged before me this ___ day of _____, 20__, by _____ who is personally known to me or who has produced _____ as identification and who did take an oath.

_____ day of _____, 20__.

_____Notary Public

Notary Public (Signature)

_____

(Printed or Typed Name)

Commission Number:_____

My commission expires:

I hereby consent to be associated as local counsel of record in this cause pursuant to Florida Rule of Judicial Administration 2.061.

DATED this _____ day of _____, 20____.

_____

Local Counsel of Record

_____

Florida Bar Number

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing motion was furnished by U.S. mail to PHV Admissions, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 accompanied by payment of the $250.00 filing fee made payable to The Florida Bar and to _____

_____

Name and Address of All Counsel of Record and of Parties Not Represented by Counsel

this _____ day of _____, 20____.

_____

Movant

APPENDIX L

New Rule 1-3.11

RULE 1-3.11 APPEARANCES BY NON-FLORIDA LAWYERS IN AN ARBITRATION PROCEEDING IN FLORIDA

(a) Non-Florida Lawyers Appearing in an Arbitration Proceeding in Florida. A lawyer currently eligible to practice law in another United States jurisdiction may appear in an arbitration proceeding in this jurisdiction if the appearance is:

(1) for a client who resides in or has an office in the lawyer's home state, or

(2) where the appearance arises out of or is reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice, and

(3) the appearance is not one which requires *pro hac vice* admission. Such lawyer shall comply with the applicable portions of this rule and of rule 4-5.5.

(b) Lawyers Prohibited From Appearing. No lawyer is authorized to appear pursuant to this rule if the lawyer:

(1) is disbarred or suspended from practice in any jurisdiction;

(2) is a Florida resident;

(3) is a member of The Florida Bar but ineligible to practice law;

(4) has previously been disciplined or held in contempt by reason of misconduct committed while engaged in representation permitted pursuant to this rule;

(5) has failed to provide notice to The Florida Bar or pay the filing fee as required by this rule or

(6) is engaged in a "general practice" as defined elsewhere in this rule.

(c) Application of Rules Regulating The Florida Bar. Lawyers permitted to appear by this rule shall be subject to these Rules Regulating The Florida Bar while engaged in the permitted representation, including, without limitation, rule 4-5.5.

(d) General Practice Prohibited. Non-Florida lawyers shall not be permitted to engage in a general practice pursuant to this rule. For the purposes of this rule, a lawyer who is not admitted to practice law in this jurisdiction who files more than 3 demands for arbitration or responses to arbitration in separate and unrelated arbitration proceedings in a 365 day period shall be presumed to be engaged in a "general practice."

(e) Content of Verified Statement for Leave to Appear. Prior to practicing pursuant to this rule, the non-Florida lawyer shall file a verified statement with The Florida Bar. The verified statement shall include:

(1) a statement identifying all jurisdictions in which the lawyer is currently eligible to practice law;

(2) a statement identifying by date, case name, and case number all other arbitration proceedings in which the non-Florida lawyer has appeared in Florida in the preceding 5 years;

(3) a statement identifying all jurisdictions in which the lawyer has been disciplined in any manner in the preceding 5 years and the sanction imposed, or in

which the lawyer has pending any disciplinary proceeding, including the date of the disciplinary action and the nature of the violation;

(4) a statement identifying the date on which the legal representation at issue commenced, and the party or parties represented;

(5) a statement that all applicable provisions of this rule have been read, and that the verified statement complies with this rule;

(6) a certificate indicating service of the verified statement upon all counsel of record in the matter and upon The Florida Bar at its Tallahassee office accompanied by a nonrefundable $250.00 filing fee made payable to The Florida Bar, however, such fee may be waived in cases involving indigent clients; and

(7) a verification by the lawyer seeking to appear pursuant to this rule.

J:\USERS\Lholcomb\MJP 2\1-3.11.wpd

Resolution

The Florida Bar
Real Property, Probate & Trust Law Section Executive Council
Recognizing the Service and Contributions of
Lawrence F. Beyer
To the Council, Section, The Florida Bar and the Community

Whereas, Lawrence F. (Larry) Beyer, a respected and deeply loved member of the Real Property, Probate & Trust Law Section of The Florida Bar, died after a courageous battle with cancer on November 16, 2002; and

Whereas, Larryserved his country with distinction in the United States Air Force as a B-47 and B-52 flight crew member attached to the Strategic Air Command during the Cuban Missile Crisis; and

Whereas, Larry subsequently transferred to the United States Army and became a decorated helicopter pilot, earning a Silver Star and a Purple Heart for his bravery in rescuing his pinned co-pilot from his burning helicopter, despite his own burns and broken back, and for his gallantry in connection with subsequent successful rescue efforts, after they were shot down in Viet Nam in 1966; and

Whereas, after retiring from the military in 1983 as a Lt. Colonel, Larry began a second career as an attorney with the Buffalo, New York office of the Hodgson Russ law firm; and

Whereas, shortly thereafter, Larry was transferred to the firm's Ft. Lauderdale and, later, to the firm's Boca Raton offices, where he became a talented Board Certified specialist in wills, trusts and estates law, handling both planning and litigation matters; and

Whereas, Larry served as a member of the Board of Directors of the Palm Beach County Estate Planning Council, as the Chair of the Beach County Probate Law and Probate Rules Committees, as a long-standing and very active member of the Florida Bar's Probate Rules Committee, as a Circuit Representative to The Florida Bar's Real Property, Probate & Trust Law Sectionfor the Fifteenth Judicial Circuit and as a valued member of the Section's Executive Council; and

Whereas, Larry was the first attorney to receive the Lifetime Achievement Award from the South Palm Beach County Bar Association; and

Whereas, Larry was an Eagle Scout and the father of an Eagle Scout, and his extensive contributions to his local community, through coaching youth baseball and soccer, his service on the Board and volunteer efforts at His Caring Place and other faith-based ministries, his service as a member of the Board of Trustees of the Boca Raton Historical Society, his service as a member of the Board of Directors of the Florida Philharmonic and his serviceon many other boards in his local community, was recognized by an awards ceremony shortly before his death by the Mayor of the City of Lighthouse Point; and

Whereas, the Executive Council of the Real Property, Probate & Trust Law Section of The Florida Bar recognizes the extraordinary dedication and service that Larry has provided to his nation, his community, his local Bar Association and The Florida Bar, including the Real Property, Probate & Trust Law Section, during his lifetime and acknowledges that he will be sorely missed.

Now, Therefore, be it resolved by the Executive Council of the Real Property, Probate & Trust Law Section of the Florida Bar that the loss of Lawrence F. Beyer is mourned, that his distinguished service and contributions are respected, appreciated and acknowledged, and that his rich contributions to the practice of law, particularly to the practice of wills, trusts and estates law, will be remembered forever.

Unanimously Adopted by the Executive Council of the Real Property, Probate & Trust Law Section of The Florida Bar this 24th day of May, 2003.

_____
Steven L. Hearn, Chair
Real Property, Probate & Trust Law Section
of The Florida Bar

Executive Council Meetings
03-04

July 31 - August 3, 2003
Legislative Update/Executive Council Meeting
The Breakers, Palm Beach
Group Rate: $140/night
Reservation Cut-Off Date: June 30, 2003
Reservation Number: 1-800-833-3141

2 beds; NON-smoking
3 day cancellation
WVQGD
$180 Deluxe (water view request)

November 6 - 9, 2003
Executive Council Meeting
Hilton Garden Inn, Pensacola
Group Rate: $99/night
Reservation Cut-Off Date: October 13, 2003
Reservation Numbers: 1-800-Hiltons or direct 866-916-2999

January 22 - 25, 2004
Executive Council Meeting
Hilton, Ocala
Group Rate: $92/night
Reservaton Cut-Off Date: January 2, 2004
Reservation Numbers: 1-352-854-1400 or 1-877-602-4023

February 17 - 21, 2004
Executive Council Meeting
Waikoloa Beach Marriott, Kona Hawaii
Group Rate: $170/night
Reservation Cut-Off Date: January 18, 2003
Reservation Number: 1-800-922-5533

May 27 - 31, 2004
RPPTL Convention/Executive Council Meeting
Hilton Resort & Marina, Key West
Group Rate: $175/night
Reservation Cut-Off Date:
Reservation Number:

RPPTL FINANCIAL SUMMARY

July 1, 2002 Through May 9, 2003

Revenue:	***$461,671***
Expenses:	***$510,474***
Net:	***- $48,803***
Beginning Balance:	***$507,095***
Ending Balance:	***$458,292***

HOLLAND & KNIGHT LLP

One Progress Plaza
200 Central Avenue, Suite 1600
P.O. Box 3542 (ZIP 33731-3542)
St. Petersburg, Florida 33701

727-896-7171
FAX 727-822-8048
www.hklaw.com

April 22, 2003

BRUCE MARGER
727-824-6144

Internet
Address:bmarger@hklaw.com

Louis B. Guttmann, III, Esq.
P. O. Box 628600
Orlando, FL 32862-8600

Re: Organ Tissue, Marrow and Blood Donations as a proposed project of the Probate and Guardianship Section of The Florida Bar

Dear Louis:

At the ABA RPPTL meeting in New York this month, there was a hand out on the referenced subject, which I enclose. I believe that dissemination of tissue donor information to the Bar and to the public would serve a very useful function, provide an excellent activity for circuit representatives and promote goodwill.

Frankly, when my clients mention tissue donation, I am at a disadvantage to know who should be contacted, what information I should impart to the client and what documents to include or give to the client. We were all moved by the mismatched heart transplant for the young South American girl at Duke University. It seems natural for our Section to be involved in assisting at all levels.

Additional materials can be obtained from ABA or from U.S. Department of Health and Human Services, Division of Transplantation, 5600 Fishers Lane, Parklawn Building, Room 16C-17, Rockville, Maryland 20857 (301) 443-7577.

Sincerely yours,
HOLLAND & KNIGHT LLP

By: _____
Bruce Marger
BM:bb:enc.
cc: Bryan L. Albers, Esq.; Rohan Kelley, Esq.; Ed Koren, Esq., Laird A. Lile, Esq.
STP1 #499981 v1

41

REAL PROPERTY PROBATE & TRUST

Law Section of The Florida Bar

Internet Web Site Redesign

Requirements and Proposal

Prepared by:

Andrew Z. Adkins III
Director
Legal Technology Institute
P.O. Box 117644
Gainesville, FL 32611-7644
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Travis Yates
Director, Web Development Services
Legal Technology Institute
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Winter 2003

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INTRODUCTION

The Real Property, Probate and Trust Law (RPPTL) Section was organized in 1954, and is the largest Section of The Florida Bar, with more than 9,000 members. The goal of the RPPTL Section is to aid in the development of real property, probate and trust law, and to serve the public generally and The Florida Bar in interpreting and carrying out the public and professional needs and objectives in the field of real property, probate and trust law.

The Legal Technology Institute (LTI) was established in October 1997 at the University of Florida Levin College of Law with a mission *"To provide an innovative forum for making a positive impact and improving technology in the legal profession."* Through the Levin College of Law, LTI provides independent Legal Technology Consulting Services, Internet Web Design and Development Services, and Market Research Services for the legal profession.

LTI has been involved in Internet Web Design and Development since its inception. Travis Yates, director of Web Development Services, has been involved in the Internet and the World Wide Web since its introduction to the legal profession in 1995. Under Mr. Yates' direction, LTI has designed many different, unique, and innovative Internet Web Sites for a variety of clients.

Andrew Z. Adkins III, director of the Legal Technology Institute, is the cofounder of *The Internet Lawyer*, a monthly newsletter focusing on the practical use of the Internet in the legal profession. He is also the developer of *"The Internet for the Legal Profession"* seminar, the first Internet seminar in the country that focused specifically on the legal profession.

LTI has extensive experience in designing, developing, and maintaining Internet Web Sites for all aspects of the legal profession. We use standard, off-the-shelf design tools and design sites for easy maintenance. We are pleased to present this *Requirements and Proposal* to redesign the Real Property, Probate and Trust Law Section of The Florida Bar Internet Site.

LTI worked directly with Mr. Sam Boone to develop an initial set of design requirements. The Web committee and Section leadership then invited LTI to attend the December 6, 2002 retreat in Orlando to present the requirements and determine additional needs. During this meeting, several key decisions were made on the design and technologies to be used in the new Site, which are presented in this document.

The *Requirements and Proposal* is organized as follows:

- Current RPPTL Section Web Site provides information about the current site content and organization
- RPPTL Section Web Site Redesign Specification provides detailed information for developing the new site
- LTI Proposal to redesign the RPPTL Section Web Site provides in-depth information and costs to redesign and enhance the RPPTL Section Internet Web Site.

STATEMENT OF PROJECT

www.flabarrpptl.org was initially created in 1996. Andrew Z. Adkins III worked closely with the Section to determine specifications and requirements, prepared a formal Request for Proposal, and assisted with the selection of the original developer. While content has been added through the years, the Site's original design and look and feel have changed little.

LTI's role in this project is to work with the Section leadership and Web committee to determine requirements for the new Section Web Site and prepare estimated costs for the design and development using enhanced Internet technologies. In addition, the RPPTL Section requested LTI to prepare a proposal to redesign and enhance the existing Web Site. The main objectives of the RPPTL Section Web Site include:

- Increase communications among Section members and seek to increase membership via the Web Site by providing more real property, probate, and trust law specific information and related documents online
- Utilize the Section Web Site for working committees
- Redesign the Site for easier navigation and use the existing graphics to incorporate a new, fresh "look and feel"
- Redesign the Site infrastructure (directories, files, templates) for easier maintenance
- Develop a master publishing schedule for the various Section entities to create and deliver content to the Site via "content coordinators"
- Utilize a database design for easier updates and provide multiple access levels for the Section's content coordinators
- Design a "public" area to be accessible by anyone; design a "private" area to be accessible by Section members
- Migrate existing content from the current Site to the new Site
- Implement an easy-to-use Web Site Search function

RPPTLS CURRENT INTERNET WEB SITE ENVIRONMENT

HOST

www.flabarrpptl.org is currently hosted by Future Business Solutions, Inc., located in Altamonte Springs, FL.

WEBMASTER

Sam Boone is currently the liaison between the RPPTL Section and the Web host.

CURRENT CONTENT

Current RPPTL Section Web Site content includes:

- 420 HTM files
- 1,551 total files
- 1,015 "orphaned" files (files with no links to other files)
- 8,817 total links
- 3,957 external links (links to URLs off the Site)
- 548 "broken" links (links in HTM files that do not work)
- 3 pages "Under Construction," (Search Page, Site Map Page, Mediators and Board Certified Attorneys Page)
- 59 PDF files

The current Site also hosts several "forums" using Netbula's *AnyBoard*. The following forums are active on the Site:

- Real Property: 47 posted messages, the latest "non-admin" message dated 11/2002.
- Probate & Trust: 91 posted messages, the latest "non-admin" message dated 12/2002.
- Practice Management: 2 posted messages, the latest "non-admin" message dated 12/2002.
- Legislative Activity: 3 posted messages, the latest "non-admin" message dated 8/2002.

In addition, there are 23 Real Property Committees and 20 Probate and Trust Law Committees represented on the Web Site. While the Site holds basic information on the committee structure, the Section committees do not utilize the Web Site as a working tool.

ORGANIZATION

The current Site is organized in a structure similar to the Section: *Real Property* and *Probate and Trust Law.* Each sub section on the Site contains committee information and CLE information. In addition, there are sub pages for various entities within the Section, including eighteen General Standing Committees, Executive Council Officers and Members, Membership Information, the Section Newsletter, Mentor Information, and the four Forums.

GRAPHICS

The RPPTL Section Web Site contains three basic graphics: the red "seal," the black and gold "shadowed" text, and the left margin parchment paper. The majority of the Web committee indicated they liked the current graphics, but wanted to use them in a different manner. After further discussion, it was decided to keep the current red "seal" and continue to utilize the black and gold shadowed text in the new design, albeit with a newer and fresher look.

NAVIGATION

Current Site navigation uses graphic text located at the top of each page. Clicking on the text takes the Web Site visitor to the designated page. This was the original navigation design and has not been modified since the original Site was created in 1996.

CONTENT FLOW

All content flows first to Mr. Boone in various formats from Section members. Mr. Boone then forwards the content to the Web host with instructions on where to post or update the new content. Mr. Boone does not post any content directly to the Web site.

RPPTLS INTERNET WEB SITE DESIGN REQUIREMENTS

OBJECTIVES

The objectives of the RPPTL Section Web Site redesign are simple:

- The Site should be visually appealing to the Web visitor and not cluttered with graphics, images, and unnecessary text.
- The Site should be easy to navigate, allowing the user easy access to all parts of the Site with minimal clicks. The Site must have search capabilities.
- The Site should be easy to update, allowing multiple *authorized* users to add content as needed with minimal instruction.
- The Site should be secure and must provide statistics and demographics to the WebMaster through common Web Site management tools.

GRAPHICS

The Web committee determined during the December 6 meeting that the new Site will incorporate the two existing graphics and section logo, though a new "look and feel" will be presented. The first graphic is the red "seal" that appears on the left-hand margin. Note the seal is a separate graphic from the ribbon and the parchment paper that appears behind the seal. The second graphic is the "Real Property, Probate and Trust Law Section of the Florida Bar" masthead. The committee decided to keep the black and gold shadowed look, though were open to different styles.

NAVIGATION

The Web committee determined during the December 6 meeting that the new Site will have a completely different navigation system. The current navigation system is not consistent throughout the site and relies on too many individual graphic text buttons.

Navigation techniques have evolved over time and the Section decided to utilize a new look using drop-down menus. The major pages should be organized at the top level using tabs or buttons while the individual sub pages should be included in the drop-down menus. The specifics of these titles and the major organization of content will be determined during the initial design phase. The objective is for the Web Site visitor to be able to access any page on the Site in three clicks or less. The navigation bar/menu should follow a standard look and feel throughout the Site.

PUBLIC AREA (INTERNET)

The current Section Site is completely public. All content is available to the public with no restricted access. The new Site will continue to provide a public access Site with much of the existing material available to the general public. The Section anticipates additional content to be continuously added to the public Site in the future. The specific content and organization of the public area will be determined during the Design phase.

PRIVATE AREA (EXTRANET)

The Web committee determined during the December 6 meeting that the new Site will have a "private/members only" area as well as a public area. The private area will only be accessible by Section members and select associates. The specific content and organization of the private area will be determined during the Design phase. Access to the private area will be via username and password.

In addition, a separate area should be created for the Section's working committees. These areas should be password protected and include, as a minimum, file and document sharing, announcements, calendaring, and contact information.

WEB CONTENT FLOW

The Web committee determined at the December 6 meeting that content is provided by several key members of the Section, including committee chairs, The Florida Bar RPPTL Section liaison, and the newsletter and articles editors. These "content coordinators" should be provided access to the Web pages that contain their content. By using a database design concept with multiple content coordinators, the flow of information would be much smoother with quicker and easier Site updates. The Section will continue to have an overall Web Site coordinator, such as Mr. Boone, that would help direct the flow and decision making for the Site updates.

SEARCH ENGINE

The Web Site must have a search engine allowing any visitor to search the *entire* Web Site (public area *and* private area). Search results should include the links to content on both the public and the private areas. If a Web visitor is not a member of the Section and the search results indicate the requested link is in the private area, the visitor must be notified that the content is "private." The page should also indicate how the visitor can "join" the Section to gain access to the private Site content. The search engine should be dynamic, meaning that any new content is automatically indexed into the database search. Note there may be some areas or content the Section may not want available to the search engine. An example may be content in the Section committee work areas.

LISTSERV TECHNOLOGIES

Listservs are automatic email distribution systems, allowing anyone who subscribes to a particular listserv to receive all postings to that listserv via email. Any postings from that subscriber are automatically distributed to everyone subscribing to the same listserv. Listservs are a subscription-based system, meaning that a user must first subscribe before receiving any listserv emails or posting to the listserv. There are several methods used when implementing listserv technologies:

- "Moderated" listserv – a moderated listserv provides for better editorial control over the information posted to the listserv. However, it requires someone (the "list moderator") to review *every* email posted before posting it to the listserv.

- "Unmoderated" listserv – most listservs in use today are unmoderated, meaning that any subscriber can post to the listserv and no one will review the message before it is distributed to the entire listserv. Typically, there is a set of "rules" sent to each subscriber periodically indicating the "ethics" of a particular listserv.

- Single posting listserv – a single posting listserv is commonly used for email newsletters or updates. A single person posts the email message (or newsletter) to the listserv and it is automatically distributed to all subscribers. No one else can post replies to the listserv message.

The Section will require several listservs and should be able to create and maintain their own listservs.

DATABASE DESIGN OPTION

The Web committee determined at the December 6 meeting the new Site will explore the possibility of a database design using standard off-the-shelf design tools. The database design should provide multiple levels of access and allow multiple persons within the Section to post content. The database design should also provide a Web maintenance interface for the WebMaster and content coordinators to add new content and edit or delete existing content for each of the specific areas. The database design should allow for a minimum of the following four Web maintenance interfaces:

- Section Committee Work
- Section CLE and Seminar Information
- Section Calendar of Events
- Section Publications and Member Articles

ADMINISTRATION AND ACCOUNTING TOOLS

Effective account management tools reduce the costs associated with the account maintenance and provide a quick turnaround for user addition or modification requests for system access. Account management requirements will be determined during the initial Design phase and help determine the Web host capabilities. Account management functions should include, at a minimum, Site statistics, email management, JAVA management, cgi scripts, security and password protection.

SECURITY

Security and accountability within an Internet Web Site are paramount. Users must be able to seamlessly interact and retrieve information with confidence that proprietary information or content is protected from both the public Internet as well as designated and authorized users who shouldn't be privy to certain information. The security model must be flexible in architecture, and should be able to provide access controls based on individual, group, organization, data type, or other business criteria.

RPPTL SECTION INTERNET WEB SITE PROPOSED SOLUTION

OVERVIEW

The Legal Technology Institute (LTI) proposes to completely redesign and enhance the Real Property, Probate and Trust Law (RPPTL) Section of The Florida Bar Internet Web Site, using a database design strategy. We will utilize the existing content and reformat for the new design and add new content as it becomes available. The database design concept will allow multiple persons within the Section *authorized* access to update their specific pages on the Site without having to "code" or format the various pages.

LTI proposes delivering a full turnkey Internet Web Site, including database design, Internet front-end access, Web maintenance interface, and all documentation.

DESIGN METHODOLOGY

There are several phases involved in an Internet design/redesign project, each building upon the other. LTI proposes the following three-phase implementation:

Phase 1 – Site Design

During the initial design phase, LTI will work with the Section to determine the structure of the Web Site database, data fields and types, the look and feel of the Web maintenance editor interface, and the security and access requirements.

LTI will present a new look and feel to the Site using the current red seal and the current black and gold shadowed text. LTI will create the Site navigation using a drop-down menu design. LTI will also create the various Web Site templates that will be used throughout the Site.

LTI will work with the Section to help determine what information and content should be provided in the public area, what information and content should be provided in the private area, and the various committees and working group areas.

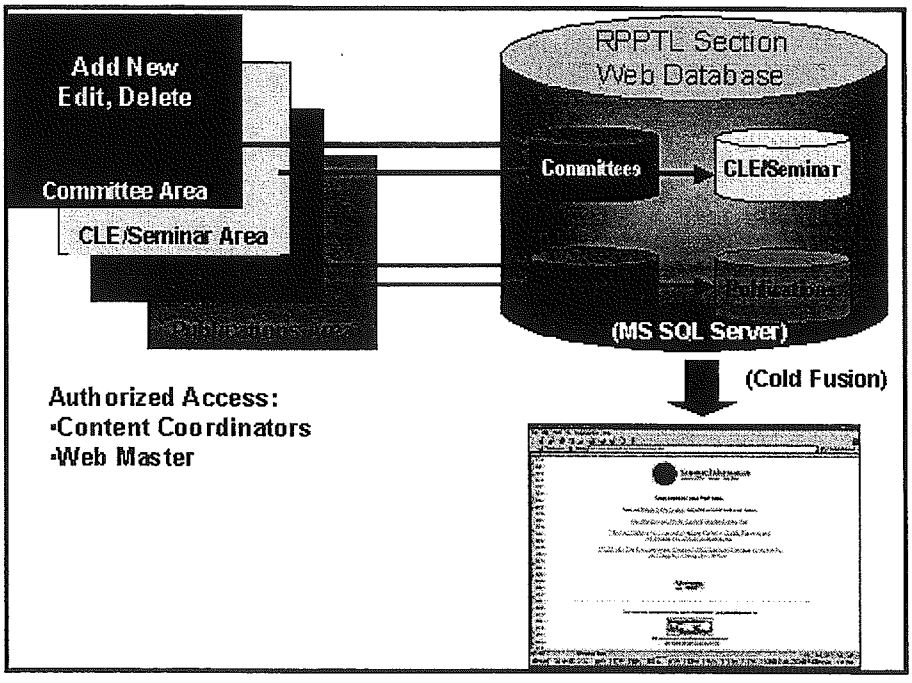
LTI will work with the Section to help determine the optimum flow of content from the various content coordinators and their ability to post data directly to the Site using the Web maintenance interface. LTI will also develop a publishing schedule for the content coordinators. A sample workflow worksheet is included in the Appendix of this proposal.

It is anticipated Phase one will take approximately four to six weeks, depending upon availability of Section Web committee members. At the end of this phase, we will have determined (at a minimum):

- Graphics design elements, using the existing graphics
- Color schemes and templates to be used on the various pages
- Navigation methods and graphics
- Public and private area Site content and content coordinators
- Database fields, features, and interface
- Security levels and password procedures
- Site maintenance, updates, and procedures
- Site administration and accounting

It has been our experience that quality time spent in the initial design phase will determine the overall strategies and scope of services and lead to a more dynamic and well-organized Internet Web Site.

The following graphic details the "flow" of information from the content coordinators to the database to the Internet. Content coordinators will access their areas via a Web maintenance interface, allowing them to update and maintain the content on their specific pages. The information entered into these areas is automatically pasted into the SQL database. When Web visitors access any pages on the RPPTL Section Web Site, the programming code (Visual Basic via Cold Fusion) interprets the request, queries the database for the content, then automatically updates the Web page.



Phase 2 - Site Development

During the second phase, LTI will develop the Web Site, including the public and the private area interfaces. This phase will involve creating the database using Microsoft SQL Server, programming using Cold Fusion to interface the database to the Internet, and programming using ActiveEdit to create the Web maintenance editor interfaces. LTI will work with the Section to select a Web host and begin transferring the Site to the host.

Once the initial Site is online, LTI will work with the Section Web committee and the individual content coordinators on the Web maintenance interfaces and update procedures. While the Site will be physically online at this time, it will not be made public.

It is anticipated Phase two will require approximately eight weeks to develop. At the end of this phase, the entire Section Web Site will be online and ready for the migration of existing content.

Phase 3 - Content Migration

During the last phase, LTI will migrate the existing content, as determined by the content coordinators for those particular pages, from the current Site to the new Site. This will involve both mass import methods as well as manual "cut and paste" operations. At this time, LTI will implement the Search engine, any required HTML forms, listservs, auto-responders, and other required functions. LTI will also work with the Section to publicly announce the new Site.

