

**Minutes of the Business Litigation Committee Meeting
Business Law Section of the Florida Bar Labor Day Retreat
September 3, 2011**

The meeting of the Business Litigation Committee of the Business Law Section of the Florida Bar was held at the Ritz Carlton in Naples, Florida on September 3, 2011 at approximately 10:00 a.m.

Present were the following: The Honorable Edwin Torres, Ryon McCabe, Kacy Donlon, Peter Valori, the Honorable Tom Smith, Manuel Farach, Jason Kellogg, Jeffrey Hirsch, John Clough, David Ackerman, Gregg Mora, Russell Landy, Gwynne Young, Melanie Damian, Steve Lessne, Rick Gross, Rick Nielsen, the Honorable William Van Nortwick, Michael Higer, Peter Gampel, David Steinfeld, Jon Polenberg, Scott Chitoff, Detra Shaw-Wilder, Barbara Riesberg, Mark Nichols, the Honorable Edward LaRose, the Honorable Jeffrey Streitfeld, Maxine Long and the Honorable Gill Freeman.

1. Committee Chair Mark Nichols called the meeting to order at 10:07 a.m.
2. Committee Chair Nichols asked the members to review the June 23, 2011 minutes for the Business Litigation Committee meeting at the Florida Bar Annual Meeting. The minutes were unanimously approved with a change to reflect attendance by Kacy Donlon.
3. RUAA Subcommittee – Jon Polenberg gave an update on the Revised Uniform Arbitration Act Committee. Judge Cope assisted with the drafting of the white paper and the proposed bill. These items were circulated and are on the Executive Council Agenda for a triple-motion on Monday, September 5, 2011.
4. FICPA subcommittee – Ryon McCabe forwarded names of volunteers for the FICPA committee to Dianne Wells.
5. LLC Statute Revision – Rick Gross started a discussion regarding availability of fees for bad faith dissolution action, mentioning the current law under Chapter 607 for fees. The discussion continued with respect to judicial dissolution, receivership and the ability to set fees. Rick Gross brought up the request for action regarding vexatious litigation. He pointed out that Section 57.105 already covers frivolous litigation; and, that “vexatious” is defined under the federal statutes.

The committee position is that: a) “vexatious” is not defined under current or proposed statutes; and b) it would be duplicative of Section 57.105, which has a safe-harbor provision and clearly defined terms. Rick Gross moved to oppose the language in section 607.1431(4) of the proposed LLC draft regarding fees for vexatious litigation as it is arbitrary; the motion passed unanimously.

Discussion was had regarding the proposed language should be consistent with the corporate statutes with respect to buyouts. Also, discussion was held whether we should mirror the Delaware system; is it more attractive to business?

It was pointed out that p.123 of the LLC draft regarding remedies available to the court reads “any equitable remedy” and thus allows a Judge to do anything he wants to achieve equity.

Additional policy issues were raised with respect to whether there should be “paternalistic” default provisions where issues are not addressed in operating agreement, or where there is no operating agreement.

6. Section Chair Mindy Mora, Chair-Elect Brian Gart and Tracy Eller joined the meeting along with Stephen Nagin and Eugene Pettis. Chair Mora encouraged all to acknowledge the retreat sponsors and to attend the Section lunch. Eugene Pettis introduced himself as a current member of the Board of Governors. He is exploring a run for President of the Florida Bar.
7. Bill Wiley addressed the committee regarding legislation and stressed an effective response to proposed bills is a swift response. There are two major legislative initiatives coming out of this committee. The first is the Revised Uniform Arbitration Act, which is scheduled for an Executive Committee triple motion on Monday, September 5, 2011. The second is legislation addressing covenants-not-to-compete, targeted for the 2013 legislative session. We should form a subcommittee to work from the draft prepared by Hal Litchford. Bill also pointed out that Melanie Damian is a good lobbyist.
8. Jodi Cooke from the Bankruptcy/UCC Committee addressed the committee with respect to a focus group on standards for Receivers and Trustees in light of recent issues in South Florida; the purpose is to educate Judges and practitioners as to what should be in orders appointing receivers to ensure checks and balances; a survey was sent to receivers and judges to help clarify the standards – she is seeking more response from the judiciary. It was suggested to review the SEC qualifications for receivership which were just revamped and are available on the SEC website.
9. Article 9 – ABA prototype for litigation language was attached to the materials; Chair Nichols requested committee members review and provide comments to him.
10. Diversity Subcommittee – Detra Shaw-Wilder is the liason for the Business Law Section. She advised the strategic plan for BLS is to have a liason for each committee in an attempt to get the message out to obtain more diverse participation in substantive committees. Ms. Shaw-Wilder suggested promotion of BLS membership to minority bar associations. She will bring a BLS application for students to the upcoming Minority Mentoring Picnic.

11. Pro Bono Committee – Melanie Damian reported that this committee is 1 year old. The committee plans 3 clinics this year in Jacksonville, Tampa and Miami. The committee is partnering with ABA Business Law Section to do financial literacy training. There is a sign up for the clinics in the registration materials.

Ms. Damian indicated we are in a crisis of funding for the poor to have access to justice. She proposed a resolution for the Business Litigation Committee to support a triple motion to the Executive Council to support access to justice funding. The motion to approve the resolution passed unanimously.

Ms. Damian also requested the Business Litigation Committee give \$1000 do the Federal Judicial Roundtable. There are more benefits this year including recognition as a top sponsor at events. The motion this request passed unanimously. The annual sponsorship by the Business Law Section includes recognition on the court practices website and at the Annual Meeting.

12. Judge Smith was appointed a Federal Magistrate Judge in the Middle District of Florida. His investiture is October 24 at 4 p.m. in Orlando. Committee members warmly congratulated Judge Smith.
13. Legislative Subcommittee - a signup sheet was circulated for those who wish to participate. Barbara Riesberg reported she would circulate an email to the subcommittee with proposed bills for review and comment.
14. Business Litigation Jury Instructions – Manny Farach gave an update on this. He indicated Judge Smith had revamped the Business Jury Instructions. The Supreme Court of Florida is expected to review the proposed instructions in 2012. The entire set will be published later this year. In the interim, Manny will provide drafts of what has been approved and Peter Valori will post to the website. Manny can be contacted via email at MFarach@RichmanGreer.com.
15. Vexatious litigation was discussed as it was raised by an elected official. A short discussion was held in which members of the committee pointed out that 1) Judges have inherent authority to sanction; and 2) this issue is covered by section 57.105.
16. A very brief discussion was had with respect to the RPPTL white paper on statute of limitations for payment bonds.
17. Business Law Journal – editors are Jude Cooper and Lynn Sherman. The contribution from the Business Litigation Committee will be case summaries provided by law students from UF. Zach Hyman is the student liason. The Business Law Journal has not yet been published this year. It is a priority to publish this year. An additional \$10,500 is needed to publish. A donation of \$1500 includes a ½ page ad in the Business Law Journal.
18. Business Litigation Certification Review – there were no updates to report.

19. State/Federal Judicial Liason Committee – Ryon McCabe reported that the purpose is to encourage participation of the judiciary in BLS activities. This year, there are more Judges on the committee than lawyers.
20. BLS hosts a website devoted to the business courts.
21. The Committee adjourned at 11:58 am.