

**Minutes of the January 19, 2006 Meeting  
of the Executive Council of the Business Law Section  
of The Florida Bar**

On Thursday, January 19, 2006 at approximately 3:30 p.m., the Executive Council of the Business Law Section of The Florida Bar met during The Florida Bar's Midyear Meeting at the Hyatt Regency in Miami, Florida. The following members of Executive Council were present :

David Ackerman	Steve Fender	Karen Orlin
Stuart Ames	Bucky Fox	Mark Roher
Alan Aronson	Brian Gart	Joel Rothman
Douglas Bates	David Gay	Tom Sadaka
Philip Bates	Rick Gross	Lisa Schiller
David Beyer	Michael Higer	Phil Schwartz
Hans Christian Beyer	Alan Howard	Jeanne Seewald
Russ Blain	Kacy Lake	Mark Stein
Michael Chesal	Ed LaRose	Robert Thornburg
Stuart Cohn	Sam Lewis	William Van Nortwick
Lou Conti	Maxine Long	Lori Vaughan
Melanie Emmons Damian	Stephen Mahle	Michael Williamson
Ken Darrow	Doug McDonald	Diane Wells
Jeff Davis	Tom Messana	Bill Wiley
Lacey Diggs	Mindy Mora	Mark Wolfson
Ava Doppelt	Jim Murphy	Don Workman
John Emmanuel	John Olson	Greg Yadley

Chair, Mark Wolfson welcomed all Executive Council members and guests. Diane Wells then introduced Byron Smile of X-Roads, a bankruptcy turnaround firm that would be sponsoring the Section's cocktail party immediately after the Executive Council meeting.

**I. Approval of Minutes**

Upon motion, with a second, the minutes of the August 14, 2005 meeting of the Executive Council at the Annual Retreat of The Florida Bar Business Law Section were approved as amended.

**II. Treasurer's Report**

Treasurer, Rick Gross, presented the current financial status of the Section reporting that the Section continues to be in good financial condition. A discussion was undertaken about the Section's December, 2005 Un-Audited Statement of Operations, which was distributed to all Council members present. Thereafter, the Section's Budget for 2006/2007 was reviewed and discussed. Upon motion, with a second, the 2006/2007 Section Budget was approved.

### III. Special Committee Reports

A. **Paralegal Task Force.** Lou Conti, the Section's representative on The Florida Bar's Paralegal Task Force explained that the Task Force had had a number of meetings to determine how to regulate paralegals within the State of Florida based upon requests from paralegal trade associations and members of the Florida legislature. The Task Force was to meet again on Saturday, January 21, 2006 to attempt to prepare a report to The Florida Bar's Board of Governors on the subject.

B. **Chapter 517 Task Force.** Greg Yadley gave the report for the Task Force. Currently the Task Force has 25 members. The Task Force was to hold its first formal meeting at 9:00 a.m. on January 20, 2006. Stu Cohn and Greg Yadley have had preliminary meetings with state officials interested in working with the Task Force.

### IV. Committee Reports

A. **Anti-Trust, Franchise & Trade Regulations.** David Beyer gave the Committee Report. The Committee has been active in preparing two pamphlets on the subjects of consumer law and franchising for The Florida Bar. It is also reviewing certain issues involved with filing. Larry Silverman and Bruce Hoffman are working on a judicial handbook on antitrust issues to be passed out to members of the judiciary. The Committee plans on holding a Lunch & Learn CLE program in the spring of 2006.

B. **Bankruptcy/UCC Committee.** Lisa Schiller gave the Committee Report. Forty people attended the Committee's meeting as part of the Florida Bar Mid-Year Meeting. During the Committee's meeting, a CLE program on lobbying ethics was presented. There was also discussion about the use of the ECEF filing system by the United States Bankruptcy Court for the Southern District of Florida. Representatives of the local bars for all three bankruptcy courts within the state also reported on activities in their regions. Other CLE programs for the year were discussed, including the successful View From the Bench Program which is to be held again in the Fall of 2006, and a possible additional CLE program which may be put on at The Florida Bar's Annual Meeting in June, 2006.

The Committee had also created a number of study groups, including one to review proposed revisions to Article 1 of Florida's version of the Uniform Commercial Code. That group, led by Doug Bates, reported that most states had adopted NCCUSL'S Amendments to Article 1 of the UCC with the exception of the proposed Section 1-301 (Choice of Law). A triple motion was then made that the Section adopt the NCCUSL Amendments to Article I of the UCC subject to the rejection of proposed Section 1-301 with an effective date the date that the bill becomes a law. The motion was made by Lisa Schiller and duly seconded. After discussion, the motion passed.

