

**THE FLORIDA BAR BUSINESS LAW SECTION  
EXECUTIVE COUNCIL MEETING AGENDA**

Thursday June 14, 2018  
3:00-6:00  
Hilton Orlando Bonnet Creek

**I. Call to Order and Introductions by Council Members – Melanie Damian, Chair**

*The Section reaffirms its goal: to achieve 100% participation in Pro Bono Service by Business Law Section members and attorneys in their firms.*

*Recognition of our Section Sponsors... Thank you to*

*Sapphire Sponsors:*

*Berger Singerman  
Michael Moecker & Associates  
City National Bank  
Eisner Amper  
Elijah*

*Emerald Sponsors:*

*Akerman  
Clarivate Analytics  
Clark Partington  
Gibraltar Private Bank  
GrayRobinson, P.A.  
Kaufman Rossin  
Messana, P.A.  
Navigant*

**II. Approval of Minutes of the January 18, 2018 Meeting, Leyza Blanco, Secretary (EXHIBIT A)**

**III. Treasurer's Report – Jay Brown -Treasurer (EXHIBIT B)**

**IV. Reports of Special Committees and Task Forces**

- A. Chapter 607 Sub-Committee – Phil Schwartz and Gary Teblum, Co-Chairs **(EXHIBIT C)**
- B. UCRERA Task Force –Kenneth Murena, Chair
- C. Digital Currency Task Force – Woody Pollack, Chair
- D. Employee Hacker Task Force – Robert Kain, Chair
- E. Antitrust and Trade Regulation – J. LaRose, Chair
- F. UVTA Task Force – John Hutton,Chair
- G. Proposed Amendments to the Fla. R. Civ. P. Task Force – Bart Valdez, Chair

**V. Standing Committee Reports**

- A. Bankruptcy/UCC – Carlos Sardi, Chair; Hon. Cathy McEwen, Judicial Chair
- B. Bankruptcy/Judicial Liaison – Jodi Cooke, Chair; Hon. Roberta Colton, Judicial Chair
- C. Business Litigation – Amanda Fernandez, Chair; Hon. Ed LaRose and Hon Darrin Gayles, Judicial Chairs
- D. Communications – Chris Broussard, Chair
- E. Computer & Technology Law –Matthew Horowitz, Chair
- F. Continuing Legal Education – Jennifer Morando, Chair
- G. Corporations, Securities & Financial Services – Robert Barron, Chair
- H. eDiscovery Committee – Bart Valdes, Chair
- I. Inclusion/Mentoring/Fellowships – James Moon, Chair  
Hon. John Olson Judicial Chair

- J. Intellectual Property – Michael Colitz, Chair
- K. Legislation – Kacy Donlon, Chair
  - Aimee Diaz Lyon, Legislative Consultant
  - Approval of Legislative Positions **(EXHIBIT D)**
  - Approval of Contract Renewal for Section Lobbyist
- L. Long Range Planning – Greg Yadley, Chair; Hon. Michael G. Williamson, Judicial Chair
- M. Membership – Amir Isaiah, Chair
- N. Pro Bono – John Macdonald, Chair; Hon. Laurel Isicoff, Judicial Chair
- O. Labor Day Weekend Retreat – Adina Pollan, Chair
- P. Sponsorship Committee – Woody Pollack, Chair
- Q. State/Federal Courts Liaison – Detra Shaw Wilder, Chair; Hon. Robert Luck, Judicial Chair
- R. Third Party Opinion Standards Committee – Robert Barron, Chair

**VI. Other Reports:**

- A. Historian/Parliamentarian Report – Phil Schwartz
- B. Board of Governors – Leslie Lott
- C. RPPTL Liaison Report – Marsha Rydberg
- D. Tax Liaison Report – Lou Conti
- E. Liaison to FICPA Report – Donald Workman
- F. Liaison to Out-of-State Practitioners Report – Donald Workman
- G. Liaison Judiciary – Hon. Virginia Norton
- H. Chair’s Report – Melanie Damian
- I. Chair-Elect’s Report – Michael Chesal

**VII. Future Meeting Dates**

- |                                                    |                       |
|----------------------------------------------------|-----------------------|
| A. Labor Day Retreat – Hyatt Regency Coconut Point | Aug 31 – Sept 3, 2018 |
| B. Winter Meeting – Orlando, TBD                   | January 16-19, 2019   |
| C. Executive Council Retreat – Israel              | March 10-14, 2019     |

**VIII. Motion to Adjourn**

# **EXHIBIT A**

**MINUTES OF THE 2018 WINTER MEETING  
OF THE FLORIDA BUSINESS LAW SECTION  
EXECUTIVE COUNCIL**

Thursday, January 18, 2018  
3:00 p.m. to 6:00 p.m.  
Doubletree, Orlando, Florida

**I. Call to Order, and Introductions by Council Members – Melanie Damian, Chair**

Melanie Damian, Chair of the Business Law Section, duly called the 2017 Winter Meeting of The Florida Bar Business Law Section (“BLS” or “Section”) to Order at approximately 3:00 PM.

Ms. Damian then requested introductions by all those in attendance. She also asked that all members of the Executive Council sign the Attendance List to confirm the presence of a quorum. (A copy of the Attendance List is attached hereto as Exhibit A.)

Ms. Damian began the meeting by reiterating the Section’s commitment to Pro Bono activities on behalf of the Bar.

**II. Approval of Minutes of the September 4, 2017 Labor Day Retreat Meeting – Leyza Blanco, Secretary**

Leyza F Blanco, Secretary, presented the Minutes of the September 4, 2017 Fall Retreat Meeting which took place in Lantana, Florida. (A copy of the Minutes were attached to the Agenda as Exhibit A.) Upon motion duly made and seconded, the Minutes were unanimously approved as drafted.

