

**The Florida Bar Business Law Section – Executive Council**

**Thursday, June 27, 2013  
3:30 p.m. - 6:30 p.m.  
Boca Raton Resort and Club  
Boca Raton, Florida  
Addison Ballroom East/West**

**Annual Meeting of the Section  
3:30 p.m.**

**AGENDA**

- I. Call to Order – Brian K. Gart, Chair
- II. Report of the Nominating Committee
- III. Election of the 2013-2014 officers
- IV. Adjournment

**Meeting of the Executive Council  
3:45 p.m.**

**AGENDA**

- I. Call to Order, and Introductions by Council Members – Brian Gart, Chair
  - A. **Pro Bono Resolution**  
Be it resolved, that the Business Law Section, encourages pro bono Service by its membership; and  
  
Be it further resolved that as part of its efforts to further and support pro bono service, the Business Law Section supports the Pro Bono Committee partnering with the CLE Committee and other committees of the Business Law Section to include a brief (3-5 minutes) presentation re-affirming the Business Law Section’s support of and commitment to pro bono service at CLE programming and other appropriate Section events.
  - B. Announcement of the Florida Bar Leadership Academy Nominees
    - 1. Budget Amendment for Leadership Academy Scholarships (see Terry Hill’s May 19, 2013 Email to BLS Leadership) **(EXHIBIT “A”)**
  - C. Annual Report of the Section **(EXHIBIT “B”)**

- II. Approval of Minutes – Judge Bill Van Nortwick:
  - A. Executive Council Mid-Year Meeting, Orlando Florida – January 10, 2013  
(EXHIBIT “C”)
  - B. Special Telephonic Meeting of Executive Council (LLC Statute Approval) – January 24, 2013  
(EXHIBIT “D”)
  - C. Special Telephonic Meeting of Executive Council (Service of Process) – April 3, 2013  
(EXHIBIT “E”)
  - D. Executive Council Meeting, Rutherford Hill Winery, Napa County California – April 19, 2013  
(EXHIBIT “F”)
  
- III. Treasurer’s Report – Judge Bill Van Nortwick
  - A. 2012-2013 Budget Amendments (see attached report) (EXHIBIT “G”)
  - B. B. Judicial Reimbursement Policy (see attached reimbursement form)  
(EXHIBIT “H”)
  
- IV. Reports of Special Committees and Task Forces
  - A. Ch 608 LLC Drafting Task Force - Lou Conti /Gary Teblum/Greg Marks
  - B. Third Party Opinion Standards – Robert Barron
  - C. Subcommittee on Covenants Not to Compete – Hal Litchford
  - D. Social Media Task Force – Brian Gart
    - 1. Update on Website RFPs (see Form of RFP, and Article on Mobile Lawyering)  
(EXHIBIT “I”)
  - E. Formation of Joint Task Force on Proceedings Supplementary Statute (See Florida Bar Journal Article)  
(EXHIBIT “J”)
  - F. BLS Service History Project – Brian Gart and Greg Yadley (See Chair’s Message)  
(EXHIBIT “K”)
  
- V. Committee Reports
  - A. Antitrust, Franchise & Trade Regulation - Jude Cooper/Ava Doppelt (special action to disband Committee and form sub-committee of Business Litigation) – Steph Nagin
  - B. Bankruptcy / UCC - Jacob Brown/Robert P. Charbonneau
  - C. Bankruptcy / Judicial Liaison – Doug Bates / Hon. Paul Hyman
  - D. Business Litigation - Barbara Riesberg/ Russell Landy
  - E. Communications - Lynn Sherman/ Kacy Donlon/ Sam Lewis
  - F. Computer & Technology Law – Kevin Levy/Lawrence Kunin
  - G. Continuing Legal Education – Michael Chesal/ Ryon McCabe/ Lori Vaughan
  - H. Corporations, Securities & Financial Services - Laurie Green/ Stefan Rubin
  - I. Diversity Committee - Leyza Blanco/ Detra Shaw-Wilder
  - J. Intellectual Property - Leora Herrmann/Ury Fischer/ Dineen Wasyluk
  - K. Legislation - Alan Howard/ Jon Polenberg / Bill Wiley / Aimee Diaz Lyon
    - 1. Lobbyist Contract Approval
    - 2. Travel Reimbursement of Members Assisting Section Lobbyist
    - 3. Mid-Session Changes to Approved Legislative Positions

- L. Long – Range Planning – Greg Yadley/ Hon. Michael G. Williamson
- M. Membership & Law School Relations - Jodi Cooke / Phil Kabler/ Peter Valori
- N. Pro Bono Committee - Mark Stein/ Jennifer Morando / Hon. Laurel Isicoff
- O. Retreat & Sponsorships – Michael Chesal/ Lori Vaughan
- P. State/Federal Courts Liaison – Mark Nichols / Hon. Mary S. Scriven/  
Hon. Gill Freeman

VI. Other Reports

- A. Historian / Parliamentarian- Phil Schwartz/ Russ Blain
- B. Council of Sections – Hon. William Van Nortwick, Jr.
- C. Board of Governors – Michael Higer
- D. RPPTL Liaison Report – Jamie Marx
- E. Tax Liaison Report – Nick Lioce
- F. Liaison to Out-of-State Practitioners – Donald Workman
- G. Young Lawyers Division Liaison Report – Andrew Jenkins
- H. Chair – Brian Gart
- I. Chair-Elect – Steph Nagin
  - 1. Review of Bylaws **(EXHIBIT “L”)**
  - 2. Organizational Meeting for new BLS Committee Chairs and Vice Chairs

VII. Future Meeting Dates

- A. Labor Day Section Retreat– August 30 - September 2, 2013, Boca Raton, Florida
- B. Mid –Year Meeting - January 22-23, 2014, Hilton Walt Disney World Resort,  
Orlando

VIII. Motion to Adjourn

# EXHIBIT “A”

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**From:** "Brian K. Gart" <bgart@bergersingerman.com>  
**To:** <mobos@flabar.org>  
**Sent:** Friday, June 14, 2013 10:50 AM  
**Subject:** FW: Leadership Academy scholarship funds

**From:** Terry L Hill [mailto:THill@flabar.org]  
**Sent:** Sunday, May 19, 2013 6:12 PM  
**To:** Brian K. Gart; Steph Nagin  
**Subject:** Leadership Academy scholarship funds

Brian and Steph,

I want to thank you for the Business Law Section's participation in the Leadership Academy nomination process and the section committing to provide scholarships to cover the four (4) Business Law Section selected fellows. Congratulations on having so many Business Law Section nominated fellows selected (more than from any other section). The estimated cost associated with each fellow over the course of the fiscal year is \$3,500 per fellow. The planning group has determined that the best way to financially handle processing scholarship recipient's attendance and participation in the Leadership Academy is for the section to internally transfer the funds for each scholarship fellow (\$14,000 total for the four Business Law Section fellows) from the Business Law Section general budget to the Leadership Academy budget. The bar will directly handle reimbursements for all of the academy fellow scholarship recipients and provide an accounting of the funds back to the section at the end of the fiscal year. If you have any questions regarding this process, please contact me.

Thank you.

Terry L. Hill  
Director, Programs Division  
The Florida Bar  
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Tallahassee, Florida 32399-2300  
Phone 850-561-5700  
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# EXHIBIT “B”

## Business Law

As in years past, The Florida Bar Business Law Section has had an extraordinarily active year and continues to make its legislative initiatives, CLE programs, and work of the substantive law committees its overall focus. In a slight departure from past annual reports, the section recognizes and highlights certain special projects, initiatives, and achievements, as follows:

- *Florida Revised LLC Act Drafting Committee* — The Business Law Section, along with the Tax Section, after an almost five-year effort going back to 2008, has sponsored a proposed Florida Revised Limited Liability Company Act (the “revised act”) in the 2013 Florida Legislature. The revised act was introduced in the House (H.B. 1079) by Representative Charles McBurney of Jacksonville, and in the Senate (S.B. 1300) by Senator David Simmons of Orlando. Section legislative advocates Bill Wiley, Aimee Diaz Lyon, and Greg Black have done an exceptional job squiring the revised act through the Florida Legislature, with technical assistance from Drafting Committee Chair Lou Conti.

The revised act is based in large part on the Revised Uniform Limited Liability Company Act (2006), as amended in 2011, promulgated by the Uniform Law Commission. The revised act retains a significant core from the current Florida LLC Act, but will be renumbered as new F.S. Ch. 605, rather than as an amendment to existing F.S. Ch. 608. One thing that has not changed is the “*Olmstead Patch*” changing the charging order provision in existing §608.433, which was passed into law in 2011 as a result of efforts of the Tax, RPPTL, and Business Law sections, to address the controversial 2010 Florida Supreme Court decision in *Olmstead*.

The proposed effective date of the revised act is January 1, 2014, for all LLCs formed on or after that date, and there will be a transition period for all LLCs existing as of December 31, 2013, so that the revised act will not apply to the existing LLCs until January 1, 2015, unless they opt to be governed by the revised act in 2014.

A core group of Business Law Section lawyers have been instrumental in drafting the Florida Revised LLC Act, including Chair Lou Conti; Greg Marks, the reporter for the Drafting Committee; Steve Lear, the recording secretary for the drafting committee; past Business Law Section Chair Phil Schwartz; past Legislation Committee Chair Gary Teblum; Mark Nichols, who chaired a subcommittee of trial lawyers from the Business Litigation Committee; Academic Advisors Stu Cohn, of the University of Florida Fredric G. Levin College of Law and Manuel Utset, of the Florida State University College of Law; Jon Polenberg, past Business Litigation Committee chair; and Legislation Committee Chair Alan Howard, among many others who worked tirelessly on this project. A list of the Drafting Committee is included as part of the White Paper describing the Revised LLC Act prepared by the Drafting Committee and posted on the Business Law Section website.

- *Maxine Long: Recipient of President’s Pro Bono Award* — The entire section was thrilled to learn and will continue to celebrate President Gwynne Young’s decision to award our own former section chair, Maxine Long, with The Florida Bar’s Pro Bono Award for the 11th Judicial Circuit. With many of our members in attendance, Maxine was recognized along with 21 other outstanding lawyers for their work on behalf of poor and indigent clients at a January 31 ceremony at the Supreme Court of Florida. In 2011-12, Florida lawyers provided 1.67 million hours of pro bono services to those in need and \$4.88 million to legal aid organizations. The Florida Bar President’s Pro Bono Service Awards were established in 1981. They are intended to encourage lawyers to volunteer free legal services to the poor by recognizing those who make public service commitments and to raise public awareness of the substantial volunteer services provided by Florida lawyers to those who cannot afford legal fees. Pro bono service continues to be a key mission of our section and Maxine continues to serve our section as a member of the section’s Pro Bono Committee.

