

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

Thursday January 18, 2018

3:00pm to 6:00pm

Doubletree (at the entrance to Universal), Orlando, Florida

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.

**II. Approval of Minutes of the September 4, 2017 Labor Day Retreat Meeting (EXHIBIT “A”)
Leyza Blanco, Secretary**

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
- B. UCRERA Task Force –Kenneth Murena, Chair
- C. Digital Currency Task Force – Woody Pollack, 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 – Keith Kanouse, Chair
- F. Continuing Legal Education – Stephanie Lieb, Chair
- G. Corporations, Securities & Financial Services – Robert Barron, Chair
- H. eDiscovery Committee – Bart Valdes, Chair
 - Consider adoption of the comments to rule changes proposed by the Federal E-Discovery Monitoring Subcommittee (**Exhibit C**)
- I. Employee Hacker Task Force – Robert Kain, Chair
- J. Inclusion/Mentoring/Fellowships – James Moon, Chair, Hon. John Olson Judicial Chair
- K. Intellectual Property – Michael Colitz-Morris, Chair, Hon. Mary Scriven, Judicial Chair
- L. Legislation – Kacy Donlon, Chair
 - Aimee Diaz Lyon, Legislative Consultant
- M. Long Range Planning – Greg Yadley, Chair; Hon. Michael G. Williamson, Judicial Chair
- N. Membership & Law School Relations – Amir Isaiah and Zach Hyman, Co-Chairs
- O. Pro Bono – John Macdonald, Chair; Hon. Laurel Isicoff, Judicial Chair
- P. Labor Day Weekend Retreat – Adina Pollan 2018 Chair
- Q. Sponsorship Committee – Manny Farach and Woody Pollack, Co-Chairs
- R. State/Federal Courts Liaison – Detra Shaw Wilder, Chair; Hon. Robert Luck, Judicial Chair
- S. 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 – Jamie Marx/Marsha Rydberg
- D. Tax Liaison Report –
- 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. Executive Counsel Retreat – Cartagena Colombia March 21-25, 2018
- B. Annual Meeting -Orlando Hilton Bonnet Creek June 13-16, 2018

VIII. Motion to Adjourn

EXHIBIT A

**MINUTES OF THE 2017 FALL RETREAT MEETING
OF THE FLORIDA BUSINESS LAW SECTION
EXECUTIVE COUNCIL**

Monday, September 4, 2017
8:30 p.m. – 11:30 a.m.
Eau Palm Beach Resort & Spa, Lantana, 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 Fall Retreat Meeting of The Florida Bar Business Law Section (“BLS” or “Section”) to Order at approximately 8:30 AM.

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

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.)

II. Report from Michael Higer, President of the Florida Bar

President Higer thanked Mark Nichols and Retreat Committee, long range planning members and executive council for a successful retreat. He advised of the Florida Bar’s new Health & Wellness initiative chaired by Dori Foster-Morales from Miami. Mr. Higer separately encouraged members to sign up for free legal answers for serving the needs of those who qualify for free legal services through the Pro Bono Matters website. He also advised of the Florida Bar’s new committees dealing with mental health chaired by Steve Leifman and by Howard Talenfeld.

President Higer reported on the progress of the Constitution Review Commission (“CRC”) which he advised must file proposed amendments with the Secretary of State by May, 2018. He noted that the CRC Rules Committee is meeting to establish definitive deadlines for submissions, with such definitive deadlines possibly set for dates in October, 2017. President Higer pointed out that the Judiciary Committee of the CRC is chaired by Bill Schifino who can be expected to be sensitive to and aware of the interests of the Florida Bar in protecting the judiciary. He mentioned that, with respect to judiciary issues, it is anticipated that, in the upcoming legislative session, a bill similar to HR Bill 1 from last session seeking to impose judicial term limits bill will once again be a focus of Speaker Corcoran. President Higer reminded those in attendance that the Florida Bar was successful in opposing the term limits bill during the 2017 legislative session, emphasizing that the Bar’s opposition will have to be renewed with respect to the legislative session beginning in January, 2018.