**III. Treasurer’s Report – Jay Brown - Treasurer**

Jay Brown reported that the Section’s fiscal standing is sound. He advised that anyone with questions regarding the budget for 2017-2018 should be directed to him.

Mr. Brown, moved to authorize to increase hours for Tracey Eller from 14 hours up to 21 hours per month totaling up to approximately \$560 per month which was seconded. After limited discussion, the Motion was unanimously approved.

**IV. Legislation – Kacy Donlon, Chair; Aimee Diaz Lyon, Legislative Consultant**

Kacy Donlon reported the completion of 2<sup>nd</sup> week of 9 week legislative session. Ms. Donlon also reported that the financial literacy bill is in process. Ms. Donlon and Ms. Diaz Lyon reported that the UVTA bill is also in process and will be presented at a Committee meeting next week which will provide more information as to where opposition to the bill presently lies. There are no legislative matters for the Council to vote on at this time.

**V. Reports of Special Committees and Task Forces**

A. Chapter 607 Sub-Committee – Phil Schwartz & Gary Teblum, Co-Chairs

Phil Schwartz, Co-Chair of the Chapter 6077 Sub-Committee reported that the Sub-Committee is working through the statute in comprehensive fashion. He further reported that the Sub-Committee's work on Articles 1-8 including commentary has been completed.

Mr. Schwartz reported the work on Articles 14-16 will be posted at a later date in the Spring leaving only one section which has not yet been reviewed. The remaining section will be taken up as a single comprehensive discussion similar to the discussion on the LLC Act. The Sub-Committee expects it will be completed by June, 2018 to permit revisions over the summer and ensure all the ancillary changes and conforming changes to the LLC statute are included. The goal of the Sub-Committee is to present the proposed revisions for the 2019 legislative session. The bulk of the issues have already been vetted and have been published.

Mr. Schwartz requested that any committees with issues as to the proposed statute should convey those to the Sub-Committee now before the Sub-Committee's review is complete. Specifically, the Sub-Committee requested that the Business Litigation Committee cover a list of items for input. Input from the Committees is important to ensure all concerns from the committees have been addressed. Mr. Schwartz added that the 607 Statute has service of process issues which also need to be addressed.

#### B. UCRERA Task Force – Kenneth Murena, Chair

Ken Murena, Chair of the UCRERA Task Force reported that the UCRERA Task Force met and made progress in refining language of UCRERA to address concerns raised in the meeting. The Committee has three more sections to review and reached agreement regarding one section. The issue of selling property outside the ordinary course will be reviewed by the Committee. By June of 2018, the Task Force will have a better idea of whether it will recommend support of UCRERA.

#### C. Digital Currency Task Force – Woody Pollack, Chair

No report.

### **IV. Standing Committee Reports**

#### A. Bankruptcy/UCC - Carlos Sardi, Chair; Hon. Cathy McEwen, Judicial Chair

Carlos Sardi, Chair of the Bankruptcy/UCC reported that the Bankruptcy/UCC Committee met together with the Bankruptcy Judicial Liaison Committee at the Winter Meeting. The Committee reported that the Committee discussed the progress with the foreclosure bill, the UVTA and other legislative proposals. The Committee discussed the Bankruptcy Venue Reform Act of 2017 and commended the Chair of the Section for obtaining approval of the Executive Council to support the legislation. The Section's support for the Bankruptcy Venue Reform Act of 2017 is being considered by the Florida Bar this Friday. Upon approval, a letter from the Business Law Section will be sent to our U.S Representatives in Washington D.C. Mr. Sardi also reported the formation of a task force to review international service of process issues.

Mr. Sardi further reported that the UCC Article 9 Seminar will be held on April 20, 2018 at the Marriott Waterside in Tampa and will feature well-known speakers, Steven O. Weise and Norman Powell. He also reported that the Bankruptcy/UCC Committee is working on developing a CLE regarding involuntary bankruptcies.

#### B. Liaison to Out-of-State Practitioners Report – Donald Workman

Donald Workman, Liaison to the Out of State Practitioners reported that they are working to obtain articles for the out of state newsletter from members of the Section.

C. Liaison to FICPA Report – Donald Workman

Donald Workman, Liaison to the FICPA reported having two face to face meetings at their conferences and two phone calls in effort to improve relationships between the FICPA and the Business Law Section. The objective is that the two organizations support each other's legislative efforts and to improve communication between two organizations. Mr. Workman reported that discussions are moving toward planning a networking event for members of both organizations to get together.

**IV. Report from Michael Higer, President of the Florida Bar**

President Higer thanked everyone present for their service and noted all the past chairs of the Section who are present and still engaged in the work of the Section. President Higer also congratulated and thanked Leslie Lott for her service to the Bar and this Section.

President Higer advised that we have a responsibility to ensure that Judicial Nominating Commissions are diverse and representative of race, creed, color, practice areas etc. He reported this is an issue because the application process in some circuits yielded 5 or less applications. He encouraged the members of the Executive Council, as leaders to ensure that at least 2 applicants for each of the open seats are highly qualified and diverse. If the members of the Florida Bar do not succeed in submission of at least 2 qualified candidates, the responsibility to submit candidates may be taken away from the Florida Bar. There is a greater need for qualified candidates in the following circuits: 3rd, 5th, 6th, 8th, 10th, 12th, 14th, 16th, 19th, 20th.

President Higer further reported that the deadline for applications for Florida Bar Committees was January 16, 2018. If have other suggestions or recommendations for those interested in serving on those committees, send an email to Michelle@dkrpa.com.

**VI. Continued Reports from Standing Committees**

D. Bankruptcy/Judicial Liaison – Jodi Cooke, Chair; Hon. Roberta Colton, Judicial Chair

Judge Robert Colton, Judicial Chair of the Bankruptcy Judicial Liaison Committee, reported that the final installment of the discussion on attorneys' fees in bankruptcy cases and how they are handled across the 3 districts will occur at the annual meeting in June. A sub-committee members will put together comments and compile recommendations to be considered by the larger committee.