- *New Lawyer and Law Student Mentoring Initiative* — In the last year, the section’s Membership Committee has greatly expanded its mentoring program with both increased financial support and a more direct approach to new lawyers and law students. In addition to increasing its sponsorship of mentoring picnics and programs throughout the state, the Membership Committee has embarked on a program

seeking volunteers, who will be added to a list of potential mentors to help new lawyers and law students become acclimated as budding business lawyers. The section is particularly sensitive to the needs of new lawyers who find it necessary, given the current economic environment, to hang their own shingle, while lacking the requisite practical skills. The section is maintaining the list of potential mentors and sending its members information about potential mentees from time to time. Many of our members are giving more of their time and talent to assist. Mentoring includes being able to field practice questions from a mentee and establish a relationship to help a mentee through the challenges of law school and the early stage of practice. We hope this initiative will become a huge success and a standing program of the section and recognize the constant hard work and dedication of Membership Committee Chair Emeritus Alan Aronson.

- *Publications, Journal, Social Media, and Website* — The section has also engaged in what will be a multi-year effort to revamp and restructure how the section delivers content to its members, including the development of its social media platform, state-of-the-art website, and streamlined e-journal and case updates. Thanks to the help of the entire Communications Committee, which includes Lynn Sherman, Kacy Donlon, Sam Lewis, Peter Valori, as well as the leadership of the section, Chair-elect Steph Nagin and Secretary-treasurer Judge Bill Van Nortwick, the section expects response to RFPs by the time of the annual meeting.

Brian K. Gart, *Chair*

# EXHIBIT “C”

**DRAFT MINUTES OF THE MEETING  
OF THE EXECUTIVE COUNCIL OF THE BUSINESS LAW SECTION  
OF THE FLORIDA BAR AT THE SECTION’S MID-YEAR MEETING**

**ORLANDO AIRPORT MARRIOTT HOTEL, ORLANDO, FLORIDA**

**January 10, 2013 – 3:30 PM to 6:30 PM**

The meeting of the Executive Council (“EC”) of the Business Law Section (“BLS” or “Section”) of The Florida Bar during the Mid-year Meeting of the Section was called to order at 3:30 p.m. by **Brian Gart**, Section Chair.

**I. ATTENDANCE AND QUORUM**

The Chair requested those in attendance to briefly introduce themselves. In addition, a sign-in attendance sheet was circulated to confirm the presence of a quorum for transaction of business.

As the first order of business, the Chair read the following standing Resolution of the BLS to remind and focus all attendees of the Section’s sustained continuing “commitment to support Pro Bono” efforts:

**Be it further resolved that as part of its efforts to further and support pro bono service, the Business Law Section supports the Pro Bono committee partnering with the CLE Committee and other committees of the Business Law Section to include a brief (3 to 5 minutes) presentation re-affirming the Business Law Section’s support of and commitment to pro bono service at CLE programming and other appropriate Section events.**

The Chair noted that he would take the business out of order from the organization of the meeting set forth in the agenda of this meeting that had been posted on the Sections Web site and emailed to the members of the EC. Items IA and IB will be taken up following the report concerning the LCC Act.

## **II. APPROVAL OF MINUTES OF THE EC MEETING ON SEPTEMBER 3, 2012**

As the next item of business, the Chair requested Judge **Bill Van Nortwick**, the Secretary/Treasurer of the Section, to seek approval of the draft minutes of the September 3, 2012 EC meeting. The Secretary/Treasurer observed that the minutes had been made available to all Section members on the Section's Web site and were included as Exhibit C in the agenda materials distributed to the EC. He asked if any EC member had suggestions for amendment. **John Emanuel** then **moved approval of the minutes, which was duly seconded. The minutes were approved unanimously by a voice vote of the EC.**

## **III. TREASURER'S REPORT AND APPROVAL OF FINANCIAL STATEMENT**

As the next item on the meeting agenda, the Chair requested the Treasurer to present a report of the status of the Section's finances and present the proposed budget for fiscal year 2012-2014. Judge **Van Nortwick** noted that the November 2012 financial statement had been included as Exhibit D to the agenda and the proposed budget had been included as Exhibit E. He reported that the Section was financial healthy and had experienced a substantial increase in its fund balance.

He further noted that the Budget Committee had revised and recommended the proposed budget. **Following a discussion and a motion duly made by Steph Nagin and seconded by Gary Teblum, the Treasurer's Report and proposed budget were approved unanimously by the EC.**

## **IV. REPORTS OF SPECIAL COMMITTEES AND TASK FORCE**

### **A. REPORT OF THE LLC DRAFTING TASK FORCE**

The Chair called upon **Lou Conti**, chair of the LLC Drafting Task Force and former BLS Chair. Mr. Conti announced that the draft of the amended LLC Act is complete. He noted that it is modeled on the Uniform Act with elements of the

LLC Act in Delaware and the American Bar Association Uniform Act. He noted that Representative Charles McBurney and Senator David Simmons will be the sponsors in the Florida Legislature. Mr. Conti thanked members of the Task Force who worked on the draft, in particular Gary Teblum and Greg Marks.

The Chair announced that he will call a special meeting of the Executive Council on January 24, 2013 to consider and vote on the amended LLC Act. A final draft will be distributed to the Executive Council no later than January 17, 2013.

Mr. Conti discussed the various issues faced by the Task Force in writing the amended LLC Act. The Chair thanked Mr. Conti and the Task Force and emphasized that all EC members should contact Mr. Conti, Mr. Teblum, or others on the Task Force with any comments or questions and be prepared to participate and vote on January 24.

## **I. (Continued)**

A. The Chairman then announced that the meeting was returning to items IA and IB on the agenda.

The Chair informed the EC that the Board of Governors of The Florida Bar had authorized the creation of a Leadership Academy and requested **Mike Higer**, a former Chair of the BLS and current member of the Florida Bar Board of Governors, to discuss the academy.

Mr. Higer advised that the president-elect of the Florida Bar, Gene Pettis, has proposed and the Board of Governors are considering approving a leadership academy, a description of which is attached to the agenda as Exhibit A. He is requesting the BLS EC to approve this initiative. Mr. Higer explained that the Florida Bar Leadership Academy is a multi-session training program designed to assist a diverse and inclusive group of lawyers in becoming better leaders, while assisting them in identifying opportunities for future leadership roles within The Florida Bar and the legal profession. Each year a select group of participants, targeted to attorneys who have practiced 3 to 15 years, are selected from

applications submitted to the Bar. These participants will be referred to as “Fellows.” In an effort to achieve diversity and wide range inclusive among participants, qualified individuals will be sought from different backgrounds, large and small law firms, the private and public sectors, different practice areas, Bar sections and divisions, voluntary and specialty Bars, and different geographical areas of the state. At the heart of this program is the Bar’s belief that inclusion is the pathway to unity. During their term of one year, Fellows will follow a curriculum tailored to enhance their knowledge base and experience, including attending Bar events, special educational programs on topics such as Bar structure, developing and sustaining programs, devotion to public service, public speaking and the Speakers Bureau, conducting an effective meeting, and developing and implementing a public service project, and many other related areas. Fellows will have the opportunity to establish relationships with Bar leaders, including former Bar Presidents, Board of Governors members, alumni of the Academy, as well as current Bar leadership, to learn more about the inner workings of the Bar and their role within the legal profession, while enhancing their personal leadership skills. Networking is a significant part of the Academy, wherein the Fellows develop relationships that will last long after the Academy. The skills the Fellows learn will benefit the Bar, their local voluntary or specialty bar associations, their firms, and the public as a whole. The mission of the Academy is to enhance the skills of a diverse and inclusive group of lawyers.

**After discussion among the counsel, Ava Doppelt moved that the EC adopt a proclamation approving the proposed leadership academy. Rick Gross seconded the motion. The motion was approved unanimously by a voice vote of the EC.**

C. The Chair called the EC’s attention to the legislative position request by the Elder Law Section of The Florida Bar. That Section is proposing legislation that amends section 744.3215, Florida Statutes, to include the right to own, carry or possess weapons as a right that may be removed from a person by a court order determining capacity, but not delegated to a guardian. The Chair briefly discussed the request and recommended that the Section take no position.

#### **IV. (Continued)**

## **B. THIRD PARTY OPINION STANDARDS TASK FORCE**

**Robert Barron** reported on the work of the Third Party Opinion Standards Task Force and stated that no action by the EC is required at this time.

## **C. TASK FORCE ON COVENANTS NOT TO COMPLETE**

There was no report from the Covenants/Not to Complete Task Force.

## **D. SOCIAL MEDIA TASK FORCE**

The Chair reported on the developments of the Social Media Task Force. He advised that the new survey by the Bar will be distributed and that the Social Media Task Force and the Commission will have a conference call to discuss the Bar's approach to social media. He noted that the Section's survey on social media is included in the agenda materials.

## **V. COMMITTEE REPORTS**

### **A. ANTITRUST FRANCHISE AND TRADE REGULATION**

**Ava Doppelt** gave the report for Committee Chair Jude Cooper. She reported that the Committee discussed the non-compete legislative proposal and decided that it will undertake a continuing legal education program on covenants not to compete. Ms. Doppelt also noted that the Committee is having a difficult time maintaining adequate membership and will consider whether to take some action with respect to the status of the Committee and will make a recommendation to the Chair.

### **B. BANKRUPTCY/UCC**

**Jacob Brown**, Committee Chair, reported that more than 50 members were present at its meeting earlier in the day. The Committee will present a CLE program on Article 9 of the Uniform Commercial Code in Tampa on April 26 and

Steve Weiss will be the lunch speaker at the program. In addition, the Committee will present a telephonic CLE program on intellectual property and the Paskey Bankruptcy Law Seminar and dinner will occur at the Tampa Art Museum.

**Mr. Brown moved that the EC approve \$1,000 funding each for the Middle District BLESS Foundation and the South Florida Bankruptcy Bar Foundation to support pro bono activities. Judge Olsen seconded the motion.** Professor Davis suggested that the Section's funding be increased to \$10,000, with \$9,000 to be donated to the BLESS Foundation and \$1,000 for the Southern District Bankruptcy Bar Foundation. Mr. Brown and Judge Olsen accepted Professor Davis' amendment. **After a lengthy and complete discussion, the motion was approved unanimously by a voice vote of the EC.**

**Mr. Brown then made a triple motion to approve certain glitch amendments to the Assignment for Benefits of Creditors (ABC) Statute (Chapter 727, Florida Statutes), as circulated to the EC by email. Tom Messana seconded the motion. Following further discussion, the motion was approved unanimously by a voice vote of the EC.**

**Mr. Brown then made a triple motion to support the proposed legislation adding exemptions to the Fraudulent Transfer Act similar to section 548 of the Bankruptcy Code.** He noted that this motion was a different position from that taken previously by the Section and adds a four-year look back statute of limitations. **Professor Davis seconded the motion.** Professor Davis then noted that has written an article on the subject for those who would like further information. **Following further discussion, the motion was approved with one negative vote. All judges in the meeting abstained from voting on the motion.**

### **C. BANKRUPTCY/JUDICIAL LIAISON COMMITTEE**

**Judge Hyman** presented the report of the Committee. He noted that 65 members of the Committee were in attendance at the meeting on January 9, 2013. The Committee received reports from the Bankruptcy Courts from each district in

the state. The Committee also discussed in detail the need for diversity activities including outreach to minority bar associations and law schools.