It is anticipated Phase three will require approximately three to six weeks, depending on the complexity of the Site, the amount of existing content to be transferred and the amount of new content to be provided.

Maintenance

After the Site has been populated with existing and new content, LTI will begin the Maintenance Phase. It has been our experience that any new design will require between three and six months of modifications and maintenance due to requested changes made to the new Site. This "tweaking" usually involves minor database changes, Site functions and features, and modifications to the Site private areas.

DATABASE DESIGN

LTI uses three basic tools for the database design.

- First is the actual database itself. LTI proposes building the RPPTL Section Web Site database using Microsoft *SQL Server 7*. This is a powerful and popular relational database system that will not only address the Section's immediate needs, but allow the Section's Web Site to grow as additional content and pages are added.

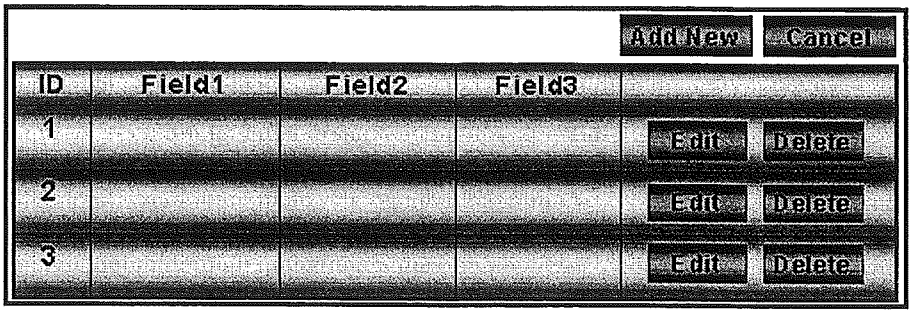
- Second is the software to interface the database with the Internet. LTI proposes using Macromedia ***Cold Fusion*** which is an industry standard for developing Internet databases. LTI will develop all the necessary programming code to interface the SQL database to the Internet.

- Third is the Internet Web editor that allows multiple *authorized* users to edit their own pages on the Section Web Site. LTI proposes using ManyOne *ActiveEdit*, a leading multi-user Web editor.

LTI anticipates creating five separate Web maintenance interfaces for this Site. The WebMaster and the content coordinators are the only ones who will have access to these pages. LTI will work with the Section and the content coordinators in the design of these interfaces. LTI proposes creating the following Web maintenance interfaces:

- Committees Pages
- CLE/Seminar Pages
- Publications/Articles Pages
- Section Events/Calendar Pages
- Actionline Page

The following two diagrams detail sample Web maintenance interface pages that the content coordinators would access to update their particular pages. The first graphic details the initial page that provides a "Table of Contents" to their individual area. This particular page is the initial Web interface accessed by the content coordinator. No editing of content is done on this page, though the content coordinator has the ability to delete pages.



The control buttons allow the content coordinators to "Add" new content, "Edit" or "Delete" existing content, or "Cancel" the process. The various database fields will vary, depending on the requirements of the particular Section entity or content coordinator. For example, the Publications Page may have fields for the title, author, and publication date.

When the content coordinator selects the "Add New" or "Edit" control buttons, the following Web maintenance interface page would provide access to the content editor.

Publications Editor
Add/Edit

Area ID	Publications
Publication Title	RPPTL Section Internet Web Site Proposal
Author	Andrew Z. Adkins III
Date	January 2003
Text	The purpose of this example is to demonstrate what the Web maintenance interface page would look like for the Publications Editor. Similar Web maintenance interfaces would be developed for other areas.

Save Cancel

The above example identifies the area as the Publications page. All information entered into this screen will be reflected on the "Publications" area on the Web Site. Here, the content coordinator entered "RPPTL Section Internet Web Site Proposal" in the Publication Title data field. Similarly, "Andrew Z. Adkins III" was entered in the Author data field, and "January 2003" was entered in the Date data field. The actual text of the article is entered in the Text data field. This can be accomplished by either typing in the text or using the "cut and paste" method of the Microsoft Windows operating system.

Once the data is entered on this page, the content coordinator clicks on the "Save" button, which then transfers the content directly to the database. The content coordinator does no Web programming, HTML coding, or formatting and placement of text.

INTERNET WEB HOST SERVER

The Legal Technology Institute does not host Web Sites. Instead, we rely on stable and proven Web Hosting companies. Most of our clients use ValueWeb, a Florida-based company located in Deerfield Beach. Depending on the options chosen for the design of the RPPTL Section Web Site, LTI will work with the Section to choose a Web Host company that is reliable, has a solid business history, and provides the optimal service and tools required for the Section's Web Site.

SITE SEARCH ENGINE

The RPPTL Section Web Site will have a single search engine for the entire Site, including both public and private areas. If the Site visitor conducts a search and the content happens to be in the private area, the visitor will be notified that the located information is in the private area of the Site; the visitor will then be presented with a login or "Join the Section" option. Areas of the Site that should be excluded from the search will be determined during the Design phase.

SECURITY

Security will be set for a minimum of three levels. First, the "WebMaster" level will provide access to the entire Site for content changes, updates, and account maintenance and Site statistics. This will be limited to the Section liaison (i.e., Mr. Boone), the Web Host company, and LTI. Second, the "content coordinator" level will provide limited access to that particular content coordinator's page(s), but only for Site updates. The content coordinator will not have access to change the database structure (if this option is used), but can only add new content and edit or remove existing content. A third level will allow access to change the database design, programming code, or other design features.

ACCOUNT MANAGEMENT

There will be several types of account management tools used for the RPPTL Section Web Site. First will be Site statistics. Depending on the Web host chosen, the Site statistics should have the following information available:

- Hits per hour/day/week/month/year
- Number of files transferred per day/week/month/year
- Number of URLS and unique URLS
- Pages accessed on the Site; first page, first few seconds

In addition, the Section should have access to various HTML forms, scripts, email configurations, and e-commerce capabilities.

PROJECT IMPLEMENTATION, SCHEDULE AND COSTS

PHASE 1 – SITE DESIGN

- **Objectives.** LTI will work closely with the RPPTL Section Web Committee to determine the database design, navigation, content flow, and graphics templates for the Site. We anticipate several collective and individual meetings that can best be accomplished via telephone conferences. We will utilize the Internet to present graphics designs and layouts for the discussions.

- **Schedule.** Once approved with a signed Agreement, LTI will complete the above objectives within four to six weeks, depending upon availability of Web committee members.

PHASE 2 – SITE DEVELOPMENT

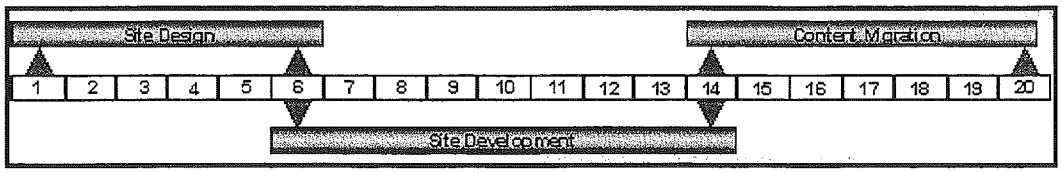
- **Objectives.** Once the Site design has been approved, LTI will then begin developing the new Section Internet Site using a database design. LTI will also create the Navigation, the Public and Private areas, the Web maintenance interfaces, and templates as discussed during the Design Phase.

- **Schedule.** Phase 2 will begin after the Design phase is completed and will require approximately eight weeks.

PHASE 3 – CONTENT MIGRATION

- **Objectives.** When the Site has been developed and approved, LTI will migrate the existing data and content from the current Site into the new Site. This will be coordinated with the Site content coordinators.

- **Schedule.** Phase 3 will begin after the Site has been developed and approved. Depending on the availability of the Section Site content coordinators, LTI anticipates this phase to take approximately three to six weeks.



COSTS AND DISCOUNTS

LTI proposes to completely redesign and redevelop the RPPTL Section Internet Web Site as described in this proposal for a flat rate of $32,500. In addition, first year maintenance costs will be $8,000. This full turnkey Internet Web Site proposal includes the following:

- Complete database design and development using Microsoft SQL database, including required meetings with Web committee members; design and development of the Cold Fusion front-end browser interface; design and development of the Web maintenance back-end browser interface; multi-level secure access; and complete database documentation.
- All graphics, logos, navigation and templates for the entire Web Site.
- Private area ("extranet") design and development for multi-level secure access to provide login access via username and password.
- Committee work group area ("extranet") design and development for multi-level secure access for creating individual working committee group functions, including file sharing, calendaring, discussions and announcements.
- Creation of up to five listservs for use by the Section.
- Search engine

Total Site Design and Development Cost:	$40,000	
Less LTI Consulting Fees:	($3,500) Current consulting project	
Less 10% RPPTL Section Discount:	($4,000) Prior client discount	
Proposed Cost:	$32,500	$32,500
Maintenance, Months 1 - 5 Up to 20 hours per month @ $50/hour	$1,000 per month	$5,000
Maintenance Months 6 - 12 Up to 10 hours per month @ $50/hour	$500 per month	$3,000

Total Proposed Design, Development Costs, 1st Year Site Maintenance $40,500

Costs *not* included:
Web hosting setup and monthly fees
Listserv software costs (*may* be part of monthly Web host charge)
Forum software costs (*may* be part of monthly Web host charge)

Appendix

About the Legal Technology Institute

Project Design and Development Team

Sample of Internet Web Site Designs

Content Coordinator Workflow Worksheet

December 6, 2002 Web Decisions

ABOUT THE LEGAL TECHNOLOGY INSTITUTE

The Legal Technology Institute (LTI) was established at the University of Florida Levin College of Law in the Fall of 1997. LTI's mission is *"To provide an innovative forum for making a positive impact and improving technology in the legal profession."* The Institute provides Independent Legal Technology Consulting Services, Internet Web Design and Development Services and Market Research Services to the legal profession.

The Legal Technology Institute was founded because of a growing need for an independent consulting firm to work with the legal profession and corporations to bridge the gap between industry vendors, technology professionals, businessmen and lawyers. We have proven our commitment to quality service through our performance with law firms, corporate legal departments, law schools, bar associations, the judiciary, and legal vertical market vendors.

We are a professional, independent technology organization working with the legal profession. We are part of the University of Florida Levin College of Law, with offices in the law school. Our advice to our clients is objective and free of any conflict of interest. Recommendations are based on clients' needs, not what the vendor sells. The Director, Andrew Z. Adkins, III, has brought years of consulting services to the Institute. Adkins was president of Adkins Consulting Group, Inc. and a cofounder of *The Legal Consulting Group*, an association of computer consulting firms working with the legal industry.

Internet Web Site Design & Development includes working with the various departments, committees, and individuals to incorporate marketing opportunities via the Internet. Mr. Adkins has worked with The Florida Bar to help provide direction for incorporating Internet technologies into the Bar's long-range planning. Both Mr. Adkins and Travis Yates, Director of Web Development Services at LTI, are frequent speakers on Internet design and marketing topics. LTI has designed and developed many different and unique Web sites for law firms, bar associations, and conference groups.

PROJECT TEAM

Andrew Z. Adkins III is the director of the Legal Technology Institute at the University of Florida Levin College of Law. He has been involved in legal technology since 1989 and has personally consulted with more than 300 law firms, corporate and government law departments, law schools, government agencies, courts and the judiciary, and companies marketing products and services to the legal profession. He was also instrumental in helping The Florida Bar recognize the importance of the Internet in the legal profession and provided recommendations to the Bar to move more technologies and access to Bar information using the Internet. He has consulted in the past with the Real Property, Probate and Trust Law Section of The Florida Bar on their original Web Site in 1996.

Travis Yates is the director of Web Development Services for the Legal Technology Institute at the University of Florida Levin College of Law. Mr. Yates, a talented artist, is responsible for the development and creation of numerous legal specific Web Sites, including private law firms, bar associations, and conference groups. He prides himself in creating graphically pleasing sites that are unique by utilizing specific client demographic information, thereby maximizing the marketing and branding potential. Mr. Yates is a member of the Association of Internet Professionals, the International WebMasters Association and the World Wide Web Artists' Consortium.

Burt Ingley is a database programmer and works with the Legal Technology Institute through a subcontractor agreement. Through this strategic relationship, Mr. Ingley helps with the design and development of Internet Web Site databases for LTI clients. Mr. Ingley has worked on several designs with the Legal Technology Institute, including the LegalTech Conference registration database.

SAMPLE OF LTI INTERNET WEB SITE DESIGNS

Graphic thumbnails of sample LTI Designed Sites www.law.ufl.edu/lti/Web/samples.htm

General Practice Solo and Small Firm Section Association of the Florida Bar www.gpssf.org
Carol Kirkland 800-342-8060 x5631

LegalTech Conference ..... www.legaltechshow.com
The LegalTech Conference Web Site includes registration databases for all conferences designed and developed by LTI.
Lori Corino 212-313-9043

Barkan & Neff ..... www.barkanneff.com
Barkan & Neff's Internet Web Site incorporates a database design as part the Site.
Dennis Leland 504-525-0831

Coker, Myers, Schickel, Sorenson, Higgenbotham & Green, P.A. ..... www.cokerlaw.com
Ron Owen 904-356-6071

Beales Law ..... www.bealeslaw.com
Kim Smith 804-738-6180

Conroy Simberg and Ganon ..... www.csglaw.com
Star Gutman 954-961-1400

Martin Law Office ..... www.martinpa.com
Michael Martin 863-686-6700

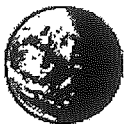
Butler, Burnette & Pappas ..... www.bbplaw.com
Butler, Burnette & Pappas is an insurance defense firm with offices in Tampa and Tallahassee. The Site was developed to attract potential clients and provide an "online" visit to the firm.

The Internet Lawyer ..... www.internetlawyer.com
The Internet Lawyer is a monthly newsletter focusing on the practical use of the Internet in the legal profession. The Web Site provides additional information and resource links not found in the print publication, including online ordering information, and the only Web Developers Directory for the legal profession.

Harris Barrett ..... www.harrisbarrett.com
Harris Barrett is a full service law firm with four offices located in Florida. The Site was developed to attract potential clients, service existing clients, and to assist the firm's legal researchers.

Real Property, Probate and Trust Law Section
Internet Web Site
Content Coordinator Workflow Worksheet

	Content Description	Content Coordinator	Special Functions			Update Frequency D/W/M/P	Electronic Format
			Email	Form	Search		



"Robert W. Goldman" <rgoldman@gfsestatelaw.com>
05/06/2003 11:21 AM

To: <bbevis@flabar.org>
cc:
Subject: Amicus

As you now know, the executive committee of our section has unanimously endorsed the section's involvement as an amicus in Menotte v. Raborn. This is a bankruptcy case out of the Southern District of Florida, which is being appealed to the 11th Circuit Court of Appeals. The issue is a very particular one involving two statutes 689.07 and .071, which address real estate trusts. The question for the court is whether beneficiaries of a real estate trust need to be listed in the deed of property to the trust in order to avoid fee ownership in the trustee (and therefore inclusion of the trust property in the trustee's personal bankruptcy estate). We believe the statutes are rather clear that inclusion of the beneficiaries is not required and that this truth is stated in 689.071 (not expressly addressed by the court below). We are certain this issue does not involve other sections; nor is it contrary to any of our approved positions.

Please forward this item to Mr. Harkness and Mr. Hill for approval. Naturally, when our brief is prepared we will send it to them. If they would like to view it in draft form that too would be my pleasure…

Thanks.

Bob Goldman

Bob

PROFESSIONAL ETHICS COMMITTEE OF THE FLORIDA BAR
PROPOSED ADVISORY OPINION 02-8

The Professional Ethics Committee has received an inquiry from a member of the Florida Bar who is contemplating entering into a referral arrangement with a nonlawyer. The inquiring attorney has been approached by a securities dealer who would like to pay members of the Florida Bar a portion of any advisory fees generated in exchange for referring clients to a specified financial advisor. The attorney would also have the option of taking an examination to become an investment advisor. The attorney could then become actively involved in the client's account and be eligible to share in an advisory fee based upon the amount of work the attorney performs on the client's account.

This inquiry raises the question of when, if ever, can an attorney refer a client to a particular service or product and then profit from the referral. Many state bars have examined this issue and come to different conclusions. Some states have determined that such conduct would be permissible with disclosure and the consent of the affected client. See, e.g., California Formal Opinion 1999-154, Oklahoma Opinion 316, and Utah Opinion 99-07. Others states have determined that an inherent conflict of interest exists which cannot be cured with consent. See, e.g., New York State Opinion 682, North Carolina Formal Opinion 99-1, Ohio Opinion 2000-1, and Texas Opinion 536.

This Committee has also issued a number of opinions relating to this subject. Originally, the Committee approved an attorney accepting a referral fee from a savings institution under certain conditions. The attorney would have to conduct an independent investigation to see if the investment was proper under the circumstances. The attorney would also need to inform the client of referral payment and secure the client's consent in writing. See Ethics Opinion 60-26. Later this opinion was modified by Ethics Opinion 70-13 which concluded that attorneys must also pass on the benefit to the client or credit the same against fees charged by the attorney. Finally, the Committee, in Ethics Opinion 90-7, determined that an attorney cannot advise a client as to the amount of insurance the client needs and then sell the client the recommended insurance because of the inherent conflict of interest. The opinion suggests, that in instances where the attorney is not advising the client on the client's insurance needs, the attorney may sell the client insurance as long as it is in the best interest of the client in accordance with Rule 4-1.7(b) and the attorney abides by the requirements of Rule 4-1.8(a) regarding business transactions with a client.

At this time, we see no substantial distinction between advising a client to purchase insurance, or to use a particular bank, or to see a financial advisor. Accordingly, we adopt the rationale of the Committee's previous opinions in any situation where an attorney is advising a client to use a particular product or service where the attorney is to receive a fee for the referral. Whenever an attorney is entrusted by a client to provide the client with independent unbiased advice on how to proceed, the client should expect that the advice given is not tainted by the attorney's own financial interest. Because of the attorney's personal interest in receiving a referral fee, this type of conflict of interest cannot be consented to by the client. In order for an

attorney to make such a recommendation, the attorney would need to remove any financial interest in making the recommendation by either passing on the benefit to the client or crediting the amount against legal fees.

As discussed in Opinion 90-7, there are instances when an attorney can refer a client to a product or service and benefit financially from the referral. This would be true only if the referral is not related to any legal advice being provided to the client.

This inquiry is timely in light of the recent adoption of Rule 4-5.7 of the Rules Regulating the Florida Bar which discusses the ethical responsibility of a member of the Florida Bar providing nonlegal services. Rule 4-5.7 provides the following guidance:

> **(a) Services Not Distinct From Legal Services.** A lawyer who provides nonlegal services to a recipient that are not distinct from legal services provided to that recipient is subject to the Rules Regulating The Florida Bar with respect to the provision of both legal and nonlegal services.
>
> **(b) Services Distinct From Legal Services.** A lawyer who provides nonlegal services to a recipient that are distinct from any legal services provided to the recipient is subject to the Rules Regulating The Florida Bar with respect to the nonlegal services if the lawyer knows or reasonably should know that the recipient might believe that the recipient is receiving the protection of a client-lawyer relationship.
>
> **(c) Services by Nonlegal Entity.** A lawyer who is an owner, controlling party, employee, agent, or otherwise is affiliated with an entity providing nonlegal services to a recipient is subject to the Rules Regulating The Florida Bar with respect to the nonlegal services if the lawyer knows or reasonably should know that the recipient might believe that the recipient is receiving the protection of a client-lawyer relationship.
>
> **(d) Effect of Disclosure of Nature of Service.** Subdivision (b) or (c) does not apply if the lawyer makes reasonable efforts to avoid any misunderstanding by the recipient receiving nonlegal services. Those efforts must include advising the recipient, preferably in writing, that the services are not legal services and that the protection of a client-lawyer relationship does not exist with respect to the provision of nonlegal services to the recipient.

The new rule attempts to clarify the applicability of the Rules Regulating the Florida Bar whenever nonlegal services are being provided by a member of the Florida Bar. The Comment to Rule 4-5.7 is instructive in clarifying that many of the Rules will apply regardless of how the nonlegal services are provided. The Comment, in pertinent part, states:

> Even before this rule was adopted, a lawyer involved in the provision of nonlegal services was subject to those Rules Regulating The Florida Bar that apply

> generally. For example, another provision of the Rules Regulating The Florida Bar makes a lawyer responsible for fraud committed with respect to the provision of nonlegal services. Such a lawyer must also comply with the rule regulating business transactions with a client. Nothing in this rule (Responsibilities Regarding Nonlegal Services) is intended to suspend the effect of any otherwise applicable Rules Regulating The Florida Bar, such as the rules on personal conflicts of interest, on business transactions with clients, and engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

As indicated, nothing in the new rule would limit an attorneys duty to deal fairly with a client and to ensure that a personal conflict of interest does not affect his or her independent judgment.

In conclusion, the present inquiry hints, but is not clear, that in the proposed referral arrangement the clients will have initially sought out the attorney for legal advice related to investments before being referred. Therefore, the particular suggested referral fee appears to create a personal conflict of interest and should be avoided.

Elder Law Section

THE FLORIDA BAR

April 14, 2003

Professional Ethics Committee
c/o Elizabeth Clark Tarbert, Ethics Counsel
The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300

Re: Comments on Draft Proposed Advisory Opinion 02-8

Dear Ms. Tarbert:

As Chair of the Elder Law Section, I write on behalf of our membership to express great concern about the proposed draft comments issued by the Professional Ethics Committee ("PEC") on Proposed Advisory Opinion 02-8. While our Section opposes the proposed draft, it agrees with the comments expressed by the Special Committee on Ancillary Business in its response to the PEC on this matter. We believe the proposed draft comments can only serve to create a domino effect of severely limiting the advice attorneys give to their clients and to which the public has a constitutional right to competent and adequate representation. Our profession and the general public would be better served by opening a dialogue within The Bar to address ethical lawyering in the twenty-first century which would include cogent discussions of ancillary businesses.

I wish to share with you how the proposal could potentially negatively impact the attorney-client relationship and the services and advice provided by elder law attorneys to their clients.

First, we feel that a distinction must be made between a situation where an attorney seeks to engage in a purely referral fee arrangement with a non-lawyer, and a situation where an attorney seeks to engage in an ancillary business arrangement and provide both legal and non-legal services to a client and stands to profit from the non-legal services. The first situation does not involve the issue of ancillary business whereas the latter does. The two situations are distinctly different and should not be addressed together by the PEC under this advisory opinion. For the purpose of this response, I will direct my attention to the latter situation.

Second, it is our Section's position that the focus should be on clarifying the conduct to which the Rules of Professional Conduct apply and to aid the attorney in avoiding misunderstanding on the part of the client receiving the non-legal services. This is the focus that will uphold the integrity of the profession. The focus should not be on limiting the lawyer's provision of non-legal services.

Ancillary Business options are provided for in Rule 4-5.7 of the Rules of Professional Conduct. The second paragraph of the comments to Rule 4-5.7 provides that "we are not adopting the approach of substantively limiting the type of non-legal services or the manner that they are to be provided." However, the PEC relies on Ethics Opinion 90-7, a pre-Rule 4-5.7 ancillary business decision, to absolutely prohibit attorneys from providing financial and insurance products to their clients. This is contrary to the rule. Because Ethics Opinion 90-7 predates Rule 4-5.7, it is no longer of effect. Moreover, we believe Ethics Opinion 90-7 is antiquated in today's world.

Third, certain areas of an elder law practice are transactional in nature and can potentially involve the provision of ancillary services. For example, asset protection planning and estate planning are transactional legal services that could involve the attorney providing advice as to non-legal services (i.e. the role certain insurance products may play in the tax and public assistance arenas). An elder law attorney may recommend that an elder or disabled person would benefit from engaging the services of a geriatric care manager to assist with the coordination of medical and social aspects of aging issues.

In both examples, an attorney may have an ancillary business that perhaps sells products (i.e. insurance) or services (i.e. geriatric care management) that could ultimately provide invaluable benefits to the client. Alternatively, the attorney may refer the client to a non-lawyer to provide services or products and the non-lawyer may be related (i.e. spouse) to the attorney. The measures provided by the Rules of Professional Conduct should ensure that the core values of the profession remain protected when an attorney is presented with either of the situations addressed above. It is in the client's best interest for the legal profession to be able to furnish related services to the client through what might now be considered to be an ancillary business.

Elder law is a multi-disciplinary practice that takes a holistic approach to resolving a client's problems. It allows for creative lawyering as we live and practice in a world that demands we be ready and prepared to resolve the issues of an ever-increasing aging population. The provision of ancillary services is a necessity, not an option, as our profession endeavors to improve the quality and delivery of services to the public in the twenty-first century.

We suggest that transactional attorneys, which include elder law attorneys, who are members of The Florida Bar be given an opportunity to present to the PEC their ideas for formulating guidelines for ethical conduct. Our Section stands ready to take an active role in opening a dialogue

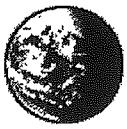
with the PEC to provide a roadmap toward this purpose. Please contact me directly to schedule a meeting at a mutually convenient time.

Sincerely,

Rebecca L. Berg, Chair

RLB/SLS:ne
cc: Elder Law Section Executive Council
Russell W. Divine, Esq., Co-Chair Ancillary Business Special Committee
Samuel C. Ullman, Esq., Co-Chair Ancillary Business Special Committee

b\FlaBar\Resp 3-041403



"Charlie Robinson" <CharlieR@charlie-robinson.com>

03/31/2003 05:08 PM

To: "Steve Hearn (Hearn, Steve)" <slh@estatedisputes.com>, <lguttmann@thefund.com>, <bbevis@flabar.org
cc:
Subject: FW: Proposed Ethics Opinion 02-08 - Soon to destroy the Ancillary Business Rule!

I think the Council needs to be aware of the ongoing battles with the new Ancillary Business Rule. Martin Cohen's correspondence, along with the Ancillary Business Committee response (to follow in separate email), and the original proposed advisory opinion (also to follow) should be in the Council Book for St. Pete. I think we should opposition in the most effective way to try to keep the opinion from becoming final. Ancillary Business options are provided for in Rule 4-5.7. We have a good deal of blood, sweat, and tears in getting that rule passed and now an advisory opinion that is not even on point takes us back to another bad advisory opinion 90-7.