E. Business Litigation – Amanda Fernandez, Chair; Hon. EdLaRose & Hon. Darrin Gayles, Judicial Chair

Mr. Zach Hyman reported on behalf of the Business Litigation Committee and their CLE on Digital Currency Block Chain. He further reported the formation of a task force for review of the International Law Section's proposed bill for on service of process and the discussion of whether this should be state or federal legislation. The Committee requested members from Bankruptcy/UCC Committee to assist with the task force for review of the international service of process issues.

Mr. Zach Hyman also reported that a letter was written to the Florida Supreme Court regarding modification of rules regulating certified mediators and Justice Lawson agreed to review the status of the correspondence from the Section.

F. Communications – Chris Broussard, Chair

Chris Broussard, Chair of the Communications Committee, reported regarding the Committee's discussion regarding the development of a blog and dedicated blog space on the website in the hopes of getting more people involved in the Business Law Section. Mr. Broussard also reported on adding links to Lexology on the web page and the development of promotional videos to be posted on the website.

G. Computer & Technology Law – Keith Kanouse, Chair

Keith Kanouse, Chair of the Computer & Technology law Committee reported on the Committee's discussions relating to block chain technology and smart contracts and working through issues relating to those issues. Mr. Kanouse also reported regarding the Committee's review of issues relating to broadband privacy and taxation of internet video so that they can provide comments to the legislative committee. The Committee will be reviewing topics regarding new cases relating to initial coin offerings and their impact and will focus on how to grow their committee.

H. Continuing Legal Education – Jennifer Morando, Chair

Jennifer Morando, Chair of the Continuing Legal Education Committee advised of the need for contributions of articles for the Florida Bar Journal due to the Business Law Section's guaranteed spots in the Florida Bar Journal. Ms. Morando also reported on "Got Civility" program being presented throughout the state and advised that the next presentation will be in Tampa on Feb 7, 2018 at the Stetson Law Center.

Ms. Morando further reported on the upcoming Federal Securities Institute chaired by Greg Yadley and sponsored for the first time by the Business Law Section. Mr. Yadley reported that the Institute is taking place in Miami on Feb 1-2 at the JW Marriott Marquis and offers 15 CLE hours for \$740 registration fee featuring the former Chair of the Securities & Exchange Commission and Justices from Delaware Supreme Court as guest speakers. Mr. Yadley asked that the members of the Executive Council share information with colleagues and other organizations so we can ensure robust participation in that program.

I. Corporations, Securities & Financial Services – Robert Barron, Chair

Robert Barron, Chair of the Corporations, Securities & Financial Services Committee reported regarding the Committee's discussion relating to dissolution and oppression of minority shareholders which lasted the duration of their meeting.

J. eDiscovery Committee – Bart Valdes, Chair

Bart Valdes, Chair of the eDiscovery Committee reported that they are developing a Continuing Legal Education program that will have 4 sessions. The Committee is applying for Technology credit and certification for Civil Trial and Business Litigation credit. St. Lucie and Martin County judges are available to present on E-Discovery and digital evidence issues. The presentations can be done in your jurisdiction.

Mr. Valdes further reported that the Sub-Committee for the Federal Civil Rules Committee is proposing changes to the Rule 1.380 regarding sanctions and e-discovery. The Committee proposed comments which are not proposed to go within the rule but rather provide comments to the proposed changes to promote consistency, particularly with proposed changes regarding sanctions, duties to preserve etc. indicating that if the rule is proposed to be adopted in a form different from the Federal Rules, there should be comments as to why they would be different so that there is guidance as to why

they are not identical. The eDiscovery Committee moved for the Executive Council to direct the permit the e-Discovery Committee to send their comments to the Sub- Committee which motion was seconded and approved by the Executive Council.

Mr. Valdes further reported that issues relating to spoliation and duty to preserve discovery issues impact other committees. Mr. Valdes made a motion to create a task force to review proposed rule amendments to the Fla R. Civ. P. called the Amendments to the Rules of Civil Procedures Task Force to provide any substantive comments to the Rules as the process of amending the Florida Rules of Civ P. progresses. The motion was seconded and approved. Mr. Valdes called for others interested in serving on the Rules Task Force to advise of their interest.

K. Employee Hacker Task Force – Robert Kain, Chair

Mr. Kain reported on the Florida Computer Abuse and Discovery Act and the passage of a similar law in Utah. Mr. Kain further advised that the Task Force’s report will be available on the website.

L. Inclusion/Mentoring/Fellowships – James Moon, Chair; Hon. John Olson, Judicial Chair

James Moon, Chair of the Inclusion/Mentoring Fellowships Committee reported regarding the joint meeting of Membership and Inclusion/Mentoring/Fellowships Committee and advised the meeting was better attended than usual. Mr. Moon further reported that Applications for fellowships are available on the website and the deadline for submission is January 23, 2018. Mr. Moon reported that there will be upcoming events promoting diversity and inclusion in Miami, Orlando and Tampa and that new materials for with a new logo as giveaways for the events.

M. Intellectual Property – Michael Colitz-Morris, Chair; Hon. Mary Scriven, Judicial Chair

Mr. Michael Colitz-Morris, Chair of the Intellectual Property Committee reported that 49 attorneys are being re-certified and 6 applicants are taking the board certification exam. He further reported that the 9<sup>th</sup> Annual Intellectual Property Symposium will be held on April 12-13 at the Don CeSar Hotel. There will be sessions on block chain, and a panel of federal judges presenting for an opportunity for 12 CLE credit hours over the 1/1/2 day event. There will also be a 2- hour session on Thursday for those who wish to take the certification exam.

N. Long Range Planning – Greg Yadley, Chair; Hon. Michael G. Williamson, Judicial Chair

No report.