#### **D. BUSINESS LITIGATION**

**Barbara Riesberg**, Committee Chair, presented the report of the Committee. She noted that approximately 20 members were present at the meeting earlier in the day. She reported that the Committee discussed the proposed amended LLC Act in detail, including hearing a presentation from Mr. Conti. The Committee also discussed the ABC bill. She noted that the Committee will present a lunch CLE program with the e-Discovery Committee at a time to be determined.

#### **E. COMMUNICATIONS**

**Lynn Sherman**, Committee Chair, presented the report for the Committee. She requested that the EC members prepare articles for the Florida Bar Journal because the Bar Journal is in need of articles on behalf of business law subjects. She suggested that the Committee chairs provide articles based on activities of the substantive committees. She reported that the 2011 Business Law Journal has been completed and published and that future issues of the Business Law Journals will be published solely electronically and the content posted on a rolling basis. She said that the content could be bundled as an e-book periodically if the Section members desired.

She noted that the Chair was proposing to upgrade the Section's Web site so that it will be a more useful tool for the Section. She is working on the preparation of an RFP to seek vendors for that purpose. She said the RFP will be drafted to assure that the vendors understand the Section's goals and priorities concerning the Web site and that the cost for the work will be set by a competitive process.

Finally, she advised that there were photographs from the September 2012 Naples Retreat published on the Section's Web site.

The Chair urged that the members submit articles and that Ms. Sherman is requested to “hound” the Committee Chairs by email and telephone for content for the Business Law Journal and Florida Bar Journal.

## **F. COMPUTER**

**Larry Kunin**, Committee Chair, presented the report for the Committee. He noted that approximately 20 members were present at the Committee’s meeting earlier in the day. The Committee discussed future legislation to address the problem of employees hacking into the employer’s community and the split among the federal circuits on the issue. The Committee also discussed an ethics opinion relating to whether non-lawyer assistants may undertake e-filing.

## **G. CONTINUING LEGAL EDUCATION**

**Michael Chesal**, Committee Chair, presented the report for the Committee. He noted that there are CLE programs scheduled in April (UCC), March (Intellectual Property), and June (E-filing). He stated that the Section will continue frequent lunch CLEs organized by Alan Aronson. He reminded the substantive law committees to use their meetings as an opportunity for CLE programs. He noted that the CLE programs at the retreat in September will have more substantive content while working in partnership with the sponsors of the retreat.

## **H. CORPORATIONS, SECURITIES AND FINANCIAL SERVICES**

**Laurie Green** presented the report for the Committee. She summarized the discussion at the Committee meeting concerning the amended LLC Statute and the proposed Public Benefit Corporation statute.

She introduced Professor **Stuart Cohn** to discuss the public benefit corporation proposed statute in more detail. Prof. Cohn explained that Benefit Corporations are a new class of corporation that: (1) creates a material positive impact on society and the environment; (2) expands fiduciary duty to require consideration of non-financial interests when making decisions; and (3) reports on its overall social and environmental performance using recognized third party

standards. He observed that the sustainable business movement, impact investing and social enterprise sectors are developing rapidly, but are constrained by an outdated legal framework that is not equipped to accommodate for-profit entities whose social benefit purpose is central to their existence. The Benefit Corporation is the most comprehensive yet flexible legal entity devised to address the needs of entrepreneurs and investors and, ultimately, the general public. Prof. Cohn explained that the major characteristics of the benefit corporation form are: (1) a requirement that a benefit corporation must have a corporate purpose to create a material positive impact on society and the environment; (2) an expansion of the duties of directors to require consideration of non-financial stakeholders as well as the financial interests of shareholders; and (3) an obligation to report on its overall social and environmental performance using a comprehensive, credible, independent and transparent third-party standard. The enacting state's benefit corporation statutes are placed within existing state corporation codes so that the enacting state's existing corporation code applies to benefit corporations in every respect except those explicit provisions unique in the benefit corporation form.

**Ms. Green made a triple motion, seconded by John Pullenberg, that the Executive Council support the proposed Public Benefit Corporation legislation. Following further discussion, the motion was approved unanimously by a voice vote of the EC.**

## **I. DIVERSITY**

**Leysa Blanco**, Committee Chair, presented the report on behalf of the Committee. She discussed the successful Koziak Minority Mentoring Picnic in Miami at which 58 law students expressed interest in the BLS. She advised that a similar picnic will take place in Tampa on February 15. Judge **Catherine McEwen** will head the effort on behalf of the Section at the picnic. Ms. Blanco asked for volunteers to assist Judge McEwen at the picnic.

Ms. Blanco reported that there was a good turnout at the Diversity Committee meeting earlier in the day, but noted that some substantive committees have not yet appointed designated representatives to the Diversity Committee. She said the Committee discussed participation at the Volunteer Bar Leadership

Conference on September 19-20 in Orlando and the use of fellowships to promote diversity. She requested that the substantive committees identify young lawyers who the Section could approach to become fellows.

## **J. INTELLECTUAL PROPERTY**

**Leora Hermann** reported on behalf of the Committee. She said there were 24 members in attendance at the meeting of the Committee earlier in the day and the Committee had a lively meeting. Further, she advised that the bureau chief from the Department of State spoke at the Committee's meeting concerning the Trademark Act. In addition, the Committee received a presentation on the Consumer Fraud Task Force and presented a CLE on recent federal laws relating to intellectual property treaties.

The Committee will sponsor an IP symposium in West Palm Beach on March 21-22, 2013. She noted that the Committee is also undertaking a rewriting of the Intellectual Property pamphlet.

## **K. LEGISLATION**

**Alan Howard**, the Chair of the Committee, reported on behalf of the Committee. He reported that there will be five pieces of legislation supported by the BLS in the upcoming legislative session: ABC, Uniform Arbitration Act, the amended LLC Act, the Benefit Corporation Act, and the Uniform Fraudulent Transfer Act.

## **L. LONG RANGE PLANNING**

**Mr. Yadley** advised that there was no report on behalf of the Long Range Planning Committee.

## **M. MEMBERSHIP AND LAW SCHOOL**

**Jodi Cooke**, Chair of the Committee, reported that the Committee has sponsored receptions at the law schools at the University of Florida, the University

of Miami, and NOVA. Other law schools will be approached for receptions in the spring. She announced that Peter Valori was reorganizing the mentoring program.

#### **N. PRO BONO**

Committee Chair **Mark Stein** reported that the Committee will continue sponsoring nonprofit clinics. A second Jacksonville nonprofit clinic was successful, and clinics will be held in Miami in March and Tampa on April 18. He noted that Judge Isicoff is developing a model pro bono policy for consideration by the EC and plans to present the proposed policy to the EC in June. The Committee is still studying ways to achieve a 100% pro bono participation by the members of the EC

#### **O. RETREAT**

The Chair announced that the report of the Retreat Committee will be a part of the Report of the Chair-Elect, **Steph Nagin**.

#### **P. STATE/FEDERAL COURTS LIAISON COMMITTEE**

The Chair **Mark Nichols** reported that the Committee met with the Business Litigation Committee and that there is no separate report for the Committee.

### **VI. OTHER REPORTS:**

#### **A. HISTORIAN/PARLIAMENTARIAN**

**Phil Schwartz** and **Russ Blain** advised that they will present a report at the June meeting.

#### **B. COUNCIL OF SECTIONS**

Judge **Van Nortwick** advised that the Council of Sections will meet in June and that there was nothing to report at this time.

### **C. BOARD OF GOVERNORS**

**Mr. Higer** stated that there was no further report with respect to the activities of the Board of Governors.

### **D. RPPTL LIAISON REPORT**

**Marsha Rydberg** stated that there is no report.

### **E. TAX LIAISON REPORT**

There was no report from the tax liaison.

### **F. LIAISON TO OUT-OF-STATE PRACTITIONERS**

There was no report from the liaison.

### **G. YOUNG LAWYERS DIVISION LIAISON REPORT**

There was no report from the liaison.

### **H. THE CHAIR REPORT**

The Chair discussed in detail the upcoming EC retreat in Yountville, California. He noted that the opening dinner would be held at the Botega Restaurant on April 17 and the closing dinner will occur in the Black Stallion Winery on April 20. He stated that there will be an event with members of the Napa Valley Wine Bar and a CLE on the business law of wine. He said that the members of the EC can expect to receive emails reporting on other activities to take place at the retreat.

### **I. CHAIR-ELECT REPORT**

The Chair-Elect **Steph Nagin**, discussed the change in the venue for the September 2013 BLS Retreat from the Waldorf Astoria in Naples to the Boca

Raton Resort in Boca Raton. Mr. Nagin stated that the retreat was moved to the Boca Raton Resort after reviewing several other properties. He noted that the retreat would be centered in the Yacht Club portion of the Resort. Further, the Resort has made available an event App for the meeting. **Judge Olsen moved and Marsha Rydberg seconded a motion to authorize the testing of the App at the retreat at a cost of \$2,500. After further discussion, the motion was unanimously approved by a voice vote of the EC.**

The Chair-Elect then called on **Michael Chesal** to give a more detail report of the retreat. After giving the report, Mr. Chesal urged more law firm sponsorship of the retreat.

There being no further business to come before the EC, the Chair adjourned the meeting at 6:30 p.m.

# EXHIBIT “D”

**DRAFT MINUTES OF A SPECIAL TELEPHONIC MEETING  
OF THE EXECUTIVE COUNCIL  
OF THE BUSINESS LAW SECTION OF THE FLORIDA BAR**

**Thursday, January 24, 2013 – 4:00 PM to 4:33 PM**

At 4:00 PM on Thursday, January 24, 2013, a teleconference of the Executive Council (“EC”) of the Business Law Section (“BLS”) of The Florida Bar was commenced pursuant to notice to consider and vote on a motion to approve comprehensive amendments to Florida’s Limited Liability Company Act, Chapter 608 of the Florida Statutes (the “Amended LLC Act”). The Amended LLC Act is a BLS initiative to be presented to the Florida Legislature in the 2013 Florida Legislative Session.

BLS Chair, **Brian Gart**, commenced the teleconference by advising that, in lieu of a roll call, each attendee was requested to send an e-mail to BLS Secretary, Bill VanNortwick (with a contemporary e-mail copy to the Chair and to BLS Program Administrator, Mary Ann Obos), attesting to having participated in the EC teleconference and having voted on the motion to approve the Amended LLC Act. The Chair advised that the process for the teleconference had comported with requisite “notice” requirements and proof of establishment of a quorum. He then yielded to former BLS Chair, **Lou Conti**, who had chaired the **Amended LLC Act Drafting Committee**.

As he commenced his presentation, Mr. Conti noted that many members contributed to the project. He gave special recognition to **Greg Marks**, **Steve Leer**, a core group of colleagues, **Phil Schwartz** and **Gary Teblum**, and more recently, Professor **Manuel Utset** of the Florida State University, College of Law.

He stated that he “did not mean to leave out anyone” in his acknowledgements (which he stated had been mentioned without a prepared list of names).