III. Report from Michelle Suskauer – President Elect of Florida Bar

President Elect Suskauer reported on the progress of the Gender Bias Commission that originally had been chaired by Michael Higer, noting that the Gender Bias Commission has issued 12 recommendations which are in the process of being implemented by Diversity and Inclusion Committee of the Florida Bar. She also reported on the formation of the Gender Equality Subcommittee, which has a goal of seeking to achieve gender equality for, and seeking to eliminate gender bias from, the profession.

IV. Approval of Minutes of the June 22, 2017 Annual Meeting (EXHIBIT “A”) -
Leyza F. Blanco, Secretary

Leyza F Blanco, Secretary, presented the Minutes of the June 22, 2017 Annual Meeting which took place in Orlando, 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.

V. Treasurer's Report (EXHIBIT "B") - Jay Brown, Treasurer

Jay Brown reported that the Section's fiscal standing is healthy. He advised that work on the budget for 2017-2018 is being finalized and asked that requests for funding be promptly made.

VI. Reports of Special Committees and Task Forces

A. Chapter 607 Sub-Committee – Phil Schwartz, Chair; Gary Teblum, Vice Chair

Phil Schwartz, Co-Chair of the Chapter 607 Sub-Committee reported that the Sub-Committee continues to work diligently on revisions to Chapter 607 of the Florida Statutes, a project which has been ongoing for over 3 years. He advised that the Sub-Committee continues to work through remaining sections of Chapter 607 and intends to complete its legislative proposal in time so that it will be ready to be presented in the 2019 legislative session. Mr. Schwartz advised that he expects to have the proposal ready for review by the Executive Council at the June, 2018 meeting.

B. UCRERA Task Force –Ken Murena, Chair; Amanda Fernandez, Vice Chair and Stephanie Lieb, Vice Chair

Dianne Wells, a member of the UCRERA Task Force, reported that the review of UCRERA is continuing and the work of the Task Force is focused on how UCRERA would substantively change Florida law with respect to receiverships for commercial real estate projects.

C. Digital Currency Task Force – Woody Pollack, Chair; Jude Cooper, Vice Chair

Woody Pollack, Chair of the Digital Currency Task Force (formerly known as the Bitcoin Task Force) reported that legislators are seeking assistance from the Section in addressing issues which arise with respect to digital currency. The Task Force is continuing its efforts to evaluate how other states are addressing digital currency issues and will be evaluating legislation that is being considered for adoption by the Uniform Law Commission. Mr. Pollack noted that the Digital Currency Task Force had been looking to add members to the Task Force with banking and regulatory expertise and that he was pleased to report that he had received a few volunteers along with names of several potential Task Force members who in each case could offer such expertise and assistance.

VI. Standing Committee Reports

A. Bankruptcy/UCC – Carlos Sardi, Chair; Stephanie Lieb, Vice Chair; Hon. Cathy McEwen, Judicial Chair

Carlos Sardi, Chair of the Bankruptcy/UCC Committee, reported that the Bankruptcy/UCC Committee meeting was well attended. During the meeting, the Committee discussed recent legislative efforts and issues relating to various legislative proposals including UCRERA, the Florida Bankers Foreclosure Amendment, Digital Currency regulation and amendments to the Uniform Voidable Transfers Act ("UVTA"). Mr. Sardi advised that he would not expect a legislative proposal relating to UCRERA to be available until 2019. Mr. Sardi also advised that (i) the foreclosure legislation previously proposed during the last legislative session is expected to be introduced once again this year,