O. Membership & Law School Relations – Amir Isaiah and Zach Hyman, Co-Chairs

Mr. Amir Isaiah, Co-Chair of the Membership & School Relations Committee reported having a well-attended meeting together with Inclusion/Mentoring/Fellowships Committee. The Membership Committee is introducing initiatives with scholars program and cooperative efforts with CLE committees to bring new members and have also encouraged scholars to attend every meeting, introducing FSU Scholars who were in attendance. The Committee thanked Judge LaRose and Manny Farach on their efforts and requested assistance in liaising with other law schools.

P. Pro Bono – John Macdonald, Chair; Hon. Laurel Isicoff, Judicial Chair

Mr. John Macdonald, Chair of the Pro Bono Committee reported robust attendance at the meeting from representatives from other committees. He reported on the Florida Pro Bono Matters Program and platform that has been rolled out in 29 counties and developed with seed money from our section. Mr.



Macdonald advised that the Pro Bono Matters Program has to be published to everyone and utilized by the lawyers including on social media to increase access to the platform. Mr. Macdonald further reported that a link on the website takes BLS members directly to the program and discussed developing a program to be rolled out in June to encourage BLS members to sign up during the meeting to be entered into a raffle for a fabulous prize.

Mr. Macdonald also encouraged members to become fellows for the Florida Bar Foundation at a modest sum and reported on 2 recent amendments which provides safe harbor to conflicts rules for participants in legal aid clinics to reduce the potential of inadvertently touching a matter that is adverse to a client or policy basis adverse to the firm when participating in short term legal services programs. The second amendment discussed was to relax conflict rules to encourage retired and out of state bar members to participate in pro bono service in an effort to expand opportunity and remove impediments for lawyers to provide pro bono service.

Q. Labor Day Weekend Retreat – Adina Pollan 2018 Retreat Chair

Ms. Adina Pollan, 2018 Retreat Chair reported that the 2018 Retreat will take place at the Hyatt Coconut Point in Bonita Springs over Labor Day weekend with the theme “Chart a Course for Treasure Island where You will Find, Health, Wealth and Wisdom.”

R. Sponsorship Committee – Manny Farach and Woody Pollack, Co-Chairs

Mr. Manny Farach, Co-Chair of the Sponsorship Committee encouraged members to contact the sponsors of the Section to ensure they are satisfied with the sponsorship benefits. Mr. Farach reported that efforts are being focused on what the Sponsors are seeking as benefits for their sponsorship. The Sponsorship Committee will reach out to Committees to advise of any such feedback from the committees and to request ideas, thoughts, or suggestions relating to sponsors and sponsorship benefits.

S. State/Federal Courts Liaison – Detra Shaw Wilder, Chair; Hon. Robert Luck, Judicial Chair

Mr. Amir Isaiah reported on behalf of the State/Federal Courts Liaison Committee regarding building on roundtables from retreat and possibly having a smaller roundtable program in South Florida since Judge Beatrice Butchko was not present for the roundtable at the last retreat.

T. Third Party Opinion Standards Committee – Robert Barron, Chair

Mr. Robert Barron reported briefly that the Third Party Opinions Standards Committee hopes to have a finished report this summer.

**VII. Other Reports**

- A. Historian/Parliamentarian Report – Phil Schwartz  
No report.
- B. Board of Governors – Leslie Lott  
No report.
- C. RPPTL Liaison Report – Jaime Marx/Marsha Rydberg  
No report.
- D. Tax Liaison Report

No report.

E. Liaison Judiciary – Hon. Virginia Norton  
No report.

F. Chair’s Report – Melanie Damian

Ms. Melanie Damian reported that the Executive Council Retreat will be held in Cartagena, Colombia on Mar 21-25, 2018 and encouraged those who have not yet registered to do so as hotel reservations are filling up quickly and the room block may be nearly full. There is an opportunity to register at sister hotel across the street.

Ms. Damian also reported that the next meeting of the Executive Council will be at the Hilton Bonnet Creek in connection with the Florida Bar Annual Meeting.

G. Chair-Elect’s Report – Michael Chesal

Mr. Michael Chesal, Chair Elect reported that work on the slate for Executive Council next year has begun and he encouraged chairs whose term is concluding to advise him of potential candidates for next year’s appointments. He also advised that work is underway to plan the Executive Council retreat for March 11, 2019.

**VIII. Future Meeting Dates**

- A. Executive Counsel Retreat – Cartagena Colombia (March 21-25, 2018)
- B. Annual Meeting – Orlando Hilton Bonnet Creek (June 13-16, 2018)

**IX. Motion to Adjourn**

Ms. Damian then entertained a motion to adjourn. The motion was duly made, seconded and passed unanimously at approximately 5:30 PM.