Best regards

Charlie Robinson
410 South Lincoln Avenue
Clearwater, FL 33756
727 441-4516 Fax 727 447-7578
Please Note New email and Web Site Address
CharlieR@Charlie-Robinson.com
www.Charlie-Robinson.com
www.Charlierobinsonfuturist.com

-----Original Message-----
From: Martin Cohen [mailto:MartinCohen@Bellsouth.net]
Sent: Saturday, March 22, 2003 1:41 AM
To: Richard Josepher; Richard Comiter; Sherwin P Simmons; Donald Tescher; Samuel Ullman
Cc: Charlie Robinson; Michael A. Lampert; Steven Hearn; 'Lauchlin Waldoch'; 'Rebecca Louise Berg'
Subject: Proposed Ethics Opinion 02-08 - Soon to destroy the Ancillary Business Rule!
Importance: High

Dear Colleagues:

For your information, I enclose my comments to the PEC regarding Draft Opinion 02-08 and the March 18th response from Assistant Ethics Counsel Vanstrum containing Proposed Ethics Opinion 02-08. The letter does not state when the publication will take place (to determine the response date). However, according to the Bar's website, the response "must be **postmarked no later than April 31, 2003."**

Obviously the PEC was unimpressed by my arguments. I was wondering if the Ancillary Business Committee's comments were submitted.

In the March Tax Section Bulletin, Rick wrote that the section goals include developing a working knowledge of the new ancillary business rule. Referring to the outstanding insurance program set for April 11th (on page 2), Richard states that Rick will have achieved his goal. Sherwin, Donald and Sam will be discussing the Rule. After receiving the latest response from the PEC, my question is "Why bother?"

By reviving opinion 90-7, the PEC would destroy the ancillary business rule. To the extent that the inquiring attorney would receive a pure referral fee, the ancillary business rule does not apply at all. However, to the extent that the attorney would be involved in the management of the client's account, the committee should obtain additional facts before rendering an opinion on the applicability of the ancillary business rule. Unfortunately, rather than treating the issues in this manner, the PEC relies on Ethics Opinion 90-7, a pre-Rule 4-5.7 ancillary business decision, to absolutely prohibit attorneys from providing financial and insurance products to their clients.

This is contrary to the rule. The second paragraph of the comments to Rule 4-5.7 provides that we are not adopting the approach of substantively limiting the type of non-legal services or the manner that they are to be provided. After reading this, I am sure that I was not alone in concluding the Ethics Opinion 90-7 was moot.

Consider inviting the members of the PEC to attend the April 11th seminar (without charge). They may not fully understand the seminar content However, after listening to the slate of experts, they may realize why lawyers should be permitted to furnish a broader scope of related services to their clients. Once the PEC can understand that it is in the client's best interest for the lawyer to furnish related legal services to the client in one area of ancillary business, it will be easier for the PEC to accept other types of ancillary businesses.

As Bar leaders, I hope that you will actively pursue this matter.

Martin H. Cohen, Esq.
Martin H. Cohen, P.A.
600 N. Pine Island Road
Suite 450
Plantation, FL 33324

Telephone: (954) 315-0355
Facsimile: (954) 442-1983
E-mail: MartinCohen@Bellsouth.net

 - March 18 ltr from Arne Vanstrum and Proposed Opinion 02-8.pdf

The Florida Bar

JOHN F. HARKNESS, JR.
EXECUTIVE DIRECTOR

650 APALACHEE PARKWAY
TALLAHASSEE, FLORIDA 32399-2300

850/561-5600
WWW.FLABAR.ORG

March 18, 2003

Mr. Martin H. Cohen
600 North Pine Island Road, Suite 450
Plantation, Florida 33324

Re: Professional Ethics Committee
Draft Proposed Advisory Opinion 02-8

Dear Mr. Cohen:

At its meeting on March 7, 2003, the Professional Ethics Committee considered your comments regarding Proposed Advisory Opinion 02-8. The Committee voted to adopt the opinion with some modification based, in part, on the comments received. A copy of the proposed opinion is enclosed for your convenience.

Please note that at this time, the opinion is not final. The proposed advisory opinion will be published in *The Florida Bar News* for comment by Florida Bar members in good standing in accordance with Rule 4(c), Procedures for Ruling on Questions of Ethics (these rules are found on the Florida Bar's website at http://www.flabar.org). If any member of The Florida Bar files a comment on the proposed advisory opinion within 30 days of the publication date, the committee must review the opinion in light of any comments received. If no member of The Florida Bar files a comment within the 30 day period, the opinion will become final. If you disagree with the opinion, you may wish to consider filing a comment to preserve your ability to seek Florida Bar Board of Governors review of the proposed advisory opinion in accordance with Rule 4(h), Procedures for Ruling on Questions of Ethics.

If you have any questions, please call me at (850) 561-5780.

Sincerely,

Arne C. Vanstrum
Assistant Ethics Counsel

Enclosure

cc: Tim Chinaris, Chair/Professional Ethics Committee

G:\02-8cohen.wpd

Law Offices of
MARTIN H. COHEN, P.A.
600 North Pine Island Road
Suite 450
Plantation, Florida 33324

Telephone: (954) 315-0355
Facsimile: (954) 442-1983

February 6, 2003

Professional Ethics Committee
c/o Ms. Elizabeth Clark Tarbert
The Florida Bar
650 Apalachee Parkway
Tallahassee, FL 32399-2300

RE: Comments on Draft Proposed Ethics Advisory Opinion 02-8

Ladies and Gentlemen:

The inquiry discussed in Draft Proposed Ethics Advisory Opinion 02-8 (hereinafter "the draft" or "the draft opinion") consists of two separate scenarios. The first one concerns a referral fee. The other appears to involve an ancillary business activity. The Committee has ample authority to answer the issue of referral fees, and I do not disagree with the Committee's conclusions. However, without directly answering the second question, the opinion clearly indicates that certain business activities involve inherent conflicts of interest, not only where the attorney would be receiving a referral fee, but also where the attorney would be furnishing the services as an ancillary business.

In the middle of a discussion of referral fees (third paragraph), the author cites Ethics Opinion 90-7. That opinion concerned an ancillary business arrangement, not a referral fee. Relying on Opinion 90-7, the draft reasons that certain types of insurance or financial services activities with the client involve an inherent conflict of interest. This adds nothing to the discussion of referral fees. On the other hand, it lays a predicate for including the Rule 4-5.7 comment stating that the rules on personal conflicts of interest and on business transactions with the client will still apply.

Although not clearly set forth in the draft, the reasoning appears to be as follows:

1. Services not distinct from legal services require compliance with the Rules Regulating the Florida Bar ("The Rules").
2. The Rules include compliance with the provisions concerning conflicts of interest and doing business with your client.
3. Various pre-ancillary business rule ethics opinions conclude that a lawyer cannot furnish insurance and financial products to his tax or estate planning client since this would create an incurable conflict of interest.
4. Therefore, under Rule 4-5.7, a lawyer may not provide insurance and financial products to the client.

This reasoning ignores the MDP battle that led to the adoption of an ancillary business rule. The comments to the Rule state that the Rule rejects the approach of substantively limiting the type of nonlegal services that a lawyer may provide or the manner in which he can provide them. Rather, the Rule attempts to clarify the lawyer's conduct so as to avoid any misunderstanding by the client. This Committee may wish to provide guidance in the application of Rule 4-5.7 to members of the Bar. It should not seek to proscribe ancillary business areas that are related to our legal services. In fact, the Rule contemplates engaging in ancillary businesses that are related to the legal services that we perform for our clients.

Often this will be to the client's benefit. For example, an attorney doing eleventh hour Medicaid planning may suggest a specific commercial annuity as one strategy, among many, to qualify for public benefits without impoverishing the healthy spouse. Assisting the client in purchasing the annuity may benefit the client as much as other strategies, including personal care contracts, unsecured notes, and private annuities. Qualification for benefits will save the client thousands of dollars in nursing home expenses. The lawyer is trained to look out for his client first. Rarely is this the concern of competing financial professionals who are in the business of providing legal advice to Medicaid applicants as a front for the sale of annuities.

Similarly, a tax lawyer offers alternative solutions for reducing estate tax exposure and for paying the tax. One solution may be to use life insurance to fund the liability. If the lawyer is competent to do so and properly licensed, the client benefits from the lawyer's professionalism in providing the policy, including due diligence on the company. Would the client be better served by any of the thousands of insurance "professionals" who focus only on the commission? In many cases, with no more than a weekend of training, these "professionals" provide an "estate plan" using canned software. Then the client looks for an attorney to be a scrivener who will prepare documents at the lowest price.

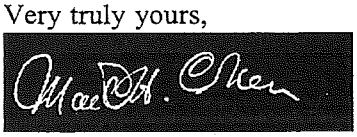
The draft states that the client is entitled to unbiased advice untainted by the attorney's own financial interest. The underlying premise is that all financial services provided by transactional lawyers are tainted. After thirty years in practice, I have found that those not involved in transactional practice know little about what transactional lawyers do, especially in the fields of taxation and estate planning. Without experiencing the interrelationship between the law and the financial world, one may assume that additional compensation for financial services destroys the attorney's objectivity. It is no more or less tainted than would the prospect of additional compensation for recommending off-shore trusts for asset protection and for estate planning rather than concentrating on available less expensive domestic options.

It is time for the leadership of The Florida Bar to trust that transactional lawyers will act in the client's best interest – even when providing ancillary services for additional compensation. All practicing lawyers make decisions that are affected by their own financial interest. Historically, these decisions have concerned choices that we offer the client within the scope of what we still consider the practice of law. I could give pages of examples, but they are too well known to most practicing attorneys. One was mentioned in this month's issue of Florida Lawyer. In an article on the proliferation of class actions, Broward County Circuit Judge Robert Andrews commented "A lot of class-action suits don't benefit the class. They benefit the lawyers and the primary plaintiffs." This is not a critique of the difficult financial decisions that trial lawyers make every day. However, this Committee should be sensitive to the changing landscape of law practice and not try to reverse the advancements reflected in Rule 4-5.7 by proscribing business areas as having incurable conflicts of interest.

I submit that the draft should be amended to clearly reflect that the second scenario may involve an ancillary business and that the inquiring attorney presented insufficient facts for you to give guidance beyond a direction to comply with Rule 4-5.7. In addition, the draft should either remove all references to Ethics Opinion 90-7 or withdraw the opinion.

Thank you for your attention.

Very truly yours,



MARTIN H. COHEN

RPPTL MEETING/CLE SEMINAR SCHEDULE
2003

~~Jan 10~~	~~Condominium Law CLE Seminar, Tampa~~
*Jan 15 - 18	The Florida Bar Midyear Meeting, Hyatt, Miami
~~Feb 5-6~~	~~Landlord Tenant CLE Seminar, Ft. Lauderdale/Tampa~~
Feb 20-21	Probate Litigation CLE Seminar, Ft. Lauderdale/Tampa
Feb 26 - March 2	**Out of State Executive Council Meeting - Healdsburg, CA**
*March 5 - 10	ACTEC, Las Croabas, Puerto Rico
March 6-7	Real Property Litigation CLE Seminar, Ft. Lauderdale/Tampa
March 27-28	Construction Law CLE Seminar, ~~Ft. Lauderdale~~ / Tampa
*March 20 - 23	ACREL, Las Vegas, NV
April 4 - 5	Real Property/Wills, Trusts Cert Review Courses, Hyatt, Orlando
*May 15 - 17	Fund Assembly, Kissimmee
May 22 - 25	**Section Convention/Executive Council Meeting, Vinoy, St. Pete**
June 5 - 8	**Attorney Trust Officer Conference, Ritz-Carlton Tiburon, Naples**
*June 25 - 28	The Florida Bar Annual Meeting, World Marriott, Orlando
*June 26 - 29	ACTEC, St. Paul, Minnesota
July 31 - Aug 3	**Legislative Update/Executive Council, The Breakers, Palm Beach**
*Sept 3 - 6	The Florida Bar General Meeting, Airport Marriott, Tampa
Sept 11-12	Mortgage Law CLE Seminar, Ft. Laud/Tampa
Oct 2-3	Probate and Trust...No Muss/No Fuss CLE Seminar, Ft. Laud/Tampa
Oct 23 - 24	FAR/BAR Contract/Litigation Issues CLE Seminar, Ft. Laud/Tampa
*Oct 29 - Nov 3	ACTEC, Charleston, S.C.
*October 23 - 26	ACREL, New Orleans, LA
Dec 4-5	Estate Planning CLE Seminar, Ft. Laud/Tampa

file name: h:\sections\rpptl/meeting & seminar schedule
* Related Groups

RPPTL MEETING/CLE SEMINAR SCHEDULE
2004

Jan 8 - 9	Development/Government Regulation/Property Rights/Affordable Housing CLE Seminar, Ft. Laud/Tampa
Jan 22 - 25	Executive Council Meeting, Hilton, Ocala
Feb 5 - 6	Probate & Trust Litigation CLE Seminar, Ft. Laud/Tampa
Feb 17 - 21:	Executive Council Meeting, Waikoloa Beach Marriott, Hawaii
March 4 - 5	Construction Law CLE Seminar, Tampa
March 25 - 25	Condominium Law CLE Seminar, Ft. Laud/Tampa
April 2 - 3	Real Property/Wills & Trusts Cert Review Courses, Hyatt, Orlando
*May 6 - 8	Fund Assembly, JW Marriott, Orlando Grande Lakes
May 27 - 31	RPPTL Convention/Executive Council Meeting, Hilton, Key West
June ____	Attorney/Trust Officer Liaison Conference, _____
July ____	RPPTL Legislative Update/Executive Council Meeting, _____

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* Related Groups

(Fund Assembly: May 5 - 7, 2005; May 11 - 3, 2006, May 24 - 27, 2007; May 8 - 10, 2008)

Real Property, Probate and Trust Law Section
Of The Florida Bar
Committee and Liaison Report

To Executive Council May 24, 2003
At St. Petersburg, FL

Name of Committee/Liaison: Section Liaison to CLE Committee

Report or Description of Attached Materials:

1) On April 25 – 27, 2003 at Casa Monica in St. Augustine, FL, The Florida Bar's CLE Committee conducted a special two-day interactive workshop for attorneys who want to learn how to be more effective Florida CLE program participants. There was one attendee from the RPPTL Section.

2) A CLE Committee member wrote an evaluation of the recent Section-sponsored seminar entitled, "*Overview of Real Property Issues.*" The reviewer's comments were so praiseworthy they bear repeating: "this was one of the most well-delivered, flowing, well-paced and timed programs I have seen in my nearly 20 years of CLE attendance." Program Chair Michael S. Smith deserves the credit for doing such a great job, along with his speakers Gene Shuey, Larry Miller, Al LaSorte, Clay Schnitker, Andy Decker, Michael Gelfand, and Mel Brinson.

Date and Location of Next Meeting, if applicable: June 26, 2003 at the Bar's Annual Meeting in Orlando (Marriott World Center).
Website Coordinator:
Report Submitted By: Patricia P. Jones
Date: May 6, 2003

CLE CORNER
May 9, 2003

By Pat Jones, CLE Coordinator, Real Property Law Division
And Jim Herb, CLE Coordinator, Probate and Trust Law Division

On April 25 – 27, 2003, the Florida Bar CLE Committee conducted a Program Chairs workshop in St. Augustine, Florida. For those of you who were unable to attend this valuable session, I will try to highlight some of the interesting information the attendees shared.

Quality. A quality program means among other things, selecting the best topics for presentation, selecting a catchy title, recruiting the "right" speakers, compiling meaningful program materials, and developing the presentation skills of the speakers.

Topics. Did you know that 74% of those surveyed report that a good topic is more important than a good speaker? Start selecting topics by looking at the obvious "hot" subjects created by changes in the law or emerging trends in the field. Then review the presentations given in previous years to avoid repeating topics that have been recently treated and to select other topics that would be appropriate to update.

Titles. Catchy titles can make a difference. For example, the Government Lawyers Section offered, "Death is Different" as opposed to, say, "Advanced Appellate Workshop."Another example of an effective title is the seminar sponsored by the Workers' Compensation Section on Sexual Harassment at a venue in South Florida. They called it, "The Birds and the Bees in the Keys." From our own Section, you may recall a Probate seminar called, "The Nuts and Bolts of RIVTs." Because they rhyme, or play on words, or have double meanings, topics like these grab our attention and appeal to us in ways that we are only subconsciously aware of..

Speakers. A bad speaker cancels out a good topic. The worst experience that can happen to a Program Chair is to have a designated speaker send an inexperienced person to speak in his or her stead. A Program Chair may be well advised to select her own substitute speaker, someone who knows the subject area and can speak intelligently about it, rather than accept a new associate who does not know the subject, lacks experience in the field, and has done no previous public speaking.

For those interested in Speaker Development, the Internet offers unlimited resources. A "Google" search on the Internet on "public speaking"will uncover a host of intriguing sites, such as, "Ten Tips for Successful Public Speaking," "How to Conquer Public Speaking Fear," "So You Wanna Deliver an Effective Speech?" and "Effective Speech Writing."

Materials. One reason people pay to attend Bar-sponsored and Section-sponsored seminars is for the materials. They should be useful reference materials that can stand on their own, as opposed to "bare bones" outlines. For seminars that are geared toward the practical aspects of the subject, forms and checklists are appreciated. One of the more frequent (and bitter) complaints the Bar's staff receives is about materials that were given as a separate handout because they were not received by the Bar in time for inclusion in the printed manual. Program Coordinators and Program Chairs should consider canceling a speaker if they are unable to meet deadlines.

Some people who are effective public speakers are reluctant to accept speaking engagements because they don't want to prepare the corresponding material(and certainly not by the short-fuse deadline the Program Chair is suggesting!). There is no law requiring a speaker to write his or her own materials. If a Program Chair is aware of a person who prefers writing to public speaking, he should consider assigning the writing and speaking tasks to different individuals.

More ideas about materials: in some cases, the materials may already be written. The Bar's CLE Publication staff has suggested that a CLE manual (or selections within a manual) can be the basis of a

seminar. Consider the manuals that already exist in this Section alone --"Florida Real Property Sales Transactions," "Florida Real Property Complex Transactions,""Practice under Florida Probate Code" -- the possibilities are endless. And one last note about preparing meaningful materials: don't forget the Internet. Surfing the Net can provide inspiration, new ideas, new information on your topic, and links to organizations that are active in your field. A list of relevant websites is itself a valuable item to include in one's materials.

I hope I have given you enough ideas to get you started as you begin your seminar program planning for the coming year. In the next issue I will be providing more in-depth information on Quality and Innovation in seminar presentations. And if you have ideas that you would like to share, or if you have comments or questions about our CLE programs, please email me at pjones@thefund.com.

WILLIAMSON, DIAMOND & CATON, P.A.
ATTORNEYS AT LAW

RICHARD P. CATON
ALSO ADMITTED TO KENTUCKY BAR

SANDRA FASCELL DIAMOND
BOARD CERTIFIED WILLS, TRUSTS & ESTATES

DOUGLAS M. WILLIAMSON
BOARD CERTIFIED REAL ESTATE

Please reply to:

ST. PETERSBURG
150 2nd Avenue North, Suite 840
St. Petersburg, Florida 33701
Telephone (727) 896-6900
Facsimile (727) 895-4552

SEMINOLE
9075 Seminole Boulevard
Seminole, Florida 33772
Telephone (727) 398-3600
Facsimile (727) 393-5458

Seminole
May 9, 2003

Bonnie Elliott Bevis
The Florida Bar
650 Apalachee Parkway
Tallahassee, Florida 32399-2300

Via Facsimile Transmission
(850) 561-5825

Re: Legislative Review Committee

Dear Bonnie:

During the course of this past legislative session, it was necessary for the Legislative Review Committee to act on various matters that came before the Legislature subsequent to our last Executive Council Meeting. The Legislative Review Committee as well as the Executive Committee of the RPPTL Section approved the following positions:

1. Oppose SB 2018 / HB 1649, requiring multiple disclosures by sellers of real property creating contract recission rights for buyer and seller liabilities for damages.

2. Oppose SB 1220 / HB 1551, requiring disclosures by non developer sellers of deed restricted communities and creating contract recission rights if the disclosures are not delivered to buyers.

3. Oppose portions of SB 1636 that (1) require sellers of real property to disclose to Buyers that the property tax assessment might increase after the sale, and (2) require DR-219 transfer tax forms to be filed in an office other than a county office where deeds are recorded.

4. Oppose SB 1286, which would impose burdensome pre litigation requirements to claims for construction defects, blocking access to the courts and creating potential liability for attorneys who are required to render pre litigation opinions, but supports modifications to the statute

which would mitigate some of these requirements.

5. Oppose SB 2300, which imposes burdensome pre litigation disclosures for condominium homeowners association members, but supports changes to mitigate some of these requirements.

It is my understanding that all of these positions were approved by the Board of Governors and should be included in the St. Petersburg Agenda Package for information purposes.

Very truly yours,

Sandra F. Diamond

SFD/amw

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Real Property, Probate and Trust Law Section
(List name of the section, division, committee, bar group or individual)

Address c/o Sandra F. Diamond; Williamson, Diamond & Caton, 9075 Seminole Blvd, Seminole, Fl 33772 (727) 398-3600
(List street address and phone number)

Position Type Florida Bar: Real Property, Probate and Trust Law Section
(Florida Bar, section, division, committee or both)

CONTACTS

Board & Legislation Committee Appearance Sandra F. Diamond, Legislative Chair – see above
(List name, address and phone number)

Appearances before Legislators Sandra F. Diamond (727) 398-3600 Peter M. Dunbar (850) 222-3533
(List name and phone # of those appearing before House/Senate Committees)

Meetings with Legislators/staff Sandra F. Diamond (727) 398-3600 Peter M. Dunbar (850) 222-3533
(List name and phone # of those having face to face contact with Legislators)

PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. All proposed legislation that has *not* been filed as a bill or a proposed committee bill (PCB) should be attached to this request in legislative format - Standing Board Policy 9.20(c). Contact the Governmental Affairs office with questions.

If Applicable, List The Following SB 2018 / HB 1649 Sen. Diaz de la Portilla / Rep. Prieguez
(Bill or PCB #) (Bill or PCB Sponsor)

Indicate Position ____ Support __X__ Oppose ____ Technical Assistance Other _____

Proposed Wording of Position for Official Publication:
Oppose SB 2018 & HB 1649, requiring multiple disclosures by sellers of real property, creating contract rescission rights for buyers and seller liability for damages.

Reasons For Proposed Advocacy: Proposed legislation would burden sellers of real property with NINE new disclosure obligations regarding matters that are now considered due diligence items for the purchasers (e.g., soil conditions, airport proximity, sinkhole activity, wildlife habitat areas, wellfield proximity, wetland zones, etc.). This would effectively reverse long-standing caveat emptor principles (for nonresidential property) and would require sellers by law to do the purchasers' due diligence. Under existing law, parties are free to allocate this responsibility in their contracts; under this legislation, there will be no more "AS-IS" real estate contracts. The only groups benefitted by this legislation will be the service companies that will be required to prepare the seller's statutory disclosures, and the litigators that will be required for a long string of lawsuits to interpret a confusing law.

PRIOR POSITIONS TAKEN ON THIS ISSUE

Please indicate any prior Bar or section positions on this issue to include opposing positions. Contact the Governmental Affairs office if assistance is needed in completing this portion of the request form.

Most Recent Position NONE

(Indicate Bar or Name Section) (Support or Oppose) (Date)

Others
(May attach list if more than one)

NONE

(Indicate Bar or Name Section) (Support or Oppose) (Date)

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

The Legislation Committee and Board of Governors do not typically consider requests for action on a legislative position in the absence of responses from all potentially affected Bar groups or legal organizations - Standing Board Policy 9.50(c). Please include all responses with this request form.

Referrals

1. NONE
   (Name of Group or Organization) (Support, Oppose or No Position)

2. _____
   (Name of Group or Organization) (Support, Oppose or No Position)

3. _____
   (Name of Group or Organization) (Support, Oppose or No Position)

Please submit completed Legislative Position Request Form, along with attachments, to the Governmental Affairs Office of The Florida Bar. Upon receipt, staff will further coordinate the scheduling for final Bar action of your request which usually involves separate appearances before the Legislation Committee and the Board of Governors unless otherwise advised. For information or assistance, please telephone (904) 561-5662 or 800-342-8060, extension 5662.

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Date Form Received _____

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(List name of the section, division, committee, bar group or individual)

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If Applicable, List The Following SB 1220 / HB 1551 Sen. Fasano / Rep. Anderson
(Bill or PCB #) (Bill or PCB Sponsor)

Indicate Position ____ Support __X__ Oppose ____ Technical Assistance Other _____

Proposed Wording of Position for Official Publication:
Oppose SB 1220 & HB 1551, requiring disclosures by non-developer sellers in deed-restricted communities and creating contract rescission rights if disclosures are not delivered to buyers.

Reasons For Proposed Advocacy: Proposed legislation would burden individual sellers with disclosure obligations as if they were developers, creating an impediment to the enforceability of private real estate contracts. This requirement duplicates the same information (copies of existing deed restrictions) that is always disclosed in the title evidence (title abstract or title insurance) delivered to the buyer pursuant to the purchase and sale contract. In order to create a non-rescindable contract, non-developer sellers would be required to run a title search before the contract is even signed, in order to deliver accurate deed restriction information that the buyer will receive again anyway under the title evidence provision that is in every real estate purchase and sale contract.

PRIOR POSITIONS TAKEN ON THIS ISSUE

Please indicate any prior Bar or section positions on this issue to include opposing positions. Contact the Governmental Affairs office if assistance is needed in completing this portion of the request form.

Most Recent Position NONE

(Indicate Bar or Name Section) (Support or Oppose) (Date)

Others
(May attach list if more than one) NONE

(Indicate Bar or Name Section) (Support or Oppose) (Date)

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

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Referrals

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(Name of Group or Organization) (Support, Oppose or No Position)

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(Name of Group or Organization) (Support, Oppose or No Position)

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If Applicable, List The Following SB 1636 (Bill or PCB #) Sen. Campbell (Bill or PCB Sponsor)

Indicate Position ____ Support __X__ Oppose ____ Technical Assistance Other _____

Proposed Wording of Position for Official Publication:
Oppose portions of SB 1636 that (1) require sellers of real property to disclose to buyers that the property tax assessment might increase after the sale, and (2) require DR-219 transfer tax forms to be filed in office other than county office where deeds are recorded.

Reasons For Proposed Advocacy: (1) Portions of the proposed legislation would burden sellers of real property with a new disclosure obligation regarding an obvious matter of common knowledge: real estate taxes may increase after the sale. Sellers as a class should not be charged with educating buyers as a class about the latest laws, and private contracts are not the government's bulletin boards. (2) Creating two separate filing offices for deeds and the required DR-219 deed tax form will double the time required to record a real property conveyance: the current one-stop filing procedure should not be changed. Other provisions of the bill concerning ad valorem taxes are not opposed.

PRIOR POSITIONS TAKEN ON THIS ISSUE

Please indicate any prior Bar or section positions on this issue to include opposing positions. Contact the Governmental Affairs office if assistance is needed in completing this portion of the request form.

