

**MINUTES OF THE MEETING  
OF THE EXECUTIVE COUNCIL OF THE  
BUSINESS LAW SECTION OF THE FLORIDA BAR**

**SEPTEMBER 1, 2014  
THE RITZ CARLTON, NAPLES BEACH RESORT**

The fall meeting of the Executive Council of the Business Law Section (“BLS” or “Section”) of The Florida Bar was called to order by the Honorable William Van Nortwick, Chair, at 8:30 a.m.

**I. QUORUM**

As the first order of business, as is the Section’s tradition and regular practice, the Chair requested that everyone present sign the “Attendance List” to confirm that a quorum was present for the transaction of business. (Accompanying these minutes as Exhibit A is the Attendance Sheet.)

**II. APPROVAL OF MINUTES**

**A.** Mr. Polenberg presented the minutes of the June 26, 2014 annual meeting of the Section held at the Gaylord Resort and Convention Center in Kissimmee, Florida, which were attached as Exhibit A to the agenda. Upon motion duly made and seconded, the minutes of the June 26, 2014 mid-year meeting were unanimously approved.

**B.** Mr. Polenberg presented the minutes of the June 26, 2014 meeting of the Executive Council held Gaylord Resort and Convention Center in Kissimmee, Florida, which were attached as Exhibit B to the agenda. Upon motion duly made and seconded, the minutes of the June 26, 2014 meeting were unanimously approved.

**BOARD OF GOVERNORS’ REPORT (Agenda Item VII(D) taken out of order)**

The Chair recognized Greg Coleman, President of The Florida Bar, to present the Board of Governor’s report for Michael Higer. Mr. Coleman thanked the Business Law Section, and advised the members there are proposed changes to the Rules governing Lawyers addressing the way in which lawyers are able to contact government entities. The BLS was encouraged to provide comments. Mr. Coleman also informed the EC there would be new technology resources available on The Florida Bar website. Justice Labarga has focused on access to justice, and will assemble a summit attended by state leaders from all branches of government and the business community to address the problem. Mr. Coleman then recognized David Prather and William Schifino as members of The Florida Bar Board of Governors who are exploring a candidacy for president of The Florida Bar.

### **III. TREASURER'S REPORT**

Mr. Polenberg presented the Treasurer's Report for the Section. Mr. Polenberg reported the Section exceeded budgeted expenses for Bar year 2013-2014 by approximately \$100,000, but also exceeded projected revenues by approximately \$70,000. The net result is an approximate \$30,000 reduction in the Section's fund balance.

Upon motion made by Mr. Gross, seconded by Mr. Stein, the Executive Council unanimously accepted the Treasurer's Report.

### **IV. MATTERS REQUIRING EXECUTIVE COUNCIL VOTE OR CONSIDERATION**

#### **A. Legislative Committee Report:**

The Chair recognized Melanie Damian, chair of the Legislation Committee. Ms. Damian reported the legislative session for 2015 starts in March, and therefore, the Section must have its legislative initiatives filed this fall. Ms. Damian then stated BLS expects to have the LLC glitch bill ready for the mid-year meeting scheduled for January 2015, and will continue to advocate for passing the financial literacy legislation.

Ms. Damian thanked the substantive committees for reviewing the standing legislative positions, and then explained the current legislative positions were emailed to the Executive Council and posted on the website. (The Legislative Positions accompany these minutes as Exhibit B). Thereupon, Ms. Damian made the following **triple motion**:

Supports rolling over and readopting the list of legislative positions as recommended by the substantive committees. The list was uploaded to the website last night [August 31, 2014]. None of these positions are new."

Mr. Brown seconded the motion, and the members of the Executive Council unanimously approved the motion.

Ms. Damian announced the legislative initiative known as CADRA, which was a product of the Intellectual Property, Computer Law, and Business Litigation Committees. Thereupon, Ms. Damian made the following **triple motion**:

Supports anti-hacking legislation including passage of the Computer Abuse and Data Recovery Act (CADRA).