# **EXHIBIT B**

**THE FLORIDA BAR**  
**Business Law Section**  
For the Eleven Months Ending Thursday, May 31, 2018

	This Month	YTD	FY 17-18	Budget
	May	2018	Budget	% Utilized
3001-Annual Fees		\$271,810	\$285,000	95.37%
3002-Affiliate Fees		\$1,280	\$2,590	49.42%
<b>Total Fee Revenue</b>	<b>\$</b>	<b>\$273,090</b>	<b>\$287,590</b>	<b>94.96%</b>
3301-Registration-Live		\$117,685	\$115,000	102.33%
3321-Registration-Webcast	\$1,232	\$2,372		0.00%
3331-Registration-Ticket	\$7,066	\$51,764	\$75,500	68.56%
<b>Total Registration Revenue</b>	<b>\$8,298</b>	<b>\$171,820</b>	<b>\$190,500</b>	<b>90.19%</b>
3351-Sponsorships		\$153,032	\$115,000	133.07%
3391 Section Profit Split	(\$29,420)	\$56,960	\$115,000	49.53%
3392-Section Differential	\$180	\$11,160	\$18,000	62.00%
<b>Other Event Revenue</b>	<b>(\$29,240)</b>	<b>\$221,152</b>	<b>\$248,000</b>	<b>89.17%</b>
3401-Sales-CD/DVD	\$2,460	\$2,460		0.00%
<b>Sales, Rents &amp; Royalties Revenue</b>	<b>\$2,460</b>	<b>\$2,460</b>	<b>\$</b>	<b>0.00%</b>
3899-Investment Allocation	\$473	\$31,842	\$9,697	328.37%
<b>Non-Operating Income</b>	<b>\$473</b>	<b>\$31,842</b>	<b>\$9,697</b>	<b>328.37%</b>
<b>Total Revenue</b>	<b>(\$18,009)</b>	<b>\$700,365</b>	<b>\$735,787</b>	<b>95.19%</b>
4131-Telephone Expense		\$359	\$900	39.91%
4133-Internet Service			\$150	0.00%
4134-Web Services		\$18,099	\$24,000	75.41%
4135-Social Media		\$4,000	\$7,500	53.33%
4301-Photocopying			\$200	0.00%
4311-Office Supplies		\$545	\$700	77.83%
<b>Total Staff &amp; Office Expense</b>	<b>\$</b>	<b>\$23,003</b>	<b>\$33,450</b>	<b>68.77%</b>
5031-A/V Services		\$9,040		0.00%
5051-Credit Card Fees	\$704	\$7,209	\$3,400	212.02%
5101-Consultants		\$60,000	\$80,000	75.00%
<b>Total Contract Services</b>	<b>\$704</b>	<b>\$76,249</b>	<b>\$83,400</b>	<b>91.43%</b>
5501-Employee Travel	\$2,435	\$4,227	\$6,360	66.45%
5561-Judges Travel	\$2,018	\$21,868	\$46,000	47.54%
5571-Speaker Travel	\$94	\$2,101		0.00%
5599-Other Travel		\$3,353	\$8,000	41.91%
<b>Total Travel</b>	<b>\$4,546</b>	<b>\$31,548</b>	<b>\$60,360</b>	<b>52.27%</b>

	This Month	YTD	FY 17-18	Budget
	May	2018	Budget	% Utilized
6001-Post 1st Class/Bulk		\$44	\$675	6.56%
6021-Post Express Mail	\$2	\$8		0.00%
6231-Promotion Item/Giveaway		\$3,330	\$1,783	186.77%
6301-Mtgs TFB Annual Meeting		\$	\$15,000	0.00%
6311-Mtgs General Meeting	\$37	\$60,866	\$50,000	121.73%
6319-Mtgs Other Functions		\$20,982	\$30,000	69.94%
6321-Mtgs Meals		\$186,303	\$180,000	103.50%
6325-Mtgs Hospitality		\$38,858	\$58,000	67.00%
6341-Mtgs Equip Rental		\$20,017	\$18,217	109.88%
6361-Mtgs Entertainment		\$12,303	\$15,000	82.02%
6401-Speaker Expense		\$4,466	\$2,500	178.66%
6451-Committee Expense	\$1,197	\$5,402	\$5,000	108.04%
6531-Brd/Off Special Project			\$5,000	0.00%
7001-Grant/Award/Donation	\$1,154	\$9,709	\$14,000	69.35%
7011-Scholarship/Fellowship	\$533	\$16,991	\$50,000	33.98%
7999-Other Operating Exp		\$1,527	\$50,700	3.01%
<b>Total Other Expense</b>	<b>\$2,924</b>	<b>\$380,807</b>	<b>\$495,875</b>	<b>76.80%</b>
8011-Administration CLE		\$16,500		0.00%
8021-Section Admin Fee		\$86,298	\$92,017	93.78%
8101-Printing In-House		\$25	\$1,350	1.84%
8131-A/V Services	\$105	\$5,955		0.00%
8141-Journal/News Service		\$425		0.00%
8171-Course Approval Fee		\$150		0.00%
<b>Total Admin &amp; Internal Expense</b>	<b>\$105</b>	<b>\$109,353</b>	<b>\$93,367</b>	<b>117.12%</b>
9692-Transfer Out-Council of Sections	\$300	\$300	\$300	100.00%
<b>Total InterFund Transfers Out</b>	<b>\$300</b>	<b>\$300</b>	<b>\$300</b>	<b>100.00%</b>
<b>Total Expense</b>	<b>\$8,578</b>	<b>\$621,261</b>	<b>\$766,752</b>	<b>81.02%</b>
<b>Net Income</b>	<b>(\$26,588)</b>	<b>\$79,104</b>	<b>(\$30,965)</b>	<b>(255.46%)</b>
2001-Fund Balance, Beginning		\$428,208	\$428,208	100.00%
<b>Fund Balance, Ending</b>	<b>\$</b>	<b>\$507,312</b>	<b>\$397,243</b>	<b>127.71%</b>

# EXHIBIT C

**Presentation to the Executive Council of the Business Law Section  
June 14, 2018**

**PROPOSED MODIFICATIONS TO CHAPTER 607**

The Florida Bar Business Law Section ("Section") has a long history of proposing entity statutes for our state. The Section comprehensively updated and modernized Florida's corporate statute in the late 1980s, updated Florida's partnership statute in the mid 1990s, updated Florida's limited partnership statute in the early 2000s and updated Florida's LLC statute in the late 1990s and, in a far more comprehensive fashion in 2013, and the Section is now – once again – working to update and modernize Florida's corporate statute.

Florida is a Model Act/Uniform Laws state with respect to its entity statutes, but unlike Delaware, for example, the Section is not in a position to make significant changes to our State's entity statutes on a year in and year out basis. Thus, the Section's efforts have tended to be to present large comprehensive bills to replace older entity statutes with updated and modernized ones. That is not to say that the Section has not previously updated and modernized provisions of the Florida Business Corporation Act ("FBCA"), but these efforts have not typically been on a comprehensive basis.