(ii) the Bankruptcy/UCC Committee had created a sub-committee for the review of any legislative proposals dealing with digital currency, and (iii) the Bankruptcy/UCC's sub-committee led by Mindy Mora, Jodi Cooke and Lynn Sherman is prepared to assist in reviewing any newly proposed legislation potentially impacting debtor or creditor rights. Mr. Sardi also reported that the Bankruptcy/UCC Committee engaged in a lengthy discussion with respect to the continuing legislative efforts seeking to implement the Uniform Voidable Transfers Act. Mr. Sardi noted that the Committee's efforts to resolve differences with the views of other Sections that have opposed the legislation have been unsuccessful, but expects those efforts will be continued into the future. In this regard, Mr. Sardi reported that the Bankruptcy/UCC Committee's reaffirmed its desire to proceed with the UVTA legislative proposal, and pointed out that efforts across the country to approve UVTA have continued and that seven additional states now have approved the UVTA, bringing the total number to 16 adopting states. Mr. Sardi acknowledged that the Bankruptcy/UCC Committee is quite aware that the effort to pass UVTA may end up being a multi-year approach in order to preserve the Business Law Section's long-standing strong relationships with those other Florida Bar Sections that oppose the legislation. He reported that, notwithstanding the reality of the anticipated timing,, the Bankruptcy/UCC Committee has voted to support the recommendation from John Hutton that the measure be kept alive by re-filing the bill in the upcoming 2018 legislative session, as previously had been approved by the Executive Council. The Committee also discussed the status of temporary judgeships in the Southern and Northern Districts of Florida. Mr. Sardi also reported on the planned Uniform Commercial Code Seminar that is being proposed for April 20, 2018, which is slated to have the reknown presenter and UCC expert, Steven Weiss, as a presenter relating to UCC Article 9. Mr. Sardi reported that the next Committee meeting will be held jointly with the Bankruptcy Judicial Liaison Meeting due to a scheduling conflict with the ABI Paskay Seminar.

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

Jodi Cooke, Chair of the Bankruptcy/Judicial Liaison read the report from Roberta Colton, Judicial Chair. She reported that the Bankruptcy/Judicial Liaison Committee had a well attended meeting where a robust discussion was had on topics solicited from committee members relating to attorneys' fees. The Bankruptcy/Judicial Liaison Committee intends to resume its discussion on attorneys' fees topics at its mid-year meeting in January 2018. The topics that are being covered include those that were solicited from the members of the Bankruptcy/UCC Committee and from members of the local bankruptcy bar associations. The presentation indicated that the goal of this attorneys' fees project is to prepare a report for members of the Business Law Section, for those working as judges and in other capacities at the bankruptcy courts, and for various other interested persons that sets forth the findings of the Committee and to formulate and present proposals designed to streamline attorneys' fee procedures across the state.

C. Business Litigation – Amanda Fernandez, Chair; Zach Hyman, Vice Chair; Hon. Edward LaRose, State Judicial Chair; Hon. Darrin Gayles, Federal Judicial Chair

Vice-Chair, Zach Hyman reported that the meeting was well attended and that Judges Luck and Gayles were in attendance. He reported that the UCRERA Task Force is reviewing the timing of enactment of the statute and issues regarding the Florida assignment of rents statute.

Mr. Hyman noted that the Committee discussed UVTA, Pro Bono work and E-Discovery as well and reported that the Committee is working on a CLE program on E-discovery that is being organized by Bart Valdez.

He then reported that the Committee had a lengthy discussion regarding an amendment to rules regarding selection of mediators that was being considered by the Florida Bar's Alternative Dispute Resolution Committee. Mr. Hyman explained that currently courts may appoint a certified mediator or a

mediator who is selected by the parties. He reported a concern over the proposed amendments which would require certification of mediators and would end the utilization of evaluative methods in mediation. My Hyman reported that the Committee had decided to present a motion resolving to oppose the Alternative Dispute Resolution Committee's proposed revisions to Fla R. Civ P relating to assignments of mediators which proposal would effectively require that certified mediators be selected and utilized in a large number of cases. He noted that this amendment also has opposition from various other parties. Jon Polenberg seconded the motion. The Motion was approved with two abstentions: Manny Farach, Gil Freeman.

My Hyman next made a motion that the Business Law Section request that the Florida Supreme Court appoint a task force to evaluate how certified mediators are regulated and to develop rules for regulating certified mediators, with the task force being a stakeholder task force comprised of members who are consumers of mediation services including clients. Rick Gross requested an amendment to the motion so that the Business Law Section was requesting the proposed task force to review, evaluate and proposed rules with respect to the entire mediation process. The motion as amended was seconded by Jon Polenberg. An extensive discussion followed. In the course of that discussion, concerns were expressed regarding the training and certification of mediators, particularly non-lawyer mediators, who are not required to undergo an examination prior to certification and concerns were also expressed to the effect that the public is being misled by certain unqualified but certified mediators. Upon vote taken the motion was approved.

