

**INTELLECTUAL PROPERTY LAW COMMITTEE  
BUSINESS LAW SECTION  
THE FLORIDA BAR**

**MEETING MINUTES – BUSINESS LAW SECTION RETREAT  
Ritz Carlton, Naples, FL – August 30, 2014**

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**Attendees:** Dineen Wasylik, Woody Pollack, Julee Milham, Robert Thornburg, Samuel Lewis, Doug McDonald, Steve Peretz, Moish Peltz, Joel Rothman, Robert Kain, Jeanne Seewald, Ken Hartmann, Eddie Fays, Daniel Whitehouse, Oliver Ruiz, Jim Matulis, Doug Cherry, Kevin Levy, Larry Kunin

**I. WELCOME AND INTRODUCTION BY THE CHAIR – call to order 9:40**

Chair Dineen Wasylik welcomed the group. Attendees each introduced themselves.

**II. OLD BUSINESS**

**A. Adoption of Meeting Minutes.** 2014 Annual Meeting, Gaylord Palms  
The minutes that had been previously distributed by e-mail were approved by voice acclimation.

**B. Legislative Update**

(1) CADRA Task Force, Robert Kain, Fort Lauderdale

The committee discussed modifications that had been proposed and approved by the computer law committee earlier this morning. Those modifications included typographical changes and proposed changing the law to enumerate losses. Discussion was had about how the business litigation committee was critical in narrowing CADRA, but noted that several key business litigation leaders were supportive of the proposed legislation. A smaller task force consisting of Ury Fisher, Sam Lewis, and the Chair and Vice Chair of business litigation had spent considerable time discussing and negotiating the proposed legislation.

Brief discussion was had concerning whether CADRA was preempted by the Copyright Act. Robert Kain explained that the additional element required for this law (and to avoid preemption) was misuse of the password or technological access barrier. Sam Lewis noted that

nothing in DMCA anti-circumvention would be offended by this legislation.

Michael Chesal noted that the attorneys fees provision were allowed based on the “circumstances of the case,” but the statute required willful violation. It was pointed out that “circumstances of the case” had been added in an earlier revision to accommodate competing interests and concerns from the business litigation committee.

On motion, duly seconded, the IP committee supported the proposed CADRA legislation.

Robert Kain then left the IP Committee to discuss CADRA with the business litigation committee. Mark Stein later joined him for support. Messrs. Kain and Stein returned to report that business litigation had made additional modifications to the proposed legislation, including eliminating the “circumstances of the case” language from the attorneys fees provision as well as replacing the word “may” with the word “shall” in the attorneys fees provision. The business litigation committee believed there was significant case law on what a reasonable fee was, and thus was more comfortable with a prevailing party attorney fee structure. The business litigation committee also modified proposed 804(3) to allow for an additional recovery permitting the plaintiff to recover original and all copies of the information which was the subject of the action.

Samuel Lewis moved to accept the modified proposed CADRA. Mark Stein seconded the motion. The motion passed unanimously.

- (2) Digital Assets Bill, Proposed Chapter 740 – Dineen Wasylik  
A discussion was had about this proposed legislation, coming from the RPPTL Section. Dineen Wasylik explained that she had spoken with colleagues who understood this proposed legislation, intended to be uniform throughout the states, had the support of numerous large service providers such as Google and Facebook. This support created comfort for members of the IP committee. It was not clear what position if any the IP committee needed to take on this proposed legislation.
- (3) Business Identity Theft, Proposed Amendments to Chapter 817.02 – Woody Pollack  
Larry Kunin will head a task force to consider this legislation.
- (4) Financial Literacy, HB 367 – Woody Pollack  
Nothing to report.

(5) LLC Act Glitch Bill, Proposed Amendments to Ch. 607 – Woody Pollack

Nothing to report.

(6) Proceedings Supplementary – Woody Pollack

Nothing to report.

**C. Diversity Committee Update – no update**

**D. Intellectual Property Certification Update**, Jeanne Seewald, Naples  
There are currently 137 board certified IP attorneys; 9 people applied for the 2014 exam, 7 took it, and 6 passed. The next exam is scheduled for May 14, 2014. The application period is September 1, 2014 to October 31, 2014. The 2009 certification class is up for recertification. Recertification applications were due August 15, 2014, but extension requests may be honored.

Joel Rothman questioned why applications needed to be submitted in paper form. It was not clear if this was a Bar Rule.

Jeanne Seewald also explained the pre-testing process. This is the first year that IP is going through the pre-testing process, which is designed to check the test and make sure it is appropriate. If you are contacted and asked to be a pre-tester, you receive a packet with an envelope including the test and a separate envelope including the test answer. You are expected to take the test and then grade it. It does not get turned in and nobody knows if you have passed or failed. There is CLE available for doing this.

If you are interested in serving on the IP Certification Committee, you should fill out a committee preference form in January.

**III. NEW BUSINESS**

**A. Review of Prior Legislative Position**

A discussion was had as to whether the IP Committee still supports its prior legislative position which “Supports Revised Model Trademark Act, Ch. 495, Florida Statutes.” Legislative position support is good for two years and this was last voted on July 2012.

Dineen Wasylik observed that there were differences in the classification system used by the state as compared with the Federal system. For example, under the Florida statute, lawyers are classified in class 44, while under the Federal system, they are classified in class 45. Michael Chesal noted that we originally sought to exclude the classifications from the state system, but the Dept. of State objected. He suggested when we look at this statute again, we should consider revisiting this point. We also discussed a potential need to look more thoroughly on separating out dilution claims if

we are considering proposed revisions to this statute. We were reminded that if we do make proposals, it would be wise to avoid proposed modifications to the administrative code as that could present difficulties.

Julee Milham moved to maintain the position. Doug McDonald seconded. The motion passed unanimously.

Michael Chesal, Mark Stein, Jeanne Seewald, Dineen Wasyluk, and Woody Pollack will be looking at proposing modifications to the Revised Model Trademark Act.

**B. Subcommittee on Copyright Act Revisions, Julee Milham, St. Petersburg**

Julee Milham pointed out that there was likely a significant amount of proposed legislation coming forward that would modify the Copyright Act. Julee Milham will head a subcommittee to stay abreast of these modifications. Samuel Lewis, Michael Chesal, Mark Stein, Woody Pollack, Kimra Major-Morris, and Jon Gibbs have volunteered. Please contact Julee Milham if you'd like to be on this subcommittee.

**IV. SIXTH ANNUAL INTELLECTUAL PROPERTY SYMPOSIUM, March 5-6, 2015**

Woody Pollack reported that the IP Symposium planning committee had had its first meeting and selected a date – March 5-6 – for the symposium. The symposium will be held in Ft. Lauderdale. Venues are currently being identified. Michael Colitz, III is chairing the symposium this year. Michael Chesal stated that Judge Jordan has expressed interest in being move involved in the section and may be a good keynote speaker. Michael Chesal also suggested the Symposium planning committee consider corporate sponsors for this year's event.

**V. INTELLECTUAL PROPERTY CLE: Julee Milham, St. Petersburg**  
Julee Milham presented a very well-received CLE titled COPYRIGHT, ACT IV: A Discussion of What's Been and the Next Paradigm Shift. The Court Number is 1406541N.

**VI. ADJOURNMENT**  
Next meeting will be at the Mid-Year Meeting – January 2015  
(Location: Rosen Shingle Creek in Orlando area, tentatively January 22 or 23.)