

**The Florida Bar  
Business Law Section  
Computer and Technology law Committee**

**MINUTES OF MEETING – SEPTEMBER 3, 2011**

Attendance: Kevin Levy, Chair, Larry Kunin, Vice-Chair, Julee Milham, Carly Hammon, Ury Fischer, Doug Cherry, Robert Thornburg, Manny Farach, Sam Lewis, Stephen Luther, Leora Herrmann, Robert Kain, Darren Spielman, Mark Calvert, Denise Villarreal, Jaime Hewitt, Sim Singh, Dineen Wasylik, Alisa Pavlick, Jim Matulis, Phil Kabler, Oliver Ruiz, Danixia Cuevas, Mark Milam.

Attending by Phone: Cathy Mitchell, Jim Meadows, Joel McTague, Steven Teppler

Minutes: Minutes from the June meeting were approved with one typo correction.

Introductions: Appears committee growing in diversity and rejuvenation. Three law students are in attendance and welcome.

This meeting is part two of efforts to rejuvenate committee. For the second straight meeting attendance is strong.

Announcements

Diversity - Leyza Blanco may be appearing to speak about Business Law Section diversity initiatives.

Pro Bono – In June 2011 the Business Law Section adopted June a rule to strive for pro bono participation of members of the Business Section with a minimum goal of each attorney handling at least one pro bono case per year.

Introduction of Business Law Section leadership

Mindy Mora (Chair), Brian Gart (Vice Chair), Bill Wiley (lobbyist), Tracy Eller (emails), Steph Nagin (Secretary treasurer) stopped by for welcome and announcements.

Legislative session begins January 10, which is ahead of normal schedule. The whole session is expected to be at a rapid pace. Section leadership needs to know what is on this committee's interest. On Bill Wiley's radar are computer fraud issues, forensic evidence issues, sunset review of Dept. of State, e-filing/e-discovery, covenants not to compete, and work with the Appropriations, Finance and Tax committee. If the Computer Law Committee wants to take a position on anything, especially in opposition

to a proposed bill, the Committee needs to prepare a white paper that is objective. The white paper is sent to Bill and he will share it with the Legislative Committee.

Hal Litchford is heading a subcommittee to study the covenants not to compete statute. There is no particular issue, merely that the statute has not been reviewed for a while.

Listserv: The Listserv is active again and updated with members' emails. Specific mention was made about Tim Morrell circulating articles of interest to the committee.

Legislative update: Larry Kunin, as Vice Chair, is the Committee's automatic representative to the Legislative Committee. There was no particular report other than to alert the committee, as did Bill Wiley, that the legislative session is upcoming and that the Committee should keep an eye out for legislation within the Committee's interest.

New Mission Statement: Kevin Levy, Chair, introduced a new Committee Mission Statement (set forth below), which was approved by unanimous consent:

- *The mission of the Computer and Technology Law Committee is to educate the Business Law Section and members of The Florida Bar about substantive computer and technology law cases, issues and statutes.*

### Possible Committee Task Forces

#### 1. CLE

Committee discussed holding a possible CLE during the "Fly-In" meeting in Tampa on December 1, 2011. The Committee is allotted 2 hours. The Committee also discussed hosting a separate CLE during the June 2012 Annual Bar Meeting.

The consensus appeared to be that the Committee should have a 50 minute CLE during its meeting. A full CLE may be issue because of hurdles. Kevin Levy will lead this task force.

A suggestion is to bring people in from out of state to speak at a CLE, including at a standalone symposium. People want to come to Florida, so we should take advantage of that.

#### 2. Internet Predators/Scambusting

Tim Morrell raised the topic of Internet scam busting and predator prevention. See scambuster.org. Tim sometimes gets calls from clients who were victimized and allege that banks turn their head. Sam Lewis suggested that the way to address this is to change bank regulations.

Internet predators also increasingly affect the business side. These are usually companies that do trademarks. Scammers may set up a common name, like Windows or

Lite, or may pick generic names and registered thousands of them and then send demand letters to take them down or pay. These cases don't get picked up often in the press. Maybe the Committee can be a resource to educate lawyers and the public.

### 3. *Legislation*

The Vice Chair will lead legislation task force efforts.

Question was raised about whether the Committee has dropped efforts regarding amendments to the Cyber Crimes Statute. The expressed reason was that most lawyers look to the Computer Fraud and Abuse Act, not Florida law, for a remedy.

It is not the Committee's role to get something passed, but come up with proposal. The legislative committee handles getting passage.

The Committee debated whether there is a reason to add a civil cause of action to the Cyber Crimes Statute, including whether such right can be abused. The Committee previously reached out to Criminal Law Section and it showed no interest in addressing the Cyber Crimes Statute. An expressed weakness in the CFAA is that it is unclear what is meant by "authorization" and "exceeding authorization" in the CFAA. For example, what if an employee while having access locks an employer out of a computer system, installs a computer time bomb, or adds encryption and withholds a key until a ransom is paid. This is a topic of interest to employment and corporate counsel as well.

### 4. *Articles*

Question was raised about also trying to get articles in the Business Law Journal as well as the Florida Bar Journal, but that is a long effort, and it may be better to start with articles in the Florida Bar Weekly. The Business Law Journal used to be merely case notes, but that has broadened.

Oliver Ruiz will lead efforts to submit articles to the Business Law Journal and the Florida Bar Journal.

### 5. *Special masters*

Manny Farach said that the Committee used to have an initiative regarding special masters for e-discovery. We need to look where that took over, and formation of task force may be helpful.

### 6. *E-Discovery*

Civil Rules Committee was thankful when the Computer Law Committee jumped in to help fix proposed e-discovery rules. The Committee should capitalize on this effort and discuss potential certification. ASEDS is currently selling an e-discovery certification course for less than \$1000.

Doug Cherry said that there is task force for e-discovery rules and perhaps this can be combined into a broader e-discovery task force. Doug will lead this taskforce. In fact, the e-discovery rules task force is set to meet immediately after conclusion of the Computer Law Committee meeting.

7. *Hot Topics*

Task force would make sure that we have something to talk about at each meeting, perhaps a 10 minutes presentation and debate.

Other Business

Recruitment. The Committee is already engaged in recruiting more members, as evidenced by the increasing attendance.

Bob Thornburg gave a report on the IP Committee.

Robert Kain suggested reading the *CyberSource Corp. v. Retail Decisions, Inc.* decision regarding computer method claims.

Meeting Close: Next meeting is the fly-in meeting in Tampa in December 1, 2011.