

**Minutes for the Meeting of the Bankruptcy/UCC Committee
of the Business Law Section of the Florida Bar**
Held on Wednesday, January 25, 2017, at 9:30 a.m.
At the Gaylord Palms, Orange Blossom Ballroom, in Orlando, Florida

Jodi Daniel Cooke, Chair
Carlos E. Sardj, 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. Subsequently, attendees introduced themselves, and the meeting commenced.

The previously circulated minutes from the committee meeting held in Naples at the Annual Retreat were discussed and unanimously approved upon motion by Dan Stermer, and seconded by Lynn Sherman.

II. Introduction of Special Guests, Pro Bono Reminder, and Special Announcement

The Chair introduced Lansing Scriven, who is running for President of The Florida Bar. Mr. Scriven spoke to our Committee about his background, running platform, and other issues. The Chair encouraged everyone to reach out to Mr. Scriven to learn more about him.

The Chair likewise introduced Michelle Suskauer who is also running for President of The Florida Bar. Ms. Suskauer also spoke to our Committee about her credentials, background, running platform and other issues.

The Chair reminded everyone to take a pro bono case for this year.

Before starting the meeting, the Chair advised the Committee about Susan Sharp having lost her daughter, and upcoming funeral arrangements. The family is asking for donations to Mary Lee's House in lieu of flowers. The Chair offered to provide more information to whoever requests it.

III. Business Law Section Update & Welcome

Section Chair Jon Polenberg welcomed everyone to the Mid-Year Meeting. Mr. Polenberg reminded everyone about the annual meeting in June 2017. Mr. Polenberg apologized for the crazy meeting schedules, and advised that the Section is working on trying to get the meeting schedule and hotel information out sooner. Mr. Polenberg also spoke about the upcoming

retreat in Portugal in April. Lastly, Mr. Polenberg invited all members to be alert about upcoming legislative issues.

Section Vice Chair Melanie Damian also addressed the scheduling issues, and pledge to work on this to avoid the same hiccup next year. Ms. Damian is accepting all comments. Lastly, Ms. Damian advised that the budget would be voted on at mid-year EC meeting.

IV. Legislative Update

Legislation Chair Jay Brown and Section Lobbyist Aimee Diaz-Lyon notified everyone that the Florida legislative session has not officially started yet, but it starts in March for 2017. Mr. Brown noted that there is a lot of turnover right now and an unwillingness to submit bills. He wants our Committee to be as quick as in the past to review the bills and let him know if the Section should take any position as soon as possible.

Mr. Brown advised that FBA foreclosure amendment is moving forward. Mindy Mora is on top of it.

Mr. Brown also said that the Uniform Voidable Transaction Act (UVTA) is also going to be active this legislative session. RPPTLs, however, want to clarify that a transfer of an illiquid asset would not be treated as a voidable transfer. Mr. Brown advised that the RPPTLs are taking a senseless position on this. Ms. Diaz-Lyon also advised as to the status of the sponsorship of the UVTA bill and said that she will work hard to find a sponsor.

Ms. Diaz-Lyon also advised that Senator Hukill filed a bill on financial literacy education as a graduation requirement for high school students. The Chair confirmed that our Committee has a standing position to support the bill and will advise the EC accordingly.

Jim Moon intervened to ask about a new bill to override courts on invalidity of legislation as unconstitutional. Ms. Diaz-Lyon advised as to the status of the bill, and the discussion was deferred for later in the meeting.

Mr. Brown spoke about other pending legislative matters and asked members of our Committee to reach legislators to address issues of importance to our Section, including legislation on judicial term limits.

V. Bankruptcy Judicial Liaison Committee Meeting Report

No meeting yet. Nothing to report. It's scheduled for later in the day.

VI. Reports from Study Groups

- a. *Uniform Commercial Real Estate Receivership Act* – Lynn Sherman and Kenny Murena Co-Chairs (Joint Task with Business Litigation Committee)

Mr. Murena advised there has been no meeting yet. In general, most agree that there is a lot of reasons to have the Act, but there are issues that are not quite there with Florida law, and other issues with the RPPTLs. It is still early and the study group is still reviewing the language. A proposal was made to have interns hone in on issues impacting Florida law, and move forward.

- b. *Proceedings Supplementary* - Donald Kirk and Ivan Reich, Co-Chairs (Joint Task with Business Litigation Committee)

This law was passed. We are done.

- c. *HB 713/SB 562* (proposed amendments to Fla. Stat. § 559.72) – Jodi Cooke, Chair

These bills have not been re-proposed but they still may be. The Chair will stay on top of it and let the Committee know.

- d. *FBA foreclosure amendment* (proposed amendments to Fla. Stat. § 702.12) – Mindy Mora, Chair

Mindy Mora advised about the status of the amendments being put forward by the bankers' group. Ms. Mora explained that the amendments relate to the surrendering of property in bankruptcy and ability to later defend a foreclosure action in state court based on the surrendering of such property. Ms. Mora further explained that the Executive Council provided authority to work with the bankers' group on this project. Based on this authorization, the sub-committee has worked with the bankers' group to come up with the proposed language to reconcile the amendment with the recent Eleventh Circuit Court of Appeal's decision in *Failla v. Citibank, N.A.* The effective date of the amendment will be October 1, 2017.

