FINAL REPORT AND RECOMMENDATIONS OF THE SUPREME COURT SELECT COMMITTEE TO STUDY THE FLORIDA BOARD OF BAR EXAMINERS

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Introduction

Pursuant to her constitutional authority as chief administrative officer of the judicial system,[1] former Chief Justice Rosemary Barkett created the Supreme Court Select Committee to Study The Florida Board of Bar Examiners (hereinafter "Supreme Court Select Committee") on April 1, 1994, and instructed it to "study the admissions procedures for new lawyers." The order mandated that the "Select Committee shall review the existing rules, procedures, and methods employed by the Board of Bar Examiners, as well as the recommendations of the Florida Bench/Bar Commission, and the request proposed by the Florida Legislature in Senate Resolution 2680, to determine whether any changes should be made in the bar admissions process." The Supreme Court Select Committee was given the charge to recommend to the Supreme Court ways to augment the continuous improvement processes and procedures of The Florida Board of Bar Examiners (hereinafter "the Board").

Originally scheduled to report its findings to the Florida Supreme Court by December 31, 1994, the Supreme Court Select Committee's term was extended through June 1997 to allow it additional time to continue its cooperative efforts with the Board. During the process, the committee identified areas for potential improvement and updating of the Board's policies and procedures. At the committee's suggestion, the Board's members and staff, with their expertise and knowledge, then recommended and implemented improvements. As this report notes, the Board implemented a number of improvements in response to concerns raised during the Supreme Court Select Committee's deliberations. In addition, the Board made improvements in some areas identified during the Board's own continuing review process, and in response to recommendations by the Florida Bench/Bar Commission. These improvements eliminated the need for the committee to make recommendations to the Supreme Court on those issues.

This final report is a record of the many areas already reviewed and improved, as well as additional recommendations by the Supreme Court Select Committee.

[1]"The chief justice of the supreme court . . . shall be the chief administrative officer of the judicial system." Art. V, § 2(b), Florida Constitution.

Executive Summary

The Supreme Court of Florida established The Florida Board of Bar Examiners by a 1955 rule of court, to assist the Court in ensuring that only qualified persons are admitted to practice law in Florida.[2] The Board is composed of fifteen members, three of whom are non-attorneys. There are nine general meetings a year, held at various locations around the state. In addition, panels meet throughout the year. Board members are dedicated public servants, donating, without compensation, an average of 500 hours of service per year.

Historically, a perception has existed of a sometimes adversarial relationship between bar applicants and the law schools on one hand and the Board and its staff on the other. Too often, applicants emerged from the process feeling it was obtrusive, offensive, and bore no reasonable relationship to the question of whether they were fit to practice law. Law school deans told the Supreme Court Select Committee that this occasionally contentious relationship has substantially improved in recent years. The Supreme Court Select Committee is pleased to commend the Board for changing its policies, procedures, and forms to make the process friendlier and more relevant to applicants.

The Board and Kathryn Ressel, who became executive director of the Board as the Supreme Court Select Committee was being formed, worked closely with the committee and responded positively to a number of issues that were raised during the committee's deliberations. Those improvements, for which the Board, Ms. Ressel, and staff are to be commended, include:

- **Modifying the guidelines for evaluating applicants for drug and alcohol abuse to make them less intrusive and less costly;**
- **Easing the requirements for reporting past employment and addresses on the bar application;**
- **Improving communications with law students to make them more aware of how the process works and how it affects them; and**
- **Narrowing the scope of financial inquiries to those involving specific financial problems encountered by applicants.**

The Supreme Court Select Committee terminated its deliberations of a number of issues raised by the Florida Bench/Bar Commission after determining that the Board had appropriately resolved those areas of concern by implementing corrective procedures and processes.

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[2]The Florida Supreme Court has "exclusive jurisdiction to regulate the admission of persons to the practice of law" in Florida. Art. V, § 15, Florida Constitution.

The Supreme Court Select Committee heard from a number of expert witnesses who highlighted problem areas, recommended improvements in the admission procedures for new lawyers, and provided valuable guidance to members of the committee as they endeavored to fulfill their assignment. Among those who provided valuable assistance to the committee were the deans of the Florida law schools and attorneys who represent applicants in bar admissions proceedings. Jane Peterson Smith, director of testing with the National Conference of Bar Examiners, provided the committee with insights and data analyses on the issue of performance testing. Dr. Carl Eisdorfer, director of the Department of Psychiatry at the University of Miami College of Medicine, was an influential resource when the committee considered the need to improve procedures for evaluating applicants for drug and alcohol abuse.

Assisted by the experts who discussed issues before the panel, the committee determined that five major issues, in addition to those identified by the Bench/Bar Commission, need to be addressed to eliminate intrusive and inappropriate aspects of the admissions process. Among its major recommendations, the Supreme Court Select Committee called for:

1. **Implementing a pilot mediation project in appropriate bar admission cases as a means of saving the time and money of both applicants and the Board.**

2. **Implementing a pilot project to test the addition of performance testing to the Florida bar exam, to more accurately measure an attorney's readiness to resolve a client's practical problems.**

3. **Collecting data on the race and gender of applicants called to investigatory hearings, regarding financial inquiries, and providing the results to the Florida Supreme Court to ensure that the Board's practices and policies do not result in discrimination.**

4. **Making additional modifications to the substance abuse protocol to enhance procedural due process for applicants who are asked to submit to an inpatient evaluation.**

5. **Publishing opinions in all bar admission cases decided by the Florida Supreme Court.**

Members of the Supreme Court Select Committee noted, but decided that it was beyond their charge to resolve a conflict between a Bench/Bar Commission recommendation that applicants be provided with and have the opportunity to respond to evidence that may be used against them and a 1991 opinion of the Florida Supreme Court upholding the confidentiality of such records. The Supreme Court should revisit this issue to consider whether to recede from its opinion in Florida Board of Bar Examiners re Interpretation of Article I, Section 14d of the Rules, 581 So. 2d 895 (Fla. 1991) and implement the recommendation of the Bench/Bar Commission.

Members of the Supreme Court Select Committee

The Honorable Gerald Kogan, Chief Justice of the Florida Supreme Court, served as chair of the Supreme Court Select Committee from April 1994 through August 1996 and as Supreme Court liaison from August 1996.[3] He also served as co-chair of the Bench/Bar Commission.

Burton Young served as a member from the inception of the Supreme Court Select Committee and as chair from August 1996. A former president of The Florida Bar and member of the Bench/Bar Commission, he is an attorney in North Miami Beach.

Jacqueline Allee, an attorney in Miami, is a former dean of the St. Thomas University College of Law. She served on the Supreme Court Select Committee from April 1994 through October 1996.

Donna E. Blanton is an attorney in Tallahassee.