**Mr. Conti noted that the final text of the Amended LLC Act had been made available for EC review. He moved by Triple Motion for approval of the proposed amendments.** He stated that the Triple Motion was based on the Drafting Committee’s labor over a four-year period (conducted through individual efforts and over 30 committee meetings or teleconferences); and was “the product of intensive, sustained efforts.” Thereupon, the Chair inquired whether there was a “Second” to Mr. Conti’s Motion. **Gary Teblum duly seconded the Motion,** which was so acknowledged by the Chair.

Mr. Conti explained in detail the salient points of the proposed amendments, the need for those proposed amendments, the process by which the proposed legislative amendments had been prepared, and the careful coordination that had been undertaken with Florida Secretary of State’s Office throughout the process.

He specifically mentioned the continuous involvement of Brenda Tadlock (and initial involvement of Ricky Harper) of the Florida Department of State, Corporations Division, in every meeting or teleconference of the Drafting Committee. He stated that: “We have worked carefully with them to address their concerns and not to impose burdens [on the Department].” In this regard, Mr. Conti explained that the proposed amendments would be “revenue neutral.” Further, “The Department of State sets filing fees under the Act and no new financial imposition will occur.”

Lastly, Mr. Conti mentioned that, if the Amended LLC Act is approved by the Florida Legislature, the effective date “would at the earliest, be on January 1,

2014 in order to accommodate sufficient time for the Florida Secretary of State to reprogram computers and set-up internal procedures.”

At the conclusion of Mr. Conti’s concise summary, the Chair thanked Mr. Conti and reminded all participants in the teleconference to send e-mail notice to Judge VanNortwick with respect to their attendance. Mr. Conti then was re-recognized and he stated that “if anyone notices any glitches, just notify me” and the Chapter 608 Drafting Committee would address them promptly. The Chair advised that the summary presented by Mr. Conti would be posted on the BLS Web site. He encouraged passage of the motion for the proposed amendments to Chapter 608.

By a voice vote the motion carried without opposition or abstention. The Chair announced that the motion carried. Thereupon, a motion was made and duly seconded to adjourn without vote or protest, at 4:33 PM.

**DRAFT**

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William A. VanNortwick, Jr.  
BLS Secretary /Treasurer

# EXHIBIT “E”

**MINUTES OF A SPECIAL TELEPHONIC MEETING  
OF THE EXECUTIVE COUNCIL  
OF THE BUSINESS LAW SECTION OF THE FLORIDA BAR**

**Wednesday, April 3, 2013 – 4:00 PM to 4:30 PM**

The Chair of the Business Law Section noticed a special telephonic meeting of the Executive Council to consider the Section's position regarding HB 1379, SB 1268. A triple motion was proposed as follows: “The Section opposes amendments to Section 48.031, Florida Statutes, re service of process and Section 56.27, Florida Statutes, re executions; payment of money collected, as proposed in Senate Bill 1268 and House Bill 1379.”

Attached to the email notice of the special telephonic meeting were links to copies of the proposed amendments posted on the Section’s website, as well as the attached white paper prepared by the Business Litigation Committee and former Chair of the Section, Jim Murphy addressing the relevant issues. Due to the urgency of this issue, notice was accomplished by email and the motion was presented and discussed during the special telephonic meeting.

Bill Wiley, the Section’s lobbyist explained the urgency in having to adopt the opposition during the legislative session even while the Section worked with the Sheriffs’ Offices (who had sponsored the proposed amendments) to resolve our differences. Jim Murphy explained the proposed amendments as well as the basis for the Section’s opposition as set forth in the White Paper. Mark Wolfson seconded the Motion.

Further discussion concerned assisting Bill Wiley in approaching the Sheriffs’ Offices to reach a compromise position. Mark Wolfson volunteered to assist based on prior efforts to address problems with the service of process statute.

The Chair called the question and the Motion passed unanimously.

Due to the Secretary's temporary unavailability, the Chair of the Section volunteered to prepare the minutes from the Special Meeting. Attendance at the special meeting and the existence of a quorum for voting purposes was confirmed by members participating on the call by emails to the Chair.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. K. Gart', written in a cursive style.

Brian K. Gart, Chair of the Section (2012-2013)

**Business Litigation Committee, Business Law Section of The Florida Bar**

**Memorandum**

**Senate Bill 1268 and House Bill 1379  
Proposed Amendments to Sections 48.031 and 56.27, Florida Statutes**

SB 1268 and HB 1379 amend Section 48.031, Florida Statutes pertaining to service of process and Section 56.27, Florida Statutes pertaining to execution sales as well as several other statutes. The Business Litigation Committee of the Business Law Section of the Florida Bar has concerns with respect to certain aspects of the proposed amendments to Sections 48.031 and 56.27, which are addressed below.

**I. Section 48.031(1)(b)**

Section 48.031(1) addresses the procedures for service of original process. Service of process is the means by which the defending party is notified of a lawsuit and provided with an opportunity to defend, and it is what confers the jurisdiction of the court over the defendant's person. Subsection (1)(b) currently provides that employers, when contacted by an individual authorized to make service of process, shall permit a process server to make service of process on employees in a private area designated by the employer.

SB 1268 and HB 1379 would amend Section 48.031(1)(b) in two ways. First, the amendments provide that failure to grant permission to the process server to serve the employee constitutes a first degree criminal misdemeanor. Second, the amendments expand the persons who are required to grant access to the process server (and those who are also subject to criminal sanctions.) While we have no problem with providing a sanction or penalty for the failure to provide access to the process server, we believe that it should apply only to employers. Expanding subsection (1)(b) to apply to not only the employer, but also to "any employee, representative, or agent" of the employer," presents several problems.

- From a legal perspective, employees, representatives, or agents of employers – especially those without managerial responsibilities, do not generally have control over the employer's place of business or the authority to grant or deny access to premises to other persons.
- There are serious policy questions with respect to making any employee a criminal in a myriad of factual circumstances that could arguably be triggered by the proposed language. Should a janitor or a sales clerk, for example, be subject to criminal prosecution for refusing to allow a process server access to serve the president of the company?
- An "agent" is a person who is authorized to act for a principal and is subject to the principal's control and consent. The scope of the agent's authority can extend to

any business conducted by the employer or can be very limited or narrow. Should the employer's real estate agent or stock broker, who may merely be visiting the employer's place of business, be subject to criminal prosecution if he or she fails to grant access to a process server? The amendments do not define the word "representative" and could cover even broader classifications of persons than "agent."

## **II. Section 48.031(2)(b)**

Section 48.031(2)(b) currently provides for substitute service on an individual doing business as a sole proprietorship by serving "the person in charge of the business" in lieu of the individual who owns the business after two or more attempts have unsuccessfully been made to serve the owner at the place of business. SB 1268 and HB 1379 would amend Section 48.031(2)(b) by allowing substitute service on the person in charge of the business at any time the owner is absent.

We do not feel that the proposed amendment to subsection (2)(b) is necessary and may generate more problems than it would solve.

- A sole proprietorship is not a legal entity. Subsection (2)(b) merely presents another way to serve an individual defendant with process when that person is operating a business as a sole proprietorship.
- There are multiple ways to serve natural persons under Florida law, including by delivering a copy of the process and pleading to the person to be served or by leaving copies at his or her place of abode with a person residing there who is 15 years of age or older. *See Fla. Stat. § 48.031(1)(a); see also Trawick, Florida Practice and Procedure § 8:6* ("Service of process on competent adult natural persons in Florida can be made in six ways").
- The phrase "person in charge" of the business is not defined in the statute and who is in charge may often be ambiguous or depend upon what aspect of the business is involved. It seem to us that, by expanding the statute to allow service on "persons in charge" any time the owner is not present, will likely result in additional challenges to service of process that will require more judicial resources to resolve. It also will likely result in more expense by plaintiffs, who will have to arrange to serve additional process on defendants through other methods when the initial service ostensibly on the "persons in charge" of the business are determined to be improper.

## **III. Section 56.27(4)(d)**

Effective October 1, 2001, legislation sponsored by The Florida Bar Business Law Section and approved by the Florida legislature enacted sweeping changes in the manner of enforcing money judgments in Florida. 2000 Fla. Laws ch. 258. Among other things, this act created a centralized system for perfecting and prioritizing judgment liens on personal property by filing a judgment lien certificate with the Florida Department of State, which is maintained in

a statewide database accessible online, and effected other broad changes in post judgment process and proceedings. See Joseph D. Bolton and Maxine M. Long, *What Do I Do with My Judgment Lien Now? A Primer on the New Centralized Judgment Lien Law*, 75 Fla. B. J. 73 (Nov. 2001) (hereafter “Bolton & Long”).

The 2000 legislation provided that the priority of a judgment lien is determined by the date (including the time of day) of filing the certificate. See Section 55.202(2)(c) (“priority of competing liens is determined in order of filing date and time). It removed the uncertainty which sometime arose from delays in docketing writs delivered to the sheriff. Bolton & Long, at 73. Under Section 56.27, to enforce the judgment by levy on personal property, the creditor must file an affidavit on or before the date of the first publication or posting of sale (1) stating that the creditor has reviewed the judgment lien index and that the information contained in the affidavit based on that review is true and correct and (2) providing certain information with regard to each judgment lien certificate on file as to the judgment debtor, including the file number and date of filing of each judgment lien certificate. Under Section 56.27(5), “[a] sheriff paying money received under an execution in accordance with the information contained in the affidavit under subsection (4) is not liable to anyone for damages arising from a wrongful levy.”

SB 1268 and HB 1379 would amend Section 56.27(4)(d) to require the creditor to include in the affidavit “[a] statement directing the sheriff how to pay out all moneys received under an execution sale.” The bills also provide that “[t]he sheriff paying pursuant to the affidavit is not liable to anyone from damages arising from a wrongful levy and pay out.” We are concerned about both of these amendments, for the following reasons:

- The procedure in section 56.27(4)(d) was developed by the Business Law Section in close consultation with the Sheriffs, through their representative, Iven Lamb.
- The affidavit received by the sheriff under the current statute provides all the information to enable the sheriff to determine who to pay, including information with regard to the date and time of filing of each judgment lien, and provides that the sheriff can safely rely on the information provided.
- The proposed amendments present a potential for abuse by shifting the determination of to whom to pay the proceeds of the sale to the levying creditor, who is far from disinterested. What if the levying creditor incorrectly directs the sheriff how to pay out the money, e.g. “Pay me.” The sheriff pays pursuant to the affidavit, and the money is gone -- even if the creditor or the sheriff knew better.
- The immunity provided to the sheriff under the proposed amendments, which provide that “the sheriff paying *pursuant to the affidavit* is not liable to anyone for damages arising from a wrongful levy and payout” appears to be considerably broader than current Section 56.27(5), which immunizes payments “*in accordance with information contained in the affidavit.*” The amendments would appear to immunize the sheriff even if there is fraud or conversion in connection with the execution sale, so long as the payments were made pursuant to the creditor’s affidavit.

- The amendments do not remove existing subsection (5) from Section 56.27; thus creating a potential conflict as to the scope of the sheriff's immunity.
- We see no reason to change the existing process, which has seemed to us to serve all parties to the process well and has provided a measure of protection against abuse.

