

**Minutes of the Business Litigation Committee Meeting
Business Law Section of the Florida Bar Annual Meeting
January 22, 2014**

The meeting of the Business Litigation Committee of the Business Law Section of the Florida Bar (the "Committee") was held at the Reunion Resort and Club, Kissimmee, Florida on January 22, 2014.

I. Call Meeting to Order

Committee Chair Russell Landy called the meeting to order at 8:41 am.

II. Approval of Minutes

The minutes of the prior business litigation meeting were approved by unanimous vote.

III. E-Discovery Committee

Meeting is at 10:05. At the retreat meeting, the committee approved making the task force into a full sub-committee. At today's meeting will discuss certification of e-discovery lawyers. They will also discuss getting more membership, educational initiatives, and reprising the seminar on e-discovery that occurred last June. Steve Teplar submitted in September a chapter for the Business Litigation manual on e-discovery.

IV. Business Litigation Jury Instructions

Jury Instructions now on Florida Supreme Court web site (have criminal, civil, and contract instructions). Some people have rotated off the committee, but have added business court judge from every district. Upcoming meeting March 13 and 14th at the DCA, and will be giving an award to Judge Gerber. Please contact the committee if believe there are instructions that should be added for the bar. Will be moving into next phase of jury instructions, please let the committee know if have any instructions that should be investigated (can email to contact, email on Florida supreme court website. For the instructions, must be a well-settled area of law.

V. Antitrust Subcommittee

Committee voted in August to approve the recommendation that the former antitrust committee become a subcommittee of the business litigation committee. There are a pending series of changes for anti-trust certification. Gave synopsis of the changes; the proposal is to change the matters needed to allow counseling matters. Will also be discussing folding the antitrust certification committee into business litigation, and phasing out the certification. Discussed how there is no

longer a great deal of activity in anti-trust, but still important to make sure that attorneys certified because complicated area of the law. Discussed how executive counsel is looking for recommendation from this committee in order to know how to proceed on the proposed changes to the certification. Need to decide whether the committee supports the proposed amendments to the certification rules? Chair decided to circle back to the issue.

Discussed small membership. The certification committee has been urged to increase participation. Have reached out to several practitioners, but still not close to the 75 members needed under the bar rules. Other problem for recertification is that standards are difficult to meet. Seeing mostly fringe cases by inexperienced lawyers, or big class action cases, which are controlled by larger firms outside of Florida. Main thrust of changes is to relax the experience qualification for certification by deemphasizing litigation and allowing counseling to substitute the more rigorous litigation requirements. Also doing brainstorming for more radical proposal to emphasize the trade regulation part of the committee. Would be following the lead of the ABA antitrust regulations. Would need to reorganize the committee along the lines of intellectual property, and to create subgroups. The Amendments before the committee today are the amendments to change the standards to be more consistent with the market today.

Chair asked for motion to take a position on the issue. Irwin Gilbert made motion to advise the executive counsel to support the changes. Motion was seconded. Motion approved unanimously.

VI. Franchise & Trade Regulation Subcommittee

No report, chair of subcommittee not present.

VII. Legislative Subcommittee

Expecting quiet legislative session this year. One of the issues to discuss will be a bill to make taking a business identity a larceny. The issue is how to take information that is public, and making it somewhat confidential and therefore taking the information becomes a crime. There have been 600 bills filed, which is about half of the usual for this time. Also, want to work with Larry Cumin in computer law to work on the legislation.

Other bills to discuss include SB 364 and 366, which deals with computer related crimes. The statute allows for civil remedies to destroy, take, injure, or damage an electronic device. Would like the computer law committee to weigh in. Also includes engaging in audio or visual surveillance of another person without their consent. Concerned because can criminalize a lot of actions. Also have glitch where defined person in wrong section. Would like to create dialogue on how would effect individuals. If the committee would like, can move to provide technical support to the bill.

Another bill is SB 386, which deals with foreign relations. Have removed concerns, which impact business laws. Not sure if this bill will pass. Had failed the past three years. Our position is that all aspects that negatively affect this committee have already been removed, therefore, do not need to oppose.

Another bill is SB 82, which deals with short sales. The bank would waive their right to a deficiency judgment. Do not believe the bill will pass. If committee wishes to oppose, then need to take actions.

B-Corp language just popped up in the session in SB 654. Will aggressively work to pass that this year. It is voluntary, can choose to file like that. Have help in passing the legislation.

SB 607 is starting the re-write process, and instead of waiting till the end to determine litigation issues, should appoint a member to assist in the re-write process and report back to the committee and make the process smoother.

Proceeding supplemental is also part of this committee. Need to also focus on writing the white paper.

Chair requested motion to approve technical support on SB 364 and 363. Motion was made and seconded. Motion approved unanimously.

Chair asked for those who are interested in helping with the re-write process on SB 607. No one volunteered. Chair decided to monitor and report back.