Dana G. Bradford II, an attorney in Jacksonville and a former chair of The Florida Board of Bar Examiners, served on the Supreme Court Select Committee from May 1994.

The Honorable Jim Davis of Tampa is a member of Congress and a former state legislator.

The Honorable John Grant of Tampa is a member of the Florida Senate.

Eurich Z. Griffin is an attorney in Tampa.

Joseph D. Harbaugh, dean of the Shepard Broad Law Center at Nova Southeastern University in Fort Lauderdale, served on the Supreme Court Select Committee from October 1996.

Eleanor Hunter of Tallahassee, an administrative law judge with the Division of Administrative Hearings, is a former member of The Florida Board of Bar Examiners.

Jeffrey Lewis, a professor of law and former dean of the University of Florida College of Law, served on the Supreme Court Select Committee from October 1996.

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[3]Unless otherwise indicated, members served from the establishment of the Supreme Court Select Committee in April 1994 through the completion of its work in June 1997.

Philip D. Lewis, president of the Philip D. Lewis real estate firm in Riviera Beach, is a former president of the Florida Senate.

Lawrence G. Mathews, Jr., a former chair of The Florida Board of Bar Examiners, was an attorney in Orlando.

Barry L. Meadow, an attorney in Miami, is a former member of The Florida Board of Bar Examiners.

Patricia Seitz, an attorney with the Executive Office of the President in Washington, D.C., is a former president of The Florida Bar. She served on the Supreme Court Select Committee from April through December 1994.

Gregory Snell, an attorney in Daytona Beach and Young Lawyers Division representative to The Florida Bar Board of Governors, served on the Supreme Court Select Committee from December 1994.

Robert Trammell, an attorney in Marianna and a former state legislator, served on the Supreme Court Select Committee from October 1996.

Hamilton Upchurch, an attorney in St. Augustine and a former state legislator, served on the Supreme Court Select Committee from April 1994 through October 1996.

I. BAR EXAM

A. Ensuring Preparedness to Practice Law

1. Performance testing

Issue:

Should a performance-testing section be added to the bar examination to test the ability of candidates for admission to The Florida Bar to perform legal skills? If performance testing is added to the bar exam, would that require law schools to increase practical skills training to prepare law students for that portion of the exam?

Discussion:

With California leading the way in 1983, at least 14 states have added performance testing sections to their bar exams. The Supreme Court Select Committee was told that performance testing works well in those states.

In a performance test, persons taking the bar exam receive a "file" simulating a legal issue they might be asked to resolve as practicing lawyers and a "library" containing information that may be helpful in resolving the problem. The performance test is designed to measure their ability to apply actual legal skills in resolving realistic legal issues. States that use performance testing do so in combination with the traditional bar exam format.

Advocates of performance testing say it would provide a better measure than the current bar exam does of whether law school graduates have acquired the skills they need to practice law. They expressed concern that new lawyers entering the profession may be deficient in the skills they need to deal with legal issues and said performance testing would help to ensure that new lawyers are prepared to practice law. Joseph Harbaugh, dean of the Shepard Broad Law Center at Nova Southeastern University, told the committee that practicing lawyers do better on performance tests than they do on the essay and multi-state bar exam (MBE) sections of the exam, indicating that performance testing really does measure a bar candidate's ability to perform skills used in the practice of law. Dean Harbaugh said performance testing would not require law schools to change their curricula because they have already done so on their own. Other law school deans who appeared before the committee generally agreed that performance testing would not require them to change curricula. Jeffrey Lewis, former dean of the University of Florida College of Law, said increased practical training is a cost issue for law schools. He said law schools are providing more practical training than ever before but cannot afford to implement additional practical training. Furthermore, the practicing bar is better equipped to provide new lawyers with practical training in legal skills.

Jane Peterson Smith, director of testing for the National Conference of Bar Examiners (hereinafter "the National Conference"), who was invited to address the Supreme Court Select Committee at its June 1995 meeting, told the committee that the National Conference is preparing a multi-state performance test that should be ready by July of 1997. Ms. Smith said the goal in implementing performance testing is to design a test that will provide as much information as possible about an applicant, in as little time as possible, for the least amount of money.

The Bench/Bar Commission in its Recommendation 28 said the Florida Supreme Court and The Florida Bar should undertake a comprehensive re-examination of the role, purpose and results to be achieved by the administration of a written examination for applicants for admission to The Florida Bar.

Members of the Supreme Court Select Committee queried whether a performance testing component would further the bar exam's purpose of ensuring well-prepared lawyers who have practical skills. The committee found that there is a consensus among practicing lawyers that law school graduates should have knowledge of the day-to-day activities of the practice of law. Performance testing may be an appropriate way to determine whether graduates have sufficient knowledge of the practicalities involved in practicing law. It was the consensus of the Supreme Court Select Committee that a pilot project should be established to see how performance testing works in Florida.

There was little support among Supreme Court Select Committee members for requiring a comprehensive skills training program in law school. Florida's law school deans argued against mandating curriculum requirements, saying it would be difficult to reach consensus on what was needed. They said that mandating comprehensive skills training would stifle experimentation at the law schools. Florida law schools have voluntarily increased clinical training over the past decade or so.

For a detailed discussion of performance testing see the minutes of the Supreme Court Select Committee's June 19, 1995 and February 12, 1997 meetings in Appendix E. See Appendix A for the text of Bench/Bar Commission Recommendation 28.

Recommendation:

The Supreme Court Select Committee recommends that the Florida Supreme Court direct The Florida Board of Bar Examiners to consider performance testing, in whole or in part, and implement a pilot project by a date certain.

2. Supervised internship

Issue:

Should a supervised internship be substituted for the third year of law school, or should a supervised internship be required in addition to three years of law school before admittance to The Florida Bar?

Discussion:

The main support for a supervised internship was voiced by some practicing attorneys who said that with a surplus of new lawyers seeking jobs, inexperienced lawyers who have not had the benefit of being tutored by an experienced lawyer may go into practice on their own. Lacking experience, they may pose a risk to the public. Proponents of supervised internship argued that it would provide new lawyers with training in the skills they need to succeed in their profession.

Opposition to a supervised internship focused on questions about the quality control of internships and the financial hardships that could be imposed on students/applicants by requiring them to participate in unpaid internships. Members expressed the opinion that the quality of supervision would likely vary drastically, making an internship requirement unworkable.

In the absence of supervised internships, there are some legal education programs already in place that ease the transition from law school into the practice of law. Law schools have implemented skills training, and the "Bridge the Gap" program sponsored by the Young Lawyers Division of The Florida Bar provides practical skills training to new lawyers.

Supreme Court Select Committee members agreed that a supervised internship in lieu of or in addition to the third year of law school should not be required.

See January 14, 1995, minutes in Appendix E.

Recommendation:

No. A supervised internship should not be substituted for the third year of law school or be required for admittance to The Florida Bar.