We appreciate your consideration of our concerns. If you have any questions, please let us know.

Respectfully submitted,

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# EXHIBIT “F”

**DRAFT MINUTES OF THE MEETING  
OF THE EXECUTIVE COUNCIL OF THE BUSINESS LAW SECTION  
OF THE FLORIDA BAR AT THE EC'S RETREAT**

**RUTHERFORD HILL WINERY, RUTHERFORD, CA,**

**From 1:00 pm to 2:00 pm PST on April 19, 2013**

Pursuant to advance notice, the meeting of the Executive Council (EC) of the Business Law Section (BLS or Section) of The Florida Bar during the spring retreat of the EC was called to order at 1:00 p.m. PST by **Brian Gart**, Section Chair.

**I. ATTENDANCE AND QUORUM**

The Chair requested those in attendance email the BLS secretary/treasurer, Judge **Bill Van Nortwick**, with a copy to **Mary Ann Obos**, BLS administration, to attest to their attendance at this meeting. The Chair advised that the process for notice and verification of attendance comported with the requirements for establishing a quorum.

**II. CONTINUING LEGAL EDUCATION PROGRAM ON  
THE LAW OF THE NAPA VALLEY WINE INDUSTRY**

The Chair introduced **Kevin P. Block**, Esq., a partner in the Napa, CA law firm of Block, DeVincenzi & Zelazny, LLP, and **Scott Greenwood-Mienert**, Esq., senior counsel to the Napa, CA law firm of Dickenson Peatman & Fogarty.

Mr. Block discussed in detail the organization and history of the wine business in the Napa Valley and the broad business law practice required on the part of "the Wine Bar" in California. He emphasized that in Napa Valley the wine business is highly regulated based primarily upon local regulation. Among other things, the regulations restrict land use to focus development in the cities and towns and to maintain agricultural use on the suitable land. In addition, water use restrictions are seen as important to the future of the vineyards and wineries.

Mr. Block then discussed in detail the issues that must be considered in the acquisition of a vineyard and winery, reviewing a detailed due diligence checklist.

Mr. Greenwood-Mienert then described his land use practice and provided various examples of the types of transactions undertaken by attorneys in the Wine Bar. He discussed the intellectual property and licensing issues that were important in the wine business.

Following a time for questions, the Chair thanked Mr. Block and Mr. Greenwood-Meinert and closed the CLE portion of the meeting.

The Chair called to order the business portion of the meeting.

### **III. LEGISLATIVE UPDATE**

**Alan Howard**, Chair of the Legislative Committee, reported that the Section was having a successful legislative session so far. He thanked the members of the Committee and awarded “gold stars” to **Jodi Cooke** (for her work on the White Paper for the ABC bill), **Jon Polenberg** (for his work in the Arbitration bill), **Lou Conti** and his team of **Gary Teblum** and **Phil Schwartz** (for their work on the amended LLC Act).

Mr. Howard reported that unfortunately, the Social Benefit Corporation bill had died in committee; that the Uniform Fraudulent Transfer Act appears to be in a position to pass, but amendments are problematic and conflict with the Bankruptcy Act; and that problems with the Service of Process bill have been resolved thanks to efforts of **Jim Murphy** and **Mark Wolfson**, both former chairs of the Section.

### **IV. PLANNING FOR JUNE ANNUAL MEETING**

The Chair and Chair-Elect **Steph Nagin**, discussed the June meeting in Boca Raton. Steph also alerted the members that the EC would receive a survey concerning future Spring EC retreats and urged all EC members to respond.

## V. COMMUNICATIONS COMMITTEE

The Chair discussed the need to improve the BLS Web site to enhance communications with members and to provide a tool for the BLS Committees. **Lynn Sherman**, Committee Chair, summarized the substance of an RFP that she has drafted for the purpose of retaining a vendor to create the new Web site with maximum utility and to assure mobile optimization.

## VI. BUSINESS LITIGATION COMMITTEE

**Rick Gross** discussed the reimbursement of judges participating in the Business Courts Round Table at the September Retreat. He suggested offering reimbursement for Friday and Saturday to encourage the involvement in the weekend's activities. The Chair and Chair-Elect indicated agreement with the suggestion.

## VII. DIVERSITY COMMITTEE

**Leyza Blanco** reported that the Committee was finalizing applications for the Fellows positions and contacting other bar associations to increase future participation. She would prefer that the Fellows be in a position to attend both the June and September meetings, but that attendance at the September retreat would be important to the program.

There being no further business to come before the EC, the Chair adjourned the meeting at 2:00 pm.

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William A. Van Nortwick, Jr.  
Secretary/Treasurer

# EXHIBIT “G”



# THE FLORIDA BAR

BUSINESS LAW SECTION

MAY 2013 FINANCIAL STATEMENT

## YEAR TO DATE OVERVIEW

YTD REVENUE:	\$538,795
YTD EXPENSES:	\$493,482
YTD NET:	\$45,313
BEGINNING FUND BALANCE:	\$501,523
TOTAL CURRENT FUND BALANCE:	\$546,836

TOTAL CURRENT MEMBERSHIP: 5322

	May 2013 Actuals	YTD 12-13 Actuals	Budget	Percent Budget
Total Business Law				
31431 Sect Dues	55	246,840	247,500	99.73
31432 Affil Dues	20	1,960	1,920	102.08
31433 Admin Fee to TFB	-98	-80,099	-80,030	100.09
-----				
Total Dues Income-Net	-23	168,701	169,390	99.59
-----				
32191 CLE Courses	-4,044	61,181	70,000	87.40
32293 Sect Differential	2,035	17,215	9,625	178.86
35003 Ticket Events	0	2,647	2,625	100.84
35201 Sponsorships	0	104,500	111,500	93.72
35208 Journal Spons	0	0	17,500	0.00
35601 Bankruptcy Judge Rec	0	2,151	5,500	39.11
35604 Sect Registration	0	103,333	102,812	100.51
35606 Jud'l Liaison Dinner	0	9,015	0	*
35721 Rtrt/Registration	34,755	34,755	25,000	139.02
38499 Investment Alloc	-3,958	35,262	14,558	242.22
39999 Miscellaneous	0	35	0	*
-----				
Other Income	28,788	370,094	359,120	103.06
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Total Revenues	28,765	538,795	528,510	101.95
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36998 Credit Card Fees	83	2,527	2,900	87.14
51101 Employee Travel	0	7,412	4,600	161.13
61201 Equip Rental	0	15,568	15,568	100.00
71001 Phone/Direct	44	554	760	72.89
71005 Internet Charges	29	371	700	53.00
81411 Promo Printing	0	653	0	*
81412 Promo Mailing	0	0	100	0.00
84001 Postage	59	661	520	127.12
84002 Printing	121	258	700	36.86
84007 Membership	0	564	4,500	12.53
84009 Supplies	0	138	195	70.77
84010 Photocopying	8	163	450	36.22
84014 Journal Printing	0	16,881	17,500	96.46
84040 Judges Trav Annl Mtg	0	2,409	3,000	80.30
84041 Judges Trav Napl Ret	0	17,063	8,000	213.29
84042 Judges Trav Sprg Ret	8,328	8,328	15,000	55.52
84043 Judges Trav Fall Mtg	0	2,864	5,000	57.28
84044 Jud'l Liaison Dinner	0	11,003	20,000	55.02
84052 Mtg Travel Exp	0	4,954	8,000	61.93
84054 CLE Speaker Exp	654	1,829	2,000	91.45
84061 Reception	0	39,876	39,876	100.00
84062 Luncheons	0	10,007	10,100	99.08
84063 Family Dinner	0	108,537	110,037	98.64
84101 Committee Exp	0	2,022	10,000	20.22
84107 Diversity Initiative	0	3,976	2,500	159.04
84201 Board Or Council Mtg	10,206	83,353	50,000	166.71

	May 2013 Actuals	YTD 12-13 Actuals	Budget	Percent Budget
Total Business Law =====				
84202 Annual Mtg	0	0	10,000	0.00
84237 Entertainment Exp	0	17,424	13,000	134.03
84282 Law School Program	0	0	500	0.00
84301 Awards	0	129	4,000	3.23
84422 Website	655	13,839	15,000	92.26
84501 Legis Consultant	0	75,000	75,000	100.00
84701 Council Of Sections	0	0	300	0.00
84991 Special Projects	0	286	2,500	11.44
84998 Operating Reserve	0	0	4,348	0.00
84999 Miscellaneous	0	533	600	88.83
88265 Refreshment Breaks	0	7,981	7,981	100.00
88269 Breakfast	0	26,421	25,000	105.68
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Total Operating Expenses	20,187	483,584	490,235	98.64
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86431 Mtgs Admin	251	6,850	2,134	320.99
86543 Graphics & Art	0	3,048	2,873	106.09
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Total TFB Support Services	251	9,898	5,007	197.68
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Total Expenses	20,438	493,482	495,242	99.64
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Net Operations	8,327	45,313	33,268	136.21
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21001 Fund Balance	0	501,523	485,263	103.35
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Total Current Fund Balance	8,327	546,836	518,531	105.46
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	May 2013 Actuals	YTD 12-13 Actuals	Budget	Percent Budget
<b>Business Law</b>				
31431 Sect Dues	55	246,840	247,500	99.73
31432 Affil Dues	20	1,960	1,920	102.08
31433 Admin Fee to TFB	-98	-80,099	-80,030	100.09
-----				
Total Dues Income-Net	-23	168,701	169,390	99.59
-----				
32191 CLE Courses	-4,044	61,181	70,000	87.40
32293 Sect Differential	2,035	17,215	9,625	178.86
35003 Ticket Events	0	2,647	2,625	100.84
35208 Journal Spons	0	0	17,500	0.00
35601 Bankruptcy Judge Rec	0	2,151	5,500	39.11
35606 Jud'l Liaison Dinner	0	9,015	0	*
35721 Rtrt/Registration	34,755	34,755	25,000	139.02
38499 Investment Alloc	-3,958	35,262	14,558	242.22
39999 Miscellaneous	0	35	0	*
-----				
Other Income	28,788	162,261	144,808	112.05
-----				
Total Revenues	28,765	330,962	314,198	105.34
-----				
36998 Credit Card Fees	52	720	900	80.00
51101 Employee Travel	0	5,150	3,463	148.71
71001 Phone/Direct	44	554	760	72.89
71005 Internet Charges	29	371	700	53.00
81411 Promo Printing	0	186	0	*
84001 Postage	59	427	400	106.75
84002 Printing	121	181	350	51.71
84007 Membership	0	564	4,500	12.53
84009 Supplies	0	46	120	38.33
84010 Photocopying	8	163	250	65.20
84014 Journal Printing	0	16,881	17,500	96.46
84040 Judges Trav Annl Mtg	0	2,409	3,000	80.30
84041 Judges Trav Napl Ret	0	17,063	8,000	213.29
84042 Judges Trav Sprg Ret	8,328	8,328	15,000	55.52
84043 Judges Trav Fall Mtg	0	2,864	5,000	57.28
84044 Jud'l Liaison Dinner	0	11,003	20,000	55.02
84052 Mtg Travel Exp	0	4,954	8,000	61.93
84054 CLE Speaker Exp	654	1,829	2,000	91.45
84101 Committee Exp	0	2,022	10,000	20.22
84107 Diversity Initiative	0	3,976	2,500	159.04
84201 Board Or Council Mtg	10,206	83,353	50,000	166.71
84202 Annual Mtg	0	0	10,000	0.00
84282 Law School Program	0	0	500	0.00
84301 Awards	0	129	4,000	3.23
84422 Website	655	13,839	15,000	92.26
84501 Legis Consultant	0	75,000	75,000	100.00
84701 Council Of Sections	0	0	300	0.00
84991 Special Projects	0	286	2,500	11.44

