

**Minutes for the Meeting of the Bankruptcy/UCC Committee
of the Business Law Section of the Florida Bar**

Held September 5, 2015, at 9:30 a.m.

At the Ritz Carlton Naples in Naples, Florida

Lynn Welter Sherman, Chair
Jodi Daniel Cooke, Vice Chair
Hon. Catherine Peek McEwen, Judicial Chair

I. Welcome and Approval of Minutes.

The meeting was called to order at 9:30 by the Chair. She welcomed everyone and introduced herself, the Vice Chair, and the Judicial Chair. The Chair reminded everyone to identify themselves before speaking so the minutes would be accurate. Attendees introduced themselves in turn, stopping to recognize Judge Isicoff's birthday and sing Happy Birthday.

The minutes from the June 2015 committee meeting in Boca Raton, which had been circulated via email prior to the meeting, were discussed and unanimously approved upon motion by Elizabeth Green, seconded by Roy Kobert.

II. Pro Bono Reminder. The Judicial Chair reminded everyone to take pro bono cases because it makes the judicial system moves more quickly for paying clients when pro se cases are reduced, and because it's the right thing to do.

III. Update and Welcome from Section Leadership. Section Chair Alan Howard welcomed everyone to the Retreat and reminded everyone of changes to the Retreat schedule this year. Section Vice Chair Jon Polenberg reminded everyone how important our Section sponsors are and to use their services when possible. Section Secretary-Treasurer Melanie Damian reminded everyone that our next meeting is January 27-30 in Orlando, a week after the midyear meeting of the Florida Bar, and that this is the last year the Section will not be part of the bigger Bar's midyear meeting.

IV. Legislative Committee Update. Section Legislation Chair Michael Chesal and Section Lobbyist Aimee Diaz-Lyon notified everyone that the legislative session will be busy in 2016 and there will be a lot of bills to review.

V. Reports from Study Groups.

A. Proceedings Supplementary Task Force – Barbara Reisburg, Chair; Donald Kirk & Michael Weisz, Vice Chairs (joint Task Force with Business Litigation Committee)

1. Barbara Reisburg reported that Senator Simmons is moving forward to amend this statute during the upcoming legislative term whether the Section is ready or not, so the Task Force has prepared and circulated proposed procedural changes to make the statute more user friendly (instead of a complete substantive overhaul of the statute, which has been discussed previously but could not be accomplished prior to the upcoming legislative session). The Task Force believes their proposal is a good alternative to Senator Simmons' proposals. It will not fix everything that is wrong with the statute, but

would be a significant improvement over the current statute. More importantly, this is what can be accomplished right now.

2. Barbara and her team gave a brief overview of proposed changes:
 - How to initiate proceedings supplementary;
 - How to bring a third party into proceedings supplementary and comply with due process (i.e., a Notice to Appear procedure);
 - Confirmation that defenses can be raised by a third party and that a trial can be conducted, if needed;
 - Preservation of the right to a jury trial; and
 - Confirmation that discovery may be conducted (which is already in the current statute), including depositions.

3. Judge Michael Williamson asked the study group about overlap in the current statute (under the 2014 amendment) with Chapter 726, and asked if it didn't make sense to provide that fraudulent transfer claims be dealt with under Chapter 726, which is a more established body of law and has better due process protections for those against whom claims are filed. Michael Weisz responded that it is critical to keep the proceedings supplementary remedy separate from Chapter 726, as the former is an execution remedy for concluded actions and the latter provides for the commencement of a separate action.

4. John Hutton asked the study group about the discovery changes, specifically third party discovery. Michael Weisz confirmed that discovery can be conducted of third parties under the proposed changes.

5. Paul Giordano asked the study group about the right to a jury trial and how clear it will be in the proposed changes, in light of case law suggesting there is no such right. Michael Weisz explained that such case law was the reason the study group included that clarification in the proposed changes, to ensure that the case law would not be interpreted to preclude a jury trial right.

6. John Emmanuel moved for this Committee to ask the Executive Council to approve a triple motion to support the proposed changes recommended by the Task Force, as stated and circulated. Mark Hildreth and Zachary Hyman seconded the motion, which was unanimously approved. Judge Michael Williamson abstained.

B. *Florida Insolvency/HMO Statutes* – Scott Underwood, Chair

1. Scott Underwood reported that there is nothing to report at this time.

C. *Surcharge of Exempt Assets* - Lori Vaughan, Chair

1. Lori Vaughan reported that there is nothing to report at this time, but please leave this study group on the agenda for the next meeting.

D. Amendments to Uniform Voidable Transaction Act – John Hutton, Chair

1. John Hutton reported that changes have been proposed to the definitions in the UVTA. The RPPTL Section is heavily debating those proposed changes and has substantial objections. Once a resolution can be reached in that Section for raising those objections, John will report back to this Committee regarding that resolution.

E. Collaborative Law – Patricia Redmond, Chair

1. Jerry Markowitz reported that preliminary discussions on this subject have taken place with members of the RPPTL Section.

2. This committee is looking for volunteers, so a new sign-up sheet was circulated.

VI. Bankruptcy Judicial Liaison Committee Report. Committee Chair Judge Paul Hyman reported that the Committee met the previous afternoon, and discussed the status of Florida's Northern, Middle, and Southern Bankruptcy Districts; recent remanded decisions; the Kozyak Minority Mentoring Picnic; and proof of claim issues.