Mr. Kunin seconded the motion. Mr. Murphy asked whether the amendments submitted by the Business Litigation Committee were adopted by the Intellectual Property and Computer Law Committees as part of CADRA, and Mr. Cane confirmed the proposed legislation included all the amendments submitted by the Business Litigation Committee. The Chair, the Honorable William Van Nortwick asked for the vote at which time Rick Gross, Mark Nichols, Gary Teblum, Sam Lewis, and the Honorable Thomas Smith voted no; the ayes prevailed and the Section approved

CADRA as its legislative initiative. (CADRA and its white paper accompany these minutes as Exhibit C).

**A. BYLAWS REVISIONS TASK FORCE**  
**Phil Schwartz, Chair**

Phil Schwartz discussed the proposed revisions to the Section's bylaws as proposed by the Task Force. (The points Mr. Schwartz discussed are within the comparison between the existing bylaws and the proposed bylaws that accompany these minutes as Exhibit D.) The Honorable Michael Williamson stated he would provide written comments, but wanted the Executive Council to consider expanding the definition of "affiliate member" to include professionals who are not attorneys such as receivers and trustees. Michael Chesal asked whether the bylaws should include standards for who qualifies as a member of a Section committee, and how to keep leadership apprised of who the committee members are. Peter Valori asked about how the bylaws treat non-substantive committees. Jim Murphy identified confusion regarding the phrase "legislative, administrative, or judicial positions," which Mr. Schwartz acknowledged was vague and needed clarification.

**B. Past Chair Award**

The Chair recognized Steph Nagin, who called forward Stuart Ames to be recognized for his accomplishments as outstanding member of the year for the Section in 2013-2014. Mr. Nagin presented Mr. Ames with a plaque acknowledging his contribution to the Section for his work on the Benefit Corporation legislation.

**C. Bankruptcy/UCC Committee (Agenda Item VI(A) taken out of order)**  
**Cori Lopez-Castro, Chair**

Ms. Lopez-Castro thanked the Executive Counsel for acting quickly to approve the BLS taking a position to file an amicus brief in support of the position that bankruptcy judges have discretion to award attorneys' fees for legal services performed to defend a motion to tax attorneys' fees. Ms. Lopez-Castro stated the amicus brief has been filed.

Ms. Lopez-Castro then explained the Bankruptcy/UCC Committee would be creating an independent website to act as a repository for applications completed by potential receivers collected by the 11th Judicial District in and for Miami-Dade County, Florida, which would be linked to the Section's website. The Committee intends to fund the website and maintenance from the budget allocated to the Diversity Committee.

After announcing the action, Rick Gross asked whether the website would include a disclaimer stating the Section does not endorse any application for receiver, and Ms. Lopez-Castro stated it would. Mr. Gross also asked whether the Section would be selecting the receiver applications to post on the website, and Ms. Lopez-Castro stated the judges will select the receiver applications to post. With respect to receiver's appending promotional material to the application, The Honorable Paul Hyman stated the judges would decide whether to include material in addition to applications.

The Honorable Edward LaRose stated he viewed the exercise as fundamentally a judicial administration process rather than one the Section should be performing. Detra Shaw Wilder asked whether the applicants would pay a fee to apply, and Judge Hyman stated charging a fee was not practical.

Mr. Polenberg asked Ms. Lopez-Castro where the Committee intended to get the funding for the initiative, and she referred the question to Leyza Blanco who reported the Inclusion/Mentoring Committee would use its budget for the website because the intent is to increase diversity for those serving as receivers.

Judge Van Nortwick then asked Ms. Lopez Castro to draft a document that explains what action the Bankruptcy/UCC Committee is taking to circulate it through the Executive Council.

## **V. REPORTS OF SPECIAL COMMITTEES AND TASK FORCES**

### **A. CHAPTER 607 SUB-COMMITTEE**

**Alan Aronson, Phil Schwartz, and Gary Teblum, *Co-Chairs***

Gary Teblum reported the Committee is conducting meetings every 2 weeks. Mr. Teblum stated there will not be draft legislation for the 2015 legislative year, and recognized the timing for the 2016 legislative year required the Task Force complete its work by the 2015 annual meeting to have the bill ready for the 2016 legislative year.