Most Recent Position NONE

(Indicate Bar or Name Section) (Support or Oppose) (Date)

Others
(May attach list if more than one) NONE

(Indicate Bar or Name Section) (Support or Oppose) (Date)

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(Name of Group or Organization) (Support, Oppose or No Position)

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LEGISLATIVE REPORT

NUMERICAL INDEX SUMMARY OF 2003 LEGISLATIVE ISSUES

Peter M. Dunbar, Martha Edenfield and Marc Dunbar
RPPTL Legislative Counsel

The 2003 Regular Session of the Legislature produced a variety of changes that will affect the practice areas of RPPTL Section members, many of which were apart of the Section's legislative package. With the Session recently concluded, none of the measures have been acted on by the Governor. The legislation will now make its way to the Governor's desk for final action which will take until the middle of June. Several major items remain unfinished, including the State budget, legislation to implement the constitutional smoking ban in the workplace, and legislation to reorganize and fund the State's court system. These items and others will be dealt with in one or more special sessions. The full text of each enrolled bill and its status with the Governor's Office is available on the legislative website (www.leg.state.fl.us). A summary of each measure that passed follows below in numerical bill order.

CS/HB 267 (Tax Certificate Sales): The bill amends section 197.432 to permit the electronic sale of certificates for unpaid property taxes and establishes the procedures to be followed by the county tax collector to implement the new procedures. **(Chapter 2003- , Laws of Florida.)**

CS/HB 283 (UCC): The bills amends section 679.509 and authorizes the termination of a financing statement by a person who has been authorized by the debtor to make the filing and termination statement indicates that the authorization has been given by the debtor. **(Chapter 2003- , Laws of Florida.)**

CS/HB 439 (Guardian Ad Litem): This bill creates the Statewide Guardian Ad Litem Office within the Justice Administration Commission. It provides for the consolidation of existing programs; program oversight; training programs; and development of long term funding options. **(Chapter 2003- , Laws of Florida.)**

CS/HB 861 (Vested Rights, MRTA and Homeowners' Association Powers): The bill contains two the Section's legislative initiatives, amending the Marketable Record Title Act to permit the extension of deed restrictions upon an extraordinary vote of the association board of directors and defining more clearly the "vested rights" of homeowners' association members. The bill also expands the powers of the homeowners' association to permit them to represent members in disputes concerning matters of common interest. **(Chapter 2003- , Laws of Florida.)**
CS/HB 1307 (Cell Phone Towers--Preemption of Local Restrictions): Section 1 of

the bill creates a new subsection (11) of section 365.172 which creates a partial preemption of local land development regulations to permit the location for wireless communication equipment antennae and related equipment. **(Chapter 2003- , Laws of Florida.)**

CS/HB 1431 (Mobile Homes–Affixed to Real Property): The bill modifies section 316.261 to permit the owner of a mobile home which is permanently affixed to real property owned by the same person to permanently retire the title to the home. The procedure permits the affixed mobile home with a retired title to be conveyed by deed and to be financed by conventional mortgage secured by the real property and affixed mobile home. **(Chapter 2003- , Laws of Florida.)**

CS/HB 1623 (Florida Business Corporation Act): The bill makes a series of changes to the Florida Business Corporation Act to modernize and simplify its provisions. **(Chapter 2003- , Laws of Florida.)**

CS/CS/HB 1719 (Construction Lien Law): The bill revise Florida's Construction Lien Law providing modified notice provisions for property owners and lenders, revising procedures for the final payment to the contractor, and revising the statement that must be provide to the owner of real property by the authority issuing the building permit. **(Chapter 2003- , Laws of Florida.)**

CS/HB 1721 (Tax Deeds on Property Contiguous to Subdivision Lands): The bill requires the tax collector to notify the record owner of contiguous property in a subdivision when application is made for a tax deed on submerged land or common elements of the subdivision. If there are no bidders for the certificates on such properties and the county does not elect to purchase the land, the county must notify the contiguous property that the land is available for taxes. The bill also provides that ad valorem and non-ad valorem assessments shall be made against the lots in a subdivision and not against the subdivision property as a whole. **(Chapter 2003- ,Laws of Florida.)**

CS/SB 260 (Condominiums–Display of Armed Services Flags): The bill modifies Section 718.113 of the Condominium Act to permit unit owners to display in a respectful manner Armed Services Flags not to exceed 4 ½ feet by 6 feet on designated holidays. **(Chapter 2003- , Laws of Florida.)**

CS/CS/SB 340 (Baker Act–Release of Patient): The bill provides that a patient may also be released by the receiving facility when approved by an attending emergency department physician with experience in the treatment of mental and nervous disorders after completion of an involuntary examination. **(Chapter 2003- , Laws of Florida.)**

SB 482 (Landlord and Tenant–Termination): The bill revises the provisions relating to the termination of residential tenancies with a specific duration by creating a new Section 83.575. The bill also provides that no landlord shall discriminate against a

member of the United States Armed Forces in offering a dwelling unit rent or in any of the terms of the rental agreement. **(Chapter 2003- , Laws of Florida.)**
SB 524 (Rules of Evidence): The bill makes modifications to rules of evidence in Chapter 90 providing that objections to admitting or excluding evidence do not have to be renewed to preserve the claim on appeal; providing for notice and the opportunity to challenge when evidence is being provided by certification; and providing for the admissibility of evidence or records maintained in a foreign country. **(Chapter 2003- , Laws of Florida.)**

CS/CS/CS/SB 592 (Condominiums and Homeowners' Association): This is the comprehensive bill dealing with most of this Session's changes to the laws governing condominiums, cooperatives, and mandatory homeowners' associations. Among the sections in bill are provisions to authorize the optional "electronic transmission" of meeting notices in condominiums, cooperatives and mandatory homeowners' associations; the Section's initiative to permit the domestication of foreign not-for-profit corporations; clarification of the insurance requirements for condominium associations; authorization for condominium and cooperative associations to charge for requested information and assessment certificates issued to a prospective purchaser or lienholder; and authorization for condominium and cooperative associations to waive the retrofit requirement of fire sprinklers upon a two-thirds vote of the membership. **(Chapter 2003- , Laws of Florida.)**

CS/SB 676 (Continuously Maintained Roadways): Section 54 of this bill is the Section's initiative permitting a roadway to be considered a dedicated public right of way when it has been continuously maintained by a county, municipality or the Department of Transportation for seven consecutive years. **(Chapter 2003- ,Laws of Florida.)**

CS/SB 1098 (Landlord and Tenant–Military Personnel): The bill amends section 83.682 to permit military personnel to terminate a rental agreement when moving into government quarters or when being transferred. The bill permits military personnel to terminate motor vehicle leases and insurance contracts. The bill also creates a new section 689.27 permitting a member of the armed forces to terminate contracts for the purchase of a house, condominium or mobile home that is intended as a primary residence when the member is transferred or required to move into military quarters. **(Chapter 2003- , Laws of Florida.)**

CS/CS/SB 1220 (Disclosure Summary on Residential Property): The bill revises the required disclosure summary required in residential real estate transaction pursuant to section 689.26, and it provides that a purchase contract does not comply with the disclosure requirements is voidable by the purchaser prior to closing. The bill was amended from its original version to conform to the recommendations of the Section's Legislative Committee. **(Chapter 2003- , Laws of Florida.)**

CS/CS/SB 1286 (Residential Construction Defect Disputes): The bill provides an alternative dispute resolution procedure for construction defect claims or claims relating

to defective material or products in residential communities. The bill is applicable to condominium, cooperative, mobile home and mandatory homeowners' associations, and provides for mandatory pre-suit procedures and the right of the contractor or design professional to cure the defects prior to the filing of an action in court. The bill was amended from its original version to conform to the recommendations of the Section's Legislative Committee. **(Chapter 2003- , Laws of Florida.)**

CS/SB 1944 (Mobile Home Relocation Trust Fund): The bill provides additional funding for the Mobile Home Relocation Trust Fund. Each park owner will pay $1 per mobile home lot per year, each mobile home owner will pay $1 per year at the time of the renewal of the owner's tag, and the park owner changing the use of the park property will pay an increased contribution for the relocation of homes in the park. **(Chapter 2003- , Laws of Florida.)**

SB 2450 (Uniform Principle and Income Act): The bill is the Section's initiative making minor changes to last year's bill relating to a trustee's power to adjust, the serving of the statement on the legal representative or natural guardian, and the calculating of the percentage within a unitrust. **(Chapter 2003- , Laws of Florida.)**

CS/SB 2568 (Guardianship): This bill is a comprehensive compilation of changes dealing with guardianship, health care, and nursing home administration policies. Section 5 of the bill amends Section 765.401 by adding clinical social workers to those who may make health care decisions for a patient if no individual in a prior class is reasonably available. Sections 6 through 16 of the bill deal with guardianship and public guardians. Sections 7, 11 and 12 are the RPPTL initiatives dealing fees in proceedings to determine guardian's and attorney's fees, education requirements for parent/guardians, and reasonable fees and costs for persons employed by the guardian. Section 16 of the bill creates the 10-member Guardianship Task Force for a two year review of guardianship laws and specifies that RPPTL shall designate a member of the Task Force. The Task Force language also passed as a part of **CS/SB 1822**. **(Chapter 2003- , Laws of Florida.)**

SB 2700 (Probate and Trust): This is the Section's 2003 Probate and Trust initiative. The bill adds evidence of exposure to a "specific peril" as a basis for presuming death with particular venue provisions for petitioning a court for such a determination, and it conforms Florida law to provide that properly executed military testamentary instruments are valid wills in this state. It also establishes a specific conflict of interest standard for certain trustees; it addresses gaps in the anti-lapse laws; amends provisions relating to the serving of the notice administration and notice to creditors; clarifies the personal representative's powers pertaining to control and expenditure of funds for protected homestead; provides that civil actions based on constructive fraud must be initiated within four years of discovery; and eliminates a conflict in the law by removing the exception of homestead property form the application of the Florida Uniform Disposition of Community Property Rights at Death Act. (Chapter 2003- , Laws of Florida).

Report of the Law School Liaison Committee, RPPTL Section

Date: May 6, 2003
From: Phillip A. Baumann, Chair

This year, the Law School Liaison Committee held student meetings at three new venues: Stetson University, Barry University and Florida A&M's new law school. The meeting at A&M was particularly fun. The student body and the faculty are both excited about their new adventure.

Attendance figures were excellent at most venues. This year, we served more students at more venues than ever before. We added three law schools to our circuit. Average attendance at the student meetings is about 25, although at A&M we had 80% of the student body in attendance.

This was this year's schedule:

University of Florida	January 30, 2003
Nova Southeastern University	February 6, 2003
Florida State University	March 6, 2003
Barry University	March 27, 2003
Florida A & M University	April 3, 2003
Stetson University	April 10, 2003

We were scheduled for University of Miami, but had to cancel due to our inability to line up speakers. To remedy that for next year, we are adding coordinators to our committee. Next year, each law school will have assigned to it a different member of our committee, who will be from the geographical area of the school. The coordinator will be responsible for securing the date with the law school and lining up speakers for the event. So far, the coordinators are:

University of Florida	Open
Nova Southeastern University	Barbara Landau
Florida State University	Fred R. Dudley
Barry University	Open
Florida A&M University	Open
Stetson University	Gregory M. McCoskey
University of Miami	Open
Florida Atlantic University	Open
St. Thomas University School of Law	Open
Florida Coastal School of Law	Open

Anyone wishing to volunteer for any open position or wishing to volunteer anyone else for any open position is welcome to contact Phil Baumann, P. O. Box 399, Tampa, Florida 33601-0399, telephone 813-223-2202, or pab@EstateLawFlorida.com.

Guardianship Law Committee
Minutes of Meeting
November 21, 2002
St. Augustine, Florida

The following members were present or participated by telephone:

Glenn M. Mednick, Chair, Dave Brennan, Hon. Maria Korvick, Donna Lee Rhoden, Sam Boone, Joe George, Michael Foreman, Edwin Presser, Judith Frankel, Stacey Cole, Martha Edenfield, Hon. Mel Grossman, David R. Carlisle, and Steven Quinnell.

The chair called the meeting to order at 1:15 P. M. and announced that the next meeting would be on May 22 or 23, 2003, in St. Petersburg. The committee will be further advised.

I. The minutes of the telephonic Meeting of October 16, 2002, were approved as circulated.

II. Edwin Presser was appointed secretary for this meeting.

III. The Chair announced that legislation pertaining to the following statutory sections, previously adopted by this committee, will be presented to the Executive Committee for action:
§744.108(8)
§744.3145
§744.444(16)
§394.467

IV. Old Business

A. Minor Trust. Michael Foreman, as a member, only, of that subcommittee, presented a draft of proposed changes to §744.441(19) as prepared by Anne McBride. The draft was discussed and some modifications were suggested including the suggestion of the addition of a recital that the ward, after emancipation, would have the right to seek to set aside the trust, or modify it, under Chapter 737. The matter was referred back to the subcommittee.

B. Baker Act, §394.467. The Chair announced that, subsequent to the dissemination of the revision to this section which was approved at the October 16, 2002, meeting, a letter from Michael S. Lederberg pointed out an unintended consequence of the revision and included a further change which would make it clear that the 'likelihood of emotional or psychological harm' clause would only apply to another person, and not to the subject of the involuntary placement inquiry. Joe George advised that a telephone poll of a majority

of the committee, conducted by him, resulted in unanimous approval of the change. After discussion and upon motion duly made and carried, the rewritten version of that section, as shown on the document attached hereto as "Exhibit 4", was unanimously approved. The Chair advised that, although this matter had already been referred to the Executive Committee, it would be permitted to amend the presentation to accommodate this glitch correction.

C. Asset Determination. Michael Foreman, a member of the subcommittee, but not chair, reported on the history of the problem being addressed and advised that the subcommittee would continue to work on a proposal. Steven Quinnell was voluntarily appointed chair and Michael Foreman and Sam Boone members of that subcommittee.

D. Prudent Investor Rule, §518.11. No further material having been submitted on this issue after invitation to do so, on motion duly made and carried, the committee declined to act on this issue.

E. Guardian ad Litem - Appointment and Compensation. Judith Frankel advised that she had prepared a response to Sandra Diamond on the issues raised by her, and that a copy of her response would be circulated to the committee.

New Business

A. Dollar Limitation -§747.051 and §747.052. the Chair announced that, although suggestion had been made by J. Craig Shaw, CLE Publications, to raise the dollar limitations to $15,000.00, he had declined to prepare a proposal. Accordingly, unless some committee member or other person submits proposed legislation for the next meeting, the matter would be open for a motion to decline to act thereon.

B. Guardianship Seminar. It was reported that it had been some time since there had been a comprehensive guardianship seminar. David Carlisle stated that he was working on such a seminar through Florida Legal Education Association, and although he had aligned some subjects and lecturers, he would welcome more.

C. Legislation by State Senator Burt Saunders. not visited.

D. Additional Items. None submitted.

The meeting was duly adjourned at 3:15 P. M.

Respectfully submitted,

Edwin Presser, Acting Secretary

The Liaison with Corporate Fiduciaries Committee of the
Real Property, Probate and Trust Law Section of The Florida Bar
in cooperation with Members of the Trust Division of the
Florida Bankers Association present:

THE FLORIDA BAR

22nd Annual Attorney/Trust Officer Liaison Conference

"East Meets West - Attorneys and Trust Officers at Their Best"

June 5 - June 8, 2003
The Ritz-Carlton Golf Resort
Naples, Florida

Program Co-Chairs:
Michael A. Dribin, Miami
Paul E. Roman, Boca Raton

Fiduciary Co-Chair
George W. Lange, Jr., Naples

Panel Coordinator:
Barbara Landau, Palm Beach

Sponsorship Coordinator:
Elizabeth D. Fletcher, Boca Raton

Breakout Coordinator:
Joan K. Crain, Fort Lauderdale

Course No. 28703

196a

2003 Attorney/Trust Officer Liaison Program Outline

"East Meets West – Attorneys and Trust Officers at Their Best"

Thursday, June 5

10:00 a.m. – 4:00 p.m. **Fourteenth Annual Scramble Golf Tournament and Lunch**
Hosted by Wachovia Bank, N.A.

3:00 p.m. – 5:00 p.m. **Registration**

6:00 p.m. – 7:30 p.m. **Reception** (Spouses Welcome)
Hosted by Bank of America Private Client Group Florida

Friday, June 6

7:30 a.m. – 9:00 a.m. **Breakfast**
Hosted by U.S. Trust Company of Florida

8:00 a.m. – 9:00 a.m. **Family and Charitable Estate Planning with Retirement Plan Accounts (with Emphasis on Community Foundations)**
Christopher R. Hoyt, University of Missouri-Kansas City School of Law

9:00 a.m. – 9:15 a.m. **Welcome**
Michael A. Dribin, Broad and Cassel, Miami, and
Paul E. Roman, Hodgson Russ LLP, Boca Raton, Co-Chairs, and
George W. Lange, Jr., AmSouth Bank, Naples, Florida., Fiduciary Co-Chair,
Liaison with Corporate Fiduciaries Committee,
Real Property, Probate & Trust Law Section of The Florida Bar

9:15 a.m. – 10:30 a.m. **Business Issues Affecting Lawyers and Trust Officers**
Panel Discussion
Robert D.W. Landon, Moderator, Dunwody, White & Landon, P.A., Tampa
George W. Lange, Jr., AmSouth Bank, Naples
Charles F. Robinson, Law Office of Charles F. Robinson, Clearwater
Joel H. Yudenfreund, The Citigroup Private Bank, Palm Beach

10:30 a.m. – 10:45 a.m. **Break**
Sponsored by Fowler White Boggs Banker P.A.

10:45 a.m. – 12:15 p.m. **Playing Around with Ethics**
Panel Discussion
Bruce M. Stone, Moderator, Goldman Felcoski & Stone, P.A., Miami
Susan Ashman, Wilmington Trust, North Palm Beach
Barbara Landau, Palm Beach
James I. Ridley, James I. Ridley, P.A., Fort Lauderdale

12:30 p.m. – 1:45 p.m. **Lunch/Group Discussions**
Hosted by Northern Trust

2:00 p.m. – 3:30 p.m. **Surviving Modern Portfolio Theory: The Litigator's Perspective**
Dominic J. Campisi, Evans, Latham and Campisi, A Professional Corporation, San Francisco, California
Sponsored by State Street Global Advisors

3:30 p.m. – 3:45 p.m. **Break**
Sponsored by Fowler White Boggs Banker P.A.

3:45 p.m. – 5:15 p.m. **Recent Florida Statutory Law Developments and a Preview of the Uniform Trust Code**
Sandra Fascell Diamond, Williamson, Diamond & Caton, P.A., Seminole
Brian J. Felcoski, Goldman Felcoski & Stone, P.A., Miami

5:30 p.m. – 7:00 p.m. **Reception** (Spouses Welcome)
Hosted by Marsh Private Client Services, Florida Offices, and Lowry Hill, Naples

Saturday, June 7

7:30 a.m. – 8:30 a.m. **Breakfast**
Hosted by Bessemer Trust Company

7:45 a.m. – 8:30 a.m. **Geopolitical Uncertainty: Opportunities and Risks**
Christine A. Callies, Bessermer Trust, New York, New York

8:30 a.m. – 9:45 a.m. **Wealth Transfer Taxes and Estate Planning: Recent Developments**
Jeffrey N. Pennell, Emory University School of Law
Sponsored by The Citigroup Private Bank

9:45 a.m. – 10:00 a.m. **Break**
Sponsored by Fowler White Boggs Banker P.A.

10:00 a.m. – 11:15 a.m. **The Principal and Income Act in Practice**
Panel Discussion
Donald R. Tescher, Tescher Gutter Chaves Josepher Rubin Ruffin & Forman, P.A., Boca Raton, Moderator
Joan K. Crain, Mellon, Fort Lauderdale
Charles B. Fisher, Jr., Deutsche Bank of Florida, Palm Beach
F. Gordon Spoor, Spoor, Doyle & Associates, P.A., St. Petersburg

11:15 a.m. – 12:30 p.m. **Recent Florida Case Law Developments**
Clay Craig, Steel, Hector & Davis, LLP, Miami

12:30 p.m. – 2:00 p.m. **Lunch: Questions and Answers – (Stump the Chumps)**
Hosted by Wright Investors' Service
Laird A. Lile, Lowry Hill, Naples, Moderator
Dominic J. Campisi, Evans, Latham and Campisi, A Professional Corporation, San Francisco, California
Christopher R. Hoyt, University of Missouri-Kansas City School of Law
Jeffrey N. Pennell, Emory University School of Law
Randolph M. Pople, Capital City Trust Co., Tallahassee

6:00 p.m. – 7:30 p.m. **Reception** (Spouses Welcome)
Hosted by the following law firms: Akerman, Senterfitt, & Edison, P.A.; Blank, Rome LLP; Bornstein and Smith, P.A.; Dunwody, White, & Landon, P. A.; Fowler White Burnett P.A.; Goldman Felcoski & Stone, P.A.; Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel, P.A.; Gunster, Yoakley, Valdes-Fauli, & Stewart, P.A., Holland & Knight; Kramer, Sewell, Sopko, & Levenstein, P.A.; Landis, Graham, French, Husfeld, Sherman & Ford, P.A.; McCarthy, Summers, Bobko, Wood, Sawyer, & Perry, P. A.; Pressley & Pressley; Proskauer, Rose, LLP; Quarles & Brady LLP; Shutts & Bowen; Steele, Hector & Davis, LLP; Tescher Gutter Chaves Josepher Rubin Ruffin & Forman, P.A.

Sunday, June 8

9:00 a.m. – 10:30 a.m. **Breakfast: Pot Luck**
Hosted by Conference Steering Committee
Michael A. Dribin, Broad and Cassel, Miami, and
Paul E. Roman, Hodgson Russ LLP, Boca Raton, Co-Chairs; and
George W. Lange, Jr., AmSouth Bank, Naples, Fiduciary Co-Chair

10:30 a.m. **Adjournment**

Sponsorship Coordinator: Elizabeth D. Fletcher, U.S. Trust Company of Florida, Boca Raton

Panel Coordinator: Barbara Landau, Palm Beach

Breakout Coordinator: Joan K. Crain, Mellon, Fort Lauderdale

General Sponsors: Bank of America Private Client Group Florida; Bessemer Trust Company; Christie's; The Citigroup Private Bank; Deutsche Bank of Florida; Fowler White Boggs Banker P.A.; The Harris; Lowry Hill; Marsh Private Client Services, Florida Offices; Mellon Private Wealth Management; Northern Trust Bank of Florida, N.A.; State Street Global Advisors; U.S. Trust Company of Florida; Wachovia Bank, N.A.; Wright Investors' Service

Continuing Legal Education Requirement Credit

(Maximum 12.0 hours)

General: 12.0 hours
Ethics: 2.0 hours

Certification Credit

(Maximum 9.0 hours)

Business Litigation: 6.0 hours
Civil Trial: 6.0 hours
Wills, Trusts & Estates: 9.0 hours

Hotel Reservation Information

To reserve a sleeping room with the Ritz-Carlton Golf Resort in Naples (2600 Tiburon Drive), please call 1-800-241-3333 or (239) 593-2000. The Florida Bar group rate of $150/night is guaranteed on the nights of June 5, 6 and 7 until May 9, or until the room block is sold-out.

2003 Attorney Trust/Officer Liaison Conference

Program Registration Form

Please Print or Type

Mail Program Registration Form and check (payable to The Florida Bar) to The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, Attn: Ms. Brooke Smith, MEETINGS DEPARTMENT.

Name _____ Attorney Number _____
Last First Required for CLE Credit

Name to be Used on Badge _____ Name to be Used on Spouse's Badge _____

Address _____

City _____ State _____ ZIP Code _____

Phone Number _____ Email Address _____

Registration and Refund Policy:

- Refunds will be honored [less $15.00 cancellation fee] if postmarked by 5/28/03.
- Registrations will be accepted on a first-registered basis at The Florida Bar through 5/28/03, or until full.
- No telephone or faxed registrations accepted.
- No telephone cancellations accepted [faxed cancellations will be accepted (850-561-5612)].
- On-Site registrations accepted on a space-available basis. NO GUARANTEE SPACE WILL BE AVAILABLE.
- ON-SITE REGISTRATION, ADD $25. On-site registration is by check/cash only.
- ONE REGISTRANT PER FORM/ONE CHECK PER REGISTRANT (Copies accepted).

Conference Registration:

____ [101] Attorney Registrant $225.00
____ [102] Trust Officer Registrant $225.00
____ [103] Attorney Registrant (5/31/03 or AFTER) $250.00
____ [104] Trust Office Registrant (5/31/03 or AFTER) $250.00

Conference Events for Registrant:

Course materials and the following Conference Events are included in registration fee. Please check the events you plan to attend.

Thursday, June 5
____ [105] Reception

Friday, June 6
____ [201] Continental Breakfast
____ [202] Luncheon
____ [203] Reception

Saturday, June 7
____ [301] Continental Breakfast
____ [302] Luncheon
____ [303] Reception

Sunday, June 8
____ [304] Breakfast

Conference Events for Spouses:

The following events are open to spouses. Check the events your spouse plans to attend. An additional fee applies where indicated.

Thursday, June 5
____ [401] Reception

Friday, June 6
____ [402] Continental Breakfast $18 [$16.74 plus tax]
____ [403] Reception

Saturday, June 7
____ [404] Continental Breakfast $18 [$16.74 plus $1.26 tax]
____ [405] Reception

Sunday, June 8
____ [406] Breakfast $18 [$16.74 plus $1.26 tax]

Thursday, June 5 – Scramble Golf Tournament (Sponsored by Wachovia Bank, N.A.):

NOTE: An additional fee applies to both registrants and spouses. (Please provide us with your Handicap or Average Score)
____ [501] Golf $50 [$46.50 plus $3.50 tax] Handicap or Average Score _____
____ [502] Golf - Spouse $50 [$46.50 plus $3.50] Handicap or Average Score _____

Course Materials (One (1) set Included in Conference Registration Fee):

[604] Additional copy of materials or materials without Registration $50 [$46.50 plus $3.50 tax]

Total Amount Enclosed $_____

196d

Real Property, Probate and Trust Law Section Of The Florida Bar

Committee and Liaison Report To Executive Council on May 24, 2003 at the Vinoy Resort, St Petersburg, Florida

Name of Committee/Liaison: Florida Probate Rules Committee

Report or Description of Attached Materials:

The Committee met in Miami, Florida on January 17, 2003 and the minutes are attached.

Date and Location of Next Meeting, if applicable: May 9, 2003 – Airport Marriott, Tampa, Florida.

Website Coordinator: _____

Report Submitted By: Brian J. Felcoski

Date: May 6, 2003.

Minutes of the Meeting of the
FLORIDA PROBATE RULES COMMITTEE
Friday, January 17, 2003
Hyatt Regency, Miami

I. Call to Order. The Chair, Brian Felcoski, called the meeting to order at the Hyatt Regency in Miami at 1:00 p.m. The members in attendance are listed on Exhibit "A" attached to these minutes. A quorum was determined to be present.

II. Administrative Matters and Announcements.

A. William M. Pearson was appointed Secretary for the meeting.

B. The Chair advised the Committee of the death of Shep King and asked for the Committee to observe a moment of silent meditation for him.

C. A motion to approve the minutes of the September 13, 2002 meeting was made, seconded and passed unanimously, with one correction to reflect that Julie Frye attended the meeting.

