President’s message:

What have we done for you lately?

by Timothy P. Chinaris, President

It is all too common to hear the question “What have you done for me lately?” Sometimes we even ask it ourselves. As a membership organization, the Out-of-State Practitioners Division needs to be able to provide its members—and potential members—with a positive answer to this question. As incoming president of the division and a member of the Executive Council for the past few years, I am pleased to report the division has worked hard to advance the interests of out-of-state Florida Bar members, and we will continue these efforts over the upcoming year.

Division membership provides benefits, both tangible and intangible. One benefit that has proven useful to all of our division members is the free ethics tape the division sends out regularly. For the first time, this year’s recording will be on a CD (instead of a cassette, as in the past). This CD will carry two hours of Florida CLE ethics credit—at no cost to you! Look for it in your mailbox in the near future.

The division continues to provide high-quality CLE opportunities to our members, both outside and inside the state of Florida. Last March we presented a full-day seminar in Chicago, which was well attended by our members in that area. At the Bar’s annual meeting in Orlando in June, the division sponsored a “Representing a Representative” seminar. Our speakers focused on some of the difficult ethics and professionalism issues that can arise when a lawyer’s client owes duties as a representative to someone else.

Seminars and other networking opportunities will be provided throughout the 2007-08 year. In February the division will again present its very popular full-day CLE seminar in New York City. This seminar annually covers leading-edge topics presented by excellent speakers—and usually has plenty of ethics credits included. In spring 2008 the division will cosponsor the “Federal Practice Seminar” in Washington, D.C. In the past this seminar has offered attendees the opportunity to attend oral arguments at the United States Supreme Court. Look for the specific dates and locations for these seminars to be announced soon. They’ll be included in the next State-to-State newsletter and posted on the division’s website at http://flabaroutofstaters.org/.

Florida Bar members in the Washington, D.C., area will have the chance to gather with the Bar’s Board of Governors in late March 2008 at a reception sponsored by the division at the out-of-state meeting of the governors. This will be a great way to meet and talk with the Bar’s leadership, which has been very supportive of the division over the years. We especially appreciate the fine work of our out-of-state BOG representatives Richard Tanner, Ian Comisky, Brian Burgoon and Eric Meeks. Other receptions and networking opportunities at locations around the country are being explored as well.

The division has been at the forefront of an issue that may be of great interest to the clients of our out-of-state Florida Bar members. Last year, for the first time, the division obtained the Bar’s approval to lobby for changes to Florida Statute 733.304. See “President’s message,” page 3
Making an informed decision on venue choice: A decision-tree approach can plant your client in fertile ground

by Honorable Catherine Peek McEwen

This is the first of an occasional column on issues that may be important to a business’s success in Chapter 11. We hope the series will remind or create awareness in our Florida Bar brethren from afar of the need to be informed when deciding where to file a bankruptcy case if a choice exists. The columns will be authored by Florida bankruptcy practitioners. We hope the columns will be helpful to you.

Greetings, Florida Bar members who have chosen to live outside the Sunshine State!

From time to time you may be called on to counsel a troubled business entity that may need to file a Chapter 11 reorganization or orderly liquidation bankruptcy case. Or you might instead represent one of the business entity’s “decision influencers,” such as a bank, critical vendor, factor or turnaround consultant.

You should know that in some circumstances a business will have a choice of where to file bankruptcy, and that choice may affect the success or economics of the case.

Generally a business entity may file in the federal district where the debtor’s principal place of business or principal assets have been located for the last 180 days or the greater part of the last 180 days or where an affiliate entity is in bankruptcy. That could be as many as three different places.

Given the existence of a choice, the business entity and its influencers should become informed of differences between venues that may translate into a positive or a negative outcome on a particular point. For example, if a business is facing specific issues that are critical to its ability to reorganize, the presence or absence of good case law on the issues (or the presence of unfavorable case law) should be assessed with respect to each issue and each possible venue choice.

Likewise, other issues to review in arming oneself to make an informed decision include the availability of competent counsel, the cost of competent counsel for the debtor or any committee or other professionals, availability of the judges to handle important hearings on a very expedited timetable, the judges’ flexibility in setting omnibus hearings on a set schedule, the method the judges use to pay professionals and even the geographic proximity of the courthouses to nearby airports, the length of travel time and yes, year-round weather conditions. The last three of these issues may seem relatively unimportant, but they bear not only on cost (airfare, ground transportation and the professionals’ hourly rates for travel) but also on the debtor’s management’s ability to attend hearings in the case with minimal disruption to the manager’s “regular” job of running the business.