3. Testing accommodations for persons with disabilities

Issue:

Are testing accommodations adequate for persons with disabilities in keeping with the Americans with Disabilities Act of 1990 (hereinafter "ADA")?

Discussion:

The Supreme Court Select Committee found that the Board does a good job of providing appropriate accommodations for persons with disabilities. Committee members decided not to further pursue this issue after Jane Peterson Smith, director of testing for the National Conference of Bar Examiners, outlined at the January 14, 1995, meeting the steps that the Board has taken to ensure appropriate testing accommodations for persons with disabilities. Members of the Supreme Court Select Committee noted, however, that ADA compliance should be revisited periodically and monitored constantly. Technological advancements and changing understandings of disabilities may require modification in testing policies for persons with disabilities, from time to time.

See January 14, 1995, and March 31, 1995, minutes in Appendix E.

Recommendation:

Yes. Testing accommodations are adequate, but The Florida Board of Bar Examiners should certify to the Florida Supreme Court every year that it is in compliance with the Americans with Disabilities Act.

4. Diploma privilege

Issue:

Should law school graduates who receive a diploma be auto-matically admitted to The Florida Bar?

Discussion:

Years ago, a diploma from a law school was all it took to be admitted to the bar. At that time, however, there were stronger informal apprenticeship and internship programs to ease the transition into the practice of law. The diploma privilege was abolished in 1951. The Supreme Court Select Committee considered the idea of restoring the diploma privilege but decided that the public interest is best served by requiring law school graduates to pass the bar exam before they are allowed to practice law, because passage ensures minimal standards of legal knowledge.

See November 30, 1994, minutes in Appendix E.

Recommendation:

No. The Supreme Court Select Committee recommends against reinstatement of a diploma privilege of any kind.

B. Scheduling and Timing

1. Allowing law students to take the bar exam before graduation

Issue:

Should students be allowed to take the bar exam in the third year of law school?

Discussion:

The rationale for permitting students to take the bar exam in the third year of law school is to allow graduates, many of whom have extensive student loans to repay, to practice law sooner. Proponents noted that it may take up to six months

after graduation before graduates who pass the bar exam are admitted to the bar. They argued that the bulk of the bar exam covers subject matter taught during the first two years of law school. In the third year, they said, students typically take elective courses to help them in a particular area where they want to practice and these subjects are not covered by the bar exam.

When the Supreme Court Select Committee discussed the issue at its June 19, 1995, meeting, law school deans said that allowing law students to take the bar exam in their third year would be disruptive. Instead of focusing on their courses, students would devote their time to studying for the bar exam, the deans said. One state, Georgia, allowed law students to take the bar exam in their third year, but the committee learned that it no longer does so.

There was some support for allowing students to take the multi-state portion (MBE) and greater support for allowing them to take the professional ethics portion (MPRE) of the bar exam in their third year of law school, but the Supreme Court Select Committee rejected these positions because members found the argument that it would disrupt law school studies to be compelling. Moreover, there was a concern expressed that if the taking of a particular component of the bar exam were allowed before graduation, that component might be viewed as less serious, less difficult, or less significant. The committee especially noted that it would be inappropriate to segregate the professional ethics (MPRE) exam in that manner.

See January 14, 1995, June 19, 1995, and February 12, 1997, minutes in Appendix E.

Recommendation:

No. The Supreme Court Select Committee recommends no change from the current practice of taking the bar exam only after law school graduation.

2. Early filing of bar admission applications by law students

Issue:

Should law students be required to file earlier for admission to The Florida Bar?

Discussion:

At the January 14, 1995, meeting some members of the Supreme Court Select Committee proposed that law schools require students to file early applications for admission to The Florida Bar, or in the alternative, require students to file a

statement that they do not intend to practice law in Florida. The committee found at its February 12, 1997, meeting that this issue has been addressed by the Board and there was no need to recommend additional action.

To encourage early filing, the Board implemented a graduated-scale application fee which costs less the earlier the student applies for admission. Also, when the Board conducts on-site orientation sessions at law schools, it emphasizes the importance of early filing.

When applicants/students file their applications earlier, the Board can complete its character and fitness investigations prior to the applicants taking the bar exam. This speeds up the admission process. Also, if applicants are not appropriate candidates for admission to The Florida Bar, they can learn that early on, possibly saving them the expense and time of completing law school.

See January 14, 1995, and February 12, 1997, minutes and Bench/Bar Commission Recommendations 32 and 40 in Appendix A.

Recommendation:

No. The Supreme Court Select Committee does not recommend mandatory early filing for admission. The committee notes, however, that voluntary early filing of bar admission applications has been affirmatively addressed by The Florida Board of Bar Examiners.

C. Communications

1. Communications with law students

Issue:

Are the Board's communications with law students adequate?

Discussion:

The Supreme Court Select Committee considered whether there was a need for the Board to improve its communications with law students regarding:

- the importance of the investigative hearing,

- an enhanced, uniform orientation program in the law schools, and

- the informational brochures distributed to students when they file bar applications.

On January 14, 1995, attorneys who represent bar applicants in proceedings before the Board told the committee that applicants were not adequately informed as to the importance of the investigative hearing. They said the Board needs to do a better job of informing applicants about the bar admission process while they are still in law school. They suggested that attorneys who are not associated with the Board could volunteer to explain the process to students near the beginning and end of law school.

The Supreme Court Select Committee found that since 1995 the Board has revised the notice of investigative hearing to give it a more "official" appearance as well as clarify the right to legal counsel. The Board now does an exceptionally good job of informing applicants of the importance of the investigatory hearing. Therefore, the committee decided not to recommend additional action.

Members found that law schools, the Florida Supreme Court, The Florida Bar, and The Florida Board of Bar Examiners have cooperatively joined to address the issue of an enhanced, uniform orientation program.

The Supreme Court Select Committee also found that the brochures developed by the Board are adequately informing law students of the Board's policies and procedures.

See November 30, 1994, January 14, 1995, and March 31, 1995, minutes in Appendix E.

Recommendation:

Accomplished. The Supreme Court Select Committee finds that the issue of improving communications with law students has been affirmatively addressed by the Board, and the committee encourages the Board to continue its proactive efforts in this regard.

II. ADMISSIONS PROCESS/CHARACTER AND FITNESS

A. Admissions Process

1. Modifying the bar application and shortening the time frame for review

Issue:

Should the Board modify the bar application and shorten the time frame for review?

Discussion:

At its March 31, 1995, meeting the Supreme Court Select Committee discussed whether the Board's forms imposed an undue burden on applicants by requiring them to disclose unnecessary information, much of which had little relevance. Among the issues discussed by the panel at that meeting was the detailed information applicants have been required to provide regarding past employers and addresses. Subsequently, the Board addressed those issues by implementing Recommendations 29, 30, 32, and 40 of the Bench/Bar Commission.