During the Committee's meeting, there was also a presentation on proposed Amendments to Article 7 of the UCC. The Committee also created a subcommittee to look at a proposal to implement uniform plan/disclosure statement standards for smaller bankruptcy cases. Finally, there was discussion of a recent Ethics Opinion, Opinion 25766, concerning whether a Chapter 11 lawyer could also act as a Mortgage Broker to his client. The Committee requested that Tom

Messana attend a meeting of The Florida Bar's Professional Ethics Committee on January 20, 2006 to present the Committee and Section's views on this subject.

**C. Bankruptcy Judicial Liaison Committee.** Judge Paul Hyman gave the report of the Committee. The Committee's meeting was well attended. During the meeting, Judge Michael Williamson made a presentation about certain proposed rules which are in the process of being adopted by the bankruptcy judges for the U.S. Bankruptcy Court for the Middle District of Florida. Judge Hyman agreed to bring the proposed rules to the attention of the Southern District of Florida Bankruptcy Court judges.

**D. Business Litigation Committee.** Kacy Lake gave the report of the Committee. The Committee's meeting was well attended. During the Committee's meeting, a CLE presentation on ethics and lobbying was put on. Additional CLE programs were also discussed, including an E-Discovery CLE program which was to be put on on January 20, 2006, and a Federal Practice CLE program which was to be put on in May, 2006. There was discussion about updating the Business Litigation Handbook, which process was being undertaken. The topic of the Business Litigation Certification course was then discussed. It was commented that the course materials and presentations (which are on audiocassette) need to be updated. Steve Fender made that presentation. It was decided that additional speakers needed to be found to update the CLE tapes and materials. A pitch was made to Executive Council Members to undertake this. Finally, Melanie Damian and Peter Valori presented their case law update and distributed their case notes.

**E. Certification Committee.** The Section had been approached by the BLSE to create more interaction between the groups. Maxine Long was appointed by Chair Mark Wolfson to act as the Section's liaison on the BLSE. There was also discussion at reviving efforts to have certain aspects of bankruptcy law certified.

**F. CLE Committee.** Michael Higer gave the Committee's report. The Committee was having a good year to date. A number of Lunch & Learn CLE Programs had already been put on and more were planned. Movement was afoot to attempt to get CLE credit for presentations made at substantive committee meetings. A number of large CLE seminars were also slated for the upcoming year.

**G. Communications Committee.** Sam Lewis gave the report of the Committee. BLOGS had been added to the Web Site and were up and running. A request was made that the Section's various committees begin using them. If any questions arose with the use of BLOGS, committees were to contact Joel Rothman. There was discussion about scrapping the Section Quarterly and instead using law students to prepare scholarly case law updates. This action was to be reviewed further. There was also discussion as to whether or not to hire a marketing person to publicize Section events, including Committee events. Further review of this subject was also to be undertaken.

A discussion then was undertaken regarding the Section Web Site. Tracey Eller, the Section's Webmaster, was introduced. Tracey stated that minor changes were being made to the Web Site. Activity at the Web Site had also increased. There were approximately 1,000 new users viewing the Web Site a month with each viewer looking at at least eight pages of content.

Tracey further reported that since January 1, 2006, 1,300 different visitors had viewed the Web Site. Sam Lewis ended the Committee's presentation by again asking for articles for The Florida Bar Journal which could be submitted on behalf of this Section.

**H. Computer Law Committee.** Tom Sadaka gave the Committee's report. There was a lengthy discussion on the issue of metadata and whether or not it should be disclosed. The Committee was going to appoint a person to volunteer to work with The Florida Bar to regulate metadata disclosure. Tom also reported that the EDiscovery CLE program to take place on January 20, 2006 was a joint project of the Business Litigation Committee and the Computer Law Committee, and that the Committee had held two Lunch & Learn CLE programs to date and were preparing more for the spring of 2006.

**I. Corporations/Securities Committee.** Karen Orlin gave the report of the Committee. Based on the work of the Chapter 617 Task Force that had been appointed by the Committee, it had been agreed to postpone any proposed legislation seeking to revise Chapter 617 until after June of 2006. It was further reported that proposed revisions to the Limited Liability Act were also being undertaken. The Committee had heard a CLE presentation on lobbying ethics as part of their meeting. The Committee was also going to undertake a review of the Section's By-Laws on lobbying ethics issues to make sure the Section was in compliance.

**J. Intellectual Property Committee.** Jeanne Seewald gave the report of the Committee. IP Certification had been approved by The Florida Bar Board of Governors in December of 2005. At its meeting, the Committee had heard a report from Joel Rothman on the use of BLOGS on the Section's Web Site. The Committee was planning three CLE presentations on IP law subjects. Additionally, Jim Gale made a one hour CLE presentation at the Committee's meeting on IP law ethics.