It is hoped these suggestions will make it easy for you to devise a decision-tree approach when advising a client on where to file bankruptcy.

Catherine Peek McEwen is a United States bankruptcy judge for the Middle District of Florida and judicial chair of The Florida Bar Business Law Section Bankruptcy/UCC Committee.
Leppla becomes Ohio State Bar’s president-elect

Dayton attorney Gary J. Leppla became the Ohio State Bar Association’s (OSBA) president-elect at the association’s annual convention in Cincinnati on May 18, 2007. Leppla will take office as president of the OSBA on July 1, 2008, after serving a full year as president-elect.

Leppla recently stepped down after three terms of service to The Florida Bar on its Board of Governors (1998-2000, 2003-2007) and after having served as president of the Out-of-State Practitioners Division in 1994-95.

“I will miss the active involvement with the Board of Governors and Out-of-State Division in Florida very much. The friendships, particularly among the governors and OOSD members, and especially the Bar staff, mean the most. The opportunities and knowledge I was exposed to in the last several years with The Florida Bar was invaluable. The Ohio State Bar Association is one of the largest and most active voluntary bars in the country. Although the issues and concerns in Ohio are distinct from those of the mandatory Bar we have in Florida, this experience has been invaluable. These are things to both learn from and to improve upon. There are positives and negatives in any Bar, but every experience in Bar leadership is a benefit,” he commented. “You never forget people like Richard Tanner, Elizabeth Clark-Tarbert and Kelly Johnson from Florida.”

In Ohio, Leppla has spent 29 years in the litigation-oriented practice of law, with continuous service to multiple Bars throughout his career. He is a longtime member of the OSBA Legal Ethics and Professional Conduct Committee and has worked closely with Bar executives, with Ohio’s Metropolitan-Bar leadership, as a continuing legal education speaker in multiple states, as president of the Dayton Bar Association and as chair of the Dayton Bar Certified Grievance Committee. He is a member of the Ohio Academy of Trial Lawyers, the Association of Trial Lawyers of America and the Academy of Florida Trial Lawyers.

Leppla’s professional activities include active casework for the Volunteer Lawyers Project (including chairing the Campaign for Equal Justice for Legal Aid and VLP), as an initiator of the Dayton Bar Association Diversity Dialogue, as a cofounder of the Equal Opportunities Law Section of The Florida Bar, as special counsel to the Ohio attorney general and as an AV-rated litigator throughout Ohio.

Leppla attended The Ohio State University as an undergraduate (Phi Beta Kappa) and for law school. He now serves as the alumni legal chair for The Ohio State Marching Band alumni on its Board of Governors. Other activities include more than 25 years as an active member of the League of Women Voters, life membership in the NAACP, the founding of a newspaper, the reclamation and restoration of an historic opera house and recent appointment by the governor of Ohio to the Judicial Nominating Committee.

As president of the Ohio State Bar Association, Leppla plans to focus on energizing participation through outreach to underrepresented member groups, including promotion of the outstanding membership services available through the OSBA. “We will triple our efforts to attain a more diverse bar in Ohio. Our goal is to aggressively engage the public and media in a dialogue concerning the nature of the work undertaken by attorneys and judges in Ohio’s system of justice,” comments Leppla.

Gary and his wife, Patricia (a speech pathologist), reside in Germantown, Ohio, and have three adult children, Dominic, who is in graduate school in London, and Miranda and Philip, who are headed to law school. His parents, Ralph J. and Helen K. Leppla, also reside in Germantown and Sarasota, Fla.

The Ohio State Bar Association, founded in 1880, is a voluntary association representing approximately 25,000 members of the Bench and Bar of Ohio as well as nearly 4,000 legal assistants and law students. Seven out of every ten Ohio lawyers voluntarily pay dues to be a member of the OSBA. Through its activities and the activities of its related organizations, the OSBA serves both its members and the public by promoting the highest standards in the practice of law and the administration of justice.