When it comes to for-profit corporations in Florida, Florida generally follows the revised Model Business Corporation Act (the "MBCA" or the "Model Act"), which is promulgated by the Corporate Laws Committee of the ABA Business Law Section. Although the Model Act has changed extensively over the past thirty-five years, Chapter 607 has been overhauled only once (in 1989) and otherwise has endured patchwork amendments, with more significant changes in 1996 and 2003. Recently, in 2016, the MBCA itself was updated and modernized in its entirety. For all of these reasons, it has been deemed a necessity to consider comprehensively amending Florida's corporate statute so that Florida keeps pace with modern statutory developments relating to corporations.

There are a large number of entities organized in Florida. At the beginning of 2018, Florida had 760,000 corporations and almost 1.2 million limited liability companies in existence - probably more than any other state – growing at the rate of about 100,000 corporations and more than 250,000 LLCs per year. Because so many of the users of Florida's entity statutes are private companies, Florida tends to try to be as proscriptive as possible to offer clarity in our law for users that range from non-lawyers, to lawyers who are not necessary experts in entity matters, and to judges, all of whom are able to benefit from proscriptive guidance in our State's entity statutes.

In 2014, a drafting task force (the "Drafting Subcommittee" or the "Subcommittee") was organized under the auspices of the Corporations, Securities and Financial Services Committee of the Section to make recommendations as to proposed changes to the FBCA, which is contained in Chapter 607 of the Florida Statutes. The Drafting Subcommittee's mission statement was to comprehensively study Florida's business corporation statute and to propose a more cohesive revision and set of amendments with the purpose of (i) bringing Florida's business

corporation statute in line with the revisions to the MBCA and the trends affecting the use of corporations by businesses today, (ii) maintaining Florida's competitiveness with other jurisdictions, (iii) seeking to fix issues presented by the existing statute that have been experienced by practitioners in practice and in litigating disputes concerning the operations of Florida corporations, and (iv) continuing to encourage formation and use of Florida corporations, where appropriate.

The FBCA is comprised of 17 articles. At the present time, the Subcommittee has completed its review of Articles 1-8, 14, 15 and 16 of the FBCA (the "Updated Act") and has posted a Master Draft, dated March 22, 2018, of the Updated Act with its proposed changes to the FBCA (and the related commentary describing the changes made to each section of the FBCA) on the Subcommittee's webpage of the Section's website. The Subcommittee is currently finalizing the remaining sections of the Updated Act, and currently expects to complete the balance of its proposal several weeks ahead of the Section's Annual Retreat in early September.

The Updated Act follows, for the most part, the 2016 version of the Model Act. Additionally, in some aspects and where appropriate, it has been harmonized with certain parallel provisions of the Florida Revised Limited Liability Company Act ("FRLUCA") that was adopted in 2013.

This bullet point summary of the Updated Act has been prepared by the co-chairs of the Subcommittee to facilitate the Executive Council's review of the proposed statute. References in this bullet point summary to "Existing Law" refer to existing Chapter 607 of the Florida Statutes. References to "Updated Act" refer to Chapter 607, as proposed to be revised. Unlike the recent revision to Florida's limited liability company statute where Chapter 608 was replaced by Chapter 605, the proposed revisions to the FBCA, although extensive, are all expected to be made within the existing Chapter 607.

### **OVERVIEW OF THE UPDATED ACT**

The Updated Act updates existing Chapter 607, which, assuming adoption in the 2019 legislative session, is planned to become effective for all Florida corporations as of January 1, 2020.

The Updated Act is modeled on the 2016 version of the Model Act, yet deviates in a number of respects by:

- (i) retaining certain non-Model Act provisions already contained in existing Chapter 607;
- (ii) borrowing language from the Delaware General Corporation Law ("DGCL"); and
- (iii) borrowing parallel language and approaches from the Florida Revised Limited Liability Company Act ("FRLUCA").

The Updated Act introduces a number of improvements and additions to Chapter 607.



The Updated Act introduces more definitions than were set forth in Existing Law, many of which are necessary because of new provisions not contained in Existing Law. The Updated Act also updates and tries to become more consistent in the use of certain defined terms and terminology (such as references to the "department" and the "chapter" and the use of the term "signed" rather than "executed").

Some of the more critical changes reflected in the Updated Act are as follows:

- clarifies the extent to which plans and filed documents can be dependent on facts objectively ascertainable outside a plan or filed document;
- modifies and expands the terms as to the date and time when a filed document under Chapter 607 is effective, paralleling (for the most part) the comparable provision in FRLCA;
- modifies the provisions relating to correcting filed documents such that corrections can be filed at any time, and would no longer be limited to the 30 day period following the initial filing;
- in several places, and at the request of the DOS, modifies the proper jurisdiction for bringing actions against the Florida Department of State ("DOS") from the county where a corporation's principal place of business is located to Leon County, Florida;
- harmonizes the specifics to be contained in a certificate of status with how the department currently operates, paralleling the comparable provision in FRLCA (for the most part);
- updates definitions of "electronic," "electronic record," "electronic transmission," "record," and "sign" and methods of giving, transmitting and delivering notice to be more in tune with current and anticipated electronic technology;
- adds the concept of "qualified director" to identify truly independent directors for purposes of the updated derivative action provisions, the updated director conflict of interest provisions, and the updated indemnification provisions;
- authorizes Articles of Incorporation and/or bylaws to include exclusive forum provisions relative to proceedings addressing internal corporate claims;
- expressly prohibits provisions in Articles of Incorporation or in bylaws purporting to impose liability upon a shareholder for attorneys' fees or expenses in connection with an internal corporate claim proceeding, but allowing such a provision in an approved shareholders' agreement;
- makes it expressly clear that proxy access bylaw provisions are permissible;
- adds language to expressly authorize a corporation (consistent with current DOS practice) to adopt an otherwise prohibited name if written consent from the other entity using that name is obtained and filed;

