

**Minutes for the Meeting of the Bankruptcy/UCC Committee
of the Business Law Section of the Florida Bar**
Held on Saturday, September 3, 2016, at 9:30 a.m.
At the Ritz Carlton Naples in Naples, 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 minutes from the annual committee meeting held in Orlando, which had been circulated via email prior to the meeting, were discussed and unanimously approved upon motion by Daniel Stermer, seconded by Roy Kobert.

II. Introduction of Special Guests and Pro Bono Reminder

The Chair introduced scholars and fellows. The Judicial Chair reminded students to stick with us. The Judicial Chair also reminded everyone to take a pro bono case and showed pro bono poster for district court judges. Prof. Davis introduced one of his students who will be competing soon in a transactional competition.

III. Business Law Section Update & Welcome

Section Jon Polenberg welcomed everyone to the Retreat. Section Chair reminded everyone about the spring retreat. Section Vice Chair Melanie Damian reminded everyone how important our Section sponsors are and to use their services when possible, and reminded everyone of our next meeting is January 27, 2017, in Orlando.

IV. Legislative Update

Section Legislation Chair Jay Brown 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. Chair Brown highlighted what is coming down the pipeline: (a) judicial term limits; (b) bitcoin; (c) corporations re: LLC glitches (already happening); (d) mortgage foreclosure amendments may be coming back; and (e) others coming in November. He asked members for support of Section efforts through contacts at the Legislature. The Committee's Vice Chair will put together task forces to study any of the measures. Chair Brown asked for support to approve amendments to the UVTA to take up to EC for approval, to go to next to the Florida Bar for approval – subject to attack by the RPPTLs.

Leyza Blanco intervened about the issue the Tax Section has with the comments on the UVTA. John Hutton (UVTA Task Force Chair) explained that the issue with the comments is something to be dealt later, because it is not something related to the substance of the bill (Florida does not adopt the comments). Chair Brown explained that it is a tactic to slow down the legislative process. Section leadership is comfortable with moving forward now, instead of slowing down to debate non-dispositive issues. Aimee Diaz-Lyon explained that we have asked the Tax Section to come up with and propose language for the comments. The Tax Section and RPPTLs have provided language to negate comments on 09/03, but this Section has not been able to read them yet.

Aimee Diaz-Lyon also gave an update on the legislative efforts, and impact of elections and new faces creeping up to educate them about the Section's efforts, including the UVTA. She explained that there are 1,500 to 2,000 bills expected to be filed this year, and seeks our assistance to identify those of interest to our Section. She also explained the timetable for future legislative sessions and our coordination to work actively on what we want to have the Legislature consider. Chair Brown encouraged members to assist in identifying legislative issues for the Legislative Committee.

V. Reports from Study Groups

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

Kenny Murena gave an update on the task force efforts, which recently had its first in-person meeting. The focus was on proposing something that all could agree would get to the next level. The task force focused on two or three critical areas and is exploring idea of a uniform receivership order to push with the Supreme Court. The group will schedule monthly calls to continue efforts.

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

No report.

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

The Chair notified the Committee that this will likely pop up in the Legislature again this year and to stay tuned.

- d. *FBA foreclosure amendment* (Fla. Stat. § 702.12) – Mindy Mora

Jodi Cooke explained that this is also expected to pop up again this year.

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

John Hutton provided an update of the Act, which the Committee adopted at the June 2016 meeting. Subsequently, after comments were received, a new version of the Act has been circulated. Summary of comments about the changes were presented. John described that the definition of person was expanded, changes were made to statute of limitations regarding the discoverability of the wrongful nature of the fraudulent transfer. The task force also prepared a white paper. Hutton sought approval from the Committee for the Act, as revised, to present to EC. John recommended to move forward and approve the Act and deal with any objections by others at the appropriate time, which the leadership supports. The Chair explained that Act had been already approved at the June meeting. John explained that revisions were made primarily regarding discovery rules.

Paul Singerman called attention to the fact that the 4th DCA may have already ruled on the discovery nature of the fraudulent transfer, and wanted to know if the changes were harmonized with that ruling. Zach Hyman corrected Paul Singerman and explained the case is actually pending before the 2d DCA. John Hutton explained that the case had been addressed in the task force's white paper, in terms of the divergence in rulings across the judiciary, to create uniformity.

Leyza Blanco asked why the Tax Section is objecting. John explained that the issue, as with the RPPTL group, is primarily related to the revised official comments to Section 4 (Fla. Stat. 726.105) – type of transfers subject to avoidance – particularly that domestic assets may be impaired per the nature of the comments.

The Chair asked for triple motion to send the Amendments to EC, and explained that the task force is seeking our Committee's support for the Section to go forward for approval process at the EC level. The Chair explained that if there are any substantive revisions there would still be further approval of those at the Committee level, but we propose to provide support for where we are now (over the Tax Section and RPTLs objection to the comments to the legislation). John Hutton made a motion for the Committee to approve UTVA, as revised, to take to EC for approval. Mark Hildreth seconded. The motion was unanimously approved. John then proceeded to thank members of the task force for their work. Prof. Davis recognized John for his tireless efforts to get this project off the ground. Everyone recognized John for his efforts.

f. *Collaborative Law* - Patricia Redmond and Hon. Laurel Isicoff

Trish Redmond explained that the task force will meet again by telephone before the Section's mid-year meeting in January. The Task Force will focus on family law issues.