Mary Piccard, former chair of the Board, reported to the Supreme Court Select Committee in a June 24, 1996, letter on the changes that were implemented to streamline the Board's forms, as follows:

- The requirement for reporting street addresses for past residences is now limited to the past three years.
- Employer addresses are now limited to the past ten years or to age 16, whichever is shorter.
- The Board deleted its question about having been an officer in forming a corporation.
- It narrowed the scope of the mental health questions to inquire only into those applicants diagnosed or treated within the past ten years for several specifically listed serious conditions.

Ms. Piccard reported that the time frame for completing review of an application has been shortened substantially as a result of new procedures implemented by the Board and staff. The number of days from filing until completion decreased as follows:

- 188 days in 1992-93,
- 187 days in 1993-94,
- 174 days in 1994-95,
- 163 days in 1995-96, and
- 154 days in 1996-97 (year to date).

"From comments made by applicants and their attorneys there is an acknowledgment that the Board's process is moving quickly," she said.

The Supreme Court Select Committee applauds this progress and recommends that the Board continue its laudable efforts.

See January 14, 1995, and March 31, 1995, minutes and Bench/Bar Commission Recommendations 29, 30, 32, and 40 in Appendix A. See Appendix D for revised application form.

Recommendation:

Accomplished. The Supreme Court Select Committee finds that the Board has appropriately addressed the issue of requiring bar applicants to disclose unnecessary information and has improved its processing time.

2. Fast track for lawyers practicing in another jurisdiction

Issue:

Should the Board implement a fast track procedure to shorten the time it takes to admit to The Florida Bar attorneys who have been admitted to the bar and are practicing in other states?

Discussion:

Advocates of a fast track argued that the time frame should be shortened for admitting out-of-state lawyers who have practiced successfully with no problems. A past president of the Association of Professional Responsibility Lawyers recommended an abbreviated investigation for out-of-state lawyers who have practiced successfully without problems for a set number of years. However, a former attorney for The Florida Bar who now represents bar applicants, told the Supreme Court Select

Committee that he disagreed. Examples were discussed. Several presenters opined that Florida has the highest character and fitness standards among bar examiners nationally.

The Supreme Court Select Committee determined that because other states may have lower admission standards, there is not a compelling reason to change or modify the process for admitting out-of-state lawyers.

See January 14, 1995, minutes in Appendix E.

Recommendation:

No. The Supreme Court Select Committee recommends against creating a fast track procedure for practicing lawyers from other states who are seeking admission to The Florida Bar.

3. Information on the status of applications

Issue:

Should applicants have the right to know the status of their applications?

Discussion:

At the January 14, 1995, meeting, several members of the Supreme Court Select Committee expressed concern that applicants were having unnecessary problems obtaining information about the status of their applications. In response to questioning by the committee, Kathryn Ressel, executive director of the Board, said that is now possible for applicants to determine the status of their applications by calling the Board. According to Ms. Ressel, applicants who call with questions are given information during the initial phone call about what is outstanding in their investigation, from information available in the computer records. In some cases, when more extensive review of the file is required, the applicant is answered by mail, usually by the next day. If an applicant complains or expresses frustration, the telephone calls are referred to a supervisor or to Ms. Ressel, who may direct the applicant to the information needed to complete the application.

Supreme Court Select Committee members and attorneys testifying before the committee manifested great concern with complaints that applicants were treated in an improper or discourteous way by the Board's staff. **To the credit of the Board and staff, when advised of these concerns, Ms. Ressel immediately implemented new procedures that improved the**

Board's communications with applicants seeking information about the status of their applicants.

At the March 31, 1995, meeting, Ms. Ressel told the Supreme Court Select Committee the Board has improved its procedures for responding to requests for information about the status of applications. She noted that the Board has changed the tone of its letters to applicants to make them more courteous. When the law school deans addressed the committee, they reported a marked improvement in the responses applicants receive from the Board.

See January 14, 1995, March 31, 1995, and February 12, 1997, minutes in Appendix E.

Recommendation:

Accomplished. The Supreme Court Select Committee finds that the Board has adequately addressed concerns about the treatment of applicants who call to inquire about the status of their applications.

B. Character and Fitness Investigations

1. In-patient alcohol and drug abuse evaluations

Issue:

Are in-patient alcohol and drug abuse evaluations appropriate and, if so, when?

Discussion:

Initially, the Supreme Court Select Committee heard extensive criticism of the Board's substance abuse protocol and its requirement for a three-day in-patient evaluation to determine whether an applicant was a substance abuser. The committee questioned why an in-patient evaluation was often required when an applicant was suspected of drug or alcohol abuse. In-patient evaluations were sometimes conducted in mental hospitals, subjecting applicants to extreme trauma, and the cost, generally ranging from $3,000 to $4,000, was prohibitive.

Dr. Carl Eisdorfer, director of the Department of Psychiatry at the University of Miami College of Medicine, discussed the substance abuse protocol at length at the committee's March 31, 1995, meeting. Dr. Eisdorfer said screening bar applicants for drug and alcohol abuse is a difficult problem because they are bright people who are trying to hide their problems, not seek help. He recommended a three-step process where bar applicants suspected of substance abuse

would be screened for information, required to submit to an out-patient evaluation by two independent psychiatrists or one psychiatrist and one psychologist, and required to undergo an in-house evaluation if recommended by the professionals who conducted the out-patient evaluations.

The Board substantially changed its procedures in response to criticism by the Supreme Court Select Committee and others that it was too quick to require expensive in-patient evaluations. The protocol was modified to eliminate unnecessary in-patient evaluations. If in-patient evaluations are recommended following the initial evaluation, the Board's consultant reviews the recommendation and provides the Board with a second opinion. These revisions have substantially reduced the cost and obtrusiveness of substance abuse evaluations.

The Supreme Court Select Committee endorsed the Board's revised substance abuse protocol. However, the committee further recommended that when an in-patient evaluation is requested, the applicant should be immediately provided with the initial evaluation and the second opinion by the Board's expert. Further, applicants should be given the opportunity to submit an evaluation by their own psychiatrist within 30 days along with other factual information they want the Board to review in making its determination of whether an in-patient evaluation will be required.

When the committee approved the recommendation, members discussed but did not formally act on additional ways to improve the screening of applicants for drug or alcohol abuse. In letters to the Supreme Court Select Committee, an attorney and Professor Randolph Braccialarghe of Nova Southeastern University recommended hair analysis, saying it was an effective, unobtrusive, and reliable way to determine whether applicants were continuing to abuse drugs or alcohol. The committee referred this suggestion to the Board and recommended that the protocol be periodically reviewed, perhaps every five or six years, to ensure that it stays abreast of the latest medical technology and expertise.

See November 30, 1994, January 14, 1995, and March 31, 1995, minutes in Appendix E and revised substance abuse guidelines in Appendix C.