	May 2013 Actuals	YTD 12-13 Actuals	Budget	Percent Budget
<b>Business Law</b> ~~~~~				
84998 Operating Reserve	0	0	4,348	0.00
84999 Miscellaneous	0	0	100	0.00
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Total Operating Expenses	20,156	252,298	264,191	95.50
-----				
86431 Mtgs Admin	251	6,850	2,134	320.99
86543 Graphics & Art	0	1,688	1,500	112.53
-----				
Total TFB Support Services	251	8,538	3,634	234.95
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-----				
Total Expenses	20,407	260,836	267,825	97.39
-----				
-----				
Net Operations	8,358	70,126	46,373	151.22
-----				
21001 Fund Balance	0	501,523	485,263	103.35
-----				
Total Current Fund Balance	8,358	571,649	531,636	107.53
-----				

	May 2013 Actuals	YTD 12-13 Actuals	Budget	Percent Budget
Total Business Law Retreat =====				
Total Dues Income-Net	0	0	0	*
35201 Sponsorships	0	104,500	111,500	93.72
35604 Sect Registration	0	103,333	102,812	100.51
Other Income	0	207,833	214,312	96.98
Total Revenues	0	207,833	214,312	96.98
36998 Credit Card Fees	31	1,807	2,000	90.35
51101 Employee Travel	0	2,262	1,137	198.94
61201 Equip Rental	0	15,568	15,568	100.00
81411 Promo Printing	0	467	0	*
81412 Promo Mailing	0	0	100	0.00
84001 Postage	0	234	120	195.00
84002 Printing	0	77	350	22.00
84009 Supplies	0	92	75	122.67
84010 Photocopying	0	0	200	0.00
84061 Reception	0	39,876	39,876	100.00
84062 Luncheons	0	10,007	10,100	99.08
84063 Family Dinner	0	108,537	110,037	98.64
84237 Entertainment Exp	0	17,424	13,000	134.03
84999 Miscellaneous	0	533	500	106.60
88265 Refreshment Breaks	0	7,981	7,981	100.00
88269 Breakfast	0	26,421	25,000	105.68
Total Operating Expenses	31	231,286	226,044	102.32
86543 Graphics & Art	0	1,360	1,373	99.05
Total TFB Support Services	0	1,360	1,373	99.05
Total Expenses	31	232,646	227,417	102.30
Net Operations	-31	-24,813	-13,105	189.34
Total Current Fund Balance	-31	-24,813	-13,105	189.34

# EXHIBIT “H”



# The Florida Bar Business Law Section Reimbursement

Name: \_\_\_\_\_ Atty. No.: \_\_\_\_\_

Office: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

In accordance with the policies outlined on the reverse of this form and the policies of the Bar, please reimburse the following:

## **Travel Expenses**

Date of Travel: \_\_\_\_\_

Purpose of Travel: \_\_\_\_\_

Airfare (receipt of photocopy of ticket required) \$ \_\_\_\_\_

Mileage \_\_\_\_\_ miles at .565 per mile \$ \_\_\_\_\_

Taxi \$ \_\_\_\_\_

Rental Car \_\_\_\_\_ days (include receipt and copy of rental agreement) \$ \_\_\_\_\_

Lodging (hotel receipt required, **not** credit card slip, room and tax only) \$ \_\_\_\_\_

**FOOD EXPENSES:** Actual expenses, not to exceed Federal Per Diem **\$71** per travel day  
*Any AMOUNT over \$25.00 requires a receipt.*

Record actual amount per meal:	DAY 1	DAY 2	DAY 3	DAY 4
Breakfast :	\$ _____	\$ _____	\$ _____	\$ _____
Lunch :	\$ _____	\$ _____	\$ _____	\$ _____
Dinner :	\$ _____	\$ _____	\$ _____	\$ _____

Total Meals \$ \_\_\_\_\_

Other (please explain) \_\_\_\_\_ \$ \_\_\_\_\_

**Total Travel Expense** \$ \_\_\_\_\_

**TOTAL** \$ \_\_\_\_\_

Make check payable to  me  my office.

Return to:  
Professional Development Department  
Mary Ann Obos  
The Florida Bar  
651 East Jefferson Street  
Tallahassee, Florida 32399-2300

Officer's Approval: Signature: _____ Date: _____
--

**Reimbursement Guidelines for Judicial Officers**  
**Attending Functions Sponsored by the Business Law Section**

*Last Updated: 1 May 2013*

A judge officially attending a function of the Section shall be reimbursed only for the following expenses unless the Section Chair approves, in advance, additional reimbursement based on special circumstances:

- I. Travel.
  - A. Local Transportation. A judge may claim reimbursement for the expense of local transportation by subway, bus, taxi or privately-owned automobile (at the established mileage rate) incurred in connection with the following:
    1. To and from common carrier terminals; and
    2. To and from places where meals are obtained.
  - B. Air. A judge normally should use the lowest available, non-refundable airfare and attempt to make reservations sufficiently in advance to obtain the lowest fare.
  - C. Private Car. Travel by privately owned automobile within 175 miles is presumed advantageous to the Section. Reimbursement for mileage, parking, and tolls is allowed. The federal government's authorized mileage rate, currently .555 cents per mile, shall apply.
  - D. Rental Cars. Reimbursement of the cost of a rental car is permitted where a judge determines that the use of a rental car is more advantageous to the Section than other means of transportation.
- II. Lodging. Reimbursable costs for lodging are limited to the actual out-of-pocket expenses incurred by the judge calculated at the Section's group room rate (including taxes and gratuities) at hotels ("Lodging Costs"). Judges who are Executive Council members who attend multi-day Section retreats, such as the Spring Executive Council Meeting or the Section Annual Retreat, shall be reimbursed for Lodging Costs for the nights of the retreat or convention. Judges who attend meetings of the Council or any committee of the Section either in their capacity as members of the Executive Council or by special invitation of the Section Chair shall be reimbursed for either the night preceding or following the official meeting depending on the time during the day such meeting takes place. If a judge desires to participate in optional activities of the Section or to stay longer than required for personal reasons, the judge will not be reimbursed for any additional lodging costs.
- III. Meals. If a judge is invited to attend any group meal (breakfast, lunch, or dinner) sponsored by the Section, the Section shall directly pay the cost of such meals. If no group dinner is scheduled on any day that the judge is invited to attend a function of the Section, the judge may itemize the actual cost for a dinner on that day not to exceed federal per diem allowance for meals and other expenses.
- IV. Expenses of Spouses. The Section will not reimburse a judge for any expenses associated with a judge's spouse attending a Section function.
- V. Registration Fees. The Section will waive the registration fee for a judge attending a Section sponsored meeting, such as the Section's Annual Retreat or Executive Council Retreat. This waiver does not extend to optional fees and charges such as spouse or guest charges, or separately billed events such as golf tournaments, tour excursions, meals or entertainment for which all Section members, spouses and guests are required to pay such additional fees and charges in order to participate.

# EXHIBIT “I”

REQUEST FOR ~~PROPOSAL~~ PROPOSALS

~~THE~~ BUSINESS LAW SECTION  
OF  
THE FLORIDA BAR

1. IMPROVED WEB PRESENCE

2. ~~WEBSITE AND~~ LOGO REDESIGN

May 15, 2013

1. ~~Introduction.~~ INTRODUCTION:

The Business Law Section of The Florida Bar (“BLS”) is accepting proposals to redesign its ~~website, design a mobile website, and update~~ Web presence. In keeping with the predominant mobile/social/search paradigm and decreased use of a traditional Web site, the BLS seeks a mobile enabled Web presence either by an App portal to its mobile enabled Web site, and an update of its logo. This ~~will be a~~ RFP contemplates services from concept to completion production. Vendors will be expected to provide software, system implementation, ~~;~~ to separately quote ongoing support and maintenance, ~~training and site hosting;~~ training for uploading content to the Web site; and to separately quote hosting of the site. The proposal must include a ~~web~~ Web content management system that will enable ~~persons the~~ BLS members designates, to create, edit and publish content on the BLS ~~website~~ Web site. The ~~proposal~~ mobile enablement must ~~also~~ include ~~a mobile version of the website that interfaces with an interface for~~ all current ~~mobile~~ iPhone, Android, Blackberry and Windows devices ~~and includes selected content.~~

2. ~~Mission of the BLS.~~ THE MISSION OF THE BLS:

The BLS, ~~was~~ organized in ~~1970,~~ 1970. ~~It~~ serves Florida lawyers, judges ~~and,~~ affiliated educators who are on the faculty of ~~its~~ in Florida, and law students in Florida who may have an interest in business law. It’s over 5100 members share a common interest in laws affecting Florida's businesses, ~~including corporate, contract, bankruptcy.~~ Such areas of law include (alphabetically) antitrust law, bankruptcy law, contracts, entities (corporations, limited liability companies, trusts, etc.), franchise law, ~~antitrust, securities, and~~ intellectual property law, ~~securities, etc.~~ The ~~Section~~ BLS also addresses the process for resolving business disputes in Florida, including ~~commercial~~ civil litigation and alternative dispute resolution. The ~~website~~ BLS Web presence should be designed and structured ~~predominantly~~ for use by ~~the lawyers, judges~~ lawyers and judges who are licensed in Florida, law professors in Florida law schools, and law students ~~that~~ who are ~~current or~~ prospective members of the BLS.

3. ~~Proposal Guidelines And Requirements.~~ PROPOSAL GUIDELINES AND REQUIREMENTS:

This is an open and competitive process.

Proposals received after the deadline - 5:00pm PDT, ~~\_\_\_\_\_~~, May 31, 2013 - will not be considered.

The proposal must contain the signature of a duly authorized officer or agent of the ~~company submitting the proposal~~ entity that submits it.

~~Quoted prices should be inclusive.~~ Please list all fees or charges in detail, including a complete explanation of the nature of those fees. Quoted prices must be inclusive.

If the execution of work to be performed requires ~~the hiring of~~ sub-contractors you must clearly state this in your proposal. Sub-contractors must be identified and the work they will perform must be defined. In your proposal please provide the name, address, and EIN of ~~the~~ each subcontractor. The BLS will not refuse a proposal based upon the use of sub-contractors; however we retain the right to refuse the sub-contractors you have selected.

Provisions of this RFP and the contents of the successful responses are considered available for inclusion in final contractual obligations.