### **B. EMPLOYEE HACKER LEGISLATION TASK FORCE**

**Robert Kain, *Chair***

Robert Kain exclaimed with glee that CADRA had passed. Mr. Kain thanked Joel Rothman, Sam Lewis, Larry Kunin, Kimberly Bursum, Mark Stein, Doug Cherry, Ury Fischer, Dineen Wasylik, Russell Landy, Jude Cooper, Jim Murphy, Andy Ostrow, and Gary Teblum for their contributions to CADRA. Mr. Kunin was then recognized by the Chair at which time he thanked Mr. Kain for all the hard work and persistence he demonstrated with CADRA. And there was much rejoicing.

### **C. PROCEEDINGS SUPPLEMENTARY TASK FORCE**

**Barbara Riesberg, *Chair***

Barbara Riesberg reported that she, Diane Wells, and Greg Black met with Senator Simmons in Orlando to explain the due process rights under consideration. Senator Simmons agreed to wait for the Task Force to complete its work. Ms. Riesberg stated she was going to meet with the RPPTLS to explain the Task Force's work, and Marsha Rydberg mentioned the RPPTLS would next meet in Chicago. Ms. Riesberg stated the Task force needed to expand its mission to address the statutes that touch proceedings supplementary and include a definition section. Despite the expanded mission, Ms. Riesberg stated the Task Force expects to have draft legislation ready for the 2016 legislative session.

**D. STRATEGIC PLANNING TASK FORCE**  
**Steph Nagin, Chair**

Steph Nagin reported it's a work in progress.

**E. SPONSORSHIP TASK FORCE**  
**Michael Chesal, Chair**

Michael Chesal explained the focus for sponsorship had been to raise money for the Labor Day Weekend Retreat. Mr. Chesal explained the Task Force is reviewing other sections and committees to see how they deal with sponsorships. The Task Force has therefore started to focus on annual sponsorship opportunities, and the Chair noted that other sections have had success with annual sponsors.

**VI. STANDING COMMITTEE REPORTS**

**A. BANKRUPTCY JUDICIAL LIAISON COMMITTEE**  
**Bob Charbonneau, Chair**

The Honorable Paul Hyman delivered the Committee report, and stated the meeting was lively. The meeting included judges and clerks from all three districts, and the attendees focused their discussion on trial, mediation, uniform processes in the three districts, fee waiver requests, and pro bono efforts.

**B. BUSINESS LITIGATION COMMITTEE**  
**Jude Cooper, Chair**

Mr. Cooper reported the Committee discussed Representative Passidomo's Business Identity Theft legislation, and working with the Intellectual Property and Computer Law Committees. Mr. Cooper also reported the Committee engaged in debate over CADRA, narrowly approving the legislation with some edits. The Committee also committed to provide more content to the website, and appointed a person to post Committee information. Mr. Cooper next reported the Committee appointed a group of people to review legislation as the next legislative session commences. The Committee has also established a working group to analyze the Uniform Interstate Deposition and Discovery Act for possible legislation in Florida.

**C. COMMUNICATIONS COMMITTEE**  
**Kacy Donlon, Chair**

Ms. Donlon welcomed the Chair's focus on website content. The Committee is therefore looking for the substantive and non-substantive committees to provide the content needed to make the website successful. In addition to content, Ms. Donlon requested each committee review its webpage to organize it in the most effective way as the Section gets ready to migrate to the new website.

The Executive Council engaged in a discussion regarding expanding Tracey Eller's role to include up to 15 social media postings per week of which Ms. Eller currently does none. The idea is to have Ms. Eller post information regarding Business Law Section news, legislative positions, and statutes for a trial period. Mark Stein expressed concern over too many nuisance posts that may dilute members' interest, but was comfortable with moving forward for a trial to see the results.

