

Minutes of the Business Litigation Committee Midyear Meeting For the Business Law Section of the Florida Bar

The meeting of the Business Litigation Committee of the Business Law Section of the Florida Bar was held at the Tampa Airport Marriott on January 20, 2011 at approximately 9:00 AM.

Present were the following: Ryon McCabe; Mark Nichols; KacyDonlon; Melanie Damian; Maxine Long; Barbara Riesberg; the Honorable Richard Nielsen; Rick Gross; Jeff Hirsch; the Honorable Tom Smith; Jon Polenberg; Jude Cooper; Manny Farach; Juan Martinez; Peter Valori.

1. Committee Chair Ryon McCabe called the meeting to order at 9:20 AM.
2. Before getting approval of the minute, Committee Chair McCabe asked the Committee members their opinions of the Sections “fly-in, fly-out” format. Several members expressed concerns about getting flights out of Miami the night before, so they had to come in on early flights on Thursday morning, which ran the risk of them being late to the meeting. Some members suggested starting later in the future to accommodate those arriving in the morning; others suggested having a conference call feature so people whose schedule couldn’t accommodate the travel could still participate.
3. Committee Chair McCabe asked the member to review the September 4 meeting minutes from the Business Litigation Committee meeting at the Labor Day Retreat. The committee unanimously approved the minutes.
4. Committee Chair gave Ryon McCabe an update on proposed 57.106. He informed the members that Executive Council had approved the triple motion proposed at the meeting in Naples. Mark Nichols told Committee Chair McCabe to wait for a full synopsis until Bill Wiley came to give the group a more complete update.
5. Mark Nichols gave an update on the LLC Drafting Task Force. Mark says the group spent a significant portion of its time on Olmstead-related issues, and the Task Force wanted to have patch language approved before the Legislative session began. At the close, the Task Force discussed what the process will be for finalizing the LLC Act language over the next year, and said they will be reaching out to committees for input. Mark said he will send out an email with detailed information for any members of the Committee who want to participate.
6. Business Law Section Chair Michael Higer, Chair-Elect Mindy Mora, Bill Wiley, and Traci Eller joined the Committee meeting. Section Chair Higer asked us to “have patience” with the Committee rooms, as there are still a few bugs to be worked out. He also invited us to the Section lunch, where the special guest speaker would be Sean Harrison, a member of the Florida House of Representatives. Mindy Mora elaborated on the details for the Executive Council Spring Retreat to Amsterdam. Bill Wiley told the members to expect a very active legislative session, not just for substantive bills related to our Committee, but also on the court funding issue. Traci Eller requested new material for the Business Law Section’s website.

7. Jon Polenberg discussed the new proposed rule of civil procedure on e-discovery drafted by the E-Discovery Rules Subcommittee. After having a meeting in the morning, the E-Discovery Rules Subcommittee made some minor glitch changes to subsection (d) of the proposed rule, including the addition of the “proportionality” test. This proposed rule basically mirrors the federal rule (except with the elimination of subsection 3). Jon said the proposed rule was going to be taken to Executive Council this afternoon for a triple motion, and the Subcommittee asked for our Committee’s support. Judge Nielsen added the judges agreed to the proposed language of this rule. The proposed rule, with minor glitch changes, was unanimously approved by the Committee.

8. Jon Polenberg talked to the Committee about the Revised Uniform Arbitration Act Subcommittee. The Subcommittee’s meeting will take place this afternoon at 1:30PM, and anyone is invited to attend. The Subcommittee will be commenting on the uniform rule and hopes to have draft legislation prepared for Executive Committee triple motion approval by the upcoming Labor Day Retreat so the bill can go through during the 2012 legislative session. Jon said the Subcommittee is awaiting the outcome of the Supreme Court case *AT&T v. Concepcion*, which will have an impact on class action arbitrations.

9. Manny Farach gave the Committee an update on the new Section for Alternative Dispute Resolution. He says the Section has grown tremendously, but that nearly 80% of the group consists of lawyers focused in mediation. The members hope to expand their Section to include lawyers whose practice involves other types of ADR. The Section also wants to start getting involved with legislation, which may include commenting on the RUAA.

10. Mark Nichols talked about the Business Litigation Case Summaries for the Journal. Mark reviewed all of the case summaries written by the University of Florida law students and submitted them to Steve Fender. Mark thanked Manny for giving the law students an outline based upon his short summaries, which Mark also submitted for Steve’s consideration. The Committee talked about just submitting Manny’s summaries in the future. Peter Valori said submissions to the Journal need to be considered on a year-to-year basis, because each editor has a different style.

11. Mark Nichols and Peter Valori gave an update on the CLEs. Mark said scheduling has become an issue, because many of the lawyers have calendar calls and are reluctant to schedule anything in advance. Mark will reach out to all of the remaining speakers in the next month to inquire as to their schedules again. Peter said the Florida Bar was making it difficult to allow the Section to have the CLEs sold because of the quality of the CLEs, even though the ones already taped did not have poor quality. Peter thinks instead of offering them for sale, we offer them through the Section’s website as a member benefit. That way, the Section has more control over how to put together the series.

12. Melanie Damian talked to the Committee about the Federal Judicial Roundtable, which will be held at the Annual Meeting in June. Melanie outlined the format for the Roundtable: the first hour will be a “State of Affairs” to be given by the approximately 35 judges expected to attend, followed by questions and answers; the second hour will feature

roundtable discussions. The problem with the Roundtable is the time of the event, which will be from 2:30 to 5 PM, will conflict with the Section's Executive Council. Melanie moved for the Committee to support her request for a \$1000 sponsorship. The Committee unanimously approved her request.

13. Melanie Damian talked about the Pro Bono Committee video being produced. She asked the Committee for volunteers to appear in the video to speak about their pro bono work.

14. Rick Gross asked the Committee Members to attend the ABA Section of Litigation Conference, being held at the Fontainebleau in Miami, FL from April 13 through 15.

15. The Committee began discussing all of the proposed substantive legislation being proposed for the upcoming legislative session. Committee members expressed concerns about HB 87, dealing with judicial opinions being forwarded to the legislature, and SB 262, dealing with intimidation of a judge. Bill Wiley also came back into the meeting to discuss 57.106. Bill says a lot of people have reviewed the proposed language, and no one has had a nice thing to say about it. Bill knows this statutory change would not pass this year under any circumstances. He suggests beefing up the white paper, including an analysis of possible scenarios where the statute would be used. Bill also suggests reevaluating the insurer's perspective. With the meeting running short on time, the Committee appoints a subcommittee to deal with all of the legislation. The Subcommittee consists of Committee Chair McCabe, Melanie Damian, Barbara Riesberg, Rick Gross, Jeff Hirsch, Jude Cooper and Jon Polenberg.

16. The Committee adjourned at 11:03 AM.