Shortlist Finalists will be required to participate in a one-hour interview and demonstration to a BLS user group for final evaluation. An interview and demonstration may be conducted in-person or over the Internet.

The BLS will negotiate contract terms upon selection. All contracts are subject to review by BLS's legal counsel, and a project will be awarded upon signing of an agreement or contract; ~~which~~ that outlines terms, scope, budget and other necessary ~~items~~ matters.

4. ~~Overview.~~ OVERVIEW:

BLS will create or provide any original and stock photography. A firm ~~which can handle~~ that has proven experience handling all Web site planning, interface design, and production is required. The ~~site~~ BLS mobile device enabled Web presence must include a technology solution that allows ~~the~~ BLS in-house staff to easily and cost effectively update content and modify the ~~website and mobile website~~ Web site after ~~the~~ initial launch. The Web site should have the capability of serving as both a horizontal and vertical portal to serve both as a platform to other Web sites in the legal profession [such as other Bar group sites, court Web sites, court filing

portal(s), commercial research sites, etc.] and as an entry site to a wide range of news, editorial content, and digital publications.

- a) ~~Website~~**Web site:** BLS currently has a standalone ~~website~~**Web site** at **www.flabuslaw.org**. ~~The existing website~~**This Web site** was designed almost a decade ago ~~and~~, has been modified a number of times over the years by different programmers. ~~The result is an outdated website that is not visually appealing and can not~~, and is not mobile enabled. BLS considers its Web site as neither compelling nor sufficiently visually appealing to attract members and potential members. The existing site cannot be maintained or updated by anyone without substantial programming experience. ~~The BLS is looking for a designer to create a new and improved website and a mobile website which showcase BLS's mission and goals via the latest technology. The site will~~design of a new and improved, mobile enabled Web site should: (1) explain the BLS's overall mission and leadership structure, and provide both current year information (e.g., Committee agendas, Minutes, draft minutes, initiatives, and photos of Committee leadership and Committee meetings) and historical information (e.g., past Committee agendas, Minutes, and photos). Latest Internet technology to facilitate such content posting and display, as well as secure portions of the site for posting non-public information, would be expected to be utilized. In these regards, the site needs to:
- i) Provide clear and ~~easily~~intuitively navigable menus and pages and optimized searches regardless of device type utilized to access the site;
  - ii) Integrate BLS's ~~email~~e-mail marketing, news releases ~~and~~, and provide to The Florida Bar ("TFB") site as well as links to selected social media sites and blogs;
  - iii) Provide ~~optimized searches;~~Web analytics that enable gaining actionable insights from the analytics efforts (e.g., qualitative data that tracks visitors and traffic, search engine results, conversions to membership; monitoring to send an e-mail or text message if the BLS Web site ever goes down or when defined Web trends change; and routine reports to the Executive Committee and the BLS Program Administrator at TFB);
  - ~~iv) Provide quality and historical performance tracking;~~
  - iv) v) OptimizationBe enabled for all desktop, laptop, and mobile devices (~~phones~~i.e., smartphones, phablets, tablets, etc.);
  - ~~vi) Be accessible in desktop and mobile formats; and~~

- v) ~~vii)~~ Utilize a well recognized content management system (such as ~~WordPressWordPress~~, Drupal, ~~or Joomla, or equivalent~~) that is searchable and will allow the ~~websiteWeb presence~~ to be updated ~~by BLS members~~ without programming experience by authorized persons by the BLS;
- vi) Utilize software to prevent malware and unauthorized intrusion.

b) ~~**Mobile Website.** The BLS presently does not have a mobile website. The BLS aspires to develop a connected mobile web application alongside the main website that identifies the resources and functions of the new website that will be most appealing and useful to mobile and tablet users, and brings it to them in a streamlined, interactive format. The mobile website should be~~ **Enablement:** The BLS Web site currently is not enabled to provide optimized searches for site visitors who utilize mobile devices. The BLS is aware that a majority of site visitors utilize mobile devices and that it must predominantly offer a mobile solution that enables site visitors to conduct searches and to connect to social media through the BLS Web presence that is compatible with the most current version of all major smart phone platforms, including ~~iphone, android, and blackberry~~ iPhone, Android, Blackberry and Windows. All content updated within the ~~website CMS must~~ content management system automatically must update to the mobile ~~app. The website should automatically redirect mobile users to the mobile site, but~~ App. The Web site should provide the ability for ~~the~~ a user to opt to view the full ~~website on each page~~ Web site.

c) ~~**Logo.** The current logo needs refreshing and updating and will be integrated into the new website and:~~ The current BLS logo was designed by TFB many years prior to the existence of the Internet. It needs to be refreshed and updated for integration into the new Web App as well as on all future ~~and current~~ marketing materials. All logo work should include full color, two-color, one-color, and reversed versions, if appropriate. When updating BLS's logo, the successful bidder should take into account the following criteria for all logo and word marks developed:

- i) Logo and word mark should facilitate use in design with simple edges and construction.
- ii) Logo and word mark should be legible in small applications.

- iii) Logo and word mark should use "BLS."
- iv) Logo and work should be screened, allowing use on all color backgrounds.

UPON COMPLETION OF THE DEVELOPMENT OF THE ~~WEBSITE, MOBILE WEBSITE, WEB SITE~~ AND UPDATED LOGO, BLS WILL ASSUME FULL RESPONSIBILITY FOR ~~WEBSITE~~ WEB SITE CONTENT MAINTENANCE AND ADMINISTRATION AS WELL AS LOGO USE. ALL CONTENT, CODING AND GRAPHICS PROVIDED WILL BECOME THE SOLE PROPERTY OF BLS.

5. ~~Timeline~~ TIMELINE:

- a) Proposals are due no later than 5:00pm EDT, \_\_\_\_\_, Thursday, May 30, 2013. Responses ~~are to~~ should be submitted in Adobe pdf format via email to: lynn.sherman@arlaw.com. Proposals will be evaluated immediately thereafter.
- b) Questions should be submitted on or before than 5:00pm EDT, \_\_\_\_\_, Thursday, May 30, 2013 to lynn.sherman@arlaw.com. ~~Responses to all~~ All questions will be ~~issued~~ \_\_\_\_\_, responded to by May 23, 2013.
- c) Shortlist finalists will be notified by \_\_\_\_\_, June 6, 2013.
- d) Interviews ~~and~~ / demos for shortlist finalists will be held during the week of \_\_\_\_\_, June 10, 2013.
- e) The award will be made by \_\_\_\_\_, Thursday, June 27, 2013. All other candidates will be notified shortly thereafter. The initial meeting with the project team will commence the week of \_\_\_\_\_, July 8, 2013.
- f) The project must be completed, delivered, and live by \_\_\_\_\_, September 2, 2013.

The BLS reserves the right to select the vendor it deems most appropriate for the project, regardless of whether they are the lowest bidder, waive stated requirements, negotiate further with vendors, discontinue the evaluation process, or choose not to award to any responding vendor.

6. ~~Budget~~ BUDGET:

Please provide several cost proposals to accomplish the scope outlined below. The budget must encompass all design, production, and software acquisitions necessary for development and maintenance of the ~~website~~Web presence. Please separately list pricing for: ~~website~~ (a) mobile optimized Web site design, development, testing, and deployment; ~~)b) training of BLS personnel, and deployment; mobile website design, development, testing, and deployment;~~ (c) ongoing technical maintenance and support; website (d) Web site hosting; and (e) logo design.

7. ~~Specifications and Guidelines.~~ **SPECIFICATIONS AND GUIDELINES:**

a) **Website**Web site Development Guidelines: The ~~website~~Web site designed by the successful candidate must meet the following criteria:

i) **Content Management System:**

- (1) The ability for multiple users to edit and contribute site content;
- (2) ~~Allow~~The ability for persons designated by the BLS ~~personnel~~ to manage, add, and delete ~~any~~ rotating photos, banners and buttons;
- (3) Provide the ability to create ~~web~~Web content that ~~can~~ automatically can expire;
- (4) ~~Utilize~~Ability to use a common content management system ("CMS"), such as ~~Wordpress~~WordPress, Drupal, ~~or Joomla~~) or equivalent that will permit designated non-technical ~~BLS staff~~persons to easily and instantly update ~~website~~Web site content, data, or scripts;
- (5) ~~Convert~~Ability to convert existing content as directed to new ~~website~~Web site;
- (6) ~~Provide~~Provision for initial staff training, training documents ~~and~~, user manuals, and continuous technical support as required;
- (7) ~~Flexible role assignment that provides~~Ability to flexibly assign users ~~with increasing~~ levels of access rights from site administration [the highest level] to basic member access [the lowest level];
- (8) ~~Provide the ability~~Ability to have one or more blogs, and to select blog from the front page of the site or for blog content to be ~~shown~~displayed on the front page of the site;
- (9) Ability to link to LinkedIn, Facebook, and Twitter from the front page of

the site.

- (10) ~~(9)~~ Ability to associate the BLS's Twitter account to a user account on the ~~website~~ Web site, and to allow designated users ~~of a specific role~~ to "post to twitter" when, for example, making a blog post or ~~when~~ creating other content on the site;
- (11) ~~(10)~~ Provide the capability for members to associate their LinkedIn, Twitter, and Facebook accounts with their user accounts;
- (12) ~~(11)~~ Ability to schedule content for publishing and/or expiration;
- (13) ~~(12)~~ ~~Built~~ A built in spell checker;
- (14) ~~(13)~~ A WYSIWYG editing tool that allows users to edit and preview content for ~~web and~~ both mobile devices and desktop or laptop computers;
- (15) ~~(14)~~ Automatic archiving of content in a separate data repository. [In this regard, the BLS is a part of The Florida Bar, which is an arm of the Florida Supreme Court, and as such is subject to mandatory recordkeeping requirements under and Florida law];
- (16) ~~(15)~~ Ability to ~~retrieve website statistics for analysis and reporting purposes~~ obtain and retrieve desirable Web site analytics and reports.

ii) **Membership database:**

- (1) ~~Existing~~ The existing membership database routinely is updated by TFB. As updated, it should ~~either~~ integrate with the proposed CMS platform, ~~OR~~ or proposals in response to this RFP should address migration alternatives and rationale;
- (2) ~~Membership~~ The membership database should be searchable.

iii) **Site design, content and structure:**

- (1) ~~Must load~~ It is vital that the BLS site loads quickly and securely (less than 3 seconds with cable) so that users can enjoy a fast browsing experience;
- (2) ~~Needs~~ The site needs to integrate ~~or~~ link to existing (rather than duplicating) data on other ~~websites, such as The Florida Bar; ideally~~ Web sites. Ideally, the site would pull up the data but make it look like the data

- is part of the BLS ~~website~~Web site, unless the user links to another site;
- (3) ~~Provide~~The site must provide search capabilities using key words or phrasing that will identify content from throughout the site. Only content that is accessible to the user ~~will~~should display in search results. All search terms ~~will~~should be highlighted in results;
  - (4) ~~Provide~~There needs to be a professional, ~~clean and~~uncluttered, easy to navigate theme for the ~~website~~Web site;
  - (5) ~~Theme~~The theme should follow ~~website~~Web site conventions and standards, and display consistently across common ~~web browsers~~Web browsers (e.g., Firefox 4.x and above, Safari 6.x and above, Netscape 7.x and above, Chrome, Bing, Duckduckgo, DogPile, and Explorer 7x and above);
  - (6) ~~Theme~~The site theme should be ADA compliant and comply with accessibility standards set forth in Rule 60-8.002, Florida Administrative Code for disabled users;
  - (7) ~~Site~~The site structure should allow for future themes to be added and removed;
  - (8) A robust search feature should be available for all public and members-only content;
  - (9) Content and features only for members ~~only is~~must be available (as detailed in the next section, below);
  - (10) ~~Master~~A master calendar for all BLS events needs to be assessable from the front page, with the ability to click and add any event to ~~google~~Google and ~~outlook~~Outlook calendars;
  - (11) ~~Forms and~~There needs to be a provision for forms and a shopping cart ~~and~~so that users will have the ability to register for events and to make payments for purchases online;
  - (12) ~~Ability~~For events pages, there needs to be the ability to change sponsor logos on each page and/or ~~show~~to display sponsors as a slide show on bottom or side of each page. A link to different events needs to be on the front page. Recurring annual events include a Spring Retreat, an Annual [summer] Meeting, a Fall Retreat, a Mid-year [winter] Meeting, annual minority picnics, law-school reach-out programs, and Continuing Legal

Education programs.