D. At the request of the RPPTL Section Executive Committee, the Rules Committee has been asked to hold on the previously passed proposed change to Rule 5.200 that would delete the requirement of listing the decedent's social security number in the petition for administration while the Probate Law Committee is reviewing the issue, because the law committee may make inclusion of the number a statutory requirement.

E. An emergency motion was made, seconded and passed by a vote of 23-0 to change the term "notice of administration" to "notice to creditors" in Rule 5.496. A motion was made, seconded and unanimously passed to waive Rule 9 so the Committee could consider the motion for the rule change in concept and in final at the meeting, to allow the amendment to go forward as part of the pending two-year-cycle proposals.

F. The Chair announced the next meeting would probably be in May in Tampa or St. Petersburg in conjunction with the RPPTL executive council meeting, or at another date and location to be announced.

III. Subcommittee Reports.

A. **Fort Lauderdale** Rule 5.496 Form and Manner of Objecting to Claim and proposed Rule 5.498 Personal Representative's Proof of Claim. A motion was made, seconded and passed to modify Rule 5.496 and create a new Rule 5.498 Personal Representative's Proof of Claim. A motion to limit the service requirement in 5.498(b) to exclude those who had been served with a notice to creditors did not pass. Motions to change the notice requirements in 5.498 (c) and (d) were made and passed. Copies of the

rules as amended are attached as Exhibits "B" and "C." The rules were then referred to the Style Committee.

B. **Palm Beach**

1. Rule 5.345 Accountings Other Than Personal Representatives' Final Accountings. A motion to amend the rule to add a verification requirement in new subdivision (h) was made, seconded and passed. A copy of the rule as amended is attached as Exhibit "D." The rule was referred to the Style Committee.

2. Rule 5.346 Fiduciary Accounting. A motion to amend the rule to add a verification requirement in new subdivision (d) was made, seconded and passed. A copy of the rule as amended is attached as Exhibit "E." The rule was referred to the Style Committee.

3. Rule 5.400 Distribution and Discharge. A motion to amend the rule to add the word "verified" before the phrase "final accounting" in subdivision (a) was defeated.

C. **Tampa/St. Petersburg**

1. Rule 5.275 Burden of Proof in Will Contests. A motion for no change to the rule and to add language to the committee note was made, seconded and passed. A copy of the rule and committee note as changed is attached as Exhibit "F."

2. Rule 5.400 Distribution and Discharge. After discussion, the subcommittee was directed to review the rule and to consider the deletion of (f) because waiver is covered in another rule.

IV. New Business.

A. Guardianship Law Committee -- Glenn Mednick reported on proposed statutory changes being considered by the Guardianship Law Committee, including the expansion of involuntary commitments under Section 394.467 [the Baker Act], the addition of a provision to pay attorneys' fees without court order under Section 744.444(16) and Section 744.108, and the addition of a short education course for guardianships of minors under Section 744.3145. The Miami Subcommittee was asked to review the need for a rule in conjunction with Section 744.3145. No rule changes were suggested; however, all of the subcommittees were asked to review guardianship laws in conjunction with rules being reviewed to cover any gaps in the rules.

B. Guardianship Monitoring – The Miami Subcommittee was asked to consider the need for a rule covering monitors and the issue of whether

reports of monitors are to be provided to interested persons. It was reported that the Supreme Court Commission on Fairness' Guardianship Monitoring Committee has done an initial draft of a report covering this matter; however, that committee has asked its members not to circulate the draft report for the time being.

C. Rule 5.120 Administrator Ad Litem and Guardian Ad Litem. A discussion was held on the applicability of Rule 5.120 to trust administrations. The consensus was that under Rule 5.010, Rule 5.120 clearly would not apply to the appointment of an Ad Litem in trust proceedings; however, there was a consensus that there is nothing the Probate Rules Committee could do to address this.

D. Mediation in Probate Proceedings – A discussion was held regarding the adoption of the civil mediation rules in the Probate Rules, since the Civil Rules of Procedure (and the confidentiality provisions in the civil mediation rules) do not apply in non-adversary probate proceedings. The Orlando/North Florida Subcommittee was assigned to consider the matter.

E. Effective Dates of Rules – A discussion was held regarding a letter from Toby Muir raising the issue of the appropriate elective share rule effective for a decedent dying during the 11-day period after October 1, 2001 (when the new elective share statute became effective) and prior to October 11, 2001 (when the revised elective share rule was adopted). The consensus was that since there are probably so few cases where this is an issue, and that by the time a fix was approved the issue would have already likely been resolved, the Committee would not take any action.

F. Rule 5.270 Revocation of Probate. The Tampa Subcommittee was assigned to consider the need to change the rule to replace "devisees" with "beneficiaries" and to do a search of the rules to determine if any other rules should be similarly changed.

G. The Naples Subcommittee was assigned to consider why F.S. 734.1025 does not apply to intestate estates, and whether any rule changes or additions are needed.

H. Rule 5.697 – Masters' Review of Guardianship Accountings and Plans. A discussion was held regarding the ability to object within ten days to the referral of matters to a master in the civil rules, but not in Rule 5.697. The Palm Beach Subcommittee was assigned to consider the matter.

I. Rule 5.404 – Notice of Taking Possession of Protected Homestead. A discussion was held regarding the need for changes to the rule to cover the homestead reimbursement provisions proposed for F.S. 733.608. The Orlando/North Florida Subcommittee was assigned to consider changes to the rule.

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V. Adjournment. The meeting adjourned at approximately 3:10 p.m.

Respectfully submitted,

William M. Pearson, Acting Secretary

EXHIBIT A

FLORIDA PROBATE RULES COMMITTEE
Attendance Roster
January 17, 2003 – Hyatt Regency, Miami

Frank T. Adams
Paul I. Auerbach
William R. Blackard, Jr.
Christopher W. Boyett
James D. Camp
Tami F. Conetta
Lawrence L. Davis
Michael A. Dribin
Jack A. Falk, Jr.
Brian J. Felcoski (Chair)
Jean M. Finks
Norman A. Fleisher
Frank T. Gaylord
Joseph P. George, Jr.
Martin Greenbaum
Frederick C. Heidgerd
Shane J. Kelley
Gary B. Leuchtman
Glenn M. Mednick
William H. Namack, III
William M. Pearson
Frank T. Pilotte (Vice-Chair)
Adrienne F. Promoff
Charles S. Sacher
Peter A. Sachs
Joel H. Sharp, Jr.
Edward P. Swan
Thomas K. Topor
Sydney S. Traum

Others attending:

Craig Shaw
Judy Bonevac
Leon McCombs II
Stewart Marshall
David Carlisle

EXHIBIT B

RULE 5.496. FORM AND MANNER OF OBJECTING TO CLAIM

(a) **Filing.** An objection to a creditor's claim shall be in writing and shall be filed within 4 months from the first publication of notice to creditors or within 30 days from the timely filing or amendment of a claim, whichever occurs later.

~~(b) Objection to Proof of Claim. An objection to a personal representative's proof of claim shall identify the particular item or items of the claim to which objection is made.~~

(~~c~~b) **Service.** A personal representative or other interested person who files an objection to a creditor's claim shall serve a copy ~~by registered or certified mail or by delivery~~ of the objection on the claimant or claimant's attorney of record within 10 days after the filing of the objection, and also on the personal representative if the objection is filed by an interested person other than the personal representative.

(~~d~~c) **Notice to Claimant.** An objection shall contain a statement that the claimant is limited to a period of 30 days from the date of service of an objection within which to bring an action as provided by law.

Committee Notes

This rule represents an implementation of the procedure found in section 733.705, Florida Statutes, and adds a requirement to furnish notice of the time limitation in which an independent action or declaratory action must be filed after objection to a claim.

Rule History

1992 Revision: New rule.

2003 Revision: Reference in (a) to notice of administration changed to notice to creditors. Committee notes revised.

20 Revision: Removed provision for objections to personal representative's proof of claim, as separate rule regarding same was created.

Statutory Reference

§ 733.705, Fla. Stat. Payment of and objection to claims.

Rule References

Fla. Prob. R. 5.040 Notice.
Fla. Prob. R. 5.041 Service of pleadings and papers.

EXHIBIT C

RULE 5.498 PERSONAL REPRESENTATIVE'S PROOF OF CLAIM

(a) **Form.** A personal representative's proof of claim shall contain the following:

(1) A description of each claim, the basis for the claim, and the amount claimed.

(2) The name and last known mailing address for the claimant.

(3) Whether the claim is due or involves an uncertainty, and if not due, then the due date and, if contingent or unliquidated, the nature of the uncertainty.

(4) Whether the personal representative has already paid the claim or whether he or she intends to pay the claim.

(5) A statement that all persons are limited to the later of 4 months from first publication of the notice to creditors or 30 days from the date of the filing of the personal representative's proof of claim to file an objection to all items listed as to be paid on the proof of claim.

(b) **Service.** The personal representative's proof of claim shall be served at the time of filing or immediately thereafter on all interested persons and all claimants listed in the proof of claim.

(c) **Objections.** Objections to a personal representative's proof of claim shall be in writing and state the particular item or items to which the interested person objects. The objector shall serve a copy of the objection on the personal representative, and in the case of any objection to an item listed as to be paid, shall also serve a copy on the claimants or their attorney of record within 10 days after the filing of the objection.

(d) **Procedure for Items Listed as to Be Paid.** If the item to which the person objects is listed on the proof of claim as to be paid by the personal representative, and has not actually been paid by the time the objection is filed, the item shall be treated as if a claim was filed by the claimant on the date the personal representative's proof of claim was filed and the objector must file an objection to the item within 4 months from the first publication of notice to creditors or within 30 days from the filing of the proof of claim, whichever occurs later. The objection shall contain a statement that the claimant to which the objection applies is limited to a period of 30 days from the date of service of the objection within which to bring an action as provided by law. If the item objected to by the interested person is listed as to be paid by the personal representative, but is paid prior to the objection being filed, then the item shall be treated as if it was listed on the proof of claim as paid.

(e) **Procedure for Items Listed as Paid.** If the item to which the person objects is listed on the proof of claim as paid, then it shall not be necessary for the claimant to file

an independent action on that item within the time period provided in subdivision (d). Issues of liability as between the estate and the personal representative individually for that item shall be determined in the estate administration, in a proceeding for accounting or surcharge, or in another appropriate proceeding.

Committee Notes

This rule represents an implementation of the procedure found in section 733.705, Florida Statutes, with respect to a proof of claim filed by the personal representative. The rule recognizes the different treatment between items listed on a proof of claim as having been paid versus items listed as to be paid. An objection to an item listed as to be paid is treated in the same manner as a creditor's claim and adds a requirement to furnish notice of the time limitation in which an independent action or declaratory action must be filed after objection to a claim.

Rule History

20 Revision: New rule. Previously part of Fla. Prob. R. 5.496.

Statutory Reference

§ 733.705, Fla. Stat. Payment of and objection to claims.

EXHIBIT D

RULE 5.345. ACCOUNTINGS OTHER THAN PERSONAL REPRESENTATIVES' FINAL ACCOUNTINGS

(a) **Applicability and Accounting Periods.** This rule applies to the interim accounting of any fiduciary of a probate estate, the accounting of a personal representative who has resigned or been removed, and the accounting of a curator upon the appointment of a successor fiduciary. The fiduciary may elect to file an interim accounting at any time, or the court may require an interim or supplemental accounting. The ending date of the accounting period for any accounting to which this rule applies

(1) For an interim accounting, any date selected by the fiduciary, including a fiscal or calendar year, or as may be determined by the court.

(2) For the accounting of a personal representative who has resigned or has been removed, the date the personal representative's letters are revoked.

(3) For a curator who has been replaced by a successor fiduciary, the date of appointment of the successor fiduciary.

(b) **Notice of Filing.** Notice of filing and a copy of any accounting to which this rule applies shall be served on all interested persons. The notice shall state that objections to the accounting must be filed within 30 days from the date of service of notice.

(c) **Objection.** Any interested person may file an objection to any accounting to which this rule applies within 30 days from the date of service of notice on that person. Any objection not filed within 30 days from the date of service shall be deemed abandoned. An objection shall be in writing and shall state with particularity the item or items to which the objection is directed and the grounds upon which the objection is based.

(d) **Service of Objections.** The objecting party shall serve a copy of the objection on the fiduciary filing the accounting and other interested persons.

(e) **Disposition of Objections and Approval of Accountings.** The court shall sustain or overrule any objection filed as provided in this rule. If no objection is filed, any accounting to which this rule applies shall be deemed approved 30 days from the date of service of the accounting on interested persons.

(f) **Substantiating Papers.** On reasonable written request, the fiduciary shall permit an interested person to examine papers substantiating items in any accounting to which this rule applies.

(g) **Supplemental Accountings.** The court, on its own motion or on that of

any interested person, may require a fiduciary who has been replaced by a successor fiduciary to file a supplemental accounting, the beginning date of which shall be the ending date of the accounting as specified in subdivision (a) of this rule and the ending date of which is the date of delivery of all of the estate's property to the successor fiduciary, or such other date as the court may order.

(h) Verification. All accountings shall be verified by the fiduciary filing the accounting.

Committee Notes

The personal representative is required to file a final accounting when administration is complete, unless filing is waived by interested persons. Additionally, a fiduciary of a probate estate may elect, but is not required, to file interim accountings at any time. An accounting is required for resigning or removed fiduciaries. The filing, notice, objection, and approval procedure is similar to that for final accounts.

Rule History

1977 Revision: Change in (a) to authorize selection of fiscal year.

1980 Revision: Change in (d) of prior rule to require the notice to state that the basis for an objection is necessary. Change in (e) of prior rule to require any person filing an objection to set forth the basis of such objection.

1984 Revision: Extensive changes. Committee notes revised.

1988 Revision: Citation form change in committee notes.

1992 Revision: Editorial change. Committee notes revised. Citation form changes in committee notes.

2002 Revision: Implements procedures for interim accountings and accountings by resigning or removed fiduciaries. Committee notes revised.

2003 Revision: Committee notes revised.

20__ Revision: [To be supplied]

Statutory References

§ 733.3101, Fla. Stat. Personal representative not qualified.
§ 733.501, Fla. Stat. Curators.
§ 733.5035, Fla. Stat. Surrender of assets after resignation.
§ 733.5036, Fla. Stat. Accounting and discharge following resignation.
§ 733.508, Fla. Stat. Accounting and discharge of removed personal representatives upon removal.
§ 733.509, Fla. Stat. Surrender of assets upon removal.

ch. 738, Fla. Stat. Principal and income.

Rule References

Fla. Prob. R.5.020 Pleadings: verification: motions.
Fla. Prob. R. 5.122 Curators.
Fla. Prob. R. 5.150 Oder requiring accounting.
Fla. Prob. R. 5.346 Fiduciary accounting.
Fla. Prob. R. 5.430 Resignation of personal representative.
Fla. Prob. R. 5.440 Proceedings for removal.

EXHIBIT E

RULE 5.346. FIDUCIARY ACCOUNTING

(a) **Contents.** A fiduciary accounting shall include:

(1) all cash and property transactions since the date of the last accounting or, if none, from the commencement of administration, and

(2) a schedule of assets at the end of the accounting period.

(b) **Accounting Standards.** The following standards are required for the accounting of all transactions occurring on or after January 1, 1994:

(1) Accountings shall be stated in a manner that is understandable to persons who are not familiar with practices and terminology peculiar to the administration of estates and trusts.

(2) The accounting shall begin with a concise summary of its purpose and content.

(3) The accounting shall contain sufficient information to put interested persons on notice as to all significant transactions affecting administration during the accounting period.

(4) The accounting shall contain 2 values in the schedule of assets at the end of the accounting period, the asset acquisition value or carrying value, and estimated current value.

(5) Gains and losses incurred during the accounting period shall be shown separately in the same schedule.

(6) The accounting shall show significant transactions that do not affect the amount for which the fiduciary is accountable.

(c) **Accounting Format.** A model format for an accounting is attached to this rule as Appendix A.

(d) **Verification.** All accountings shall be verified by the fiduciary filing the accounting.

Committee Notes

This rule substantially adopts the Uniform Fiduciary Accounting Principles and Model

Formats adopted by the Committee on National Fiduciary Accounting Standards of the American Bar Association: Section of Real Property, Probate and Trust Law, the American College of Probate Counsel, the American Bankers Association: Trust Division, and other organizations.

Accountings shall also comply with the Florida principal and income law, chapter 738, Florida Statutes.

Attached as Appendix B to this rule are an explanation and commentary for each of the foregoing standards, which shall be considered as a Committee Note to this rule.

Accountings that substantially conform to the model formats are acceptable. The model accounting format included in Appendix A is only a suggested form.

Rule 5.180(a)(1)(F) allows a waiver to the requirement that principal and interest be separately accounted for.

Rule History

1988 Revision: New rule.

1992 Revision: Editorial changes throughout. Rule changed to require compliance with the Uniform Fiduciary Accounting Principles and Model Formats for accounting of all transactions occurring on or after January 1, 1994. Committee notes revised. Citation form changes in committee notes.

1996 Revision: Committee notes revised.

1999 Revision: Committee notes revised to correct rule reference and to reflect formatting changes in accounting formats.

2002 Revision: Subdivisions (a) and (b) amended to clarify contents of accounting. Committee notes revised.

2003 Revision: Committee notes revised.

20__ Revision: [To be supplied]

Statutory References

§ 733.501, Fla. Stat. Curators.
§ 733.5036, Fla. Stat. Accounting and discharge following resignation.
§ 733.508, Fla. Stat. Accounting and discharge of removed personal representatives upon removal.
§ 733.602(1), Fla. Stat. General duties.
§ 733.612(18), Fla. Stat. Transactions authorized for the personal representative; exceptions.
§ 737.3035, Fla. Stat. Trust accountings.
ch. 738, Fla. Stat. Principal and income.

Rule References

Fla. Prob. R. 5.020 Pleadings: verification: motions.
Fla. Prob. R. 5.040 Notice.
Fla. Prob. R. 5.122 Curators.
Fla. Prob. R. 5.180 Waiver and consent.
Fla. Prob. R. 5.345 Accountings other than personal representatives' final accountings.
Fla. Prob. R. 5.400 Distribution and discharge.
Fla. Prob. R. 5.430 Resignation of personal representative.
Fla. Prob. R. 5.440 Proceedings for removal.

[Note: Appxs. A and B are not being revised, and are not included.]

EXHIBIT F

RULE 5.275. BURDEN OF PROOF IN WILL CONTESTS

In all proceedings contesting the validity of a will, the burden shall be upon the proponent of the will to establish prima facie its formal execution and attestation. Thereafter, the contestant shall have the burden of establishing the grounds on which the probate of the will is opposed or revocation sought.

Committee Notes

This rule represents a rule implementation of the procedure found in section 733.107, Florida Statutes. ~~The language of this rule is virtually identical with the statute.~~The presumption of undue influence implements public policy against abuse of fiduciary or confidential relationships and is therefore a presumption shifting the burden of proof under sections 90.301–90.304, Florida Statutes.

Rule History

1988 Revision: New rule.

1992 Revision: Citation form changes in committee notes.

2003 Revision: Committee notes revised.

Statutory References

§ 90.301, Fla. Stat. Presumption defined; inferences.
§ 90.302, Fla. Stat. Classification of rebuttable presumptions.
§ 90.303, Fla. Stat. Presumption affecting the burden of producing evidence defined.
§ 90.304, Fla. Stat. Presumption affecting the burden of proof defined.
§ 733.107, Fla. Stat. Burden of proof in contests; presumption of undue influence.

Real Property, Probate and Trust Law Section
Of The Florida Bar

Committee and Liaison Report
To Executive Council on May 24, 2003
at the Vinoy Resort, St. Petersburg, Florida

Name of Committee/Liaison: Trust Law Committee

Report or Description of Attached Materials:

The Committee met in Naples, Florida on March 21, 2003 and the minutes are attached.

Date and Location of Next Meeting, if applicable: May 24, 2003
at the Vinoy Resort, St. Petersburg, Florida

Website Coordinator: _____

Report Submitted By: Brian J. Felcoski

Date: May 6, 2003.

THE FLORIDA BAR
REAL PROPERTY, PROBATE & TRUST LAW SECTION
TRUST LAW COMMITTEE
Minutes of Meeting of March 21, 2003
First National Trust Company
2150 Goodlette Road North, 7th Floor
Naples, Florida

I. CALL TO ORDER

A. Chairman Brian J. Felcoski called the meeting to order at 9:07 a.m. The following committee members were present:

Brian J. Felcoski, Chair	Coral Gables, Florida
Barry F. Spivey, Co-Vice Chair	Sarasota, Florida
Laura P. Stephenson, Co-Vice Chair	Miami, Florida
Angela M. Adams	St. Petersburg, Florida
Robert M. Arlen	Delray Beach, Florida
Robert W. Goldman	Naples, Florida
Russell B. Hale	Orlando, Florida
Stephen P. Heuston	Melbourne, Florida
Stewart A. Marshall, III	Orlando, Florida
William T. Muir	Miami, Florida
William H. Myers	Naples, Florida
William M. Pearson	Naples, Florida
Nicholas Rockwell	Sarasota, Florida
Donald R. Tescher	Boca Raton, Florida

B. The Chairman thanked Mike Morris of First National Trust Company for acting as host of the meeting and expressed appreciation from the committee for his hospitality.

C. The Chairman stated that the purpose of the meeting was to continue work on the Uniform Trust Code starting with Article 6. The committee's responsibility is to look at each section of the Code and provide an analysis of the effect on existing Florida law. He emphasized that it does not matter whether the committee likes the changes at this point. Instead, for now, the committee's concern is to provide an analysis only.

II. ADMINISTRATIVE MATTERS

A. William T. Muir was appointed Secretary for the meeting.

B. The minutes of the January 16, 2003 meeting were unanimously approved with no corrections.

III. SPECIFIC AGENDA ITEMS

A. Amendment to Sections 737.2035, Costs and attorney's fees in trust proceedings. Nick Rockwell stated that the state of the economy had caused numerous customers of banks and trust companies to transfer their trust assets to other corporate fiduciaries. Until recently, it had been widely believed that if there were no releases granted by the beneficiaries, a corporate trustee would have the right to settle an account and pay an attorney from trust assets to accomplish the settlement. Unfortunately, the authority for payment of attorney's fees in such settlements is not adequate. There are no definitive opinions on point and the Banker's Association would like to resolve the ambiguity. The consensus of the committee, following discussion, was that attorney's fees and costs should be payable without court order in the absence of an allegation of breach of trust. If there is an allegation of a breach, the trustee without further order of the court, should be able to pay reasonable fees upon the resolution of the case.

B. Uniform Trust Code.

(1) Report of Bob Goldman's committee on Article 6 of the Uniform Trust Code – Revocable Trusts. The Article 6 subcommittee report was reviewed by the committee and the following actions were taken in order of Code Section number:

Section

601 Approved.

602 Approved. The committee suggested that the dicta in the *Genov* case be cited in the comments 6.02(d).

603 Approved.

604 Approved.

(2) Report Of Barry Spivey's Committee On Article 7 of The Uniform Trust Code – Office of Trustee

Section

701 Approved.

702 Approved.

703 Approved with reference to Section 732.402(2)(y).

704 Approved with reference to Section 737.402(4)(a).

705 Approved with reference to Section 737.306(3)(f).

706 Approved with reference to Section 737.403(1) in 706(b)(4).

707 Approved.

708 Approved with deletion of last paragraph.

709 Approved.

C. Report by Donald Tescher on Behalf of Subcommittee Regarding Proposed Amendment to Section 737.402(4)(E). Don Tescher reported that conferences with the Internal Revenue Service are still pending and that he will be in a position to provide an interim report at the next meeting.

D. Report by Carl Westman and Bill Pearson Regarding Amendments to Section 744.441(19). Bill Pearson reported that no language was ready to be proposed pending coordination with the guardianship and power of attorney committees. The guardianship committee will have the lead responsibility.

IV. Open Discussion

V. The meeting adjourned at 3:14 p.m. The next meeting will be May 24, 2003.

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CHAPTER 2

BANKRUPTCY

STANDARD 2.1

EFFECT OF BANKRUPTCY PROCEEDINGS ON TITLE OF DEBTOR'S REAL ESTATE

STANDARD: ON OR AFTER OCTOBER 1, 1979, THE FILING OF A PETITION IN BANKRUPTCY CREATES AN ESTATE WHICH INCLUDES ALL LEGAL OR EQUITABLE INTERESTS OF THE DEBTOR IN REAL PROPERTY AS OF THE TIME OF FILING OF THE PETITION, INCLUDING THAT WHICH MAY BE LATER EXEMPTED FROM THE BANKRUPTCY PROCEEDINGS.

Problem 1:	John Doe held three parcels of property by various tenancies: Blackacre by a tenancy by the entireties, Whiteacre by a joint tenancy, and Greenacre by a tenancy in common. Doe filed a petition in bankruptcy on or after October 1, 1979, and subsequently he and his various co-tenants attempted to convey Blackacre, Whiteacre, and Greenacre to Richard Roe. Doe was later granted a discharge and the proceeding was closed. Is Roe's title valid?
Answer:	No. Whether the bankruptcy proceedings are voluntary or involuntary, the filing of the bankruptcy petition creates an estate over which the trustee has dominion. Property held by the entireties by a debtor whose spouse does not also file a petition in bankruptcy will still become property of the estate until an exemption is established. Likewise, interests in tenancies in common or joint tenancies will become property of the estate until such property is exempted.
Problem 2:	Same facts as above, except that Doe also holds Blueacre as trustee for the benefit of Marvin Moe. What will happen to Blueacre upon the filing of the petition in bankruptcy?
Answer:	The estate will consist only of such right and title to the property as was possessed by the debtor. Generally, the estate will hold such property subject to the outstanding interest of the beneficiary.
Authorities & References:	Bankruptcy Code, 11 U.S.C. §§ 522, 541, 549 (2001); F.S. § 222.20 (2001); 4 COLLIER ON BANKRUPTCY 1522 (15th ed. 2001); 5 COLLIER ON BANKRUPTCY 1541, 1549 (15th ed. 2001); ATIF TN 5.06.01.

Comment:

Section 541(a) provides that the commencement of a bankruptcy case creates an estate and specifies what property shall comprise the estate. Essentially, the estate is composed of all legal or equitable interests of the debtor in property, wherever located, as of the time the case is filed. This estate includes all types of property, both tangible and intangible. In short, an important provision of §541 is that all interests of the debtor in property as of the commencement of the case become the property of the estate. See §541(a) (1).

Once the property comes into the estate, the debtor is permitted to exempt it in accordance with §522 of the Code. Pursuant to §522(b)(1), the State of Florida has opted to veto the federal statutory scheme of exemptions; therefore, Florida's state law exemptions control in Florida bankruptcy cases. 4 COLLIER ON BANKRUPTCY 1522.01 (15th ed. 2001). F.S. § 222.20 (2001). Nonetheless, under Code § 522(b) the debtor must affirmatively claim any available exemption to release the property from the "estate." See 5 COLLIER ON BANKRUPTCY 1541.02 (15th ed. 2001). Moreover, any challenge to a claimed exemption must be timely filed or it is lost.