President’s message from page 1

This statute prohibits non-Florida residents (with certain limited exceptions) from serving as personal representatives of a Florida resident’s estate—even if the non-resident is an active member of The Florida Bar. The division plans to continue its pursuit of needed changes to this statute.

Finally, our division’s leadership joins me in encouraging you to get involved in these and other activities. We’d love to hear from you. If you have any questions, comments or suggestions, please call me at 334/386-7214 or email me at tchinaris@faulkner.edu.

Ethics Questions?
Call The Florida Bar’s ETHICS HOTLINE
1/800/235-8619
Florida advertising rules and the out-of-state member
by Timothy P. Chinaris

Readers of this newsletter are likely to be admitted to practice in Florida as well as in another state (or states). If that’s the case, it is also likely the other jurisdiction’s lawyer advertising rules are not as restrictive as the Florida rules. So, which jurisdiction’s rules must you follow?

From Florida’s perspective, the answer is found in the Florida Rules of Professional Conduct. Rule 4-7.1(d): “Subchapter 4-7 [governing lawyer advertising] shall not apply to any advertisement broadcast or disseminated in another jurisdiction in which the advertising lawyer is admitted if such advertisement complies with the rules governing lawyer advertising in that jurisdiction and is not intended for broadcast or dissemination within the state of Florida.” So, your advertisements not aimed at Florida are not required to comply with Florida’s advertising rules—provided they comply with the rules of the other jurisdiction in which you are licensed or otherwise admitted.

For those Florida Bar members who do advertise in Florida, it might be helpful to highlight some of the changes to Florida’s advertising rules that took effect on Jan. 1 of this year:

• Lawyers admitted in other states but not Florida may nevertheless be subject to Florida’s advertising rules, if they “have established a regular and/or permanent presence in Florida for the practice of law as authorized by other law” and advertise for legal business in Florida or target ads at Florida residents (Rule 4-7.1(c));
• A lawyer’s communications to family members are exempt from the advertising rules (Rule 4-7.1(e));
• A lawyer’s communications to prospective clients that are made at a prospective client’s request are exempt from the advertising rules (Rule 4-7.1(f));
• The ban on statements likely to create “unjustified expectations” about results to be obtained has been replaced by a prohibition on communications that promise results (Rule 4-7.2(c)(1)(G));
• Substantially more information may be included in “public service announcements” without subjecting them to the filing-and-review requirement (Rule 4-7.8(b) and Rule 4-7.2(b)(3));
• The “hiring” disclosure statement previously required in print advertising is no longer required; and
• Television and radio ads must be pre-filed with the Bar at least 15 days before airing (Rule 4-7.7(a)(1)(A)). See In re: Amendments to the Rules Regulating The Florida Bar -- Advertising, ___ So.2d ___, 31 Fla.L.Weekly S767 (Fla., No. SC05-2194, 11/2/2006), 2006 WL 3093126.

Questions left open by the Supreme Court include whether, or how, the lawyer advertising rules apply to a lawyer’s communications with former clients or to lawyer-to-lawyer communications. The Bar has filed a motion for clarification regarding these issues.

Finally, what about your law firm’s website? What rules must you follow? That matter soon will be before the Florida Supreme Court. We’ll cover that in a future column. (In the meantime, please check for updates at www.sunEthics.com.)

Division President Tim Chinaris teaches and practices law in Montgomery, Ala. He formerly was ethics director of The Florida Bar and operates the popular legal ethics website “sunEthics” (www.sunethics.com).
Major actions of The Florida Bar Board of Governors, 2006-2007