- adds back the concept of a short term reservation of a corporate name prior to incorporation, which had been removed from the statute in 1998;
- expands the types of entities that can serve as a registered agent for a corporation, paralleling the comparable provision in FRLUCA (for the most part);
- updates service of process provisions, including confirming that the service of process provisions in Chapter 48, to the extent different, are alternatives for service of process;
- authorizes boards of directors to delegate to committees and/or any officers authorization to issue equity awards, without specifying limits [still under discussion];
- updates provisions dealing with participation in meetings by way of remote communications in order to take into account technological development;
- expressly allows for bi-furcated record dates for shareholders meetings (i.e., who get notice versus who gets to vote);
- expressly states that the failure to provide the 10 day notice of an action taken by written consent does not invalidate or delay the effectiveness of the action taken;
- seeks to clarify obligations with respect to the maintaining of, and rights to access, shareholder lists;
- clarifies when shares of a corporation are considered owned by that corporation and thus not entitled to a vote;
- changes the language used to identify public companies by keying into corporations with shares registered under section 12 of the Securities Exchange Act of 1934;
- adds a separate provision addressing in detail and by way of guidance the way in which inspectors of election operate, particularly for public companies;
- through changes to section titles, clarifies that there is a difference between “voting agreements” and “shareholders agreements;”
- eliminates the restriction that shareholder agreements that change traditional corporate norms can only be implemented by corporations with 100 or fewer shareholders;
- expressly validates fee shifting provisions in certain shareholders' agreements adopted under s. 607.0732 of the FBCA;
- in the context of what is not permitted to be included in shareholders' agreements that change traditional corporate norms, removes the examples of what is considered contrary to public policy, instead leaving that determination to the courts;

- clarifying what is considered the current law to the effect that, notwithstanding the statutorily authorized shareholder agreements which require all shareholders to be parties to be enforceable, agreements among selected groups of shareholders (yet less than all) will still be enforceable between and among such contracting shareholders to the extent otherwise valid under general contract law principles;
- provides greater detail and instruction for addressing derivative actions by expanding provisions and breaking out the procedural aspects of derivative actions into seven separate sections (addressing standing, the requirement of universal demand, stay of proceedings, process for evaluating whether to dismiss the action, discontinuance or settlement of the action, payment of expenses, and nonapplicability to foreign corporations);
- adds statutory language expressly authorizing a court to appoint a custodian or receiver in a proceeding by a shareholder, but outside the context of a dissolution proceeding and, as for appointing a receiver, without any need to show insolvency [still under discussion];
- adds statutory language expressly authorizing the appointment by a court of a provisional director in a proceeding by a shareholder where a deadlock exists and outside the context of a dissolution;
- adds statutory language expressly authorizing a court to remove a director, in a derivative proceeding, under certain specified circumstances;
- modifies how director vacancies in director positions that have been elected by a separate voting group shall be filled;
- updates provisions relating to the composition, operation and authority of board committees, including authorizing board committees comprised of one board member and modifying what actions cannot be delegated to a board committee;
- clarifies the statutory language addressing director fiduciary duty standards and the business judgment rule, but without intending to make any substantive change;
- adds an express authorization for a corporation to enter into an agreement with a “force the vote” provision;
- extensive modification to the director conflicts of interest provision to match the conflict of interest approach adopted in FRLICA, and particularly to make clear that (i) an “unfair” conflict of interest transaction cannot be “sanitized” by an approval of disinterested directors (now called qualified directors) and (ii) approval of a conflict of interest transaction by qualified directors nevertheless shifts the burden of proving that such transaction is fair or unfair;
- adds a statutory provision expressly addressing in some detail the standards of conduct for officers, paralleling the statutory fiduciary duties of directors, with the intent of

replacing common law agency principles, and adding “up the line” reporting obligations and rights to reasonably rely on certain others and certain information;

- provides greater detail and instruction with respect to indemnification of directors and officers by expanding provisions and breaking out the existing “long” indemnification statute into ten separate sections (providing certain definitions, addressing permissive versus mandatory indemnification (including the need to now be wholly successful to get statutorily mandated indemnification), advancing of expenses, court ordered indemnification, determination of whether standards for permissible indemnification have been met, power to purchase indemnification insurance, ability to indemnify beyond statutory indemnification and the outside limits on the ability to indemnify);
- allows the authorization for director approved share splits or combinations without shareholder approval to be available to corporations with fewer than 35 shareholders;
- with respect to amendments to the articles of incorporation that need to be approved by shareholders, modifies the statute to require that a full copy of the amendment (and not just a summary) must be provided to shareholders for approval;
- adds interest holder liability concepts in various places including with respect to amendments to articles of incorporation, mergers, share exchanges, conversions, and domestications;
- adds provisions relating to authorizing bylaws to include certain provisions relating to majority voting for directors and holdover directors;
- modifies provisions for judicial dissolution and appointment of receivers and custodians in the context of judicial dissolution proceedings, including adding oppression as one of the grounds for judicial dissolution;
- modifies provisions governing organic transactions like mergers, share exchanges, conversions, and sales of substantially all of the assets,
- adds provisions permitting the merger of corporations without a shareholder vote following a tender offer, if certain conditions are met;
- modifies provisions regarding conversions so as to more clearly address both inbound and outbound conversions [still under discussion];
- modifies provisions governing domestications so as to expand domestications to include in-bound domestications by any non-Florida corporation, including entities existing in other states within the United States, and out-bound domestications by Florida corporations into corporations organized in other states within the United States, such that moving a corporation into another state of organization can be achieved without having to employ a merger or a conversion [still under discussion];

- modifies appraisal rights provisions, including adding events that trigger appraisal rights, and providing clarifications to the procedural aspects of the appraisal rights provisions, particularly in dealing with organic transactions approved by way of written consent, and
- modifies provisions that address the obligations of corporations to make financial statements available to shareholders, the maintenance of corporate records, and the inspection rights of shareholders and directors.