Recommendation:

Substantially accomplished. The Florida Supreme Court should order that when the Board orders an in-patient evaluation, under the revised substance abuse protocol, the applicant should be immediately provided with the initial evaluation and the second opinion by the Board's consultant. In addition, the applicant should be given the opportunity to submit within 30 days an evaluation by his or her own psychiatrist along with any other factual evidence the applicant wishes the Board to review in making its determination of whether an in-patient evaluation will be required. The Board should periodically review the substance abuse protocol, at least every five to six years.

2. The number, geographic diversity, and cost of drug and alcohol abuse evaluation centers

Issue:

Are there enough approved centers, are they sufficiently diverse geographically, and are they reasonably priced?

Discussion:

The Supreme Court Select Committee raised concerns about the number, location, and cost of the evaluation centers. The Board responded to members' concerns by approving a number of additional centers around the state as well as out-of-state. Further, the committee found the Board had reduced the cost of evaluations substantially for many applicants by providing for out-patient evaluations.

In her June 24, 1996, letter, Mary Piccard noted that the Board had responded to Bench/Bar Commission Recommendation 36 by compiling a list of seven places where applicants can receive out-patient evaluations for chemical dependency.

See November 30, 1994, January 14, 1995, and March 31, 1995, minutes and Bench/Bar Commission Recommendation 36 in Appendix A.

Recommendation:

Accomplished. The Supreme Court Select Committee finds that the Board has responded adequately to concerns about the number, location, and cost of drug and alcohol abuse evaluation centers. The Board should periodically review this issue and report its findings to the Supreme Court.

3. Character and fitness inquiries into financial problems/ irresponsibility

Issue:

Should character and fitness inquiries into financial problems be limited to fraud and bad faith?

Discussion:

Lawyers who represent applicants for admission to the bar told the Supreme Court Select Committee at its January 14, 1995, meeting that inquiries into the financial status of applicants should be limited to evidence of fraud and bad faith. The consensus of those lawyers testifying was that financial investigations should be redefined but not discarded. They agreed that financial inquiries into bankruptcy should be limited to fraud and bad intentions. Committee members discussed the financial problems that students incur because of the large amount of loans they take on to pay for law school.

The Board responded to these concerns by narrowing the scope of financial inquiries. In addition, the Board furnished the Supreme Court Select Committee with a copy of its recently adopted credit protocol.

See January 14, 1995, minutes and the credit protocol in Appendix B.

Recommendation:

Accomplished. The Supreme Court Select Committee finds that the Board has adequately addressed issues relating to inquiries into financial problems or irresponsibility.

4. Impact of financial inquiries on minorities

Issue:

Do financial inquiries have a disproportionate impact on minorities?

Discussion:

Members of the panel of attorneys who testified before the Supreme Court Select Committee said there is a perception of discrimination among minority applicants, based on the feeling that the Board has conducted more extensive reviews of the financial condition of minority applicants. Examples were discussed.

Committee members, noting anecdotal evidence presented, expressed concern over the possibility that financial inquiries may have a disproportionate impact on minorities, but said they lacked sufficient data to determine whether that was the case. They recommended that the Board collect data on the gender and race of applicants who are called to an investigatory hearing and furnish that information to the Florida Supreme Court.

See January 14, 1995, minutes in Appendix E.

Recommendation:

The Florida Supreme Court should order the Board at least every two years to collect data on the race and gender of applicants called to investigatory hearings, regarding financial inquiries, and furnish the results to the Court.

5. The right to be provided with and respond to evidence

Issue:

Should applicants have the right to be provided with and respond to evidence that may be used against them?

Discussion:

In their discussions of this issue, Supreme Court Select Committee members differed on whether applicants should be given the right to respond to evidence that may be used against them. Proponents of providing applicants with the evidence against them and allowing them to respond to it argued that applicants should have a right to know the allegations the Board is investigating. Several other issues were involved in the discussion as some members questioned how applicants could resolve invalid complaints against them if they were not allowed to review and respond to the evidence. Others questioned whether opening the records would inhibit persons with knowledge of a problem area that should be investigated from coming forward. Some members questioned the urgency of providing this information to applicants. They said it is important to rely on the good sense of Board members in sorting through invalid complaints. Proponents said opening the process would speed it up by allowing the applicant to quickly dispose of complaints that were false or irrelevant.

The Supreme Court Select Committee's discussion was prompted by Bench/Bar Commission Recommendations 34 and 39. Those recommendations, which were criticized by some members of the committee, provided that all proceedings should be public after the filing of formal specifications and the Board should be required to furnish applicants with copies of complaints, including the name and address of persons commenting adversely on their fitness to practice law. Applicants would be given an opportunity to respond.

In her June 24, 1996, letter to the Supreme Court Select Committee, Mary Piccard said the issue of confidentiality had been considered by the Florida Supreme Court and the Board on several occasions. She quoted from Florida Board of Bar Examiners re Amendment to Rules Relating to Admission to the Bar, 676 So. 2d 372 (Fla. 1996), in which the Florida Supreme Court rejected a proposal by two attorneys who represent applicants before the Board to open all records. Ms. Piccard noted that the recommendation to open the records was inconsistent with the Court's ruling.

Regarding the call in Bench/Bar Commission Recommendation 39 to furnish applicants with copies of complaints, Ms. Piccard wrote: "The need for initial confidentiality of comments from third parties is essential if the Board is to continue to conduct a thorough background investigation for all bar applicants." She said the Florida Supreme Court recognized the need

for confidentiality in Florida Board of Bar Examiners re Interpretation of Article I, Section 14d of the Rules, 581 So. 2d 895 (Fla. 1991). In that case, the Florida Supreme Court held that "The Court is concerned that unless the Board's investigative files are held in confidence, many of those from whom the Board seeks information concerning applicants would be unwilling to candidly respond. Thus, by its promulgation of Article I, Section 14, the Court made a calculated decision that the Board's records should be confidential except under certain limited circumstances."

In 1995, the Florida Supreme Court's Bench/Bar Implementation Commission recommended that the Court implement Bench/Bar Commission Recommendation 39 by adding the following to Article III, Section 3:

> h. The Florida Supreme Court shall direct The Florida Board of Bar Examiners to furnish each applicant with a copy of any complaint, together with the names and addresses, of all persons commenting adversely upon the applicant's fitness to practice law. The applicant shall thereafter be granted a reasonable opportunity to respond in writing to any such complaint. All persons providing information to The Florida Board of Bar Examiners shall be granted qualified immunity from civil liability arising from any response to a Board inquiry.

Members of the Supreme Court Select Committee noted, but decided that it was beyond their charge to resolve a conflict between this Bench/Bar Commission recommendation and a 1991 opinion of the Florida Supreme Court upholding the confidentiality of such records. The Supreme Court should revisit this issue to consider whether to recede from its opinion in Florida Board of Bar Examiners re Interpretation of Article I, Section 14d of the Rules, 581 So. 2d 895 (Fla. 1991) and implement the recommendation of the Bench/Bar Commission.