VI. Bankruptcy Judicial Liaison Committee Meeting 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 decisions, local rules and other related issues.

VII. Liaison Reports from Other BLS Committees

a. *Pro Bono Committee* – Jennifer Morando

Committee Chair John MacDonald explained that the committee meeting did not occur due to weather. The Committee intends, however, to present a request to EC for a one-time \$10,000 support for Florida Bar Foundation regarding a pilot project in South Florida. The Project provides support and a pivot point for legal aid providers, voluntary groups, and others to coordinate efforts. The idea is to expand to statewide pro bono efforts. John moved this Committee to approve a request for the funds to be taken from the Bankruptcy/UCC Committee's budget item for pro bono efforts and Paul Singerman seconded it. The Chair explained to members that the budget item is already there and has not been spent. The motion carried.

b. *IMF Committee* – Jim Moon

Jim Moon explained that the IMF Committee had a joint meeting with the Membership Committee, which was well attended. He also announced that there is a diversity CLE in the pipeline to be transportable to other voluntary bars. He explained that the committee meeting scheduling had been messed up, but explained the importance to participate and get involved with the Committee efforts. Members are not attending the meeting as much as he would like or used to be in the past, so he wants members to be more engaged.

c. *Membership Committee* – Zach Hyman

Zach Hyman explained that the Committee is reaching out to members, particularly to big law firms, to check the box and have others sign up to the Section. Scholars are participating in great numbers, a total of 25 are in attendance at the retreat. The Committee has prepared a survey to pass out to members who have left the Section to understand better why that did so. Membership wants to focus on efforts to increase membership to better financial stability for the Section.

d. *Young Lawyers Division* – Christian George

No report.

e. *Communications Committee* – Chris Boussard

Chris Boussard gave an update on the blog and website revamping for articles. This Committee is working with IT Committee and is exploring working with others. Mixology is rolling out soon.

VIII. Continuing Legal Education

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

The Judicial Chair gave update on Judge Paskay Seminar in February at Embassy Suites in Tampa, including highlights for the program.

- b. *View from the Bench Seminar/Case Review* – Hon. Mike Williamson

Judge Williamson gave an update on this year's program, in Tampa November 3rd and Miami November 4th. Russ Blain will moderate.

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

Judge Williamson explained the program and provided an update.

- d. *Future CLE Programs* – Brett Lieberman

Brett Lieberman gave an update and solicited suggestions for future CLE programs.

IX. Old Business

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

The Judicial Chair explained that the program will be a miserable failure unless we all get involved to have members move up the food chain to leadership positions. The Judicial Chair wants members to push new members. Zach Hyman asked members to actively attend Section events throughout the State.

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

No update.

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

Legislation not moving or passing with respect to new positions or conversion of temporary judgeships. Two positions in Southern District at stake even if term for temporary judgeships may be extended for a year. The Judicial Chair explained that funding is an issue and prospects are very bleak.

- d. *Out of State Division Newsletter Submissions* – Hon. Catherine Peek McEwen

The Judicial Chair encouraged members to submit articles.

- e. *C.A.R.E. & Money\$mart\$ Programs* - Hon. Laurel Isicoff

No report.

- f. *Bankruptcy/UCC Committee Policies & Procedures* – Jodi Cooke, Chair

The Chair explained the proposed policies and procedures for the Committee, which were circulated prior to the meeting via email. She asked members to review and provide comments.

X. New Business

The Chair explained that these areas will be active this year in the Legislature:

- a. *Florida International Commercial Conciliation Act* (Exhibit B) – Jodi Cooke, Chair
- b. *Amendments to Chapter 684, Fla. Stat.* (Exhibit C) – Jodi Cooke, Chair
- c. *Judicial Assistance to Foreign & International Arbitral Tribunals* (Exhibit D) – Jodi Cook, Chair
- d. *Digital/Cryptocurrency Regulation* (Exhibit E) – Jodi Cooke, Chair

Information about these areas was circulated prior to the meeting via email as exhibits to the Agenda. Stephanie Lieb will lead the Digital/Cryptocurrency Regulation task force.

The Judicial Chair notified the Committee about a recent decision of note regarding Attorney/Client Privilege for Communications to Client at Workplace (2016 WL 3917593 July 2016):

Holding: Email communication regarding pending litigation not protected by A/C privilege when communication was sent to client's place of work. There was no reasonable expectation for communication to be confidential or private. Employer had a policy in place that would not allow email for personal uses. Because of this critical factor, the court held that there was no expectation of privacy for the privilege to attach.

Practical Tip: Should lawyer be texting clients when others have access to your telephone? Be careful when sending communications to clients.

XI. Future Meeting Dates

The Chair reminded everyone that our next meeting dates are:

- a. Winter Meeting of the Florida Bar – January 25-28, 2017 (Orlando, FL)

- b. Annual Meeting of the Florida Bar – June 21-23, 2017 (Boca Raton, FL)
- c. BLS Section Retreat – April 26-30, 2017 (Lisbon, Portugal)
- d. Annual BLS Labor Day Retreat – September 1-4, 2017 (Boca Raton, FL)

XII. Adjourn

Chair moved to adjourn the meeting and the meeting was concluded at 11:02 a.m.