D. Communications – Chris Broussard, Chair; Paige Greenlee, Vice Chair

Tracey Eller reported that members of the Executive Council are being selected and then interviewed at each of the meetings for use on Section's social media pages and requested that members of the Executive Council be open if approached for such an interview. Ms. Eller reported for that the committee is requesting that the Executive Council leadership provide one or two sentences of what the person's respective committee did at its meeting, so that the information provided can be posted for the benefit of those committee members who were not able to be in attendance.

E. Computer & Technology Law – Keith Kanouse, Chair

Mr. Kanouse reported that the Committee met together with the E-Discovery Committee, that the Committee will be joining in the discussions with the Digital Currency Task Force and that the Committee will be discussing a potential CLE panel or program on data privacy.

F. Continuing Legal Education – Stephanie Lieb, Chair

Jennifer Morando reported that the CLE Committee continues to present its Got Civility program, noting that the next presentation of the program will be in Orlando on October 12. She also mentioned that there will be a presentation of the program in Tampa in November with details to be announced and in Miami-Dade County and Collier County, with dates and details to be announced. Ms. Morando also emphasized that the Committee is in need of articles for The Florida Bar Journal.

She next reported that the CLE Committee is working on putting together the Federal Securities Institute seminar slated for Feb 1-2, 2018 at the JW Marriott Marquis in Miami and is being chaired by Greg Yadley. Mr. Yadley explained that, with the Business Law Section now being the sole sponsor of the Institute, the goal for this year is for the seminar to breakeven, with the further goal of becoming a revenue generating program for the Section in years thereafter. Mr. Yadley requested sponsorships for the Institute and encouraged attendance at the Seminar.

Ms. Morando next indicated that the CLE Committee had considered a pending proposal for unconditional carryover of all CLE credits to future reporting periods and an alternative proposal which would limit carryover to only 12 general credit hours, 2 credit hours in ethics and 1 technology credit hour. She reported that the CLE Committee voted unanimously in favor of the alternative proposal and then made a motion for the Executive Council to approve and provide its support for the alternative proposal. The motion was seconded. Subject to the drafting of the proposal being clarified to determine whether the 12 general credit carryover includes or excludes the ethics and technology credit hours, upon vote taken, the motion passed unanimously.

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

Robert Barron, Chair, reported for the Corporations, Securities & Financial Services Committee. Mr. Barron reported that the meeting was well attended, and that there was some discussion of whether the Delaware court case of *Obeid V. Hogan* required Florida to consider amending the limited liability company statute to clarify an issue regarding the ability to delegate power and authority. He also reported that the Committee was updated on the status of a proposed supplement to the third party legal opinions report and legislative bills that might need to be addressed by the Committee in the 2018 legislative session. Mr. Barron advised that the bulk of the meeting was devoted to address certain focused critical issues for the Chapter 607 revision project, with particular focus on judicial dissolution provisions and whether to include oppression as one of the grounds for judicial dissolution..

H. eDiscovery Committee – Bart Valdes, Chair

Mr. Valdes reported that the eDiscovery Committee meeting included a presentation on E-Discovery and that the Committee was considering a rewrite of rules relating to E Discovery in order to adopt language of federal rules into Florida's Rules.

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

Jim Moon reported that the Inclusion/Mentoring/Fellowships Committee met jointly with the Membership Committee. He advised that the Committee continues to experience challenges to securing attendance and participation by liaison members, but noted that the meeting was well attended by members from the communications committee and by fellows and scholars. Mr. Moon suggested that there be upscaling of branding of the Section in banners for the Section's events. He reported that the number of applicants to be fellows applicants increased by four times this year and he indicated his view that the focus of the Section should be shifted to keeping these fellows/students returning to our meetings, events and activities. Mr. Moon suggested the Executive Council set up a task force to review and study why the Section is not getting its fellows/students to continue attendance after their fellowship year and after law school.