See January 14, 1995, and March 31, 1995, minutes in Appendix E; Bench/Bar Commission Recommendations 34 and 39 in Appendix A; Florida Board of Bar Examiners re Amendment to Rules Relating to Admission to the Bar, 676 So. 2d 372 (Fla. 1996); and Florida Board of Bar Examiners re Interpretation of Article I, Section 14d of the Rules, 581 So. 2d 895 (Fla. 1991) .

Recommendation:

The Supreme Court Select Committee defers consideration of this issue to the Florida Supreme Court without a positive or negative recommendation.

6. Publishing Florida Supreme Court opinions in bar admission cases

a. writing opinions in all bar admission cases

Issue:

Should the Florida Supreme Court write opinions in all bar admission cases?

Discussion:

The Florida Supreme Court writes opinions in some, but not all, of the cases it considers involving admission to The Florida Bar. In some instances, the Court issues an order without a written opinion. Supporters of written opinions in all bar admission cases said it would create a body of law making it clearer to applicants and their attorneys the legal standards applicants would be required to meet to gain admission. The Bench/Bar Commission in its Recommendation 35 said all bar application cases decided by the Court should be submitted to the Southern Reporter for publication. Recommendation 35 further requested that the Supreme Court consider issuing memo opinions on those cases that affirm a recommendation of the Board.

Mary Piccard said the Florida Supreme Court now issues opinions in more bar admission cases. Expanding case law on admissions issues provides greater guidance to applicants and their attorneys, she said. However, each case involves a unique set of facts. "Thus," Ms. Piccard said, "consistency and adherence to Supreme Court precedent can only be properly considered within the confines of the wide variety of facts presented to the Board on a case-by-case basis."

Chief Justice Kogan and Justice Harding reported that the Supreme Court writes opinions in bar admission cases that have the potential to expand case law. However, if the facts and outcomes are similar to previously decided cases in which opinions were written and if the Court is affirming the Board's recommendation, the Court may dispose of those contested bar admission cases by entering an order.

The Supreme Court Select Committee found that the Supreme Court now writes opinions in bar admission cases that expand the body of case law. The committee found no reason to recommend that the Court increase its workload by writing opinions in those cases that will not expand the body of case law for applicants and their attorneys.

See May 27, 1994, and March 31, 1995, minutes in Appendix E and Bench/Bar Commission Recommendation 35 in Appendix A.

Recommendation:

No. The Supreme Court Select Committee does not recommend that the Florida Supreme Court write opinions in all bar admission cases.

b. publishing opinions in bar admission cases

Issue:

Should the Florida Supreme Court publish opinions in all bar admission cases?

Discussion:

The Bench/Bar Commission, in its Recommendation 35, advocated that all opinions entered by the Florida Supreme Court in bar admission cases be published. Publication expands case law and provides greater guidance to applicants and their attorneys.

The Supreme Court Select Committee found that all Supreme Court opinions in bar admission cases are now submitted to the Southern Reporter for publication. Thus, this issue has been affirmatively addressed by the Court.

See March 31, 1995, minutes in Appendix E and Bench/Bar Commission Recommendation 35 in Appendix A.

Recommendation:

Accomplished. The Supreme Court Select Committee finds that the Supreme Court now submits all opinions in bar admission cases for publication.

7. Handling of conditional admittees

Issue:

How should conditional admittees be supervised?

Discussion:

The issue was raised by Bench/Bar Commission Recommendation 37, which said applicants admitted to the bar conditionally on the recommendation of The Florida Board of Bar Examiners should be monitored by a designated referee appointed by the Florida Supreme Court. The function of designating referees to monitor conditional appointees is currently performed by The Florida Bar.

See Bench/Bar Commission Recommendation 37 in Appendix A .

Recommendation:

The Florida Supreme Court should enter an order mandating that conditional admittees be monitored by a designated referee appointed by the Court. The Florida Supreme Court should designate its Bar Admissions Committee, or other appropriate entity, to develop appropriate monitoring criteria.

III. COMPOSITION AND OPERATION OF THE BOARD

A. Composition and Operation

1. Performance audits

Issue:

Should the Board undergo periodic performance audits?

Discussion:

Currently, the Board's staff conducts internal audits and conveys the results to the Board and the Florida Supreme Court. After an extensive discussion, the Supreme Court Select Committee passed the performance audit recommendation, finding that it is a common sense, good management approach to improve the performance of the Board. The committee recognized that Board members constantly question and probe the process, amounting in effect, to a self-audit; however, the committee found that an outside evaluation by a group appointed by the Florida Supreme Court would be advantageous to the Board. As previously noted, the Supreme Court Select Committee also recommends that certain functions—such as ADA compliance and the substance abuse protocol—should be reviewed periodically, perhaps every five years. The committee also notes that the Florida Supreme Court has an Inspector General who may be the appropriate entity to conduct or lead such performance audits, although the designation of audit responsibility is within the sound discretion of the Court.

See March 31, 1995, minutes in Appendix E.

Recommendation:

Yes. The Florida Supreme Court should require periodic performance audits of The Florida Board of Bar Examiners, perhaps conducted or supervised by the Supreme Court's Inspector General.

2. Periodic review by an oversight committee

Issue:

Should the Board be subject to periodic review by an oversight committee appointed by the Florida Supreme Court?

Discussion:

The Supreme Court Select Committee voted unanimously against the establishment of an oversight committee to conduct periodic reviews. The Subcommittee on the Composition and Operation of the Board found that oversight of the Board is a function of the Florida Supreme Court and is performed well. As noted previously, the Supreme Court Select Committee recommends periodic review of a number of Board functions, although it makes no recommendation as to the mechanism for such review. The method should be determined by the Florida Supreme Court when it deems review necessary. Furthermore, as noted in III.A.1. above, the Court currently has an Inspector General who may be the appropriate person to audit performance.

See February 12, 1997, minutes in Appendix E.

Recommendation:

No. The Supreme Court Select Committee does not recommend scheduling of a periodic general review of the Board by an oversight committee appointed by the Florida Supreme Court. Elsewhere in this report, the Supreme Court Select Committee has recommended scheduled review of specific Board functions.

3. Peer review

Issue:

Should members of The Florida Board of Bar Examiners be subjected to peer review?

Discussion:

The Supreme Court Select Committee discussed whether a peer review process was needed to control possible abuses by Board members. Members questioned whether the chair of the Board

has sufficient authority to discipline members in the event of unprofessional conduct. They noted it seldom occurs, but when it does it can be egregious. They acknowledged that members of a board that has such an impact on the lives of people who appear before it need to be reminded of their proper role, although not necessarily by formal rule.

