

Florida Electronic Discovery and Digital Evidence Committee

Minutes for Florida Bar-Business Law Section Annual Convention

Thursday, June 14, 2018 – 8:30 a.m.

Hilton Bonnet Creek

Conference Call Number: (888) 376-5050

Participant PIN: 547 632 1642

1. **Opening remarks and introductions of leadership**

Call to Order. David Hazouri new Chair. Chioma Deere (current Secretary) and Darren Speilman new co-vice chairs.

2. **Old Business-**

No minutes to approve.

A. Current and Ongoing Initiatives:

- Monthly case law update for Florida state and federal courts
- CLE from yesterday's will lead to another case law update on eDiscovery.
- Chris Dix and Steven Teppler – case law updates available on Flabizlaw.org website on our EDDE committee page to see the
- Darren, David and Bart spoke at CLE put on by PRI, Business Law and Technology Committee which gave a new case law updates.
- Sign up for EDDE case law updates for email blasts.

B. Need for Members for Task Force on Amendments to Florida Rule 1.380(e)

- Fed Rules Subcommittee made recommendation to the Florida Civil Rules Committee– Rule 1.380(e) on sanctions with the goal to mirror and track the federal rules.
- Bart can provide the text of the changes recommended by the Committee.
- The Florida Rules of Civil Procedure will vote on it on June 14, 2018 at 2pm – Civil Procedure Rules Committee, will be attended by Bart Valdes (Floridian Ballroom E).
- Rachel Lucanen, Cohen and Grigsby, chair – It is approved by the committee and fast tracked to be included June 18th report will provide it to the Supreme Court for adoption of the federal counterpart.
- The task force committee, of the Business Law Section, will follow the process and continue to disseminate the information. Judge Artigliere will report as we proceed.
- The EDDE committee previously provided comments to the Committee indicating that they should either follow the Federal Rules or explain all deviations.
- Judge Rudolfo Ruiz is the judicial chair of the Fed Rules committee.
- When it was provided to the EDDE committee after the committee

3. New Business-

A. CLE Presentation at 2018 Florida Bar Annual Meeting (Friday - 8:30 am)

(Bart provided the breakdown – attached to the minutes)

- a. Chris Dix and Bill Hamilton – present on the differences between federal and state law on eDiscovery. Including how to proceed with TAR and predictive coding, with visual aids.
- b. Cyber Security panel – to discuss how to secure your law firm and how to protect your clients.
- c. Mock Trial/Hearing – hearing on evidence related to snapchat, the Wayback Machine from the Internet Archives, and other issues.
- d. Judicial Roundtable – featured Judge Schwabedissen (Miami General Magistrate), as well as other federal and state court judges to discuss their take on eDiscovery.

B. Continuing Judicial Education Course and related opportunities

The “road show” on CJE presentation. We have done about 7 programs thus far. We are looking to expanding the program – as many times as possible would be best. David Hazouri explained how to set up the program and what opportunities may be available for our committee members to present. He stressed that the presentations are safe places for judges to discuss the issues. The committee did a Webex presentation, but that is not ideal as the presentation is geared to allow for conversation, not just a presentation. We will update the PowerPoint and materials as we proceed, including to update the Social Media portion of the materials.

- David H just did the advanced judicial studies for social media. Judges presence on social media – there was a question as to whether we need to address the ethics of their presence online.
- Judge Nielson from Hillsborough agreed that it was a very good presentation and encouraged the members to bring the presentation to their circuit.
- David Chapman (Wellington – committee member on PBCBA professionalism committee) commented on the need for inclusion of professionalism in the presentation. EDiscovery appears to drive less than professionalism conduct among our colleagues.
- As we proceed with possible new sanctions rules following the Federal Rules – we may need to include a standing order to require the parties to meet and confer to avoid these sanctions and professionalism/ethical violations.
- Judge Meenu Sasser (15th Judicial Circuit) is the only standing Order in State Court. Judge Schwabedissen has several orders as well which will be included in the CJE presentation.
- As we update the Powerpoint and presentation, one idea to lead to a standing order or to allow the judges to consider eDiscovery would be “How to prepare a Rule 1.200 order including how to manage eDiscovery.”

Diana Lopez Legal Aid is willing to present in 5th and 7th circuits.

Management of online digital information may be the next step in the presentations to the judges as well.

C. Liaison to Digital Currency (Crypto-Currency) Task Force

Robert reported on the committee/presentation – Gen Counsel of Fla office of financial regulation (OFR). OFR is considering amending the money services business act (governs western union, etc.). Task force will work with the OFR (as observers).

Universal currency bus act – (nicusal) – prepare a draft of the act with the IP and computer law committee to review it as well. Fla legislators would like to introduce digital currency in the 2018-2019 legislative year. The OFR indicated the bankers are also interested in amended the money services act. The legislative committee will also discuss on this matter.

Looking to the Fall Retreat to discuss further.

4. Open floor for discussion and questions

Website Updates – Resources to add to the page to ensure that we have new updates to the page.

ESI Protocol & 502(d) Orders – Steven Teppler and Chioma Deere will work on a sample protocol and orders, including possible Florida state claw back proposed orders and agreement.

- Florida rules includes all privilege – a 502(d) order would prevent the use of the information in any state court. Grimm admissibility chart – with Florida evidence rules counterparts.
- TAR protocol – discussed whether a standard protocol would be helpful when it is so case specific.

Teppler recommends that we add a disclaimer on the webpage to remind practitioners that any documents on the website must be tailored to each case and should not be used without such consideration.

Need to make sure that the website is updated with the case law update.

Judge Nielson requests that we provide a motion for entry of a preservation order, Rule 16, Fla. Rules orders. David Hazouri will provide some motions and proposed orders for entry.

Call for articles and blog posts –

PRI and Biz Law Section is looking for new content. Send to the EDDE leadership with any content for our EDDE committee members.

Chris Dix inquired as to whether there was any traffic to our EDDE committee page. We should promote our page as well – share during the CLEs, blog posts, firm blogs, and social media (i.e. LinkedIn)

Business Law Section leadership joined the meeting and thanked the EDDE committee for the great leadership – recommends that we update the website. Liaison to the communication committee to provide fresh information on the Biz Law Section bar website. The executive committee will be meeting to discuss this as well.

David Hazouri (incoming chair) touched on a few of the items he planned to pursue next year:

- Social Media with the judges – how to participate in society for judges is fraught with

uncertainty. Our committee may be in a good position to provide some guidance to the judges on social media.

- There is a system in place (Judges, PIO, and Gen Counsel) but to they need guidance to engage on best practices – without trial by error.
- The judges are in it and are of it – they may be thought of as archaic, thus affecting society’s view of the bench and the practice of law in general
- Role for our committee to play on crafting they can proceed and what to consider when to participate in social media.
- Role of attorney in democracy – Teppler urged us to consider the professional ethics committee as a resource to provide an opinion on this issue addressed. The EDDE committee can present the issue to the PEC – the Florida bar, or other executive can direct the PEC to consider and prepare an Opinion on
- It is part of the judicial canon, and awaiting a judicial opinion on the issue of judicial inclusion on social media.
- This is an opportunity (arguably an obligation)

5. Concluding Remarks

Bart Valdes signed off as Chair and confirmed the new leadership.

Respectfully submitted,

Chioma Deere, Esq.
Secretary
EDDE Committee