J. Intellectual Property – Michael Colitz-Morris, Chair

Michael Colitz-Morris reported that the Committee had approximately 30 attendees. Steve Stein gave a report on IP Certification. Mr. Stein reported that this is the 10 year anniversary of the inaugural certification class and that the Committee is reviewing re-certification applications. It was also reported that the Committee had recruited volunteers to look at the IP implications of Fla. Stat. 553.79. Mr. Colitz-Morris reported that the 9th Annual IP Symposium will be held in Tampa in March or April and that the Committee concluded its meeting with a Judicial Roundtable with Judge Middlebrooks and Judge Matthewman participating.

K. Legislation – Kacy Donlon, Chair

Aimee Diaz Lyon, Legislative Consultant

Kacy Donlon reported that there will be an early legislative session this year (beginning in the first week of January 2018 and ending the first week of March) and that next time the Executive Council meets, the Executive Council will be in the midst of that legislative session. She further reported that she expects that the Section will have mostly defensive positions in the 2018 legislative session, with the Section already having standing triple motion positions on the legislative items that the Section expects to see presented.

With respect to financial literacy, Ms. Donlon reported that the bill has gained momentum over the past 5-6 years and that the Committee continues to work on making progress on legislation concerning financial literacy. She noted that, with respect to the Uniform Voidable Transaction Act (UVTA), the Section's legislative consultant is working on trying to find sponsors for UVTA for the upcoming session. Ms. Donlon indicated that the Section and the Committee expect to be again addressing foreclosure bills that the bankers have previously filed, with Jodi Cooke, Mindy Mora and Lynn Sherman continuing to work on those issues as they have in the past. She also reported that The Digital Currency Task Force is working on preparing and/or evaluating proposed digital currency legislation which may ultimately need to be addressed by way of a triple motion via email.

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

No report

M. Membership & Law School Relations – Amir Isaiah, Co-Chair and Zach Hyman, Co-Chair

Amir Isaiah reported that this is the third year for the Scholars Program and that the Committee is analyzing the effectiveness and structure of the Scholars' Program. He advised that the goal of the Scholars Program is to expose a large percentage of potential members to the benefits of the Section. Mr. Isaiah introduced those currently in the Scholars Program who were in attendance at the meeting and each of those Scholars shared highlights of their experiences at the Annual Retreat.

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

Mr. Macdonald reported that the Committee had an active committee meeting on Saturday morning. He encouraged renewed enthusiasm and interest in the Pro Bono efforts of the Business Law Section and asked members of the Executive Council who represented substantive committees to delegate someone to come to meetings from each such substantive committee. Mr. Macdonald discussed the Pro Bono Matters platform which is funded in part from seed money from the Business Law Section and described how the platform puts lawyers in direct contact with cases from legal aid providers throughout the state. He encouraged use of the platform to leverage the Business Law Section pro bono efforts and asked that members of the Executive Council find the link to the platform's web page and to go onto the web page to select at least one pro bono case. Mr. Macdonald also described the crisis in Houston due to Hurricane Harvey and the increased need for pro bono assistance and advised that the Supreme Court of Texas permits out of state lawyers to render assistance during the crisis without being specially admitted in Texas. In this connection, he provided details with respect to a CLE Program scheduled for September 7 at 4 p.m. at which information that attorneys will need to counsel those who have lost homes will be provided. Mr. Macdonald advised that the legal aid offices in Houston have been destroyed and are in need of equipment and that the Texas Bar Association can arrange to have donations delivered to agencies that are in need.

O. Labor Day Weekend Retreat – Mark Nichols, Chair; Adina Pollan 2018 Chair

Mark Nichols thanked the Section sponsors, Melanie Damien, and his committee members for a successful retreat.

P. Sponsorship Committee – Manny Farach, Co-Chair; Woody Pollack, Co-Chair

Manny Farach also thanked the Section sponsors and thanked Dineen Wasyluk for social media posts that she had facilitated throughout the weekend.

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

Detra Shaw Wilder reported that the Committee had a robust discussion during its well-attended meeting and that attendance included 5 judges from throughout the state. She also noted that the Committee hosted a Judicial Roundtable program, at which the presenting panel included judges from several existing business courts in Florida and also judges who have been working to bring business courts to their jurisdictions (i.e., Jacksonville and West Palm Beach, specifically, Judges Norton and Sasser). Ms. Wilder noted that Judge Walsh and Judge Rodriguez have agreed to participate in a presentation on the new International Arbitration court. On behalf of the Committee, Ms. Wilder welcomed Judge Luck to the Executive Council.