- Established a “bright line” rule on using doctor of laws in lawyer advertising, allowing lawyers to use only the terms actually on their diplomas and not allowing translation of that wording into another language.
- Approved a joint Bar-judiciary committee to study a way to evaluate the performance of Florida’s judges and communicate those evaluations to the public.
- Approved a recommendation that government lawyers be exempted from the new Bar rule requiring all Bar members to designate an inventory attorney pending Supreme Court adoption.
- Approved a modification of Ethics Opinion 77-30 that gives more leeway in identifying conflicts with a city or county attorney representing a single commission member in an ethics complaint before the state Ethics Commission. The revised opinion also provides more guidance on when any conflicts may be waived.
- Approved a proposal from the Equal Opportunities Law Section and Board of Legal Specialization and Education to include “bias elimination in the legal system” among the five mandatory CLE credits. Currently, Bar members must take five credits in ethics, professionalism and/or substance abuse training as part of the 30-hour requirement.
- Endorsed the three-year cycle rules changes proposed by the Civil Procedure Rules Committee, the Probate Rules Committee and the Small Claims Rules Committee.
- Received a report showing that the recommendations of the Special Commission on Lawyer Regulation have been referred to various board committees for review.
- Adopted a position in support of Amendment 3 requiring broader support for amending the Florida Constitution.
- Approved the creation of a Florida Registered Paralegal Program Committee for Supreme Court adoption.
- Declined to endorse a proposed rule of criminal procedure dealing with closing arguments promulgated to replace a rule the Legislature repealed last session. The board voted to withhold its support for proposed criminal rules 3.250 and 3.851—written by the Criminal Procedure Rules Committee—that would give the prosecution the closing argument in cases where the defense calls only the defendant to testify and no other witnesses. Instead, the board adopted the committee’s minority report as its own. The rule will still be presented to the Supreme Court as drafted by the committee—but with the board’s objection noted—for final action.
- Endorsed amendments offered by the Criminal Procedure Rules Committee to amend Rules 3.131 and 3.132, which concern pretrial release of defendants charged with violent crimes.
- Authorized the Public Interest Law Section and the Legal Needs of Children Committee to oppose the indiscriminate use of chains and shackles on juvenile defendants during court proceedings. The board also approved allowing the Legal Needs of Children Committee to advocate for legislation to require all children have a meaningful opportunity to consult with an attorney before waiving the right to counsel in a delinquency proceeding.
- Approved a recommendation to join the Supreme Court’s Commission on Professionalism in asking the court to withdraw the commission’s request for a Bar rule change that would allow judges to impose up to a $500 fine and order attendance at a professionalism course for lawyers who show unprofessional conduct in court.
- Renewed several legislative positions from the 2004-06 biennium and adopted two new positions opposing the indiscriminate shackling of juveniles when they appear in criminal cases and supporting a student loan repayment program for state government and legal aid attorneys.
- Heard Justice Peggy Quince, appearing on behalf of Chief Justice Fred Lewis, ask the Bar to continue supporting a pay equity plan for nonjudicial court employees and to support the chief’s reconstitution of the Judicial Management Council, which assists the court on a variety of upcoming issues, including long-range planning.
- Heard Justice Barbara Pariente report that the number of lawyers performing pro bono work for the poor is declining, as are the hours and monetary contributions made by lawyers to legal aid programs. She and board members discussed several ways to reverse that trend.
- Approved a Bar legislative position supporting the Supreme Court’s certification for the need of 37 new judges this year.
- Agreed to a request from the Criminal Law Section Executive Council that the Bar direct its legislative lobbyists to support improved funding for legal services for the indigent and an early release of state funds in the current budget year allocated for those purposes because of a serious shortfall. The services affected include paying for court interpreters, court reporters, conflict public defenders and similar services.
- Approved a proposal from the Communications Committee to provide an easier way for Bar members to get a password to access secure areas of the Bar’s website.
- Approved that all future public reprimands be administered in front of the Board of Governors, continued, next page...
Board of Governors  
from preceding page

- Approved changes to Rule 4-8.4(i) on sexual conduct with clients. The amendment, which now goes to the Supreme Court, would create a rebuttable presumption that sexual conduct with a client initiated after the start of representation harms the client or the handling of the client’s case.

- Endorsed several procedural amendments recommended by several rules committees relating to the Supreme Court’s request for input on the recommendations from the Committee on Privacy and Court Records. The recommendations dealt with protecting Social Security numbers and other information that could be used to steal a party’s identity.

- Endorsed a Criminal Procedure Rules Committee recommendation that no changes be made in the rule on speedy trials, which the committee had been studying at the request of the Supreme Court.

- Nominated three lawyers for each upcoming vacancy on the state’s 26 judicial nominating committees. The final appointments will be made by Gov. Charlie Crist.

- Heard Attorney General Bill McCollum discuss his office’s operations and his two top priorities—protecting children from Internet-enabled sexual exploitation and combating gang violence.

