

MEETING MINUTES

Business Litigation Committee

Business Law Section of the Florida Bar

August 31, 2013

After the meeting was called to order, the first item was the approval of the minutes of the meeting dated June 27, 2013. Judge Smith made a motion to approve the minutes; Mark Nichols seconded the motion. By unanimous vote, the minutes were approved.

The next items on the agenda were the subcommittee updates.

E-Discovery State Rules Subcommittee: James Murphy discussed the E-Discovery State Rules Subcommittee. A task force on e-discovery had been formed, with its first goal to organize seminars on new state court e-discovery rules. The seminars were previously discussed during a presentation at a conference of civil court judges. At present, the seminars were being organized and conducted throughout the state. Mr. Murphy stated the goal of the subcommittee was to put on a follow-up presentation at the 2014 annual meeting of the Florida Bar. The subcommittee was also working on a set of protocols for e-discovery. Further, the subcommittee looked to author a new chapter on e-discovery in the Business Litigation Manual. The subcommittee also discussed a proposal to have board certification in e-discovery, and the standards under which an attorney could become certified in such a discipline. Mr. Murphy intended to raise at the Executive Council meeting the certification proposal. Mr. Murphy also intended to present to the Executive Council a proposal to convert the existing e-discovery task force to a committee of the Business Law Section.

Business Litigation Jury Instructions: Manuel Farach discussed the proposed Rule 2.451, concerning the use of social media and technology by jurors. Drafts are circulating, and he expected the rule to be implemented by year-end. The subcommittee was also working on verdict forms and jury instructions regarding the costs of action. The subcommittee was working toward a complete set of jury instructions to be adopted by the Supreme Court of Florida.

Antitrust: Irwin Gilbert reported there was low interest in the subcommittee to date, primarily because of the small caseload of antitrust cases now pending in the State. Mr. Gilbert discussed a proposal to ease the standards of board certification in antitrust law. He intended to send out those proposals for comment later in the year. Mr. Gilbert also discussed creating an annual seminar on antitrust to be named for Professor Hovenkamp.

Franchise: No report.

Legislative: The subcommittee discussed proposed legislation concerning service on a sole proprietorship, and the proposed law previously put forth regarding postjudgment collection,

which appeared to immunize the sheriff's offices from any responsibility on poor service. James Murphy discussed how, through our efforts, the proposed legislation did not pass.

The Committee next heard from its Liaisons from Diversity, Pro Bono, and Social media

Diversity: Sarah Paris stated the committee was being renamed the Inclusion, Mentoring, & Fellowship Committee. She advised as to certain upcoming dates: September 21, 2013: mentoring picnic; October 23-24: trial workshop in Miami; Oct. 17: joint program with the Cuban-American Bar Association; and November 9: minority mentoring picnic, Miami.

Pro Bono: Maxine Long discussed the process of putting together a set of law firm policies and standards for pro bono work. The Pro Bono Committee was going to submit a draft of considerations, seeking commentary from the Section at-large.

Social Media: Latasha Johnson stated the committee would be conducting its first meeting later that day, and would be discussing various issues and proposals to be submitted to the Section.

The Committee was going to discuss the proposed Computer Abuse Nondisclosure and Data Recovery Act (CADRA), but elected to move that discussion to the end of the meeting.

The Committee next discussed the LLC statute. Mark Nichols informed the Committee there would be a full-day CLE in Miami and Tampa discussing the changes to the newly-enacted LLC statute. The CLEs were scheduled to take place on October 24 and 25, respectively.

Peter Valori next discussed the recent court decision of *Tiara Condo v. Marsh*, and whether the decision marked the end of the economic loss doctrine in Florida. He stated there was still a significant likelihood of the doctrine still applying to business cases. Mr. Valori proposed the Committee write an article on the *Tiara Condo* decision, and the resulting fallout from the state court judges interpreting the decision. He also stated it was his understanding there would be proposed legislation that would, in essence, overturn *Tiara Condo*, and, in the event of such proposed legislation, there may come a time in the near future when the Business Law Section would be asked for its position on the economic loss doctrine. In response to the question, Judge Streitfeld stated in his opinion, the application of the economic loss doctrine depended on the nature of the claim. The Committee discussed forming a subcommittee to analyze the results of subsequent decisions using *Tiara Condo* as precedent, and begin the process of painting a picture of the consensus of the reaction to the decision.

The Committee next discussed the Business Litigation Certification Review courses, and the Business Law Journal. Mark Nichols reported that, with the exception of civil procedure, the rest of the courses are completed. The Business Law Journal was slated to be completed by March 2014, and the Committee agreed Manny Farach's caselaw survey would be submitted by the Committee. The deadline for submissions is January of 2014.

Next, the Committee took up the question of CADRA. Robert Kain, on behalf of the Computer Law Committee, discussed the purpose and intent of the legislation. James Murphy spoke first on behalf of the Business Litigation Committee. Mr. Murphy stated while the purpose of the bill was laudable, the breadth of the legislation extended beyond what was appropriate, and legal. The Committee's members, including Mr. Murphy, Rick Gross, Judge Meenu Sasser, Judge Gill Freeman, Judge Jennifer Bailey, and Judge Paul Huey, discussed the issues the Committee had with the bill, and after considerable discussion was had on the matter, Michael Higer moved to reject the proposed bill and appoint a liaison with the Computer Law Committee, who would then work with the Computer Law Committee to create a subcommittee to rework CADRA. Rick Gross seconded the motion, and the motion passed by unanimous vote.

The Committee then heard from Barbara Riesberg on the State/Federal Court Judicial Liaison Committee. Ms. Riesberg proposed Committee members e-mail judges to ask them to submit to the Committee orders containing conclusions of law that would be of interest to the Committee. Alternatively, if members of the Committee received orders from judges containing such information, the members were asked to submit the orders to Ms. Riesberg. In addition, Ms. Riesberg discussed the judicial dinner and the proposal to separate the dinner into two groups: one for the judges, and one for everyone else. Ms. Riesberg stated she would continue working to get more judges to attend, particularly those in the Complex Litigation sections.

The Committee next heard from Barbara Riesberg on the proceedings supplementary task force, which had recently been formed to discuss the history and current procedures of proceedings supplementary, with a view toward proposing legislation to modify and update the long-standing procedure.

Finally, Jon Polenberg stated the Revised Uniform Arbitration Act Seminar would take place on November 8, 2013, and the Committee decided it would consider a long-term review of the noncompete statute with a view toward proposing legislation; the idea is to consider proposals more expansive than those previously offered by the Antitrust, Franchise, & Trade Regulation Committee in 2012.

Rick Gross then moved to adjourn the meeting. Steve Mahle seconded the motion, and by unanimous vote, the meeting was then adjourned.