Mark Nichols moved the Executive Council as follows:

Approve expanding Ms. Eller's role to include posting 15 items to social media outlets per week for a trial period to be determined by the Communications Committee

Rick Gross seconded the motion. Thereupon, the Executive Council members engaged in discussion. Stephan Ruben asked whether 15 posts was the appropriate amount. Mr. Stein expressed more than 15 may pose a burden to the members. All agreed to use 15 for the trial period, and analyze the results. Steph Nagin asked what would be the focus of the posts. Was it to attract new members or get existing members involved? Ms. Donlon responded the goal is to do both. At that point the Chair asked for all those in favor of expanding the scope of Ms. Eller's responsibility, and the Executive Council approved it unanimously.

**D. COMPUTER LAW COMMITTEE**

**Larry Kunin, Chair**

Mr. Kunin reported the Committee focused its efforts on CADRA, but also discussed Representative Passidomo's Business Identity Theft Bill and the Digital Assets Bill (proposed by the RPPTLS).

**E. CONTINUING LEGAL EDUCATION COMMITTEE**

**Mark Nichols, Chair**

Mr. Nichols reported the Committee is continuing its work to marshal Florida Bar Journal articles, and looking for members to present lunch time CLEs.

**F. CORPORATIONS, SECURITIES AND FINANCIAL SERVICES COMMITTEE**

**Stefan Rubin, Chair**

Mr. Rubin reported the Committee had great attendance, which was fortuitous because the Legislative Committee presented Stu Ames and Stu Cohen with ceremonial bills for the Benefit Corporation legislation adopted during the last legislative session. Mr. Rubin also reported the Committee discussed the LLC act, which seems to be a topic at every Committee meeting. A Committee member volunteered to gather information to post on the Section's social media outlets, and it just so happened, that person is an attorney at Kacy Donlon's law firm – the Communications Committee Chair.

**G. E-DISCOVERY COMMITTEE**  
**Douglas Cherry, Chair**

No report.

**H. INCLUSION/MENTORING FELLOWSHIPS COMMITTEE**  
**Leyza Blanco, Chair**

Ms. Blanco reported the Committee meeting was well attended and had enthusiastic discussion, but reminded the substantive committee chairs that it was their responsibility to appoint a member to represent that committee in the Inclusion/Mentoring Fellowships Committee.

Ms. Blanco also reminded members of the Executive Council the Section would be participating in the Kozyak Minority Mentoring Picnic in South Florida scheduled for Saturday, November 1st from noon until 4:00 p.m. Ms. Blanco reported that the Section would again have a table at the picnic and requested volunteers to attend to the table. Ms. Blanco reported she has been in contact with the Cuban American Bar Association, who was planning a joint seminar on trial skills. The application deadline for new Section fellows is October 30, 2014, and Ms. Blanco asked the Executive Council to help find applicants.

**I. INTELLECTUAL PROPERTY**  
**Dineen Wasylik, Chair**

Ms. Wasylik reported that the Committee had a lively discussion regarding the CADRA. The Committee appointed members to a working group to examine Florida's Trademark Act. Ms. Wasylik also report the Committee is planning a great CLE regarding upcoming changes to Federal Copyright law.

**J. MEMBERSHIP & LAW SCHOOL COMMITTEE**  
**Peter Valori, Chair**

Mr. Valori reported the Committee needs members to volunteer as law school liaisons. Of note, the Committee has prepared three testimonial videos in which Zach Hyman, Alan Howard, and Phil Kabler provided their comments on membership in the Section. The Chair asked Mr. Valori if it would be possible to show the testimonials at the Mid-Year Meeting to which Mr. Valori stated yes. Mr. Valori then recognized Mr. Hyman for his outstanding work to organize social events, and described the four upcoming events. Of additional note, Mr. Valori pointed out that Mr. Hyman executed a successful plan to match new Retreat attendees with Executive Council members to welcome them to the meeting. Finally, Mr. Valori pointed out the First Time Attendee Gathering was also successful.