After commencement of the bankruptcy case, protection is afforded to a transferee of real property who obtains the property in good faith, without knowledge, and for a fair equivalent value. Code § 549(c). A purchaser at a judicial sale also is protected against avoidance of the transfer by the trustee in bankruptcy. See 5 COLLIER ON BANKRUPTCY 1541 (15th ed. 2001). However, this protection does not exist if the trustee has recorded a copy or notice of the petition in the land records of the jurisdiction where the property is located. If a fair equivalent value is not paid, but some value is given, then a lien arises in favor of the transferee to the extent that some value was present. Code §549(c) (2001).

Some protection is afforded transferees of property from a debtor who is involved in involuntary bankruptcy proceedings. Code §549(b). This provision only applies to transferees who take during the period between commencement of the case and entry of the order of relief. Code §303. Such a transfer is validated only to the extent that value was given after commencement of the case under this section; however, knowledge of the bankruptcy proceedings is irrelevant. 5 COLLIER ON BANKRUPTCY 1549 (15th ed. 2001).

Note: An interest which the debtor acquires by bequest, device, inheritance, or as a result of a property settlement or a divorce decree also becomes property of the estate if the interest is acquired within 180 days after the filing of the petition. Code §541(a) (5).

STANDARD 2.2

SALE, LEASE, OR USE OF DEBTOR'S REAL PROPERTY
BY DEBTOR OR TRUSTEE IN BANKRUPTCY

STANDARD: ON OR AFTER OCTOBER 1, 1979, EITHER THE DEBTOR IN POSSESSION OR THE TRUSTEE IN BANKRUPTCY CAN PROPERLY SELL, LEASE, OR USE THE REAL PROPERTY OF THE DEBTOR'S ESTATE PROVIDED THAT NOTICE AND OPPORTUNITY FOR A HEARING OF ANY SUCH SALE, LEASE, OR USE OF THE PROPERTY IN THE ESTATE (OTHER THAN IN THE ORDINARY COURSE OF BUSINESS) IS PROVIDED AS REQUIRED BY THE BANKRUPTCY CODE.

Problem 1:	A trustee in bankruptcy to the bankruptcy proceedings of John Doe entered into a contract for the sale of Doe's nonexempt real property to Richard Roe. The sale was not in the ordinary course of business. Notice of the proposed sale was given to Doe's creditors, but no hearing was ever requested by a party in interest and no hearing was ever held on the matter. The sale was subsequently completed. Did valid title pass to Roe?
Answer:	Yes. Code §§ 102(1) and 363(b) simply require notice and an opportunity for a hearing of any sale, lease, or use of property of the estate other than in the ordinary course of business. A court order is not required.
Problem 2:	Same facts as above, except that Doe, who is a debtor in possession, himself sells the property to Roe. Did valid title pass?
Answer:	Yes.
Authorities & References:	Bankruptcy Code, 11 U.S.C. §§ 102, 361, 363 (2001); 3 COLLIER ON BANKRUPTCY 1363 (15th ed. 2001); ATIF TN 5.05.02.
Comment:	Code § 363 defines the rights and powers of parties with interests in property of the estate. 3 COLLIER ON BANKRUPTCY 1363.01 (15th ed. 2001). Section 363(b) states that the trustee may, "after notice and a hearing," use, sell, or lease the property, "other than in the ordinary course of business." A court order is not required. Code § 363(b) (1) (2001); 3 COLLIER ON BANKRUPTCY 1363.02[1] 15th ed. 2001). Code §102(1) defines "after notice and a hearing" as "after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances but authorizes an act without an actual hearing if notice is properly given and if such a hearing is not requested in a timely manner by a party in interest." Thus, the burden is shifted to interested parties to provide the request for a hearing and, should no such request be made, action may be taken without a hearing. 3 COLLIER ON BANKRUPTCY 1363.02 (15th ed. 2001). **NOTE: ADDITIONAL REQUIREMENTS EXIST UNDER Code §363(f) FOR SALES "FREE AND CLEAR" OF LIENS AND ENCUMBRANCES.**

The requirements of notice and a hearing should be considered to have been met if the public records of the appropriate county reflect the recordation of one of the following:

a. A certified copy of the bankruptcy court docket showing that no request for a hearing was made pursuant to the notice; or,

b. A certified copy of the notice filed in the bankruptcy court together with a certified copy of any court order entered after a request for a hearing.

Code § 363(e) provides that at any time, on request of an entity with an interest in property which has been or is proposed to be used, sold, or leased, the court shall prohibit or condition such use, sale, or lease as necessary to provide adequate protection. Section 361 states that adequate protection may be provided by periodic cash payments to provide for the decrease in value, or by additional replacement security to compensate for the decrease in value, or by other relief which will result in "the indubitable equivalent of such entity's interest in such property." The requirement of adequate protection is mandatory. If the proposed use, sale, or lease cannot be so conditioned then it must be prohibited. See 3 COLLIER ON BANKRUPTCY 1363.05[2] (15th ed. 2001).

Section 363(h) permits the sale of any interest of a co-owner in property in which the debtor had, at the time of filing of the case, "an undivided interest as a tenant in common, joint tenant, or tenant by the entirety," provided that certain conditions specified in this section are met.

Purchasers are protected under § 363(m) from the effect of a "reversal or modification on appeal" from the authorization to sell as long as the purchaser acted in good faith. See 3 COLLIER ON BANKRUPTCY 1363.06 (15th ed. 2001). Notwithstanding the provisions of §363(m), Bankruptcy Rule 6004(g) operates to stay an order authorizing the use, sale, or lease of property until the expiration of ten days after entry of the order, unless the court orders otherwise.

If the trustee or debtor in possession is operating a business, it may sell property in the ordinary course of business without notice and a hearing unless the court orders otherwise. Code § 363(c) (l).

STANDARD 2.3

EFFECT OF BANKRUPTCY ON RIGHT TO FORECLOSE

STANDARD: ON OR AFTER OCTOBER 1, 1979, PRIOR RELIEF FROM THE BANKRUPTCY AUTOMATIC STAY IS NECESSARY FOR A VALID FORECLOSURE OF A MORTGAGE ENCUMBERING SUCH PROPERTY.

Problem:	John Doe, a mortgagor under a conventional mortgage, files a bankruptcy proceeding on or after October 1, 1979, at which time the subject mortgage is in default. The mortgagee desires to foreclose the mortgage without the approval of the bankruptcy court. May the mortgage foreclosure be commenced?
Answer:	No. The bankruptcy automatic stay extends to all of the property of the estate and all property of the debtor, regardless of whether it is located within the district in which the court sits.
Authorities & References:	Bankruptcy Code, 11 U.S.C. § 362 (2001); 3 COLLIER ON BANKRUPTCY 1362 (15th ed. 2001).
Comment:	The automatic stay, which arises upon the filing of a bankruptcy petition, stops all foreclosure actions. Code § 362(a). This automatic stay is broader than the stay in the previous Bankruptcy Act and includes a stay against a pending mortgage foreclosure in a liquidation bankruptcy which was not stayed under the old Bankruptcy Act. Section 362(b) provides a number of exceptions to this stay. A complete discussion may be found in 3 COLLIER ON BANKRUPTCY 1362.04 (15th ed. 2001). Section 362(e) provides that thirty days after a request for relief from the stay, the stay will be automatically vacated unless the court, after notice and a hearing, orders such stay continued in effect pending a final hearing. In addition, § 362(d) provides that, under certain circumstances, the stay may be terminated, annulled, modified, or conditioned upon request of a party in interest after notice and a hearing. If the court does not grant relief from the stay, it will remain in effect. Code § 362(c) (2) (2001). However, if the stay is vacated pursuant to § 362(e), no court further order is necessary to permit foreclosure unless the court order granting stay relief so specifies.

STANDARD 2.4

EFFECT OF TRUSTEE IN BANKRUPTCY
ABANDONING PROPERTY OF DEBTOR

STANDARD: AFTER NOTICE AND A HEARING, THE TRUSTEE MAY ABANDON

PROPERTY OF THE ESTATE WHICH IS BURDENSOME OR OF INCONSEQUENTIAL VALUE.

Problem:	After authorization by the bankruptcy court, a trustee in bankruptcy abandoned Blackacre, which was property of the estate. The property was abandoned to John Doe, the debtor, because of his possessory interest in the property. May Doe convey valid title to Blackacre to Richard Roe?
Answer:	Yes.
Authorities & References:	Bankruptcy Code, 11 U.S.C. §§ 350, 521, 554 (2001); ATIF TN 5.01.01.
Comment:	Section 554 of the Bankruptcy Code provides that after notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate; similarly, upon request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any such property of the estate. Code § 554(c) provides that in the absence of a court order to the contrary, any property scheduled under § 521(1) and not otherwise administered at the time of closing of a case is deemed abandoned to the debtor and deemed administered for the purpose of § 350. Section 554(d) provides that unless the court orders otherwise, property of the estate that is not abandoned and that is not administered in the case remains property of the estate. This subsection recognizes that abandonment requires notice and that there can be no abandonment by mere operation of law of property which is not listed in the debtor's schedules or otherwise disclosed to the creditors, and that such property will remain property of the estate. The unscheduled and unadministered asset remains property of the estate and the estate must be reopened and the property abandoned, sold, or exempted in order to remove it from the estate. **But Note**: If a lender desires to proceed against property that has been abandoned to the debtor before the debtor receives a discharge, the lender should obtain relief from the automatic stay, because the stay relates to property of the debtor as well as to property of the estate. The notice and hearing discussed above have the same construction as discussed in Title Standard 2.2 (Sale, lease, or use of debtor's real property by debtor or trustee in bankruptcy). If these requirements are met, the abandonment takes place and vests title to the abandoned property in the transferee, regardless of whether the transferee receives a deed.

STANDARD 2.5

EFFECT OF JUDGMENT DISCHARGED IN BANKRUPTCY
ON TITLE TO AFTER-ACQUIRED PROPERTY

STANDARD: A JUDGMENT LIEN ACQUIRED BEFORE BANKRUPTCY THAT IS SUBSEQUENTLY DISCHARGED IN BANKRUPTCY AND IS NOT SUBJECT TO EXCEPTIONS TO DISCHARGE IN BANKRUPTCY WILL NOT BECOME A LIEN ON PROPERTY ACQUIRED AFTER DISCHARGE.

Problem:	A judgment upon claims not subject to exceptions to discharge in bankruptcy was entered against John Doe on August 1, 1998, and a certified copy was recorded so as to constitute a lien on real property. Doe filed a petition in bankruptcy on January 4, 1999, properly scheduling the judgment, and subsequently received a discharge in the bankruptcy proceeding. Before one year following discharge had elapsed, Doe acquired a parcel of real property. Does the lien of the judgment attach to this after-acquired property?
Answer:	No. The judgment, properly discharged in the bankruptcy proceeding, does not become a lien against property thereafter acquired by the debtor. The judgment is not a lien against the after-acquired property, and no petition pursuant to F.S. §55.145 (200I) is necessary.
Authorities & References:	*Albritton v. General Portland Cement Co.*, 344 So. 2d 574 (Fla. 1977); Bankruptcy Code, 11 U.S.C. §§ 350, 523, 524, 541 (2001); F.S. § 55.145 (2001); 5 COLLIER ON BANKRUPTCY 1524, 1522 (15th ed. 2001); ATIF TN 5.03.02.
Comment:	Section 524(a) of the Bankruptcy Code provides that a discharge as to claims not subject to exceptions to discharge in bankruptcy is completely effective and will operate as an injunction against the commencement of any action or any act to collect a debt as a personal liability of the debtor. Section 524(a) (3) specifically operates as an injunction against the commencement of an action to collect against any property of the debtor that is acquired after filing the bankruptcy petition. A creditor, including a judicial lien creditor, could not levy upon property acquired by the debtor after the filing of the bankruptcy petition. After the discharge in bankruptcy, no enforceable judgment exists against the person of the debtor. Code § 554(a) (2001). As there is no actual cloud on title to the after-acquired property following discharge in bankruptcy, no action pursuant to F.S § 55.145 (2001) is necessary. It is recommended that marketable title be reflected in the official records of the county in which the property is located. Therefore, certified copies of the petition in bankruptcy, the schedule of liabilities showing the judgment, and the order of discharge preferably should be recorded in such county. **Note: Judgment liens against property owned by the debtor prior to bankruptcy proceedings are not covered by this Title Standard. Generally, the judgment lien continues to attach to property that was owned by the debtor before bankruptcy, even though the debtor has been personally discharged from the debt.**

CHAPTER 9

JUDGMENTS AND MORTGAGES

STANDARD 9.1

LIEN OF JUDGMENT

STANDARD: A FLORIDA COURT JUDGMENT, ORDER OR DECREE REQUIRING THE PAYMENT OF MONEY RECORDED ON OR AFTER JANUARY 1, 1972, DOES NOT BECOME A LIEN ON THE DEBTOR'S REAL ESTATE UNTIL A CERTIFIED COPY THEREOF IS RECORDED IN THE OFFICIAL RECORDS OR THE JUDGMENT LIEN RECORDS OF THE COUNTY WHERE THE LAND IS LOCATED, WHICHEVER IS MAINTAINED AT THE TIME OF RECORDATION. EFFECTIVE OCTOBER 1, 1993, THE JUDGMENT DOES NOT BECOME A LIEN UNLESS IT CONTAINS THE ADDRESS OF THE PERSON WHO HAS THE LIEN OR IS RECORDED SIMULTANEOUSLY WITH AN AFFIDAVIT CONTAINING SUCH INFORMATION.

Problem 1 — John Doe recovered a judgment in Alachua County against Richard Roe on July 1, 1984. The *original* judgment was recorded in the Official Records of Alachua County, where Roe's land was located. However, a certified copy of the judgment was not recorded in that county. Roe conveyed his Alachua County land to Mary Loe in 1987. Is Loe's title free from the lien of the judgment?

Answer: Yes. Recording a certified copy of a judgment, order or decree is essential to obtain a valid lien on real estate. Once a certified copy of the judgment is recorded, the lien becomes a general lien on all of the debtor's real estate located in the county of recordation.

Problem 2 — A certified copy of a money judgment was recorded on January 4, 1995, in the county where Richard Roe owned non-homestead real property. The judgment did not contain the address of the judgment creditor, nor did the creditor simultaneously record a separate affidavit stating the creditor's address. Richard Roe sold the property to Mary Loe. Is Loe's title free from the lien of the judgment?

Answer: Yes. A certified copy of a judgment recorded on or after October 1, 1993, becomes a lien provided that (1) it contains the lienor's address, or (2) a separate affidavit stating the lienor's address is recorded simultaneously therewith.

Authorities and References: F.S. 55.07(1); *Steinbrecher v. Cannon* 501 So.2d 659 (Fla. 1ST DCA 1987), rev. denied, 509 So.2d 1119 (Fla. 1987); *Robinson v. SterlingDoor & Window Co., Inc.*, 698 So.2d 570 (Fla. 1st DCA 1997); *HottInteriors, Inc. v. Fostock*, 721 So.2d 1236 (Fla. 4th DCA 1998); *In re Lee,* 223 B.R. 594 (Bkrtcy. M.D. Fla. 1998); *Decubellis v. Ritchotte*, 730 So.2d 723 (Fla. 5th DCA 1999); *In re Jackie Johns, DMD, P.A.* 267 B.R. 901 (Bkrtcy. S.D. Fla. 2001); 2 BOYER, FLORIDA REAL ESTATE TRANSACTIONS § 34.05[1] (2002); FLORIDA REAL PROPERTY TITLE EXAMINATION AND INSURANCE, § 5.20 (CLE 4th ed. 1996).

Comment: F.S. 55.10 applies whether the judgment is rendered in a state or federal court located within Florida. See 28 U.S.C. 1962; 2 BOYER, FLORIDA REAL ESTATE TRANSACTIONS § 34.05 [2] (2002); FLORIDA REAL PROPERTY TITLE EXAMINATION AND INSURANCE,§ 5.20 (CLE 4th ed. 1996).

An *execution* lien on real property cannot attach before a judgment lien attaches. Therefore, the mere act of delivering a writ of execution to and levy by a sheriff cannot alone create a lien on real property. A certified copy of a final judgment must be recorded before a lien on real property is created. *Diaz v. Plumhoff*, 742 So.2d 846 (Fla. 2d DCA 1999).

For a discussion of the statute of limitations on judgment liens, see Title Standard 9.2, for a discussion of the limitations period on judgment liens recorded on or after July 1st, 1987, see Title Standard 9.2-1 (Limitations on Lien of Judgments on or after July 1st, 1987, and prior to July 1st, 1994) and Title Standard 9.2-2 (Limitations on Lien of Judgments on or after July 1st, 1994).

STANDARD 9.2

LIMITATION ON LIEN OF JUDGMENT

STANDARD: SUBJECT TO THE PROVISIONS OF F.S. 55.10, NO CERTIFIED COPY OF A FLORIDA COURT JUDGMENT, ORDER, OR DECREE SHALL BE A LIEN UPON REAL PROPERTY WITHIN THE STATE AFTER THE EXPIRATION OF TWENTY (20) YEARS FROM THE DATE OF THE ENTRY OF SUCH JUDGMENT, ORDER, OR DECREE.

Problem: John Doe recovered a judgment against Richard Roe on July 8, 1985. John Doe did not record a certified copy of his judgment in the Official Records until August 3, 1986. When will the lien of the judgment expire?

Answer: At midnight of July 8, 2005, twenty years after the *entry* of the judgment. The twenty-year period is measured from the date of entry of the judgment, not from the date of recording the judgment or certified copy thereof.

Authorities & References: F.S. 55.081; F.S. 55.10(1)-(4); 2 BOYER, FLORIDA REAL ESTATE TRANSACTIONS § 34.05[3] (2002); Fla. R. Civ. Pro. 1.090.

Comment: The twenty-year limitation period is applicable to judgments entered in federal as well as state courts, except as otherwise provided below. See 2 BOYER, FLORIDA REAL ESTATE TRANSACTIONS, § 34.05[2] (2002); FLORIDA REAL PROPERTY TITLE EXAMINATION AND INSURANCE, § 5.20c (CLE 4th ed. 1996); and ATIF TN 18.03.03.

The twenty-year statute of limitations applies to judgments, orders or decrees in favor of the State of Florida in accordance with specific statutory authority. See, for example, F.S. 938.29 (public defender liens) and F.S. 775.089 (restitution liens).

Federal Debt Collection Procedure Act. A judgment obtained under the Federal Debt Collection Procedure Act of 1990, 28 U.S.C.,§ 3001, et seq., becomes a lien on real property of the judgment debtor upon filing a certified copy of the abstract of judgment. Said lien has a duration of twenty years from date of recording and may be renewed for an additional twenty year period upon filing of a notice of renewal prior to the expiration of the first twenty-year term and upon court approval of said renewal. 28 U.S.C. § 3201(c); FLORIDA REAL PROPERTY TITLE EXAMINATION AND INSURANCE, § 5.20c (CLE 4th ed. 1996). F.S. 55.081 does not apply to judgments obtained under the Act. It is unclear whether F.S. 55.081 applies to all other judgments entered in favor of the United States. See *Custer v. McCutcheon*, 283 U.S. 514 (1931); *United States v. Kellum*, 523 F.2d 1284 (5th Cir. 1975); FLORIDA REAL PROPERTY TITLE EXAMINATION AND INSURANCE, § 3.126 (CLE 4th ed. 1996).

Florida Enforcement of Foreign Judgments Act. Effective October 1st, 1984, under the Florida Enforcement of Foreign Judgments Act, F.S. 55.501-.509, a lien is created by recording a certified copy of a final judgment from another state in the Official Records of the county where the property sought to be liened is located together with an affidavit and mailing of notice as set forth under F.S. 55.505. The statute of limitations for such a lien is the same as F.S. 55.10 and 55.081, or the statute of limitations of the state where the judgment was rendered, whichever is less. See *In Re Tranter*, Bkrptcy 245 B.R. 419 (Bkrtcy. S.D. Fla. 2000) and *Muka v. Horizon Financial Corp.*, 766 So.2d 239 (Fla. 4th DCA 2000). Effective June 2, 1994, this act was amended to include any judgment, decree or order of a court of the United States.

Uniform Out-of-country Foreign Money-Judgment Recognition Act. Effective October 1, 1994, under the Uniform Out-of-country Foreign Money-Judgment Recognition Act, F.S. 55.601-.607, a lien on real property is created after recording, in the public records of the county where enforcement is sought, a certified copy of theforeign country judgmenttogether with an affidavit and mailing of notice as required by F.S. 55.604, and recording of a clerk's certificate or order recognizing the foreign judgment. The twenty-year statute of limitations in F.S. 95.11(1) that applies to actions

For a discussion of the limitations period on certified copies of judgments recorded on or after July 1st, 1987, see Title Standard 9.2-1 (Limitations on Lien of Judgments on or after July 1st, 1987, and prior to July 1st, 1994) and Title Standard 9.2-2 (Limitations on Lien of Judgments on or after July 1st, 1994).

STANDARD 9.2-1

LIMITATIONS ON LIEN OF JUDGMENTS RECORDED ON OR AFTER JULY 1, 1987, AND PRIOR TO JULY 1, 1994

STANDARD: A FLORIDA COURT JUDGMENT, ORDER, OR DECREE RECORDED ON OR AFTER JULY 1, 1987, AND PRIOR TO JULY 1, 1994, BECOMES A LIEN ON REAL ESTATE IN ANY COUNTY WHEN A CERTIFIED COPY THEREOF IS RECORDED IN THE OFFICIAL RECORDS OF THAT COUNTY, AND IT SHALL BE A LIEN FOR A PERIOD NOT TO EXCEED SEVEN (7) YEARS FROM THE DATE OF RECORDING THE CERTIFIED COPY IN THAT COUNTY. THE JUDGMENT LIEN MAY BE EXTENDED FOR AN ADDITIONAL PERIOD NOT TO EXCEED TEN YEARS BY RE-RECORDING A CERTIFIED COPY OF THE JUDGMENT, ORDER OR DECREE PRIOR TO THE EXPIRATION OF THE INITIAL SEVEN-YEAR PERIOD. THE JUDGMENT LIEN MAY BE EXTENDED FURTHER BY RE-RECORDING A CERTIFIED COPY OF THE JUDGMENT, ORDER OR DECREE PRIOR TO THE EXPIRATION OF THE ADDITIONAL TEN-YEAR PERIOD. IN NO EVENT, HOWEVER, SHALL THE LIEN UPON REAL ESTATE EXTEND BEYOND THE TWENTY-YEAR PERIOD PROVIDED FOR IN F.S. 55.081.

Problem:	John Doe recovered a judgment against Richard Roe on July 1, 1986. John Doe did not record a certified copy of his judgment in the Official Records until August 3, 1990. When did the lien of the judgment expire?
Answer:	On midnight August 3, 1997, seven years after the certified copy of the judgment was *recorded.* However, if John Doe properly re-recorded a certified copy of the judgment, then the lien would not expire until midnight July 1, 2006, twenty years after the entry of the judgment.
Authorities & References:	F.S. 55.10(1)-(4); F.S. 55.081; Fla. R. Civ. Pro. 1.090.
Comment:	F.S. 55.10(1)-(4) applies prospectively, not retroactively.
	For a discussion of the twenty-year period provided for in F.S. 55.081, see Title Standard 9.2 (Limitation on Lien of Judgment).
	The requirement for an address affidavit set forth under Title Standard 9.1 also applies to extensions of judgments.
	In the absence of case law interpreting the various amendments to F.S. 55.10, it is unclear whethera judgment lien re-recorded after expiration of its initial lien period is valid as a new and separate lien.

STANDARD 9.2-2

LIMITATIONS ON LIEN OF JUDGMENTS RECORDED ON OR AFTER JULY 1, 1994

STANDARD: A FLORIDA COURT JUDGMENT, ORDER OR DECREE RECORDED ON OR AFTER JULY 1, 1994, BECOMES A LIEN ON REAL ESTATE IN ANY COUNTY WHEN A CERTIFIED COPY THEREOF IS RECORDED IN THE OFFICIAL RECORDS OF THAT COUNTY, AND IT SHALL BE A LIEN FOR A PERIOD NOT TO EXCEED TEN (10) YEARS FROM THE DATE OF RECORDING THE CERTIFIED COPY IN THAT COUNTY. THE JUDGMENT LIEN MAY BE EXTENDED FOR AN ADDITIONAL PERIOD NOT TO EXCEED TEN YEARS BY RE-RECORDING A CERTIFIED COPY OF THE JUDGMENT, ORDER OR DECREE PRIOR TO THE EXPIRATION OF THE INITIAL TEN-YEAR PERIOD. IN NO EVENT, HOWEVER, SHALL THE LIEN UPON THE REAL ESTATE EXTEND BEYOND THE TWENTY-YEAR PERIOD PROVIDED FOR IN F.S. 55.081.

Problem:	John Doe recovered a judgment against Richard Roe on July 1, 1993. John Doe did not record a certified copy of his judgment in the Official Records until August 1, 1994. When will the lien of the judgment expire?
Answer:	On midnight August 1, 2004, ten years after the certified copy of the judgment was recorded. However, if John Doe properly re-records a certified copy of the judgment, then the lien would not expire until midnight July 1, 2013.
Authorities & References	F.S. 55.10(1)-(4), F.S. 55.081; Fla. R. Civ. Pro. 1.090.
Comments:	F.S. 55.10(1)-(4) applies prospectively, not retroactively.

For a discussion of the twenty-year period provided for in F.S. 55.081, see Title Standard 9.2 (Limitation on Lien of Judgment).

The requirement for an address affidavit set forth under Title Standard 9.1 also applies to extensions of judgments.

In the absence of case law interpreting the various amendments to F.S. 55.10, it is unclear whethera judgment lien re-recorded after expiration of its initial lien period is valid as a new and separate lien.

STANDARD 9.3

SERVICE OF PROCESS

STANDARD: SINCE IT IS SERVICE OF PROCESS, RATHER THAN RETURN OF PROCESS, WHICH GIVES A COURT JURISDICTION OVER A DEFENDANT, RETURN OF VALIDLY EFFECTIVE SERVICE OF PROCESS CAN BE AMENDED TO SPEAK THE TRUTH. HOWEVER, UNTIL PROPER PROOF OF SERVICE IS MADE, A COURT IS WITHOUT EFFECTIVE JURISDICTION TO ENTER ANY JUDGMENT AGAINST A DEFENDANT WHO HAS NOT APPEARED IN THE CAUSE OR OTHERWISE SUBMITTED TO THE COURT'S JURISDICTION.