The committee agreed that a spirit of collegiality is important to the Board and formal peer review rules could hinder that. In recommending no change, a majority of members took the position that the chair of the Board has the inherent authority and responsibility to discipline Board members for unprofessional conduct.

See January 14, 1995, and February 12, 1997, minutes in Appendix E.

Recommendation:

No. The Supreme Court Select Committee recommends against implementing a formal peer review process.

4. Tenure of Board members

Issue:

Should the length of terms served by Board members be changed?

Discussion:

The Supreme Court Select Committee discussed whether the length of terms should be shortened from the current five years to three years, but decided to recommend no change. A three-year term was proposed by members who expressed concern over reappointing Board members to a second, five-year term. Supporters of the five-year term said its benefits include continuity, stability, and leadership.

See October 20, 1995, minutes in Appendix E.

Recommendation:

No. The Supreme Court Select Committee recommends no change from the current five-year term for Board members.

5. Bifurcated investigatory and adjudicatory bodies

Issue:

Should Board members be prohibited from serving on both the panel that investigates the allegations against an applicant and the panel that adjudicates the case?

Discussion:

The Supreme Court Select Committee took no action because a rule prohibiting Board members from serving on both the investigative and adjudicatory panels in a case was adopted in 1992. Total bifurcation, never recommended by the Bench/Bar Commission and never adopted by the Florida Supreme Court, was recommended to the Supreme Court Select Committee by an attorney who represents applicants in bar admission proceedings. He said the two functions should be completely separated so that Board members who sit on investigatory panels would never sit on adjudicatory panels, and vice versa. The Judicial Qualifications Commission, which investigations complaints against judges, has adopted total bifurcation of its investigative and adjudicatory panels.

See January 14, 1995, and March 31, 1995, minutes in Appendix E and Bench/Bar Commission Recommendation 33 in Appendix A.

Recommendation:

Accomplished. The Supreme Court Select Committee recommends no further action, finding the 1992 rule adequate to protect applicant interests.

6. Establishing an ombudsman

Issue:

Should the position of ombudsman be created to help applicants resolve problems that arise during the application process?

Discussion:

The discussion of providing an ombudsman grew out of complaints by applicants that the Board's staff was not communicating effectively with them. The Supreme Court Select Committee found that over the last three years the Board has made a marked improvement in its communications with applicants. Given the policy changes implemented by the Board and staff, the committee determined there was no need for an ombudsman.

See January 14, 1995, minutes in Appendix E.

Recommendation:

No. The Supreme Court Select Committee recommends against establishment of an ombudsman, finding that the communications issues have been effectively addressed.

7. Allowing law professors and judges to serve on the Board

Issue:

Should the rules be changed to allow law professors and judges to serve on The Florida Board of Bar Examiners?

Discussion:

This recommendation grew out of a discussion of a formalized, continuing dialogue or relationship between the Board and the law schools. Most of the discussion focused on whether law professors should be allowed to serve on the Board, but there was also discussion of removing the current prohibition that prevents judges and law school trustees from serving. Proponents said that allowing law professors to serve on the Board would serve the interests of students by improving

communications between the Board and the faculty. Concerns were expressed about possible conflicts of interest on the part of faculty members because of their relationship with law students, time constraints, and creating seats on the Board earmarked for certain classes of people.

The Supreme Court Select Committee found the "conflict of interest" based prohibition on law professor service illogical, as law professors are required to make discerning judgments about their own students' qualifications on a routine basis.

The Supreme Court Select Committee likewise agreed that the prohibition against judicial service should be removed. The recommendation is consistent with Canon 4 of the Code of Judicial Conduct, which encourages judges to participate in activities to improve the law, the legal system, and the administration of justice. Making discerning judgments is the very nature of the judicial function and is not to be equated with serving as a character witness or using prestige of office to aid the private interest of another, both prohibited by Canon 2.

See February 12, 1997, minutes in Appendix E.

Recommendation:

Yes. The Florida Supreme Court should amend Article 1, section 3.e., Rules of the Supreme Court Relating to Admissions to the Bar, to eliminate the exclusion of certain classes of people in order to broaden the ability to participate. Such amendment should clearly specify law professor and judge eligibility to serve.

B. Florida Board of Bar Examiners Hearing Procedures

1. Mediation

Issue:

Should mediation be used to determine whether applicants who face specifications should be admitted to The Florida Bar?

Discussion:

The issue of mediation was raised by the chair, who said it may represent a quicker, less expensive alternative for both applicants and the Board. He suggested that the Board propose a pilot project to the Florida Supreme Court, recommending when mediation would be an appropriate alternative and when it would not.

Advocates of mediation in bar admission cases noted that Edward Blumberg, President-Elect of The Florida Bar, has appointed a committee to consider whether mediation should be permitted in attorney grievance proceedings.

There was unanimous agreement by committee members that mediation should be considered in this context. The committee recommended that the Florida Supreme Court direct the Board to propose a pilot project. It seemed logical to Supreme Court Select Committee members that such a process would redound to the benefit of both the Board and the applicants. They thought mediation would speed up the process, save both applicants and the Board time and money, and encourage the quick and effective resolution of less serious cases. Members said the Board should report to the Supreme Court within six months of the issuance of this report on its progress in developing a mediation pilot project.

See February 12, 1997, minutes in Appendix E.

Recommendation:

Yes. The Supreme Court Select Committee recommends that the Florida Supreme Court direct The Florida Board of Bar Examiners to design a pilot project providing for mediation in appropriate bar admissions cases, and to submit its proposal to the Supreme Court for appropriate judicial action within six months.

2. Including vote and dissenting opinions in the record

Issue:

Should the record transmitted to the Florida Supreme Court include the vote and dissenting opinions?

Discussion:

When the Supreme Court Select Committee discussed this issue, members inquired whether the Florida Supreme Court is informed of the vote taken by the Board in a pending case. Some members believed it would be helpful to the Court in reviewing Board decisions to know whether there were any divisions of opinion. Chief Justice Kogan said the Court does not receive that information in either bar admission cases or attorney grievance proceedings.

The committee decided to recommend no action.

See March 31, 1995, minutes in Appendix E.

Recommendation:

No. The Supreme Court Select Committee recommends no change to the current procedure.

3. Formal hearings

a. consent agreements

Issue:

Should consent agreements be allowed?

Discussion:

The Supreme Court Select Committee found this issue has been resolved to their satisfaction. The Board has implemented two kinds of consent agreements:

- When the Board identifies a drug, alcohol or psychiatric problem, the applicant and Board can enter into a consent agreement and thereby avoid a formal hearing.

- Counsel for the Board and an applicant can waive a formal hearing and enter into a proposed consent judgment. The consent judgment contains a proposed resolution of the case pursuant to one of the recommendations available to the Board following a formal hearing. If the consent judgment is approved by the full Board, then the case is resolved in accordance with the consent judgment without further proceedings.