**K. LONG RANGE PLANNING COMMITTEE**  
**Greg Yadley, Chair**

Mr. Yadley reported the Long Range Planning Committee would rest on its laurels after the great feedback received from the nominations at the Annual Meeting.

**L. PRO BONO COMMITTEE**  
**Jennifer Morando, Chair**

Ms. Morando reported the Committee continues to work on standard pro bono policies for law firms to implement, which is consistent with its goal to achieve 100% involvement in pro bono services for Section members.

One continued success has been the pro bono clinics, and Ms. Morando stated the Committee is looking for more people to volunteer for the clinics. Given the past success, new volunteers can rely on the previous work to ensure the clinics continued success.

The focus on website content is an area the Committee expects to help generate more pro bono service by the Section members.

Everyone should get ready for pro bono week starting on October 20, 2014.

The Committee has borrowed from the bankruptcy courts the idea of using “tear sheets” in the state courts to notify attorneys about pro bono opportunities. The Honorable Paul Hyman said the tear sheets work great. Ms. Morando stated the Committee needs volunteers for each court to place the tear sheets.

The Honorable Catherine McEwen announced the ABA has started a new program called HELP, the Homeless Experience Legal Project. “Project H.E.L.P. sets up legal clinics in homeless shelters that are staffed by local law firms, practitioners, and law students. Activities include helping people apply for social security/disability benefits, maintaining certified copies of identification documents (since an individual will only be admitted to a homeless shelter with a proper ID), and other legal issues.” Judge McEwen has asked for volunteers to donate a month of Tuesdays to work on the HELP program. The ABA has a handbook to facilitate those interested in HELP.

The Chair also pointed out various Legal Services throughout Florida need help with intellectual property issues.

**M. RETREAT COMMITTEE**  
**Jodi Cooke, Chair**

Ms. Cooke congratulated Mark Stein on a great job putting together this year’s Retreat. The Executive Council applauded Mr. Stein for a job well done. Mr. Polenberg reported the preliminary figures showed the projected net loss for the Retreat was approximately \$50,000, but the Committee projected results were a net loss of approximately \$5,000 or break even.

**N. STATE/FEDERAL COURTS LIAISON**  
**Russell Landy, *Chair***

Mr. Landy reported the Committee met with the Business Litigation Committee, and it was integral in putting on the Business Court Judicial Roundtable.

**O. THIRD PARTY OPINION STANDARDS COMMITTEE**  
**Robert Barton, *Chair***

Mr. Barton reported the Committee meeting was well attended.

**VII. OTHER REPORTS**

**A. HISTORIAN/PARLIAMENTARIAN**  
**Phil Schwartz**

No Report

**B. COUNCIL OF SECTIONS REPORT**  
**Alan Howard**

No report

**C. THE FLORIDA BAR CLE COMMITTEE REPORT**  
**Ryon McCabe**

No report

**D. OUT OF STATE DIVISION REPORT**  
**Donald Workman**

No report

**E. RPPTL LIAISON REPORT**  
**Marsha Rydberg, Jamie Marx**

Mr. Marx reported there is a seminar being put on by the RPPTLS regarding the impact Dodd-Frank is having on seller financing for lending institutions. It is an important issue that Section members should learn more about.

**F. TAX LIAISON REPORT**  
**Nick Lioce**

No report

**G. YOUNG LAWYERS DIVISION LIAISON REPORT**  
**Andrew Jenkins**

No report

**H. CHAIR'S REPORT**

The Honorable William Van Nortwick explained plans for the 2015 Spring Retreat in Venice Italy are underway. The dates for the Spring Retreat are March 25, 2015 through March 29, 2015. The group events will start on Thursday. Because there are no motor vehicles in Venice, those who will attend should bring good walking shoes. Judge Van Nortwick is in the process of organizing interesting tours through the historic sites in Venice.

**I. CHAIR-ELECT'S REPORT**

No report.

**VIII. ADJOURNMENT**

Motion to adjourn was duly seconded, and unanimously approved.

*/S/ Jon Polenberg*

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Jon Polenberg  
Secretary