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

Robert Barron reported for the Third Party Opinion Standards Committee. Mr. Barron indicated that the Committee continues to work on a Supplement to the Statement of Opinion Practices and, in particular, in addition to updates to deal with the new limited liability statute and opinions on issuances of preferred stock and limited liability company membership interests, the Committee has identified issues regarding the Hague Convention, choice of law, Dodd-Frank exclusions and EU Bail in rules. He advised that a draft will be circulated and then will be open for discussion. Mr. Barron also reported that, as part of this process, members of the Committee have participated in joint calls and efforts with representatives from the RPPTLS Section to discuss the Supplement and issues associated with using statements of authority. Mr. Barron advised that he is hopeful that the Committee will be in a position to circulate a draft of the Supplement in January 2018.

VI. Other Reports:

A. Historian/Parliamentarian Report – Phil Schwartz

No report

B. Board of Governors – Leslie Lott

No report

C. RPPTL Liaison Report – Jamie Marx/Marsha Rydberg

No report

D. Tax Liaison Report

No report

E. Liaison to FICPA Report – Donald Workman

No report

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

No report

G. Liaison Judiciary – Hon. Virginia Norton

No report

H. Chair’s Report – Melanie Damian

Chair, Melanie Damian, reported that the location for the Executive Council Retreat will be at the Sofitel Cartagena. Registration will be available online in the next few weeks but hotel registration details were circulated at meeting.

I. Chair-Elect’s Report – Michael Chesal

No report

VII. Future Meeting Dates

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|---|---------------------|
| A. Mid-year Meeting – Orlando Double Tree | January 17-18, 2018 |
| B. Executive Counsel Retreat – Cartagena Colombia | March 21-25, 2018 |
| C. Annual Meeting -Orlando Hilton Bonnet Creek | June 13-16, 2018 |

VIII. Motion to Adjourn

Ms. Damian then entertained a motion to adjourn. The motion was duly made, seconded and passed unanimously at approximately 11:00 AM.

EXHIBIT B

THE FLORIDA BAR
Business Law
Budget/Financial Operations

DO NOT EDIT THIS SHEET

Description	Proposed			
	2016 Actual	2017 Actual	2018 Budget	2019 Budget
3001-Annual Fees	255,108	274,200	285,000	276,000
3002-Affiliate Fees	3,090	2,090	2,590	2,590
Total Fee Revenue	258,198	276,290	287,590	278,590
3331-Registration-Ticket	78,622	60,079	75,500	75,500
Total Registration Revenue	78,622	60,079	75,500	75,500
3391 Section Profit Split	106,856	82,259	115,000	115,000
3392-Section Differential	10,725	14,875	18,000	15,000
Other Event Revenue	117,581	97,134	133,000	130,000
3699-Other Operating Revenue	2,853	0	0	0
Other Revenue Sources	2,853	0	0	0
BL Retreat Net Revenue	228,761	248,814	230,000	230,000
3899-Investment Allocation	(15,123)	47,491	9,697	0
Non-Operating Income	(15,123)	47,491	9,697	0
Total Revenue	670,892	729,808	735,787	714,090
4131-Telephone Expense	848	806	900	1,000
4133-Internet Service	0	0	150	150
4134-Web Services	23,122	24,100	24,000	24,000
4135-Social Media	6,000	5,500	7,500	6,000
4301-Photocopying	22	0	100	100
4311-Office Supplies	269	217	500	500
Total Staff & Office Expense	30,261	30,623	33,150	31,750
5051-Credit Card Fees	1,278	832	900	900
5101-Consultants	80,110	80,000	80,000	80,000
Total Contract Services	81,388	80,832	80,900	80,900
5501-Employee Travel	6,212	2,709	3,980	3,798
5561-Judges Travel	26,143	20,232	28,000	28,000
5599-Other Travel	1,679	3,428	8,000	8,000
Total Travel	34,034	26,369	39,980	39,798
6001-Post 1st Class/Bulk	82	33	275	150
6301-Mtgs TFB Annual Meeting	18,982	29,032	15,000	20,000
6311-Mtgs General Meeting	88,614	58,456	50,000	50,000
6319-Mtgs Other Functions	38,063	13,611	30,000	30,000
6401-Speaker Expense	912	360	2,500	2,500
6451-Committee Expense	3,159	2,157	5,000	5,000
6531-Brd/Off Special Project	5,000	0	5,000	5,000
7001-Grant/Award/Donation	52,878	12,679	14,000	14,000
7011-Scholarship/Fellowship	20,633	29,446	50,000	50,000
7999-Other Operating Exp	4,194	4,436	50,200	50,200
Total Other Expense	232,517	150,210	221,975	226,850
8021-Section Admin Fee	90,348	88,296	92,017	89,700
8101-Printing In-House	87	113	350	350
Total Admin & Internal Expense	90,435	88,409	92,367	90,050
Total BL Retreat Expense	292,112	297,895	298,080	240,000
9692-Transfer Out-Council of Sections	300	300	300	300
Total InterFund Transfers Out	300	300	300	300
Total Expense	761,047	674,638	766,752	709,648
Beginning Fund Balance	463,196	373,038	346,669	315,704
Plus Revenue	670,892	729,808	735,787	714,090
Less Expense	(761,047)	(674,638)	(766,752)	(709,648)
Ending Fund Balance	373,041	428,208	315,704	320,146