VII. Continuing Legal Education Reports.

A. View From The Bench – Judge Michael Williamson reported that this year's VFTB will be November 5-6 in Tampa & Miami, respectively. Steve Busey will moderate, and Brad Saxton has once again compiled the materials. Brad Saxton announced that he needs assistance compiling the materials every year and, though this year is done, if anyone is interested in helping in the future, please let him know.

B. Bankruptcy Law Education Series (BLES) – Andrew Roy, Executive Director of BLES

1. Andrew Roy reported that BLES has \$58,000 in the bank, representing funds donated for the Orlando and Tampa clinics. Also, Jacksonville is trying to their clinic off the ground.

C. ABI/Stetson Paskay Seminar – Judge Catherine McEwen

1. Judge McEwen reported that the 2016 Seminar will be held March 30-April 1 at the Sheraton Sand Key.

D. Future CLE programs – Brett Lieberman & Kathryn DeSanto, Co-CLE Chairs

1. Brett Lieberman reported that his committee is hoping to do a Federal Receiver CLE panel at an upcoming meeting of this Committee. Also, they are looking into rebooting the recent Evidence Boot Camp CLE (held in Tampa) in Miami. If you have any ideas, please let Brett or Kathryn know.

2. The Section's CLE Chair, Stephanie Lieb, reported that articles can be put in the Florida Bar Journal by this Committee or its members, so if you have one you would like to have published, let her know. Also, local CLEs can be advertised on the recently revamped BLS website, so if anyone would like increased exposure for local CLEs they are involved in, let her know.

VIII. New Business.

A. NCBJ 2015 – Paul Singerman

1. Paul Singerman reported that he and other Florida lawyers are planning a party sponsored by Florida law firms on the Monday night of NCBJ at Jungle Island, and that transportation will be provided from the Fontainebleau. Please let him know if you or your firm would like to be a sponsor.

B. ElderCARE – Judge Laurel Isicoff

1. Judge Isicoff reported that this program has been renamed "Elder \$mart\$" due to conflict with another program of the same name. The Elder Law Section is going to lead the charge on getting the program off the ground and coordinating efforts.

2. Judge Isicoff thanked those who have agreed to volunteer for the program and will be in touch once she has details.

C. Batram v. U.S. Bank – Judge Catherine McEwen

1. Judge McEwen reported that the *Batram* case concerns statute of limitation issues in foreclosure cases under Fla. Stat. 95.11(2)(c), and is headed for oral argument before the Florida Supreme Court in November due to a split of authority between Circuits of Appeal. She will let us know what happens at the next meeting.

D. 11th Circuit New Case Regarding Business Records Exception to the Hearsay Rule – Martin Knaust

1. Martin Knaust reported on new case law within the 11th Circuit dealing with the business records exception.

IX. Liaison Reports. The Chair asked that liaisons to other Section committees send her their reports in advance of these meetings so they can be posted on the BLS website before the meetings.

A. Pro Bono Committee – John MacDonald, Liaison & Committee Chair

1. John MacDonald reported that the Pro Bono Committee is still working to obtain 100% participation by Section members in pro bono efforts. National Pro Bono Week is coming up, and the Committee is working to increase the number of pro bono clinics around the state by pairing with local practitioners to start and/or support clinics in their local areas.

2. John MacDonald also reported that the Pro Bono intends to ask the BLS Executive Council to make an additional donation to the Florida Bar Foundation during Monday's Executive Council Meeting.

B. *Inclusion, Mentoring & Fellowship Committee* – Carlos Sardi, Liaison & Committee Chair

1. Carlos Sardi reported that the Committee's BLS Scholars Program is up and running, and that several current Scholars are in the meeting today.

2. Carlos Sardi also reported that the Kozyak Mentoring Picnic is coming up on October 31, 2015, and this year's theme is "Diversity is not Scary." There is a Minority Trial Skills Seminar coming up on **October 1 and 2, 2015** in Orlando.

3. Judge McEwen gave the Committee a reminder about the Each One, Reach One Campaign.

C. *Membership Committee* – Zach Hyman, Liaison & Committee Chair

1. Zach Hyman commended Amir Isaiah for doing an amazing job getting 19 law students/Scholars to attend the Retreat this weekend, sponsored by the BLS and their respective law schools.

2. Zach Hyman reported that there are 22 first-time attendees at this Retreat, and that there will be a champagne toast tonight during the Membership Committee meeting to recognize those first-time attendees.

3. Zach Hyman also reported that the Membership Committee is working on various other efforts to increase membership, aimed primarily at young lawyers and increasing their participation in the Section.

D. *Communications Committee* – Christopher Broussard, Liaison

1. Christopher Broussard reported that the Communications Committee is working to add a Mentor/mentee page to the BLS website soon. They are also creating a news/publications section on the BLS website and need ideas for submissions. If you have any, let Chris know.

X. Old Business.

A. *Out Of State Division/Newsletter Submissions* – Judge Catherine McEwen

1. Judge McEwen announced that if you want publicity for your practice, let her know – she can help you build a book of business by publishing an article in the Out of State Division's Newsletter.

B. *CARE Program/financial literacy* – Judge Laurel Isicoff

1. Judge Isicoff reported that there will be an upcoming Florida C.A.R.E. Summit during national financial literacy month in April.

XI. Future Meeting Dates. The Chair reminded everyone of the upcoming NCBJ meeting on September 27-30, 2015, in Miami, and that our next meeting date is during the Section's midyear meeting, January 27-30, 2016, in Orlando.

XII. Adjournment. Liz Green moved to adjourn the meeting and the meeting was concluded at 10:54 a.m.