Problem 1:	Valid service of process was made on John and Jane Doe, defendants in a mortgage foreclosure proceeding. However, the sheriff's return recited only that service was made on Jane Doe. John Doe's name did not appear on the return of service. The sheriff amended the return *after* the judgment was entered to add his name. Is the judgment valid against John Doe?
Answer:	No.
Problem 2:	Valid service of process is made on John and Jane Doe, defendants in a mortgage foreclosure proceeding. However, the sheriff's return recited only that service was made on Jane Doe. John Doe's name did not appear on the return of service. The sheriff amended the return to add his name *before* the entry of the judgment. Is the judgment valid against John Doe?
Answer:	Yes.
Authorities & References:	*Klosenski v. Flaherty*, 116 So.2d 767 (Fla. 1960); *Largay Enterprises, Inc. v. Berman*, 61 So.2d 366 (Fla. 1952); *International TypographicalUnion v. Ormerod*, 59 So.2d 534 (Fla. 1952); *Wilmott v. Wilmott*, 119 So.2d 54 (Fla. 1st DCA 1960), affirmed 122 So.2d 486 (Fla. 1st DCA 1960), F.S. 48.21; Fla. R.Civ.P. 1.070; ATIF TN 12.07.06.

STANDARD 9.4

TITLE ACQUIRED BY MORTGAGOR AFTER EXECUTION OF MORTGAGE

STANDARD: A MORTGAGE GIVEN BY A MORTGAGOR THEN HAVING NO TITLE, BUT WHO SUBSEQUENTLY ACQUIRES TITLE, IS VALID EXCEPT TO THE EXTENT THAT RIGHTS OF THIRD PARTIES MAY HAVE INTERVENED.

Problem: John Doe mortgaged Blackacre to Richard Roe. Doe was not then the owner of Blackacre, but subsequently acquired title thereto. Does the lien of Roe's mortgage attach to the after-acquired title?

Answer: Yes. The mortgagor's after-acquired title inures to the benefit of the mortgagee.

Authorities & References: *Taylor v. Federal Farm Mortg. Corp.,* 193 So. 758 (Fla. 1940); *Florida Land Inv. Co. v. Williams,* 92 So.876 (Fla. 1922); *Hillman v. McCutchen*, 166 So.2d 611 (Fla. 3rd DCA 1964), *cert. den.*, 171 So.2d 391. 1 BOYER, FLORIDA REAL ESTATE TRANSACTIONS § 15.05 (2002).

Comment: This Standard involves only the validity of the mortgage. Caution should be exercised with respect to the rights of third parties.

The above Standard may not apply to purchase money mortgages in some situations. See *Nelson v. Dwiggins*, 149 So. 613 (Fla. 1933); *Florida Land Inv. Co. v. Williams*, 92 So. 876 (Fla. 1922) and further proceedings at 116 So. 642 (Fla. 1928); 1 BOYER, FLORIDA REAL ESTATE TRANSACTIONS § 15.05 (2002); ATIF TN 22.03.10.

STANDARD 9.5

MERGER OF TITLE AND MORTGAGE

STANDARD: A DEED FROM THE FEE OWNER TO THE MORTGAGE HOLDER, WHICH SHOWS AN INTENTION TO DISCHARGE THE MORTGAGE, CREATES A MERGER AND THE MORTGAGE IS DISCHARGED.

Problem:	John Doe conveyed Blackacre to Richard Roe, the holder of a mortgage encumbering Blackacre, reciting therein that said conveyance was given for the purpose of extinguishing the debt. Was the mortgage discharged of record by the merger?
Answer:	Yes.
Authorities & References	*Alderman v. Whidden*, 195 So. 605 (Fla. 1940); *Stovall v. Stokes*, 115 So. 828 (Fla. 1927); *Floorcraft Distributors, Inc. v. Horne-Wilson, Inc.*, 251 So. 2d 138 (Fla. 1st DCA 1971); FLORIDA REAL PROPERTY TITLE EXAMINATION AND INSURANCE, § 5.15 (CLE 4th ed. 1996); ATIF TN 22.05.10.
Comment:	The intention that the two estates merge must be clearly indicated on the record, and there should be no indication, from the record or otherwise, that the mortgagor has or claims grounds for setting aside the conveyance.

STANDARD 9.6

IRREGULARITIES AND DISCREPANCIES IN SATISFACTIONS OF MORTGAGES

STANDARD: A SATISFACTION OF MORTGAGE IS SUFFICIENT NOTWITHSTANDING MINOR IRREGULARITIES OR DISCREPANCIES IF THE DESCRIPTIVE DATA REASONABLY DISTINGUISHES THE MORTGAGE BEING SATISFIED FROM ALL OTHER MORTGAGES.

Problem 1:	The mortgage satisfaction makes no reference to the book and page where the mortgage on Blackacre is recorded. The satisfaction contains a recital of the date, parties, and a description of Blackacre. The record does not disclose any other mortgage on Blackacre to which the descriptive data could apply. Is the satisfaction sufficient?
Answer:	Yes.
Problem 2:	The mortgage satisfaction correctly refers to the book and page where the mortgage on Blackacre is recorded. The satisfaction contains a recital of the parties and description of Blackacre but there is a discrepancy in the date recited. Is the satisfaction sufficient?
Answer:	Yes. If the satisfaction contains a discrepancy in more than one descriptive item it generally should not be accepted.
Problem 3:	Same facts as Problem 2 except that reference to the date is omitted in the satisfaction. Is the satisfaction sufficient?
Answer:	Yes. If the mortgage recording information is correct, then omission of other descriptive items can usually be ignored.
Authorities & References:	FLORIDA REAL PROPERTY TITLE EXAMINATION AND INSURANCE, § 5.13 (CLE 4th ed. 1996).

STANDARD 9.7

SATISFACTION OF CORRECTIVE OR RE-RECORDED MORTGAGE

STANDARD: WHERE A MORTGAGE IS FOLLOWED BY ANOTHER WHICH CAN BE DETERMINED FROM THE RECORDS TO HAVE BEEN GIVEN TO CORRECT OR MODIFY THE FORMER, OR TO BE A RE-RECORDING OF THE FORMER, AND TO SECURE THE SAME OBLIGATION, MARKETABILITY IS NOT IMPAIRED BY A FAILURE TO SATISFY THE EARLIER OF THE MORTGAGES IF THE LATTER IS SATISFIED OF RECORD. IN CASE OF RE-RECORDING OF THE SAME MORTGAGE, A SATISFACTION REFERRING TO EITHER RECORDED MORTGAGE IS SUFFICIENT.

Problem:	John Doe mortgages Blackacre to Richard Roe, the mortgage being properly recorded. Thereafter, John Doe places of record a mortgage in favor of Richard Roe which encumbered only the west one-half of Blackacre. The latter instrument recited that it was given to correct an erroneous description in the earlier mortgage. Subsequently, the latter mortgage was satisfied of record. May the earlier mortgage be disregarded?
Answer:	Yes.
Authorities & References:	F. S. 701.03; F.S. 701.04; *Matheson v. Thompson*, 20 Fla. 790 (Fla. 1884).
Comment:	By satisfying the corrective mortgage, the mortgagee acknowledges the modification.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By The Condominium and Plan Development Committee of the Real Property Probate an Trust Law Section (Michael J. Gelfand, Vice Chair)

Address Michael J. Gelfand, %Gelfand & Arpe, P.A., One Clearlake Centre, Suite 1010, 250 South Australian Ave, West Palm Beach, FL 33401; (561) 655-6224

Position TypeRPPTL and Committee

CONTACTS

Board & Legislation Committee Appearance

(List name, address and phone number)

Appearances before Legislators

(List name and phone # of those appearing before House/Senate Committees)

Meetings with Legislators/staff

(List name and phone # of those having face to face contact with Legislators)

PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. All proposed legislation that has *not* been filed as a bill or a proposed committee bill (PCB) should be attached to this request in legislative format - Standing Board Policy 9.20(c). Contact the Governmental Affairs office with questions.

If Applicable, List The Following

_____ (Bill or PCB #)

_____ (Bill or PCB Sponsor)

Indicate Position ___X___ Support Oppose Technical Assistance Other

Proposed Wording of Position for Official Publication: To allow homeowners' association's directors to preserve the association's covenants and restrictions from being automatically extinguished by the Marketable Record Title Act.

Reasons For Proposed Advocacy: The Florida Bar Condominium and Planned Development Committee proposes this amendment in order to avoid title and use restriction disputes by allowing homeowners' association's to preserve community covenants and restrictions that may be inadvertently extinguished by the passage of time. The law's current special provisions for homeowners' associations to preserve covenants by a membership vote is not practical because many association's are unable to obtain a quorum for members' meetings, even for annual election meetings. This allows a board of directors, representatives chosen by members, to take action.

PRIOR POSITIONS TAKEN ON THIS ISSUE

Please indicate any prior Bar or section positions on this issue to include opposing positions. Conta the Governmental Affairs office if assistance is needed in completing this portion of the request form.

Most Recent Position Last year the Section and the Bar approved the committee's recommendation.

Others
(May attach list if more than one)

(Indicate Bar or Name Section) (Support or Oppose) (Date)

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

The Legislation Committee and Board of Governors do not typically consider requests for action on a legislative position in the absence of responses from all potentially affected Bar groups or legal organizations - Standing Board Policy 9.50(c). Please include all responses with this request form.

Referrals

1.
(Name of Group or Organization) (Support, Oppose or No Position)

2.
(Name of Group or Organization) (Support, Oppose or No Position)

3.
(Name of Group or Organization) (Support, Oppose or No Position)

Please submit completed Legislative Position Request Form, along with attachments, to the Governmental Affairs Office of The Florida Bar. Upon receipt, staff will further coordinate the scheduling for final Bar action of your request which usually involves separate appearances before the Legislation Committee and the Board of Governors unless otherwise advised. For information or assistance, please telephone (904) 561-5662 or 800-342-8060, extension 5662.

An act relating to marketable record title: amending s. 712.05(1) concerning the approval necessary for the preservation of a homeowners' association's covenants or restrictions; amending s. 712.06(1) concerning the notice to be recorded to preserve a homeowners' association's covenants; and, providing for an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 712.05, Florida Statutes, is amended to read:

(1) Any person claiming an interest in land or a homeowners' association desiring to preserve any covenant or restriction or any portion of a covenant or restriction may preserve and protect the same from extinguishment by the operation of this act by filing for record, during the 30-year period immediately following the effective date of the root of title, a notice, in writing, in accordance with the provisions hereof, which notice shall have the effect of so preserving such claim of right or such covenant or restriction or portion of such covenant or restriction for a period of not longer than 30 years after filing the same unless again filed as required herein. No disability or lack of knowledge of any kind on the part of anyone shall delay the commencement of or suspend the running of said 30-year period. Such notice may be filed for record by the claimant or by any other person acting on behalf of any claimant who is:

(a) Under a disability,

(b) Unable to assert a claim on his or her behalf, or

(c) One of a class, but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

Such notice may be filed by a homeowners' association only if the preservation of such covenant or restriction or portion of such covenant or restriction is approved by ~~a majority vote at a meeting of the membership where a quorum is present~~ at least two-thirds of the members of the board of directors of an incorporated homeowners' association at a meeting for which a meeting notice, stating the meeting's time and place and containing the Statement of Marketable Record Title Action described in s.

712.06(1)(b), was mailed or hand delivered to all members of the homeowners' association not less tha. 7 days prior to such meeting.

(2)~~It shall not be necessary for the owner of the marketable record title, as herein defined, to file a notice to protect his or her marketable record title.

Section 2. Section 712.06(1), Florida Statutes, is amended to read:

(1)~~To be effective, the notice above referred to shall contain:

(a)~~The name or description of the claimant or the homeowners' association desiring to preserve any covenant or restriction and the name and particular post office address of the person filing the claim or the homeowners' association.

(b) The name and post office address of an owner, or the name and post office address of the person in whose name said property is assessed on the last completed tax assessment roll of the county at the time of filing, who, for the purpose of such notice, shall be deemed to be an owner; provided, however, if a homeowners' association is filing the notice, then the requirements of this paragraph (b) may l. satisfied by attaching to and recording with the notice an affidavit executed by the appropriate member of the homeowners' association board of directors affirming that the board of directors of the homeowners' association caused a statement in substantially the following form to be mailed or hand-delivered to the homeowners' association's members.

STATEMENT OF MARKETABLE TITLE ACTION

The [*name of homeowners' association*] (the "Association") has taken action to ensure that the [*name of declaration, covenant or restriction*], recorded in Official Records Book _____, Page _____ of the public records of _____ County, Florida, as may be amended from time to time, currently affecting the property of each and every member of the Association retains its status as the source of marketable title with regard to the transfer of a member's residence. To this end, the Association shall cause the notice required by Chapter 712, Florida Statutes, to be recorded in the public records of _____ County, Florida. Copies of this notice and its attachments are available through the Association as a

Association official record.

(c)~~A full and complete description of all land affected by such notice, which description shall be set forth in particular terms and not by general reference, but if said claim is founded upon a recorded instrument or a covenant or a restriction, then the description in such notice may be the same as that contained in such recorded instrument or covenant or restriction, provided the same shall be sufficient to identify the property.

(d)~~A statement of the claim showing the nature, description, and extent of such claim or, in the case of a covenant or restriction, a copy of the covenant or restriction, except that it shall not be necessary to show the amount of any claim for money or the terms of payment.

(e) If such claim is based upon an instrument of record or a recorded covenant or restriction, such instrument ~~shall be~~ of record or recorded covenant or restriction shall be deemed sufficiently described to identify the same ~~, including~~ if the notice includes a reference to the book and page in which the same is recorded.

(f)~~Such notice shall be acknowledged in the same manner as deeds are acknowledged for record.

Section 3. This act shall take effect upon becoming a law.

PROBLEMS STUDY COMMITTEE
SUBCOMMITTEE REPORTS

May 22-25, 2003

Names in parenthesis are the subcommittee chair,
followed by the vice subcommittee chair, if any.

I. 7-YEARS MAINTENANCE ROADS ALTERNATIVE TO CONSTRUCTED & 4-YEARS MAINTAINENACE ROADS - F.S. 95.361

(Bob Hunkapiller bhunkapiller@thefund.com / Alan Fields abfields@mindspring.com)

1. The Section's recommendation with revisions is part of HB 1373.

The Section recommended:

95.361 Roads presumed to be dedicated.-

(1) When a road, constructed by a county, a municipality, or the Department of Transportation, has been maintained or repaired continuously and uninterruptedly for 4 years by the county, municipality, or the Department of Transportation, jointly or severally, the road shall be deemed to be dedicated to the public to the extent in width that has been actually maintained for the prescribed period, whether or not the road has been formally established as a public highway. The dedication shall vest all right, title, easement, and appurtenances in and to the road in:
(a) The county, if it is a county road;
(b) The municipality, if it is a municipal street or road; or
(c) The state, if it is a road in the State Highway System or State Park Road System,

whether or not there is a record of a conveyance, dedication, or appropriation to the public use.

(2) Regardless of who constructed it, when a road has been regularly maintained or repaired for 7 years by the county, municipality, or the Department of Transportation, jointly or severally, the road shall be deemed to be dedicated to the public to the extent in width that has been actually maintained or repaired for the prescribed period, whether or not the road has been formally established as a public highway. The dedication shall vest all right, title, easement, and appurtenances in and to the road in:
(a) The county, if it is a county road;
(b) The municipality, if it is a municipal street or road; or
(c) The state, if it is a road in the State Highway System or State Park Road System,

whether or not there is a record of a conveyance, dedication, or appropriation to the public use.

~~(2)~~ (3) The filing of a map in the office of the clerk of the circuit court of the county where the road is located showing the lands and reciting on it that the road has vested in the state, a county, or a municipality in accordance with subsections (1) or (2) or by any other means of acquisition, duly certified by:
(a) The secretary of the Department of Transportation, or the secretary's designee, if the road is a road in the State Highway System or State Park Road System;

(b) The chair and clerk of the board of county commissioners of the county, if the road is a county road; or
(c) The mayor and clerk of the municipality, if the road is a municipal road or street,

shall be prima facie evidence of ownership of the land by the state, county, or municipality, as the case may be.

(4) Any person, firm, corporation, or entity having or claiming any interest in and to any of the property effected by subsection (2) shall have and is hereby allowed a period of one year from the date of the final passage hereof to file a claim with the particular governing authority assuming jurisdiction over such property, for any damages which might have accrued to such person, firm or corporation by virtue of the occupancy of such property by such particular governing authority.

(5) In the event any section, clause, sentence or portion of this Act be declared to be invalid, such invalid provision shall in no event effect the validity of the remaining sections, clauses, sentences, or portions of this Act.

(6) Subsections (2), (3), (4), and (5) shall take effect upon its passage and approval by the Governor, or upon its becoming a law without such approval.

*** End of Section Recommendation ***

2. The following revisions were negotiated with FDOT.

(2) In those instances where a road has been constructed by a non-governmental entity, or where the road was not constructed by the entity currently maintaining or repairing it, or where it cannot be determined who constructed the road, ~~Regardless of who constructed it,~~ and when such a road has been regularly maintained or repaired for 7 years by the county, municipality, or the Department of Transportation, jointly or severally, the road shall be deemed to be dedicated to the public to the extent in width that has been actually maintained or repaired for the prescribed period, whether or not the road has been formally established as a public highway. The dedication shall vest all right, title, easement, and appurtenances in and to the road in:

(a) The county, if it is a county road;
(b) The municipality, if it is a municipal street or road; or
(c) The state, if it is a road in the State Highway System or State Park Road System, whether or not there is a record of conveyance, dedication, or appropriation to the public use.

(3) ...

(4) Any person, firm, corporation, or entity having or claiming any interest in and to any of the property effected by subsection (2) shall have and is hereby allowed a period of ~~not less than~~ one year from the effective date of this act or a period of seven years from initial date of regular maintenance or reparation of the road, whichever period is greater, to file a claim in equity or with a court of law against ~~with~~ the particular governing authority assuming jurisdiction over such property to cause a cessation of the maintenance and occupation of the property ~~with the particular governing authority assuming jurisdiction over such property or with a court of law~~. Such timely filed and adjudicated claim will prevent the dedication of the road to the public pursuant to (2).

3. Comments:

Revised subsection (2) is better than the Section's recommendation.

Revised subsection (4) has clarified the 1935 statute [Section's subsection (4)] to clearly show that suit is to be brought in a court --against the governing authority. This clarification is consistent with the 1941 clarification of the statute.

FDOT is opposed to any damages provision. The problems study committee's concern was the constitutionality of revised subsection (4) which does not contain a compensation provision. In 1972 there was a constitutional attack on a predecessor to F.S. 95.361 for failing to have a compensation provision.

A saving clause providing for a claim for damages was included the 1935 act and subsequent statutes, but was omitted in 1955.

After the claims for damages provision was omitted, the FEC Railway argued that the failure to have such a provision rendered the predecessor to F.S. 95.361 unconstitutional. In *FDOT v. Florida East Coast Railway Co, 262 So.2d 480 (3rd DCA 1972)*, the court agreed that would be true had there not been a savings clause in the original act. The court said:

> [The RR argued that the predecessor statute should be] ... held unconstitutional because it does not contain a saving clause granting to the landowner...a... period...within which to file a claim... for damages... A saving clause of that nature was included in the dedication statute when originally enacted in 1935, but was omitted upon its re-enactment years later. We view as correct...that while there may have been a place or need for such a saving clause...[note: the Court does not say "damages" savings clause] in the statute when first enacted, the absence of such a clause in the statute presently is no impediment to its validity, because by the presence of the statute on the books, during the period of four years or more of state, county or city maintenance of a road... an owner necessarily must be considered to have notice thereof and to have had opportunity in that interval to make a claim for any damages... See Bridgehead Land Co. for Use and Benefit of River's Edge v. Hale, 145 Fla. 389, 199 So. 361; State Road Department v. Lewis, Fla.1964, 170 So.2d 817; Seaside Properties, Inc. v. State Road Department, Fla.App.1966, 190 So.2d 391. (Emphasis added).

Although the Section's subsection (4) was constitutionally approved by the Supreme Court in the Bridgehead Land Co. case, revised subsection (4) does provide a savings clause to stop the operation of the statute (albeit not a damages savings clause).

4. The portion of HB 1373 concerning the Section's proposal reads:

> Be It Enacted by the Legislature of the State of Florida:
>
> Section 1. Section 95.361, Florida Statutes, is amended to read:
> 95.361 Roads presumed to be dedicated.--
> (1) When a road, constructed by a county, a municipality, or the Department of Transportation, has been maintained or repaired continuously and uninterruptedly for 4 years by the county, municipality, or the Department of Transportation, jointly or severally, the road shall be deemed to be dedicated to the public to the extent in width that has been actually maintained for the prescribed period, whether or not the road has been formally established as a public highway. The dedication shall vest all right, title, easement, and appurtenances in and to the road in:
> (a) The county, if it is a county road;
> (b) The municipality, if it is a municipal street or road; or
> (c) The state, if it is a road in the State Highway System or State Park Road System,
>
> whether or not there is a record of a conveyance, dedication, or appropriation to the public use.

(2) In those instances where a road has been constructed by a nongovernmental entity, or where the road was not constructed by the entity currently maintaining or repairing it, or where it cannot be determined who constructed the road, and when such road has been regularly maintained or repaired for the immediate past 7 years by a county, a municipality, or the Department of Transportation, whether jointly or severally, such road shall be deemed to be dedicated to the public to the extent of the width that actually has been maintained or repaired for the prescribed period, whether or not the road has been formally established as a public highway. The dedication shall vest all rights, title, easement, and appurtenances in and to the road in:

(a) The county, if it is a county road;

(b) The municipality, if it is a municipal street or road; or

(c) The state, if it is a road in the State Highway System or State Park Road System, whether or not there is a record of conveyance, dedication, or appropriation to the public use.

(3)The filing of a map in the office of the clerk of the circuit court of the county where the road is located showing the lands and reciting on it that the road has vested in the state, a county, or a municipality in accordance with subsection (1) or subsection (2)or by any other means of acquisition, duly certified by:

(a) The secretary of the Department of Transportation, or the secretary's designee, if the road is a road in the State Highway System or State Park Road System;

(b) The chair and clerk of the board of county commissioners of the county, if the road is a county road; or

(c) The mayor and clerk of the municipality, if the road is a municipal road or street,

shall be prima facie evidence of ownership of the land by the state, county, or municipality, as the case may be.

(4) Any person, firm, corporation, or entity having or claiming any interest in and to any of the property affected by subsection (2) shall have and is hereby allowed a period of 1 year after the effective date of this subsection, or a period of 7 years after the initial date of regular maintenance or repair of the road, whichever period is greater, to file a claim in equity or with a court of law against the particular governing authority assuming jurisdiction over such property to cause a cessation of the maintenance and occupation of the property. Such timely filed and adjudicated claim shall prevent the dedication of the road to the public pursuant to subsection (2).

II. SATISFACTION OF JUDGMENTS - F.S. 55.141

(Barry Ansbacher bba@ansbacher.net)

The problem study committee will shortly recommend to the RPPTL Executive Council the repeal of current §55.141 and propose the changes to §55.141 immediately below.

The problems study committee's proposal:

55.141 Satisfaction of judgments and decrees; duties of clerk.

(1) All judgments and decrees for the payment of money rendered in the courts of this state and which have become final, may be satisfied at any time prior to the actual levy of execution issued thereon by payment of the full amount of such judgment or decree, with interest thereon, plus the costs of the issuance, if any, of execution thereon into the registry of the court where rendered.

(2) Upon such payment, the clerk shall execute and record in the official records a satisfaction of judgment upon payment of the recording charge prescribed in s. 28.24(15). Upon payment in the amount required above, and execution of the satisfaction by the clerk, any lien created by such judgment is satisfied and discharged.

(3) The satisfaction of judgment executed by the clerk shall be substantially in the following form:

Satisfaction of Judgment by Clerk

The undersigned Clerk acknowledges on this _____ day of _____[month] [year] receipt from _____[identity of party making payment] of $ _____ [total amount received] comprised of $_____ face amount of the judgment; $_____ interest accruing on the judgment through the date of payment; $ _____ costs of issuance of any execution; and $ _____ for recording.

Pursuant to §55.141, said sum is paid to satisfy the lien and to discharge that certain final judgment in favor of [name of judgment holder] whose last known address, if known is [address if shown on face of judgment, or in recorded affidavit pursuant to §55.10(1)] against _____ [name of judgment debtor] recorded in Official Records Volume/Book _____, page _____ of the public records of _____ County, Florida.

Upon the execution of this satisfaction, said judgment is satisfied and discharged.

If an address for the judgment holder was provided pursuant to §55.10(1), I certify that a copy of this notice has been sent to the judgment holder, at said address, by certified mail with return receipt requested or by registered mail if the notice is to be sent outside the continental United States.

_____
Clerk of Court

(4) If an address for the judgment holder was provided pursuant to §55.10(1), the clerk shall formally send a copy of the satisfaction to the judgment holder at said address, by certified mail with return receipt requested or by registered mail if the notice is to be sent outside the continental United States. If an address is not provided pursuant to §55.10(1), the clerk may, but is not obligated to, to make reasonable

attempts to locate the judgment holder if no address is provided pursuant to §55.10(1), or if delivery cannot be effected to such address. The discharge of the lien by the issuance of the satisfaction is not dependent upon the delivery of notice by the clerk.

(5) Upon application of the judgment holder, the clerk shall pay over to judgment holder the full amount of the payment so received, less the clerk's fees for issuing execution on such judgment, if any has been issued, less the clerk's fees for receiving into and paying out of the registry of the court such payment, less the clerk's fees for recording the satisfaction of judgment, and if the clerk has incurred expenses in locating the judgment holder, less the reasonable expenses so incurred.

*** End of Problem Study Committee Recommendation ***

The problem study committee recommends the repeal of the current F.S. 55.141 that provides:

55.141 Satisfaction of judgments and decrees; duties of clerk and judge.--

(1) All judgments and decrees for the payment of money rendered in the courts of this state and which have become final, may be satisfied at any time prior to the actual levy of execution issued thereon by payment of the full amount of such judgment or decree, with interest thereon, plus the costs of the issuance, if any, of execution thereon into the registry of the court where rendered.

(2) Upon such payment, the clerk, or the judge if there is no clerk, shall issue his or her receipt therefor and shall record a satisfaction of judgment, provided by the judgment holder, upon payment of the recording charge prescribed in s. 28.24(15) plus the necessary costs of mailing to the clerk or judge. The clerk or judge shall formally notify the owner of record of such judgment or decree, if such person and his or her address are known to the clerk or judge receiving such payment, and, upon request therefor, shall pay over to the person entitled, or to his or her order, the full amount of the payment so received, less his or her fees for issuing execution on such judgment or decree, if any has been issued, and less his or her fees for receiving into and paying out of the registry of the court such payment, together with the fees of the clerk for receiving into and paying such money out of the registry of the court.

(3) Full payment of judgments and decrees as in the preceding subsections of this section provided shall constitute full payment and satisfaction thereof and any lien created by such judgment or decree shall thereupon be satisfied and discharged.

History.--ss. 1, 2, 3, ch. 22672, 1945; s. 9, ch. 67-254; s. 2, ch. 77-354; s. 4, ch. 82-205; s. 296, ch. 95-147.

Note.--Former s. 55.62.