A few things did not change from before and a few of the new items in the Model Act are not proposed to be adopted. The Drafting Subcommittee:

- Did **NOT** add the provisions in the Model Act relating to “ratification of defective acts.”
- Did **NOT** add the provision permitting corporations to include in their articles of incorporation a provision that limits or eliminates a director’s or an officer’s duty to present a business opportunity to the corporation.
- Did **NOT** add the provision that requires shareholder approval of any share issuances of more than 20% of voting power.
- Did **NOT** add the default rules for the conduct of a shareholders meeting.
- Did **NOT** include the provision requiring the duration of a voting trust to be expressly set forth in the voting trust instrument.

The Subcommittee will present an updated final bullet point list highlighting the changes in the Updated Act prior to the Executive Council meeting to be held at the Section's Annual Retreat in September.

# **EXHIBIT D**

## **Legislative Positions – Business Law Section**

### **Bankruptcy / Uniform Commercial Codes / Debtor-Creditor Issues**

1. Supports Revised Article I of the Uniform Commercial Code, as developed by the National Conference of Commissioners on Uniform State Laws (NCCUSL).
2. Supports legislation to update or modernize the assignment for benefit of creditors in Chapter 727, Florida Statutes.
3. Supports the creation of 702.55 Florida Statutes, providing for notice to homeowner in mortgage foreclosure action of possibility of relief under U. S. Bankruptcy Code.
4. In any proposed legislation regarding “Credit Counseling Services”, supports clear definitions and language to exclude licensed Florida attorneys, including bankruptcy attorneys who represent debtors, from the scope of the bills.
5. Supports Revised Article 7 of UCC developed by NCCUSL relating to electronic documents of title, warehouse receipts, and bills of lading.
6. Supports providing federal bankruptcy exemption for alimony, support or separate maintenance, that has already been received, to the extent necessary for the support of the debtor or his/her dependents.
7. Opposes any amendment to existing Florida law governing real property foreclosures unless those amendments carefully preserve and protect the property rights and due process rights of the holders of interests in or affecting Florida real property.
8. Supports proposed updating and clarifying Uniform Law Commission / NCCUSL amendments to Article 9 UCC/FS Ch. 679.
9. Supports enactment of a separately credited financial literacy course as a prerequisite for high school graduation and a standard high school diploma.
10. Supports amendments to the Uniform Fraudulent Transfer Act promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL).
11. Supports the Bankruptcy Venue Reform Act of 2017 or any similar subsequent legislation.

### **Business Entities / Securities / Financial Services**

1. Opposes legislation to impose income tax on limited liability companies and subchapter S corporations.

2. Supports glitch amendments of a technical, corrective and clarifying nature to Florida Statutes, Chapter 607 re: Corporations, Chapter 605 re: Limited Liability Companies, Chapter 617 re: Not For Profit Corporations and Chapter 620 re: Partnerships and Limited Partnerships.
3. Opposes legislation that would transfer the functions of the Division of Corporations in the Department of State to the Department of Revenue.
4. Opposes “sunset” of the Division of Corporations of the Department of State.
5. Supports clarification of Florida Statutes, Section 213.758 ‘Transfer of tax liabilities’ in order to streamline the transfers of businesses and stocks of goods.
6. Opposes changes to Ch. 607, F.S. which addresses the filing of biennial reports by domestic and foreign corporations.

#### **Business Litigation / Alternative Dispute Resolution**

1. Supports the replacement of word “files” and “filing” with “serves” and “serving” wherever they appear in subsection (1) of 768.79, the Offer of Judgment and Demand for Judgment Statute.
2. Supports changing the substantive law that governs international commercial arbitration in Florida, specifically by adoption of the UNCITRAL model international commercial arbitration law.
3. Opposes HB 1135 (2009 Session) and SB 2192 (2009 Session) proposing creation of the “Florida Consumer and Small Business Arbitration Act.”
4. Supports legislation providing for award of attorney’s fees for time incurred litigating the amount of attorney’s fees a prevailing party may recover pursuant to a fee-shifting provision of a statute, rule or contract.
5. Opposes SB 1294 & HB 1273 (2011) or similar legislation regarding the choice of foreign laws, legal codes, or systems that declare certain court decisions rendered under such laws, codes, or systems are void, that certain choice of venue or forum provisions in contracts are void, or that claims of *forum non conveniens* or related claims must be denied under certain circumstances.
6. Supports update and modernization of the Florida Arbitration Code, F.S. Ch. 682, via enactment of the Revised Uniform Arbitration Act (‘RUAA’).
7. Opposes amendments to F.S. 48.031 re service of process, and to F.S. 56.27 re executions and payment of money collected, as proposed in SB 1268 (2013) and HB 1379 (2013).

#### **Intellectual Property / Computer Law**



1. Opposes changes that weaken contracts governed under current franchise laws and expand claims available under Florida's Unfair and Deceptive Trade Practices Act.

**Judiciary / Administration of Justice**

1. Supports adequate funding of the state courts' system, state attorneys' offices, public defenders' offices, and court-appointed counsel.

2. Supports legislation consistent with the Supreme Court of Florida's certification of need for additional judges.

3. Supports the funding and allocation of appropriate and necessary resources to fund complex business litigation pilot projects in the 9th, 11th, 13th, and 15th judicial circuits, provided that pilot project funding is to be in addition to existing court funding.

4. Supports adequate funding for civil legal assistance to indigent persons through the Florida Access to Civil Legal Assistance Act.

5. Opposes term limits for judges at any level of Florida's state court system.