Thereafter a discussion of proposed revisions to Florida's Trademark Act was undertaken. The Committee's Revision Subcommittee had worked very hard on the proposed revisions to the Act and the Committee had already approved them with same amendments. Michael Chesal presented the proposed revisions as amended to Chapter 495, Florida Statutes to the Council describing the changes and highlighting critical issues. Michael reported that Jay Cassis of the Florida Secretary of State's Office had reviewed the proposed revisions and had approved them with minor amendments. Thereafter, a triple motion was made and properly seconded that the Section adopt the revisions to Chapter 495, Florida Statutes, prepared by the Intellectual Property Committee, which revisions were reflected in an exhibit to the Section's January 19, 2006 Meeting Agenda, as amended by handwritten comments from the Florida Secretary of State and the Executive Council. The motion passed.

**K. Legislative Committee.** Russ Blain gave the Committee's Report. The Committee would be helping to gain passage of the two pieces of legislation proposed by the Section, changes to Chapter 671, Florida Statutes and Chapter 495, Florida Statutes. Additionally the Committee and its lobbyist, Bill Wiley, would be working with The Florida Bar to obtain passage of various bills that had been introduced in the Florida House and Senate to add 66 additional judges. Further, the Committee would be overseeing its watch list of 40-50 pieces of legislation which might have effect on business issues within the state. The watch list would be posted on a frequent basis on the Committee's Web Site. The Committee would also

undertake its weekly conference calls during the upcoming legislative session. Thereafter, there was a discussion of the definition of a "triple motion".

**L. State/Federal Judicial Liaison Committee.** Judge William Van Nortwick gave the Committee's Report. Plans were being finalized for a February 2, 2006 meeting to be held at the Florida Supreme Court and to be attended by members of the Florida Supreme Court and various general counsel from companies based in the State of Florida. The Keynote Speaker at the meeting would be Tom Gottschall, the General Counsel of Ford Motors. Various Section members would also attend the meeting to act as facilitators of group discussions.

A discussion of the development of complex litigation/business courts throughout the State of Florida was then undertaken. Jim Murphy reported on the ongoing efforts in Hillsborough County, including how the Hillsborough County Business Courts Committee had prepared a report on the subject in December of 2005 to be transmitted to Chief Judge Menendez. The Hillsborough County Business Courts Committee had also made a presentation to the Hillsborough County Trial Lawyers' Association on the subject in January of 2006.

**M. Membership/Law School Relations Committee.** David Ackerman gave the report of Committee. Members of the Section would again be working with Florida State University's Kaufman Moot Court Program starting in February, 2006 to provide guidance in the preparation of FSU's Kaufman Moot Court Team. David then explained that a program hosting the students from Nova University's School of Law had been held at Berger Singerman's Fort Lauderdale office and a program involving Stetson University School of Law students had been held at Foley's Tampa's office. Lacey Diggs was then introduced to the Council as the President of the University of Florida School of Law's Association of Law and Business. It was then reported that there would be an April, 2006 recruiting program at University of Florida and that Mindy Mora had been working to set up a similar program at University of Miami School of Law. Statistics regarding membership were then reviewed. It was proposed that a letter from the past chairs of the Business Law Section be sent out to promote membership in the Section. Preparing and putting on a CLE program with The Florida Bar Young Lawyers Section was also proposed.

**N. Opinions Committee.** Phil Schwartz stated that no report was ready for the Committee, that the Committee would report to the Council in June 2006, and that help was needed to undertake the revision of the Section's Opinions.

**O. Sponsorship Committee.** Tom Messana gave the Report of the Committee. The Committee was looking to build relationships between the Section's various vendors and the Section so as to promote interaction. The Committee was also looking into setting up a new structure of sponsorships for vendors on an annual basis as well as in connection with the Annual Retreat.

## **V. Chair's Report**

Chair, Mark Wolfson, reported that the ABA Section of Business Law will be holding its Annual Spring Meeting in Tampa from April 6, 2006 through April 9, 2006. Mark had been approached by certain of the Meeting's planners to attempt to get the involvement of the

Business Law Section in activities at the ABA Section of Business Law's Annual Spring Meeting. Further exploration of this topic was to be undertaken. Mark then gave a brief description of the status of the Executive Council's spring meeting in Casa De Campo, Dominican Republic from April 27, 2006 through April 30, 2006.

## **VI. Chair-Elect's Report**

Chair-Elect, Diane Wells, gave this Report. Diane stated that lots of work was being undertaken in connection with the Section's Annual Retreat to be held in August 2006. Dates were being reviewed so as not to conflict with other events of The Florida Bar. Diane led a discussion on the use of BLOGS, including the need for a BLOG for the work of the Chapter 517 Task Force and the Legislative Committee.

Thereupon, the Council adjourned at 6:05 p.m.

Respectfully submitted,

Merrick L. Gross  
Secretary/Treasurer