- e. *Amendments to Uniform Voidable Transaction Act* - John Hutton, Chair

John Hutton brought our Committee up to date regarding the UVTA. Legislation has been supported by our Section and the Big Bar. Dialogue continues with RPPTLs, but nothing definitive has come out. The RPPTLs' proposals have been unacceptable. We continue to work with the RPPTLs, but if the RPPTLs insist on inappropriate provisions, the Section may have no other option but to fight this head on. The UVTA sub-committee is determined to continue with the UVTA. Mr. Hutton advised that the bill requires sponsorship at the House of Representative level.

The Judicial Chair asked where the bankers' group is on this issue. Mr. Hutton advised that we have approached the bankers' group to help in getting a sponsor.

Leyza Blanco asked what the issues are in getting sponsors. Mr. Hutton then advised that it is the conflict with the RPPTLs. Mr. Hutton pointed out, by way of an example, the RPPTLs' controversial choice of law provision. Comments to the legislation have also created some of the

same issues, but the group has worked to try ironing out any such concerns. Mr. Hutton believes that this is more of a political issue.

Marsha Rydberg, who also serves on Executive Council of the RPPTLs, advised that issues with the UVTA have not been brought to the real estate side of the RPPTLs for attention. The probate/estate planning side has control of the issue, and real estate side had been run over.

The Judicial Chair advised Mr. Hutton to get an alliance with the bankers' group to assist in getting sponsors and call in past favors if necessary. The Chair reminded the members that this is not the first time our Committee has gone to the mat with the RPPTLs. Rick Gross reminded the members that we must be careful and advised that the bankers' group may ask for *quid pro quo* in the future. The Chair admitted that it may be so, but that the option should be explored. Doug Bates commented that he would like to see us avoid war with the RPPTLs if possible, and asked Ms. Rydberg for help to work with RPPTLs to iron out the differences.

Prof. Davis asked about whether the Big Bar allows two groups to have controversial/adversarial positions on the same piece of legislation. Ms. Rydberg advised that there is a process at the Big Bar to deal with such issues.

f. *Digital/Cryptocurrency Regulation* - Stephanie Lieb, Chair

Stephanie Lieb explained the status of this legislation and reported that the sub-committee is still working on statutory language to recognize digital currency. Ms. Lieb advised that there is nothing to report on that front for the time being.

g. *Collaborative Law* - Patricia Redmond, Chair; Hon. Laurel Isicoff, Judicial Chair

Judge Isicoff advised that there is nothing to report.

VII. Liaison Reports from Other BLS Committees

a. *Pro Bono Committee* – Jennifer Morando

The Committee held its meeting earlier in the morning. Ms. Morando reported that the Florida Bar Foundation is advancing a program called "Florida Pro Bono Matters" - a live database of available pro bono work. It is in its *beta* test phase, but if successful it will go live statewide. The database allows lawyers from the outside to have access and express interest in a pro bono matter. This is an ambitious program to connect *pro bono* clients with lawyers on statewide basis. Constituent firms will be asked to place a link to it on their websites.

Ms. Morando also discussed a second project in the Miami-Dade County area known as "Everyone Counts". The idea with the project is to place a lawyer in court to collect data of *pro se* litigants to assemble data to provide guides to attack *pro se* and *pro bono* problems. The sub-committee is asking for volunteer lawyers and firms.

b. *IMF Committee* – Jim Moon

Jim Moon advised about the upcoming Minority Mentoring Picnics and sign up sheets to volunteer for the same. Events are coming up on February 4 in Miami, February 11 in Orlando, and February 18 in Tampa.

Cori Lopez-Castro spoke about the status of the “Receivership Database,” which had been already approved by our Committee, and advised that it has become a reality. Ms. Lopez-Castro advised that the judges are all on board with it, and noted that the IMF Committee will be financially supporting the project. The project is conceptually designed to be a more thoughtful process to select fiduciaries and promote diversity in the selection of fiduciaries.

c. *Membership Committee* – Zach Hyman

No report.

d. *Young Lawyers Division* – Christian George

No report.

e. *CLE Committee* – Stephanie Lieb

Stephanie Lieb reported that the CLE Committee is looking for articles to publish, but that there is nothing else to report.

f. *Communications Committee* – Chris Bousard

Chris Bousard reported that the Communication Committee met earlier in the day, and that the meeting was well attended. Mr. Bousard also advised that there was a positive discussion about social media stats, opt ins, and the blog. Mr. Bousard advised that he was looking for articles too.