EXHIBIT C

COMMENTS OF THE EDDE COMMITTEE OF THE BUSINESS SECTION TO RULE CHANGES PROPOSED BY THE FEDERAL EDISCOVERY MONITORING SUBCOMMITTEE

The Electronic Discovery and Digital Evidence Committee (the "EDDE Committee") of the Business Law Section of The Florida Bar respectfully submits the following additional comments and suggestions to the Federal eDiscovery Monitoring Subcommittee (the "eDiscovery Subcommittee") of the Civil Procedure Rules Committee with regard to proposed amendments to Florida Rule of Civil Procedure 1.380(e). Initial comments from the EDDE Committee were submitted on April 27, 2017. Since that submission, the Civil Procedure Rules Committee and its eDiscovery Subcommittee have undertaken significant changes to the earlier proposal that was the subject of the April 27, 2017, Comments. The current rules amendment proposal is reflected in the September 25, 2017 Report of the eDiscovery Subcommittee (the "September 25 Report"). At the invitation of the Civil Procedure Rules Committee, the EDDE Committee respectfully submits its comments on the current proposal and the September 25 Report that supports it.

The EDDE Committee has reviewed the September 25 Report and appreciates the opportunity to comment at this point in the proceedings. The September 25 Report is clear, thorough, well researched, and helpful in providing the thought process and the considerations undertaken in getting to this point in the process. The EDDE Committee commends the eDiscovery Subcommittee for its efforts to date and fully supports amendments to the Florida Rules in response to the 2015 Federal Rules Amendments to Fed. R. Civ. P. 37(e). In addition, the EDDE Committee supports the language and methodology reflected in the proposed amendments and Committee Note in the September 25 Report subject to the following comments.

The September 25 Report raises and deals with a number of significant issues that the EDDE Committee has raised previously and raise again below in these comments.

Following Fed. R. Civ. P. 37(e) ("Rule 37(e)") essentially verbatim has the advantages cited in the report of consistency with federal rules, bringing into consideration a significant body of federal case law that fills the void in Florida of precedent because circuit judges do not frequently generate published opinions on discovery and sanctions rulings and few of these cases go up on appeal. We find this to be a laudable goal, consistent with Florida's 2012 Civil Procedure Rule amendments on eDiscovery. While there may be a need or reason to vary from Rule 37(e) language in a given circumstance, whenever possible the rules should be consistent. If not, there should be a valid reason behind the variance so those working under and applying the rules will know when federal precedent may be authoritative and usable by the court. That being said, a spirited argument may be made that the federal judges' response to Rule 37(e) has been neither uniform nor universal. Members of the EDDE are not unanimous in support of adopting the federal rule at this point. Some argue that we should await further clarification of the law. The EDDE Committee supplied to you copies of federal cases and commentary on the Rule 37(e) cases that have come down since the 2015 federal amendments took effect. The countervailing view is that the cases, while not uniform, are not the result of, nor do they reflect or uncover, a fundamental or discernable flaw in the text or intent of Rule 37(e). It appears from the September 25 Report that the eDiscovery Subcommittee considered the "diversity" in federal precedent and reached the same conclusion as the EDDE Committee.