VIII. Inclusion, Mentoring, & Fellowship Committee

Reported that had 7 successful events. Had diversity presentation in Jacksonville, had diversity mentoring picnic, trial skills workshop in October, joint program with Cuban American bar association, co-event with LGBT called out of the closet, another minority picnic. Next event will take place in Tampa for a diversity social luncheon event on February 22nd at 1p.m. Looking for volunteers. Working on a joint effort with the membership committee to formalize structure and plan and match up new members and reach out to law student members and get them better mentors. Asking for volunteer mentors as well. Asking to require chairs and vice-chairs of substantive committees to be mentors. Implemented diversity fellowship program. Have granted three fellowships. Also considering extending fellowship program to law schools.

IX. Pro Bono Committee

Liaison of committee not present, no report. Have upcoming event in Ft. Lauderdale.

X. Social Media Committee

Struggling with what mission of committee should be. Some leaders of business law section believed that section should be involved with social media and keep up with trends. Need to decide which social medias to be involved in. Have Facebook page and a linked in page, which has several followers. Twitter only has 63 followers. Looking to increase presence on these platforms. Need to decide how to use the limited resources that we have. Have had two meeting thus far. Since first meeting, during Labor Day retreat, met with social media guru to determine how to increase presence on social media. One of the drives the committee has it to gain new content and bring it to the social media that already active on. Want to promote articles and other things occurring in attorney's practices. Update on website on posting policy. Things that are sponsored or endorsed by the business law section will be highlighted. For things that are not sponsored or endorsed, they will go on main calendar and will not be highlighted.

Chair asked if there were restrictions on what could be placed on the calendar. Items will be filtered and should have a dual purpose for other members and the legal community in general. Fellow asked whether committee would update business law section members on current laws and deadlines. Committee does not have clear answer, are still discussing which direction to go. Still meeting with experts in the field that have assisted other organizations in implementing their social media. Have also discussed hiring a full time employee to run the social media.

XI. Computer Abuse Non-Disclosure and Data Recovery Act (CADRA)

Working with computer law committee in drafting this section. For many years, the individuals who worked in the field have struggled with issue on how to protect their data. In general, the courts have found that data is not suitable for conversion or trespass. The theory of making it a violation of a person access the data came from criminal sphere with the Computer Fraud and Abuse Act. The Florida computer crimes act eliminated the civil remedy. The Federal Computer Fraud and Abuse Act has been narrowly interpreted as to what "authorized access" is. Created committee to draft new legislation. Have amended to add new provisions, such as just including business related activity. Want to discuss whether want civil statute that prohibits unauthorized access to the data. It is strict liability if exceed unauthorized access. There needs to be some economic damage to the person who was breached.

Chair asked how access defined. Access defined as viewing and/or taking. Question whether confidentiality component. Statute does address whether there is a written policy as to access. Need to determine the remedial process: termination or an injunction. Have reviewed reported cases for the Florida Computer Crimes Act and most of the cases are not helpful. Trying to deal with insider going beyond authorized access, and what authorized access means.

Recommend that a policy pop up on the computer and must agree to it before access the information, but might be found to be excessive. Recommendation that narrow the statement of the policy to only business computers. No objection to adding a written policy requirement. Would give courts more objective framework to deal with the issue.

Requested vote to determine how many committee members would be in favor of adding the written policy requirement. Chair asked for informal vote. One vote in favor. 7 vote against.

XII. Economic Loss Rule: *Tiara Condo v. Marsh*

Chair spoke on this issue. Subcommittee created report on all the decisions that have come since *Tiara*. Report has been passed out and is also on the website.

XIII. State/Federal Court Judicial Liaison Committee

Tonight is the inaugural dinner. Leadership has asked the judicial liaison committee to create one for non-bankruptcy judges.

Also the 11th Judicial circuit has added an arbitration subdivision.

XIV. Proceedings Supplementary Task Force

Reviewing proceedings and supplementary statute. Still in the early stages. Having a meeting tomorrow, for all those that want to join.

XV. Receivership Practice Guide

Have seminar coming up, all day event. Also finalizing the source material, including the manual. Focus is now on the seminar, which delves into alternative structures. There will be 14 speaker. The date is May 2nd in Miami. Open to everyone.

XVI. Lunchtime CLE

Two potential lunchtime CLE's. Proposed CLE on cross-boarder litigation with Canada. Other proposal is structuring business so employers can more easily get visas. Both easy to arrange. Asked whether anyone believes should not address these topics. Can also email Ryan regarding any topics that would be good for lunchtime CLE.

XVII. LLC CLE

Had CLE on October 24. Mark Nichols spoke. Was very good.

XVIII. Arbitration CLE

Chair asked whether anyone attended arbitration CLE in September. No one attended.

XIV. Florida Non-Compete Status Review

Committee has not been created. Will keep committee updated.

XV. Identity Theft Bill

Already spoke about earlier with the legislative Subcommittee.

XVI. Review of Summary Judgment Standard

Previously had committee review in 2010. Have another committee reviewing now. Committee should take interest.

Chair asked whether any other new business. No new business

Motion made to adjourn and seconded. Motion approved unanimously.