See January 14, 1995, and February 12, 1997, minutes in Appendix E.

Recommendation:

Accomplished. The Supreme Court Select Committee finds that the Board has taken appropriate action.

b. public proceedings

Issue:

Should proceedings be public?

Discussion:

The Supreme Court Select Committee took no action on the issue of public hearings, which was addressed by Bench/Bar Commission Recommendation 34. The Bench/Bar Commission recommended that all proceedings be open after formal specifications are filed. But Mary Piccard noted in her June 24, 1996, letter to the Supreme Court Select Committee that the Florida Supreme Court has upheld confidentiality of certain records. The Bench/Bar Commission's recommendation is inconsistent with the Supreme Court's rulings. (See also discussion on issue II.B.5. hereinabove.)

See January 14, 1995, minutes in Appendix E; Bench/Bar Commission Recommendation 34 in Appendix A; Florida Board of Bar Examiners re Amendment to Rules Relating to Admission to the Bar, 676 So. 2d 372 (Fla. 1996); and Florida Board of Bar Examiners re Interpretation of Article I, Section 14d of the Rules, 581 So. 2d 895 (Fla. 1991).

Recommendation:

The Supreme Court Select Committee defers consideration of this issue to the Florida Supreme Court without a positive or negative recommendation.

In Memoriam

The Supreme Court Select Committee to Study the Florida Board of Bar Examiners salutes the memory of Lawrence G. Mathews, Jr., who died on March 25, 1997, after a short illness.

In addition to his service on the Supreme Court Select Committee, Mathews was a leader in Bar activities for nearly two decades. He chaired the Pro Bono Legal Services Committee that oversaw creation of the statewide pro bono plan ordered by the Florida Supreme Court. This year, Mathews was chair of the Board Review Committee on Professional Ethics. He had served on The Florida Bar Board of Governors since 1992.

Mathews had a long history of activity in state and local bar activities. He was president of the Young Lawyers Division in 1982-83, president of the Orange County Legal Aid Society in 1986-87, and president of the Orange County Bar Association in 1988-89. He also was a member of The Florida Board of Bar Examiners from 1984-89, including a year as chair. He served on and chaired a Ninth Circuit grievance committing during 1983-86 and served on the Supreme Court's Racial and Ethnic Bias Study Commission from 1989-91.

Larry Mathews' death is a great loss to the legal system of Florida. The Supreme Court Select Committee extends its condolences to his family and colleagues.

Acknowledgments

The Supreme Court Select Committee expresses its gratitude and appreciation to Blan L. Teagle and Debra G. Howells of the Office of the State Courts Administrator for their hard work and dedication as staff to the committee.

The Supreme Court Select Committee thanks the following persons, who assisted in the preparation of this Final Report and Recommendations:

John C. Van Gieson, John C. Van Gieson Media Relations—Copywrighting
Debra G. Howells, Office of the State Courts Administrator—Copywrighting & Editing
Blan L. Teagle, Office of the State Courts Administrator—Copywrighting & Editing
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Chairman Young's Remarks

Former Chief Justice Rosemary Barkett created the Supreme Court Select Committee over three years ago. She did so in response to a recommendation in the Bench/Bar Commission's January 1993 report for "extensive amendment and revisions to the procedures employed by the Board of Bar Examiners in investigating the fitness of individuals for membership in The Florida Bar."

The former chief justice also noted in her administrative order establishing the committee that the Florida Legislature had ". . . expressed an interest and concern about the process of admitting individuals to the practice of law." That ***interest*** was in the form of a resolution introduced in the Florida Senate (SR 2680) by Senator John Grant of Tampa, which called on the Supreme Court to create a special panel to study the Board of Bar Examiners.

Thirteen members were appointed to the Supreme Court Select Committee, including Senator Grant and the former President of the Senate, The Honorable Philip D. Lewis. Justice Gerald Kogan was appointed as the Chair, and served with dedication and great distinction until he became Chief Justice of the Florida Supreme Court in 1996, at which time I was appointed as his successor.

The Supreme Court Select Committee was not created without good cause. The dedicated members of the committee and its staff did not devote hours upon hours over a three-year period in an unneeded exercise. Indeed, there ***were*** some stale and onerous procedures being utilized by The Florida Board of Bar Examiners. And hopefully all of the legislative concerns that sparked the creation of the Select Committee were appropriately considered and satisfactorily resolved.

And there were a number of complaints that went back many years with the way The Florida Board of Bar Examiners conducted their investigations and examined applicants for both their moral and academic fitness to engage in the practice of law. Some were justified. Others were not.

What was truly remarkable was the high level of cooperation that we received from the new Executive Director of the Board of Bar Examiners, Kathryn Ressel, and her staff. Of course, we recognize that cooperative spirit would not have been possible but for the acquiescence of the Board itself. This final report details the extent and accomplishments that resulted from that cooperative effort.

The Florida Board of Bar Examiners is composed of highly motivated and principled individuals who voluntarily devote approximately 500 hours annually to their work. And as indicated in the following Final Report, the Board made some dramatic changes in its own rules and regulations. To their credit, some of these needed changes came as a result of the Board's ***own*** study and investigation. Not ours. We salute them for it. But there is some more left to do.

Among our most significant recommendations is that the Supreme Court direct the Board of Bar Examiners to bring the concept of mediation to the admission process. If properly implemented, this will be a dramatic time and money saver for not only the Board but also the applicant.

Edward Blumberg, the incoming President of The Florida Bar, has appointed a committee to study the incorporation of mediation into the Bar's grievance program. That bold and innovative suggestion sparked the idea that mediation may be ripe for the admission process.

Another significant recommendation in this report is that performance testing be piloted as a component of the Florida bar exam. The performance test is designed to measure applicant's ability to apply actual legal skills in resolving realistic legal issues. Proficiency on the performance test may more accurately measure an attorney's readiness to resolve a client's practical problems.

The members of the Select Committee had many spirited debates over various issues. We came from different venues. We had our own philosophical views and did not hesitate to express them. Some positions were changed or modified as the result of the debate. The minutes are so reflective. I am comfortable that those who will consider and act upon our recommendations will review the full appendix which includes the minutes of our meetings.

We were saddened by the untimely demise of one of our members Larry Mathews. Larry was a great lawyer and a distinguished bar leader who was totally devoted to the improvement of the legal profession and the administration of justice. He was an exemplar for us all and we honor his memory.

To all of the members of the Select Committee, past and current, I say "thank you!" It was an honor to work with each of you. To our staff, Debbie Howells and Blan Teagle, I convey for myself and the full committee our heartfelt thanks and appreciation. We could not have done it without you.

Our three year journey is now over. And may it please the Court.

Burton Young
Chairman
April 1997