One of the disadvantages of adopting the federal language is that Florida law of sanctions for failure to preserve is not identical to federal law. Rule 1.380(e), like Rule 37(e) is intended to create an exclusive

remedy in Florida for failure to preserve ESI. The Report approached this issue head on and submits authority for adopting a new exclusive remedy. The EDDE does not question that authority, but we have not researched the issue. We confine our further comments to the practical application of the new rule, if adopted.

If adopted, Rule 1.380 would presumably be applied in the case of failure to preserve ESI in a manner consistent with the Rule 37(e) analysis as stated by Magistrate Judge Jones in *Wooden v. Barringer*, ____ F. 3d ____, 1:16-CV-00378-WTH-GRJ (N. D. Fla. Nov. 6, 2017):

Rule 37(e) requires the Court to conduct the following step-by-step analysis. See *Ala. Aircraft Indus., Inc. v. Boeing Co.*, 319 F.R.D. 730, 740-46 (N.D. Ala. 2017); *Living Color Enters., Inc. v. New Era Aquaculture, Ltd.*, No. 14-cv-62216-MARRA/MATTHEWMAN, 2016 U.S. Dist. LEXIS 39113, 2016 WL 1105297, at *4-6 (S.D. Fla. Mar. 22, 2016); Ronald J. Hedges et al., *Managing Discovery of Electronic Information* 44-45 (3d ed. 2017). First, was there a duty to preserve the data in issue. Id. If so, were reasonable steps taken to avoid the loss of the data. Id. If not, can the lost data be restored or replaced through additional discovery. Id. If not, was the other party prejudiced by the loss of the data. Id. If so, the Court may impose "measures no greater than necessary to cure the prejudice." Fed. R. Civ. P. 37(e)(1). But, if data was lost "with the intent to deprive another [*5] party of the information's use in the litigation," the court may "presume that the lost information was unfavorable to the party," "instruct the jury that it may or must presume the information was unfavorable to the party," or "dismiss the action or enter a default judgement." Fed. R. Civ. P. 37(e)(2).

Nothing in this analysis appears to be inconsistent with the policies and processes of current Florida law with regard to discovery violations of failure to preserve evidence, which supports the positions taken in the September 25 Report.

It is the considered view of the EDDE that the case of *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363 (Fla. 2015), determined the trigger for preservation to be reasonable anticipation of litigation in addition to the traditional Florida triggers of statute, contract, and discovery request. While the report correctly notes that the Florida Supreme Court did not expressly overrule all district court cases reaching an inconsistent result, there is no question that the Court cited and quoted from *Am. Hospitality Mgmt. Co. of Minnesota v. Hettiger*, 904 So. 2d 547, 549 (Fla. 4th DCA 2005), which states that where a defendant has evidence within its control, it can be charged with a duty to preserve evidence where it could reasonably have foreseen the plaintiff's claim. The EDDE Committee would leave to future cases any further development in this area, but it is not reasonable for Florida lawyers and judges to assume that the Supreme Court's decision leaves older DCA opinions inconsistent with *Hettiger* and *Detzner* in force and effect anywhere in Florida.

These comments have the full support and approval of the EDDE Committee, as there was no opposition to the content of these comments in the EDDE. The EDDE Committee will seek the approval of the leadership of the Business Section of the Florida Bar to submit these comments to the Civil Procedure Rules Committee as official comments of the Business Section at the January, 2018 meeting of the section. Results of that request will be forwarded when received by the EDDE Committee. The EDDE Committee stands ready and able to further comment on the process and proposed substance of Rule 1.380(e). If any clarification or further comment is needed, please let us know.

Respectfully Submitted,

Bart Valdez
EDDE Committee Chair and
Co-Chair of the Civil Rules Amendment Task Force

Ralph Artigliere
Co-Chair of the Civil Rules Amendment Task Force