VIII. Continuing Legal Education

a. *ABI/Stetson Seminar* - Hon. Catherine Peek McEwen

The Judicial Chair advised about the event, including its social and substantive activities. She encouraged everyone to attend on April 4.

b. *View from the Bench Seminar/Case Review* - Hon. Michael Williamson and Brad Saxton

Judge Williamson advised that the program was a great success. Judge Williamson praised the materials and noted it was one of the best attended seminars in the past few years. Judge Williamson also advised that Paul Singerman will be the moderator for next year’s seminar. He

noted that the database for the case digest is available in the Middle District court's website year round for whomever wants access to it.

c. *Bankruptcy Law Education Series (BLES)* - Hon. Michael Williamson

Judge Williamson reminded members about this program. He also let the members know about its mission and funding status.

The Judicial Chair asked about the status of the retention of funds by the voluntary associations which invite judges to CLE programs. Judge Williamson has it in his agenda to follow up and report back to our Committee at the annual meeting.

Roy Kobert asked about a standing rule to have unclaimed funds in bankruptcy go to this foundation. Judicial Chair advised that the better practice is to ask for this relief upfront in the plan or by way of motion after the fact. The Judicial Chair suggested that the plan include a provision for this, or otherwise, if it is a liquidating plan, for trustees to ask for it after the fact. General discussion then ensued on the subject.

d. *Bankruptcy Deposition Boot Camp May 19, 2017 (Orlando)* - Jennifer Morando

This event will be a one day program. The location has not been announced. The Chair reminded the members that the program had been done in the past, and advised those interested to take advantage of it. This CLE is sponsored by our Committee.

e. *YLD Bankruptcy Basics CLE* - Doug Bates

Doug Bates provided a summary of this program, which is used as a vehicle to increase membership thru the Young Lawyers Division. The program will take place on March 31st in Tampa. The program will be basic for non-bankruptcy practitioners.

f. *Future CLE Programs* - Kathleen DiSanto and Brett Lieberman

Nothing to report for now.

IX. Old Business

a. *Each One, Reach One Campaign* - Hon. Catherine Peek McEwen

The Judicial Chair asked for people to get involved with this program.

b. *Batram v. U.S. Bank* - Hon. Catherine Peek McEwen

The Judicial Chair advised that the decision has already been issued by the Supreme Court, which essentially held that each installment is affected by the statute of limitations. She

explained that, with this decision, creditors with installment loans can only reach back installments within the five-year period. In other words, each installment is a separate cause of action.

c. *H.R. 4225/S. 2448* - Hon. Catherine Peek McEwen

The Judicial Chair advised as to the status of this legislation. She explained that this mainly concerns the Southern District regarding bankruptcy judgeships. Nothing has yet happened in Congress. The House bill is still pending. Judge Isicoff will lobby for conversion of temporary judges to permanent judges. However, Judge Isicoff advised of the real likelihood of losing two judges in the Southern District.

The Chair asked for status of a permanent judge for the Northern District. Judge Specie advised that it was discussed and approved only at the Eleventh Circuit level. Judge Specie further explained of the need for a second judge in Pensacola. It is currently being contemplated to have a judge from another district divide labor with the Northern District. Judge Specie has not heard back on the proposal. Judge Specie also reported about the lease expiration for the Panama City courthouse, and its effect on its potential shutdown.

Doug Bates weighed in to the problem for practitioners in the Northern District on losing the Panama City location, and its effect on the practice. Mr. Bates offered his support to Judge Specie to help on her efforts. The Chair also expressed concerns about this issue and offered the Committee's support as well to avoid on potentially losing the Panama City location.

The creation of sub-committee was proposed to study the issue and deal with the problem and assist Judge Specie's efforts. The Chair will put together sub-committee and report back. Mr. Bates volunteered to chair the subcommittee.

d. *Anticipated Legislation from International Law Section* - Jodi Cooke

The Chair advised that Keith Bell in Tallahassee has been appointed as the Committee's liaison to work with the International Law section on these bills and he will report back.

e. *Out of State Division Newsletter Submissions* – Don Workman, and Hon. Catherine Peek McEwen

The Judicial Chair encouraged members to submit articles for publication.

f. *C.A.R.E. & Elder Smart Programs* - Hon. Laurel Isicoff

Judge Isicoff explained these programs and pointed out that materials are available at the CARE website for our members' review. Anyone who interested in presenting was encouraged to reach out to Judge Isicoff.

X. New Business

The Chair explained that two bills have recently been proposed in the FL Legislature: *HB 121* would allow the FL Legislature to overrule a judicial decision and *HB 125* is the federal counterpart. Judge Isicoff proposed a motion to oppose the above legislation as follows: “We will be opposed to any legislation that violates a legislators oath of office to not violate the Constitution of Florida and that of the United States or threatens the separation of powers therein.” A motion that the Committee adopt a standing position as stated above was made by Roy Kobert and seconded by Carlos Sardi. The motion carried and will be taken to the BLS Executive Council at tomorrow’s meeting.

XI. Future Meeting Dates

The Chair reminded everyone that our next meeting dates are:

- a. Annual Meeting of the Florida Bar – June 21-23, 2017 (Boca Raton, FL)
- b. Annual BLS Labor Day Retreat – September 1-4, 2017 (Boca Raton, FL) – 30th Anniversary of Retreat

XII. Adjourn

The Chair moved to adjourn the meeting and the meeting was concluded at 11:10 a.m.