- Received a report from Supreme Court Justice Raoul Cantero, who is chair of the Supreme Court Commission on Professionalism, that the commission and President-elect Frank Angones are appointing a committee to explore having required mentoring for new Bar members.

- Approved the recommendations of the Attorney-Client Task Force, including adopting a five-part legislative position for The Florida Bar, generally opposing any impairment on the attorney-client relationship or work product protections made by government attorneys as part of investigations.

- Discussed reservations about the state’s new regional conflict counsel plan, including concerns of whether the program, which begins Oct. 1, is adequately funded and will provide effective representation.

- Approved final details for the merger of the Practice Management and Development Section to the General Practice, Solo and Small Firm Section.

- Reviewed details on how lawyers can add practice information to their bio page on the Bar’s website, pursuant to a program put in place by the Communications Committee.

- Approved a rule change to clarify that lawyers cannot belong to a private lawyer referral service unless that service follows all Bar rules. Also passed was a new standing board policy to keep judges informed when they make a complaint about a lawyer’s conduct to the disciplinary system.

Our program administrator’s newest artwork

Arlee Colman completed this painting of a manatee at the recent “Humanatee” Festival in St. Marks, Florida, to welcome the manatees back to North Florida’s waters. The original pastel was accepted into the Florida State University Museum of Fine Arts Summer Show which opened June 8 in Tallahassee.

use testimonials, references to past results and statements characterizing the quality of the lawyer’s or law firm’s work.

- Approved the Bar’s 2007-08 budget, which has no change in Bar members’ annual fees and projected revenues of $36.9 million and expenses of $36.3 million.

- Approved the Communications Committee’s proposals for listing Bar members’ 10-year disciplinary history on the Bar’s website.

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### Out-of-State Practitioners Division

**Budget for Fiscal Year 2005-2006**

**Approved Budget for Fiscal Year 2006-2007**

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### Section Reimbursement Policy

**Article 8 Miscellaneous Section 8.3 - Compensation and Expenses.** No salary or other compensation may be paid to any member of the division for performance of services to the division, but members of the division may be reimbursed for such reasonable and necessary telephone expenses, reproduction expenses and other similar out-of-pocket expenses that such member incurs in the performance of services for the division and that are specifically authorized by the president and the treasurer of the division or by the executive council. Further, the members of the executive council shall each be allowed reimbursement by the division up to, but not exceeding, the amount of $400.00 per trip, for reasonable travel expenses incurred in attending the 3 required meetings of the executive council. Reimbursement is subject to the availability of funds from the division's budget.

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**Post Your CLE Credits Online!**

Attention, Florida Bar Members:

You may now post all your CLE credits online! No longer do you have to pencil in bubbles on course attendance cards and wait for your credits to post. Now you can post your credits online and watch your record update in real time.

With the new CLE credit posting feature, you can conduct nearly all of your CLE transactions online. You may already be using the Bar’s website to check your CLE credit status. Once you have opened your online account (obtain your personal password), we guarantee the new online CLE reporting system will be both more efficient and less time consuming than filling out and mailing the course attendance cards. All you need to do is follow these simple instructions:

1. **Go to [www.FloridaBar.org](http://www.FloridaBar.org).**
2. **Click on “Member Profile” on the right side of the web page.**
3. **Click on “CLE Activity Posting.”**

Note: You will need to request a password prior to using any of the online functions. Please allow 5-7 days to receive your confidential password.

After you have completed posting all of your credits, you may wish to print the confirmation page for your records.

*If you have any questions or need assistance with the online credit reporting, please call the Legal Specialization and Education department at 850/561-5842.*
Members in the news

Division ‘Doings’ at Bar’s Annual Convention in Orlando, Florida

NEW DIVISION OFFICERS SWORN IN AT BAR’S ANNUAL CONVENTION: Frank Angones, president of The Florida Bar, swears in the new officers for the 2007-2008 Executive Committee of the Out-of-State Practitioners Division (L-R: Allyn Kantor, president-elect; Bill Lee, treasurer; Mike Busenkell, secretary; Tim Chinaris, president; and Scott Patterson, immediate past president).

CONGRATULATIONS, SCOTT PATTERTON! Tim Chinaris, president of the Out-of-State Practitioners Division, presents Scott Patterson, immediate past president, with a year-end award for his commitment to the division during 2006-07.

The Florida Bar
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