by Scott G. Hawkins

Self-assessment

At its May meeting, the Board of Governors authorized formation of a commission to conduct a limited study of certain challenges facing The Florida Bar's grievance process. Given the Bar's rapid growth (now the second largest mandatory or unified bar in the United States) and particular issues that have surfaced in the last few years, I urged that such a study be conducted to ensure the Bar is as current and responsive as it can and should be in this most important responsibility.

A Brief Look Back — The Florida Bar as a Regulatory Body

In 1949, the Florida Supreme Court formed The Florida Bar. Such action is delineated in the landmark Supreme Court opinion of *In re: Petition of Florida State Bar Ass'n.,* 40 So. 2d 902 (1949).

As noted by Justice Terrell in the opinion, the Bar was formed to oversee the regulation of lawyers licensed by the Supreme Court. Through this action, the Florida Supreme Court unified the Bar as the organization responsible for overseeing lawyer regulation, licensure, and continuing legal education. These steps marked the beginning of lawyer regulation in Florida and the Bar's grievance process.

As the Bar has grown, the demands in the area of lawyer regulation have also grown. Today, lawyer regulation (which includes the grievance process, multiple education and diversion programs relative to lawyer sanctions, and lawyer advertising) utilizes approximately 45 percent of The Florida Bar's annual budget. This allocation covers expenditures

for enforcement proceedings, staff lawyers and related personnel costs and training, and general funding of the grievance apparatus.

Annually, the Bar opens 8,000 to 9,000 inquiries into possible rule violations. In 12 months ending in June, the Bar disbarred 84 lawyers. In addition, there were 174 suspensions, 49 public reprimands, 39 admonishments, and 52 probations.

Prior Review

From time to time, the Bar has authorized studies of this regulatory function to ensure the Bar's process is as effective and current as possible. In this regard, Miles McGrane, as the 55th president of The Florida Bar, initiated a comprehensive study of lawyer regulation in 2003. This study, which lasted 33 months, was chaired by Hank Coxe, who later became the 58th president of the Bar. Under the Coxe Commission, several programs were initiated, including the Attorney Consumer Assistance Program (ACAP), which screens all complaints, and a listing of 10-year disciplinary histories for our more than 90,000 members on the Bar's website, as well as key public record documents opened readily available.

The Florida Bar has received national attention for developing new programs to address lawyer behavior and today is recognized as a leader in the area of lawyer regulation.

A Current Look

While campaigning for Bar president in late 2009 and early 2010, several members (including state court judges) urged that the grievance process be reviewed to ensure the process was as responsive and timely as possible. In addition, certain lawyer violations surfaced, which presented unique challenges most ably handled by then President Jesse Diner and later by then President Mayanne Downs.

While speedy disbarments and/or discipline resulted in such instances, it was clear that a current review of trust account violations and large-scale problems with improper filings (such as "robo" signings) should be studied to ensure the Bar's process and underlying regulations are congruent with today's challenges.

In this regard, a specific review of discipline standards and challenges facing older lawyers is also warranted.

With this backdrop, at my request, the Board of Governors authorized the formation of a commission to study these and related challenges with a view to making recommendations to the board as necessary. It is anticipated that the commission will

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commence its work in the fall with a view to rendering its recommendations by early spring 2012.

Three co-chairs have been selected: Miles McGrane, Eugene Pettis, and Edward Cheffy, and they will be assisted by Vice Chairs Renee Thompson, Jake Schickel, and Greg Coleman. The work will be divided across three working groups each led by a chair and vice chair, and each group will have a public member (a nonlawyer) selected from those who serve The Florida Bar through its Citizens Forum.

Mission of The Florida Bar and this Review

The mission of The Florida Bar includes advancing service to the public and the administration of justice. The important work of the commission to study improvements to the regulatory processes of The Florida Bar directly bears on fulfilling this mission. President-elect Gwynne Young and I look forward to seeing the work of this commission as it unfolds.❑

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rationale for suing an attorney fails since there is no testimonial privilege as to communications between an attorney and nonclient third parties. Additionally, the further justification for joining the attorney in the lawsuit, to create a conflict of interest that disqualifies the opposing party's counsel of choice, is also without merit. Any conflict of interest between the attorney and client arises out of the facts at the time of the attorney's communications with the third parties on behalf of that client. The adding of the attorney as a defendant in the lawsuit does not create the conflict. This tactic is also inconsistent with the author's purported goal to "help the bar regulate itself in the public interest" (page 30, Part II).

Attorneys who threaten people or businesses with litigation based upon patently unenforceable restrictive covenants should be sued for tortious interference in appropriate situations in which those threats have caused damage. However, the decision to file such a lawsuit against an attorney should not be based upon misquoted case law and ulterior litigation motives.

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Tipsy Coachman

I commend the authors, who did an excellent job of summarizing the two cases and delineating the origin and application of the Tipsy Coachman Doctrine ("The Butler Tetralogy: The Tipsy Coachman Doctrine Revisited" July/August).

One of the questions asked by the authors was whether an appellate court is obligated to apply the Tipsy Coachman Doctrine whether or not the appellee raised the doctrine in its brief. I do not think that either of the opinions, or that any of the opinions, removed the obligation of individuals to raise issues initially in the trial court and on appeal. However, it is clear that appellate courts in Florida are required to apply doctrines similar to the Tipsy Coachman Doctrine in some cases.

F.S. Ch. 59 specifically establishes a harmless error rule for final judgment. F.S. §59.041 (2010). A similar law requires issues to be assigned as error (F.S. §59.06 (2010)). As a practical matter, these issues are often conflated with the Tipsy Coachman Doctrine, which is a judicial rule dealing with matters of law alone. These older rules governing the scope of appellate review are often helpful in determining whether the application of the Tipsy Coachman Doctrine is necessary at all.

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