*** End of Current Statute ***

Comments:

Issue: Does §55.141(2) *Satisfaction of judgments and decrees; duties of clerk and judge.* Fla. Stat., require modification? The statute now provides that if a party tenders the full amount due on a judgment, that the clerk of court (or judge) shall record a satisfaction of the judgment. The problem is that the statute provides that the satisfaction form is to be *'provided by the judgment holder.'* Peter J. Gravina, Esq. has raised the issue that such provision has inhibited the clerk of court from recording a satisfaction, because the judgment holder could not be located, or otherwise failed to deliver the form to the clerk. In addition, the alternative procedure of obtaining a satisfaction of judgment from the judge is unreasonably restricted to when *'there is no clerk'*. Accordingly, the very purpose of the statute, to allow an expedited procedure to clear judgment liens when the judgment holder cannot be located, or refuses to timely delivery a satisfaction is defeated.

Relevance: §55.14,1 when properly applied, allows real estate practitioners to clear judgment liens and close transactions by payment of the amount due, even when the creditor cannot be timely located, or is uncooperative. If other clerks of court are adopting the same restrictive interpretation of the statute, reported by Mr. Gravina, then closings might be delayed, and the judgment debtor, or other party wishing to clear the lien will bear the additional cost of a court appearance to obtain a satisfaction, if the judgment holder will not issue same.

Summary: §55.141(2) Fla. Stat. should be modified to delete the verbiage *'provided by the judgment holder'*. Consideration should be given to adding a prescribed form of satisfaction of judgment to the statute. Consideration should also be given to clarifying when a judge may issue a satisfaction of judgment in lieu of the clerk of court. There is no reason to limit a court's authority to issue a satisfaction of judgment, although the statute now authorizes a judge to issue a satisfaction only if there is no clerk. The committee members, and circuit representatives should be polled to determine if the problem is isolated or widespread, in order to prioritize the submission of proposed curative legislation by the Problems Study Committee.

Discussion:

The subject of this memorandum is whether the current statute, §55.141 *Satisfaction of judgments and decrees; duties of clerk and judge,* requires amendment in order to eliminate verbiage which defeats the intent of the statute. The concern is whether clerks of courts will prevent judgment debtors, or other interested third parties from clearing judgment liens against property by making full payment of the amount due to the clerk and receiving a satisfaction of judgment from the clerk upon such payment. The concern which, in at least one instance, has arisen is that the clerk of court may not be willing to issue the satisfaction of judgment, because subsection (2) indicates that the satisfaction of judgment should be *"provided by the judgment holder"*.

In addition, although I am not aware of any instance where there has been an actual dispute over the issue, there is also verbiage in the statute, which provides that a judge

may issue the satisfaction of judgment upon payment only *"if there is no clerk"*. This provision, strictly interpreted permits the court to act only where there is a vacancy in the clerk's position, which is obviously a rare occurrence. This makes the alternative of a judicially issued satisfaction of judgment, not practically available under the statute, although it may be argued that the inherit jurisdiction of the court would allows a satisfaction of judgment to be issued upon application. See also §55.206 (Judge has authority upon application of judgment debtor to demand but not issue satisfaction.)

It is not uncommon for judgment holders to be difficult to locate, or to be uncooperative when the judgment debtor, or as is often the case, the closing attorney or title company is attempting to pay and satisfy the judgment to enable a closing. The concern of locating judgment holders was considered in the legislation adopted several years ago, modifying §55.10 to require that the address of the judgment holder be included on the face of the judgment (or in a contemporaneously recorded affidavit) in order for a judgment to become a lien against real property. Case law has enforced this provision, and most if not all of the underwriters will now permit insurance to be issued, without exception, for a judgment that does not contain such address.

The address of the judgment holder presumably assists in achieving a satisfaction from even an uncooperative party by use of the provisions in §55.206 Fla. Stat. This statute provides that a judgment holder must issue an estoppel showing payment in full or partial payment within thirty (30) days of demand by the judgment debtor. There is a penalty provision of $100.00 or actual and consequential damages, including attorneys' fees, for failure to issue such statement. Obviously, this provision is of limited benefit where the judgment holder cannot be located to effect the receipt of the written demand. This statute is also limited to exercise by the judgment debtor.

This problem was also addressed by the legislature in §55.10 Fla. Stat. §55.10 (5) provides an alternative to the provisions of §55.141 by allowing any interested person to transfer the lien of a properly recorded and certified judgment to a bond, although the amount that must be bonded includes not only the judgment amount, but also three years of future interest at the legal rate, and an additional $500.00. Accordingly, §55.141 provides a better alternative to the real estate attorney or other parties engaged in closings by requiring payment only of the face amount of the judgment, plus interest due through the date of such payment, and payment of miscellaneous mailing and recording costs. Use of §55.10 (5) makes sense only where the judgment debtor intends to challenge the judgment lien as a way of expediting the real estate closing whereas, §55.141 requires payment of the lien which would equitably estop a challenge to the amount claimed due by the judgment creditor.

The provisions of §55.10 and §55.141 are similar in that they permit the payment of funds to the clerk of court in exchange for releasing the lien from the real property either by satisfaction, or by transfer to bond. The provisions in §55.10 (5) provide greater clarity to the clerk of court as to the legal obligations imposed on the clerk of court, and I am unaware of there being any issues arising from a clerk of court refusing to effect such a lien transfer. Unlike §55.141, there is no provision that the form of the transfer certificate be provided by any party, other than the clerk of court, and the customary practice is for the party applying for the transfer to submit the form to the clerk of court for approval and signature.

Research of case law indicates that situation reported by Mr. Gravina has not received appellate review. There are; however, a number of cases dealing with the issuance by a clerk of court of a satisfaction pursuant to §55.141. These cases do not indicate whether the satisfaction of judgment form was provided by the judgment holder, but given the challenge brought by the judgment holders to the clerk's issuance of the satisfaction of judgment in each case, it appears very unlikely that the judgment holder was cooperating in providing said form.

There is one case that sheds light on §55.10, although not on point to particular issue before us. In Weaver v. Stone, 212 So. 2d 80 (Fla. 4th DCA 1968) the Court interpreted the predecessor to the current statute, then codified as §55.62. In this case the plaintiffs were injured in an automobile accident, and successfully brought suit against the employer of the other driver. After obtaining a judgment against the employer, the plaintiff brought a separate suit against the driver, but the second lawsuit was dismissed because of the issuance by the clerk of court of a satisfaction of the judgment. The employer attempted to pay the judgment entered against it to the plaintiffs, but the plaintiffs refused to accept the payment, which led to the employer paying the amount required under the statute and obtaining the satisfaction of judgment from the clerk of court.

The Court upheld the dismissal of the second action, based upon the satisfaction of the first case. The court found that in the statute *"There is no requirement that Plaintiff consent to the Satisfaction."* In the statute reviewed by the Court, the clerk of court was obligated to issue a receipt of payment and *"...enter notation thereof upon the margin of the record of such judgment..."* There was no reference to the form of satisfaction being provided by the judgment holder.

The dissent raised certain issues which should be considered by the Committee, especially given that the Weaver v. Stone was questioned in later opinions. See Gerardi v. Carlisle, 232 So. 2d 36 (Fla. 1st DCA 1969). The dissent interpreted the statute as allowing payment to the clerk of court for the purpose of clearing a lien, but not requiring the judgment holder to actually accept the funds as satisfaction. The dissenting opinion cited the provisions that the clerk of court must notify the judgment holder of the payment, and found that this would trigger an opportunity for the judgment holder to refuse acceptance and to challenge issuance of the satisfaction. *"By reading the statute and interpreting it in the manner in which the intent of the legislature is best shown, it can be seen that there is no satisfaction of judgment by merely paying monies into the registry of court; it is evident from the statute that there must be an acceptance by the judgment creditor of the monies received from the registry of the court before an actual Satisfaction of Judgment occurs."* ID at page 8.

The dissent also noted that in the first subsection of the statute there is a provision that the judgment may be satisfied only upon *"...payment of the full amount of such judgment"*. Thus, the issue of what constituted full payment remained a factual issue open for debate, and not a fixed amount.

The Weaver case was centered upon the ability of joint tortfeaser to avoid liability by satisfaction of a judgment against another tortfeaser, and was not focused on the technicalities of the procedure. Nonetheless, it is possible that the trial bar may raise

issues regarding the statute because of the Weaver ruling and potential that §55.141 might impair their freedom to bring separate lawsuits against joint tortfeaser, and any proposed legislation may not be considered merely a technical glitch correction.

The second issue as to whether a judge may issue the satisfaction of judgment is equally troublesome. The statute provides that the judge may issue same *"if there is no clerk"*. This is rarely the case, and if the Court, in Mr. Gravina's situation, had strictly interpreted the statute, then Mr. Gravina would not have been able to obtain the necessary satisfaction of judgment from the Court as he indicated was his ultimate solution. There is also a question as to whether third parties may rely upon a satisfaction of judgment issued by a Court founded upon the authority of §55.141. If the procedures for the clerk of court to follow were clear and unambiguous, there is no reason why recourse to the Court would be either necessary or desirable. §55.10 (5) does not provide for alternative application to a judge for a satisfaction of judgment. Accordingly, either the provisions permitting a judge to issue a satisfaction of judgment should be deleted to prevent parties from obtaining a satisfaction of judgment that may ultimately prove to be ineffective, or the restricted jurisdiction of the judge should be made concurrent with the clerk of court. If the Problem Studies Committee believes that the issue regarding a judge's authority should be addressed, consideration should be given to specifying the procedures for obtaining a satisfaction from a judge in the statute. As now written, there is no provision as to whether such satisfaction is obtained by a separate proceeding, as a supplemental proceeding to the original lawsuit, or as an independent administrative act of the court unrelated to any case file. Does jurisdiction and venue exist where the judgment was entered, where the subject real property is located or both? Because the goal of said statute is for a simple procedure that may be relied upon by third parties, this verbiage should also be addressed.

III. TITLE INSURANCE RELEASE OF MORTGAGE (Mary O'Donnell MODONNELL@APTIC.COM / Wayne Sobien wsobien@firstam.com): The committee is studying the following:

An act relating to cancellation of mortgages and title insurance; creating ss. 701.041 providing for the issuance of a mortgage release certificate by a title insurance company or its authorized agent.

WHEREAS, the Legislature finds that modern trends in the real estate market require that real estate closings must be completed, funds disbursed, and title insurance policies issued prior to the receipt by the title insurance company or its authorized agent, or the recording in the public records, of releases or satisfactions of mortgages that have been paid; that in a significant number of circumstances such releases or satisfactions are not presented in a timely fashion, or are never presented, to the title insurance company or its authorized agent; that this situation is exacerbated by the proliferation of servicing contracts and multiple assignments of mortgages; that title insurance companies devote a significant amount of time attempting to obtain and record releases and satisfactions of mortgages that have been paid; that title insurance companies and their authorized agents undertake a real and significant risk in the

issuance of title insurance policies without an exception for these paid mortgages that have not been released or satisfied in the public records; that it is in the public interest that an alternative method be made available to title insurance companies and their authorized agents to evidence in the public records the payment and release of these mortgages; NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 701.041, Florida Statutes, 2003 Supplement, is created to read:

701.041. Title insurance company; mortgage release certificate

1. Definitions. (a) The definitions in this subdivision apply to this section.

(b) "Mortgage" means a mortgage or mortgage lien on an interest in real property in this state given to secure a loan in the original principal amount of $500,000 or less.

(c) "Mortgagee" means:

(1) the grantee of a mortgage; or

(2) if a mortgage has been assigned of record, the last person to whom the mortgage has been assigned of record.

(d) "Mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been instructed by a mortgagee to send payments on a loan secured by a mortgage. A person transmitting a payoff statement is the mortgage servicer for the mortgage described in the payment statement.

(e) "Mortgagor" means the grantor of a mortgage.

(f) "Payoff statement" means a statement of the amount of:

(1) the unpaid balance of a loan secured by a mortgage, including principal, interest, and any other charges properly due under or secured by the mortgage; and

(2) interest on a per day basis for the unpaid balance.

(g) "Record" means to record with the clerk of the circuit court.

(h) "Title insurance company" means a corporation or other business entity authorized and licensed to transact the business of insuring titles to interests in real property in this state under chapter 624, Florida Statutes.

2. Certificate of release. An officer or duly appointed agent of a title insurance company may, on behalf of a mortgagor or a person who acquired from the mortgagor

title to all or a part of the property described in a mortgage, execute a certificate of release that complies with the requirements of this section and record the certificate of release in the real property records of each county in which the mortgage is recorded if a satisfaction or release of the mortgage has not been executed and recorded within the 60 days of the date payment in full of the loan secured by the mortgage was sent in accordance with a payoff statement furnished by the mortgagee or the mortgage servicer.

3. Contents. A certificate of release executed under this section must contain substantially all of the following:

(1) the name of the mortgagor, the name of the original mortgagee, and, if applicable, the mortgage servicer, the date of the mortgage, the date of recording, and volume and page or document number in the real property records where the mortgage is recorded, together with similar information for the last recorded assignment of the mortgage;

(2) a statement that the mortgage was in the original principal amount of $500,000 or less;

(3) a statement that the person executing the certificate of release is an officer or a duly appointed agent of a title insurance company authorized and licensed to transact the business of insuring titles to interests in real property in this state under chapters 624 or 626, Florida Statutes;

(4) a statement that the certificate of release is made on behalf of the mortgagor or a person who acquired title from the mortgagor to all or a part of the property described in the mortgage;

(5) a statement that the mortgagee or mortgage servicer provided a payoff statement which was used to make payment in full of the unpaid balance of the loan secured by the mortgage; and

(6) a statement that payment in full of the unpaid balance of the loan secured by the mortgage was made in accordance with the written or verbal payoff statement.

4. Execution. (a) A certificate of release authorized by subdivision 2 must be executed and acknowledged as required by law in the case of a deed and may be executed by a duly appointed agent of a title insurance company, but such delegation to an agent by a title insurance company shall not relieve the title insurance company of any liability for damages caused by its agent for the wrongful or erroneous execution of a certificate of release.

(b) The appointment of agent must be executed and acknowledged as required by law in the case of a deed and must state:

(1) the title insurance company as the grantor;

(2) the identity of the person, partnership, or corporation authorized to act as agent to execute and record certificates of release provided for in this section on behalf of the title insurance company;

(3) that the agent has the full authority to execute and record certificates of release provided for in this section on behalf of the title insurance company;

(4) the term of appointment of the agent; and

(5) that the agent has consented to and accepts the terms of the appointment.

(c) A single appointment of agent may be recorded in each county office. A separate appointment of agent shall not be necessary for each certificate of release. The appointment of agent may be re-recorded where necessary to establish authority of the agent, but such authority shall continue until a revocation of appointment is recorded in the office of the county recorder where the appointment of agent was recorded.

5. Effect. For purposes of releasing the mortgage, a certificate of release containing the information and statements provided for in subdivision 3 and executed as provided in this section is prima facie evidence of the facts contained in it, is entitled to be recorded with the county recorder, and operates as a release of the mortgage described in the certificate of release. The county recorder shall rely upon it to release the mortgage. Recording of a wrongful or erroneous certificate of release by a title insurance company or its agent shall not relieve the mortgagor, or the mortgagor's successors or assigns, from any personal liability on the loan or other obligations secured by the mortgage. In addition to any other remedy provided by law, a title insurance company wrongfully or erroneously recording a certificate of release under this section shall be liable to the mortgagee for actual damage sustained due to the recordings of the certificate of release.

6. Recording. If a mortgage is recorded in more than one county and a certificate of release is recorded in one of them, a certified copy of the certificate of release may be recorded in another county with the same effect as the original. In all cases, the certificate of release shall be entered and indexed as satisfactions of mortgage are entered and indexed.

7. Application. This section applies only to a mortgage in the original principal amount of $500,000 or less.

IV. **H & F LAND'S AFFECT ON WAYS OF NECESSITY - F.S. 704.01 & F.S. 712** (Homer Duvall hduvall@hklaw.com). The committee is studying the following:

An Act to Prevent Lands From Being Made Fallow or Unproductive Due to a Lack of Access.

It is the intent of this Legislature that no real property located within the State of Florida shall be made fallow or unproductive by reason of a lack of access to and from such lands. Moreover, it is the intent of this Legislature to correct the injustices pointed out in the *H & F Land, Inc. v. Panama City,* 706 So.2d 327 (Fla. 1st DCA 1998); *app'd,* 736 So.2d 1167 (Fla. 1999); and that the provisions of Section 704.01, *Florida Statutes,* be amended as follows, in order to provide that common-law and statutory easements for ways of necessity shall not be forfeited or otherwise disposed of by the provisions of Section 712.01, *Florida Statutes, et seq.,* commonly known as "The Marketable Record Title Act," where such easements or ways of necessity provide the only means for ingress, egress and utilities to otherwise hemmed-in or shut-off lands.

704.01 Common-law and statutory easements defined and determined.--

(1) IMPLIED GRANT OF WAY OF NECESSITY.--The common-law rule of an implied grant of a way of necessity is hereby recognized, specifically adopted, and clarified. Such an implied grant exists where a person has heretofore granted or hereafter grants lands to which there is no accessible right-of-way except over her or his land, or has heretofore retained or hereafter retains land which is inaccessible except over the land which the person conveys. In such instances a right-of-way is presumed to have been granted or reserved. Such an implied grant or easement in lands or estates exists where there is no other reasonable and practicable way of egress, or ingress and same is reasonably necessary for the beneficial use or enjoyment of the part granted or reserved. An implied grant arises only where a unity of title exists from a common source other than the original grant from the state or United States; provided, however, that where there is a common source of title subsequent to the original grant from the state or United States, the right of the dominant tenement shall not be terminated if title of either the dominant or servient tenement has been or should be transferred for nonpayment of taxes either by foreclosure, reversion, or otherwise.

(2) STATUTORY WAY OF NECESSITY EXCLUSIVE OF COMMON-LAW RIGHT.--Based on public policy, convenience, and necessity, a statutory way of necessity exclusive of any common-law right exists when any land or portion thereof outside any municipality which is being used or desired to be used for a dwelling or dwellings or for agricultural or for timber raising or cutting or stockraising purposes shall be shut off or hemmed in by lands, fencing, or other improvements of other persons so that no practicable route of egress or ingress shall be available therefrom to the nearest practicable public or private road. The owner or tenant thereof, or anyone in their behalf, lawfully may use and maintain an easement for persons, vehicles, stock, franchised cable television service, and any utility service, including, but not limited to, water, wastewater, reclaimed water, natural gas, electricity, and telephone service, over, under, through, and upon the lands which lie between the said shut-off

or hemmed-in lands and such public or private road by means of the nearest practical route, considering the use to which said lands are being put; and the use thereof, as aforesaid, shall not constitute a trespass; nor shall the party thus using the same be liable in damages for the use thereof; provided that such easement shall be used only in an orderly and proper manner.

(3) SAVINGS OF COMMON-LAW AND STATUTORY WAYS OF NECESSITY FROM EFFECT OF CH. 712.—Any right, easement or way of necessity which arises by the operation of subsection (1) or (2) of this Section, shall not be subject to termination, forfeiture or other divestiture by virtue of the operation of the provisions of Ch. 712, Florida Statutes, where such right, easement or way of necessary provides the sole means of access for ingress, egress and utilities to a parcel of shut-off or hemmed-in lands.

History.--s. 1, ch. 7326, 1917; RGS 4999; CGL 7088; s. 1, ch. 28070, 1953; s. 220, ch. 77-104; s. 1, ch. 91-117; s. 788, ch. 97-102.

Comment: On a "go-forward" basis (3) should remedy the problem created by H & F Land. The following was submitted in an attempt to remedy the "past" ways of necessity.

(3) SAVINGS OF COMMON-LAW AND STATUTORY WAYS OF NECESSITY FROM EFFECT OF CH. 712.—Any right, easement or way of necessity which arises by the operation of subsection (1) or (2) of this Section, shall not be subject to termination, forfeiture or other divestiture by virtue of the operation of the provisions of Ch. 712, Florida Statutes ***until such right, easement or way of necessity has been judicially determined,*** where such right, easement or way of necessary provides the sole means of access for ingress, egress and utilities to a parcel of shut-off or hemmed-in lands.

V. **HIDDEN LIENS** (Peggy Williams pwilliams@thefund.com).

Comments:

There is a continuing problem with liens that are only on record in the office of the municipality or other entity which imposed the lien. These liens are difficult to find, and title agents and others must search many different locations in order to be sure they have found all of the liens which may encumber their property. Often, incorrect information is given by the municipality or other entity, and the lien goes unpaid, and undiscovered until several years later, when someone new, with a new lender, tries to sell or refinance the property. Then the municipality lets them know that there are unpaid fees from a previous owner that must be paid now. Or worse yet, the new owner's water or other services are discontinued for non-payment of a previous owner's service charges.

Another problem is what has been called "bleeding" code enforcement board liens. The statute states that a CEB lien encumbers the violating property along with all other real and personal property of the violator. The problem is that the liens do not include the legal descriptions of the other property, and there is no way to know which other property the violator owns, or will come to own.

We believe it would be a benefit to title examiners, property buyers and sellers, lenders, and to the municipalities and other entities themselves if the liens were required to be recorded in the Official Records Books, with a valid legal description of the property to be encumbered. This way, everyone would have the same information, and it is much more likely that the charges will be paid in a timely manner.

Proposed change to Chapter 695.01

695.01 Conveyances and liens to be recorded.

(1) No conveyance, transfer, or mortgage of real property, or of any interest therein, nor any lease for a term of 1 year or longer, shall be good and effectual in law or in equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law; nor shall any such instrument made or executed by virtue of any power of attorney be good or effectual in law or in equity against creditors or subsequent purchasers for a valuable consideration and without notice unless the power of attorney be recorded before the accruing of the right of such creditor or subsequent purchaser.

(2) No liens for improvements, services or fines relating to real property by any governmental or quasi-governmental body, with the exception of taxes pursuant to Chapter 197, shall be good against creditors and subsequent purchasers for a valuable consideration unless the lien is recorded with a valid legal description in the Official Records Books in the county where the property is located. The amount of any lien so recorded shall include any recording fees.

(3) Grantees by quitclaim, heretofore or hereafter made, shall be deemed and held to be bona fide purchasers without notice within the meaning of the recording acts.

Proposed change to Chapter 159.17

Any municipality issuing revenue bonds hereunder shall have a lien on all lands or premises served by any water system, sewer system or gas system for all service charges for such facilities until paid, which liens shall be prior to all other liens on such lands or premises except the lien of state, county and municipal taxes and shall be on a parity with the lien of such state, county and municipal taxes. When notice of such lien is recorded with a valid legal description in the Official Records Books in the County where the property is located, it shall become good and effectual against

creditors or subsequent purchaser for valuable consideration. Such liens, when delinquent for more than 30 days, may be foreclosed by such municipality against the original property owner, or against a subsequent purchaser for value if a notice of lien has been filed in the Official Records Books, in the manner provided by the laws of Florida for the foreclosure of mortgages on real property.

Proposed change to Chapter 159.18 (Water, Gas and Sewer Charges)

(1) Any municipality shall have power to discontinue and shut off the supplying of any or all water, gas and sewer services to any users of the facilities of a water system, gas system or sewer system of such municipality who have incurred unpaid service charges for any such water system, gas system or sewer system, and may covenant with the holders of any revenue bonds issued hereunder that it will not restore the supplying of any water, gas or sewer services to such delinquent users until all charges, with reasonable interest and penalties, for all water, gas and sewer services have been paid in full. If notice of a lien for unpaid service charges for any water, gas or sewer system has been filed in the Official Records Books of the County where the property is located, any municipality shall have the power to discontinue the above services to a subsequent purchaser for value.

Proposed change to Chapter 162.09 (Code Enforcement)

(2) A certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the Official Records Books of the County and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator located in the county. In order for the lien to be enforceable against a subsequent purchaser for value of other real property owned by the violator, the legal description of the other real property must be included in the recorded order imposing a fine. Upon petition to the circuit court . . .

VI. TORTOISE ISLAND'S AFFECT ON PRE-EXISTING USE EASEMENTS (Marty Awerbach msa@awerbach.com) New Subcommittee

VII. IN REM FORECLOSURE OF SPECIAL ASSESMENT LIENS CH. 173 (Michael Berke mberke@steelhector.com) New Subcommittee

VIII. STATUTORY WAYS STUDY-F.S. 704.01(2) (Rod Neuman rneuman@gibblaw.com) New Subcommittee

IX. TITLE INSURANCE STATUTES STUDY (Homer Duvall hduvall@hklaw.com) The committee is studying the following:

1. ESCROW; TRUST FUND

626.8473 Escrow; trust fund.--

(1) A title insurance agent or agency may engage in business as an escrow agent as to funds received from others to be subsequently disbursed by the title insurance agent or agency in connection with real estate closing transactions involving the issuance of title insurance binders, commitments, policies of title insurance, or guarantees of title, provided that a licensed and appointed title insurance agent complies with the requirements of s. ~~626.8417,~~626.8417 or that a licensed title insurance agency complies with the requirements of s. 626.8418, including such requirements added after the initial licensure of the title insurance agent or agency.

(2) All funds received by a title insurance agent or agency as described in subsection (1) shall be trust funds received in a fiduciary capacity by the title insurance agent or agency and shall be the property of the person or persons entitled thereto.

(3) All funds received by a title insurance agent or agency to be held in trust shall be immediately placed in a financial institution that is located within this state and is a member of the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. These funds shall be invested in an escrow account in accordance with the investment requirements and standards established for deposits and investments of state funds in s. 18.10, where the funds shall be kept until disbursement thereof is properly authorized.

(4) Funds required to be maintained in escrow trust accounts pursuant to this section shall not be subject to any debts of the title insurance agent or agency and shall be used only in accordance with the terms of the individual, escrow, settlement, or closing instructions under which the funds were accepted.

(5) The title insurance ~~agents~~agent or agency shall maintain separate records of all receipts and disbursements of escrow, settlement, or closing funds.

(6) In the event that the department promulgates rules necessary to implement the requirements of this section pursuant to s. 624.308, the department shall consider reasonable standards necessary for the protection of funds held in trust, including, but not limited to, standards for accounting of funds, standards for receipt and disbursement of funds, and protection for the person or persons to whom the funds are to be disbursed.

(7) A title insurance agent or agency, or any officer, director, or employee thereof, or any person associated therewith as an independent contractor for bookkeeping or similar purposes, who converts or misappropriates funds received or held in escrow or in trust by such title insurance agent or agency, or any person who knowingly receives or conspires to receive such funds, commits:

(a) If the funds converted or misappropriated are $300 or less, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) If the funds converted or misappropriated are more than $300, but less than $20,000, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) If the funds converted or misappropriated are $20,000 or more, but less than $100,000, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) If the funds converted or misappropriated are $100,000 or more, a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. TITLE INSURANCE CONTRACTS

627.7711 TITLE INSURANCE CONTRACTS--DEFINITIONS.--As used in this part, the term:

(1)(a) "Related title services" means services performed by a title insurer or title insurance agent or agency, in the agent's or agency's capacity as such, including, but not limited to, preparing or obtaining a title search, examining title, preparing documents necessary to close the transaction, conducting the closing, or handling the disbursing of funds related to the closing in a real estate closing transaction in which a title insurance commitment or policy is to be issued~~. The premium, together with the charge for related title services, constitutes the regular title insurance premium~~.