~~(13) Site must be compatible with compatible with Internet Explorer 6.x and above, Mozilla Firefox 1.x and above, and Netscape 7.x and above, Safari, and Google Chrome on Windows and Mac operating systems and must display properly on all mobile devices, including android, blackberry, iphone, and other smart phones and mobile devices;~~

(13) ~~(14) Layouts~~Page layouts must support optional scrolling banners for announcements ~~and~~ photos, (such as photos of BLS events ~~or~~), and sponsors' logos;

(14) ~~(15) Support the~~The site must support use of video, images, and audio files in various formats [note: because Flash is not available to iPhone users, it should not be used];

(15) ~~(16)~~ Ownership of the design of the ~~website~~Web site and all content ~~should~~must be transferred to the BLS upon completion of the project;

(16) ~~(17) Utility~~There needs to be a utility or tool for checking and repairing broken internal or external links.

iv) **“Members ~~only~~Only” functionality enhancements:**

(1) Document management & sharing:

(a) ~~Provide~~The site must provide the ability to create, upload, and ~~sharing~~share documents to facilitate ~~committee and association~~Committee work;

(b) ~~Ability~~The site must provide the ability to collaborate on document editing online, if possible, for instance by utilizing Google Apps on our domain;

(c) ~~Provide~~The site must provide a historical document library/repository for past documents. [Each year for example, the Litigation Committee prepares and provides “White Papers” to legislators, legislative staff, and to administrative agencies of the Florida government. The BLS occasionally files amicus briefs with courts. The BLS also publishes Opinion Standards for use by business lawyers in Florida. The BLS publishes an electronic Business Law Journal that is available to members. Occasionally,

[CLE materials are made available after courses have been held.](#)  
[These documents typically are in Adobe .pdf](#)

- (2) Survey integration:
  - (a) Ability to create and manage online surveys which can be sent to select groups of members or non-members;
  - (b) Storage and/or tabulation of survey responses should be available online;
  - (c) Ability to download all responses to a survey in common formats such as CSV or XLS.
  
- (3) Member & Committee ~~email~~e-mail lists:
  - (a) Provide the ability for members to sign up ~~for~~ or to take themselves off of different ~~committee~~Committee lists;
  - (b) ~~Allow email~~Provide the ability to allow e-mail lists to have shared administration by designated members, ~~allowing to enable~~ standard ~~email~~e-mail list features such as mass subscription, mass removal, etc.;
  - (c) ~~Mail~~The e-mail server used by the ~~website~~Web site should be configured with proper DNS settings, MX records, and reverse PTR records to reduce the possibility of mail being treated as spam.
  
- (4) Membership Directory:
  - (a) Provide for a robust, functional, searchable, and sortable membership directory section of the site, available to all members;
  - (b) Members should have the ability to update their profile information, including links and/or API connections with LinkedIn ~~and other social media such as~~, Twitter, and Facebook.
  
- (5) Member Discussion Boards:
  - (a) Provide a ~~members-only~~ "Members Only" discussion forum with threaded conversations on various topics;
  - (b) ~~Members should be able~~ Provide the ability of members to comment on/reply to others' posts, share comments or posts via social media,

- and create new topics;
- (c) Moderator/administrator functions should be available to allow users with specific roles or privileges to remove or hide posts and/or topics, as well as archive posts and topics. \_\_\_\_\_
- (6) Event management:
- (a) The ~~website~~Web site should include an event management system, allowing members with designated role or permissions to create and organize events such as conferences online. \_\_\_\_\_
- (b) ~~Provide~~The Web site should provide for informational content to be associated with each event. \_\_\_\_\_
- (c) The Web site must allow members and non-members to sign-up
- (d) ~~(c) Allow members and non-members to sign-up~~ to attend an event, pay online for event registration, and pay online for other associated products ~~or services~~.
- (e) ~~(d) Features~~ There need to be features for members and organizers to manage logistics of events ~~should be included~~, for example examples:
- (i) ~~Ability for members to submit session/~~Submission of sessions or topic proposals;
- (ii) ~~Ability for members~~The ability to discuss and comment on session/topic proposals;
- (iii) ~~Ability~~The ability for members to vote or to rate session/topic proposals. \_\_\_\_\_
- (iv) ~~Ability~~The ability for organizers to approve sessions/topics and create a conference schedule with calendar display/functionality. \_\_\_\_\_
- (v) The ability to survey participants after an event to obtain feedback to improve future events.
- (7) Secure payment processing for:
- (a) Annual Membership renewals and new membership registration & payment;
- (b) Processing payments for event registration and/or sub-registration.

transportation, meals, etc.;

- (c) ~~Ability to define additional monetize-able~~ Selling products and ~~to sell those products~~ services to members or ~~nonmembers~~ non-members;
- (d) ~~Ability to associate~~ Associating multiple products or services with specific events.

(8) Learning Management System (LMS):

The BLS is interested in a centralized online learning management platform to host professional development and other educational material for our members. This is an optional, but highly desired requirement of the RFP. A proposed LMS should allow members and organizers to:

- (a) Create and deliver online course content to other members;
- (b) Provide secure access to courses so they can be monetized and password Protected;
- (c) Manage users, roles, courses, instructors, facilities, and generate reports;
- (d) Provide a Course calendar;
- (e) Student, instructor and administrator messaging and notifications;
- (f) Web-based or blended course delivery.

(9) Gallery:

- (a) Image files ~~can~~ should be ~~viewed~~ viewable in a gallery-like format displaying thumbnails of multiple images in a single page.
- (b) ~~Specific~~ Specified users ~~can~~ should have the ability to upload pictures with specific captions.
- (c) Clicking on thumbnails ~~opens~~ should open a larger version of the picture.
- (d) Pictures ~~can~~ need to be easily be deleted or reordered as appropriate.

(10) Library:

- (a) ~~Ability~~ There needs to be the ability to add and delete internal or external links to content;
- (b) ~~Editable~~ There needs to be an editable portal ~~providing~~ that provides

links to ~~websites~~Web sites or Apps of interest to BLS members.

b) Mobile Enablement of Development Guidelines:

~~b) — Mobile Website Development Guidelines.~~ The mobile ~~website~~enabled Web site designed by the successful candidate must meet the following criteria:

- i) ~~The~~ mobile ~~website~~enablement of the site will include selected ~~subsets~~subsets of information from ~~website~~the full site and ~~will~~ automatically needs to update as ~~website~~the site is updated;
- ii) The ~~website should~~site automatically ~~redirect mobile users to~~should device aware and display the mobile ~~site~~version, but provide the ability for ~~the~~a user to ~~opt~~choose to view the full ~~website~~site miniaturized on each ~~page~~screen;
- iii) ~~Site~~The site should be device-aware with the capability to alter formatting based on the inquiring media;
- iv) ~~Mobile website will~~The site needs to be easy to navigate using graphic buttons, icons, or tabs that are touch screen friendly ~~-(including for touch screen laptops, as well as for tablets, phablets, and smartphones);~~
- v) ~~Utilize~~The site needs to utilize a format that will reduce the need for horizontal scrolling and excessive vertical scrolling by those accessing such information on ~~web~~Web enabled mobile ~~phones and handheld~~ devices ~~;~~
- vi) ~~Fluid~~There needs to be a fluid, consistent layout, with a minimum width of 320 ~~px, dpi~~ that ~~will~~ automatically will adjust to screen size, and screen orientation ~~;~~
- vii) ~~Include~~The site needs to include high resolution images ~~minimize~~with minimized pixilation ~~;~~
- viii) ~~Will~~The site must load quickly on all mobile devices ~~;~~
- ix) HTML5 doctype ~~;~~ should be used where appropriate;
- x) ~~Separate~~A separate URL for ~~the~~ mobile ~~website,~~enabled version should not require a Web site designator such as m.flabuslaw.org or flabuslaw.org.mobi;
- xi) ~~Utilize~~The mobile enabled version should use a font that is clear and legible on a small screen.
- xii) ~~Ensure~~The mobile enabled solution ~~integrates with social media outlets i.e.~~should integrate with LinkedIn, Facebook, and Twitter, and Linked In.
- xiii) ~~Fully~~The mobile enabled version needs to be searchable.
- xiv) ~~Member~~The mobile enabled version must have member login and ~~members~~

~~only~~ “Members Only” areas;

xv) ~~-Ability~~ The mobile enabled version must provide the ability for members to post comments to ~~members only~~ the “Members Only” areas;

xvi) ~~Compatible~~ The mobile enabled version must be compatible with the most recent versions of all popular mobile devices, including ~~ios, android, blackberry, and windows~~ iOS, Android, Blackberry, and Windows phone.

c) ~~Logo Guidelines-~~ LOGO GUIDELINES:

- i) Logo must be adaptable to print, web, video and other applicable marketing uses;
- ii) Logo must be provided in b/w, color, vertical and horizontal formats;
- iii) Logo must be screened with ability to place on color backgrounds with no integrity loss of logo;
- iv) Logo must be provided in multiple formats that are universally recognized and used by graphic designers, media outlets and BLS office staff;
- v) Logo must display clearly on small screens and mobile devices.

8. ~~Hosting recommendation-~~ HOSTING RECOMMENDATION:

- a) Contractor may suggest site and database hosting arrangements for the proposed site to be purchased by the BLS separately or may include this as a part of the proposal.
- b) Proposed site and database hosting arrangements may be suggestions of third party vendors or with the contractor’s preferred vendor.

9. ~~Qualifications-~~ QUALIFICATIONS:

Each proposal should include the following information about the bidder ~~:-~~ :

- a) List the five ~~websites~~ Web sites your firm has produced that best reflect your work and relevancy to this project. Briefly list the role your firm played in each project. The URL should be submitted. Only sites that are live will qualify during evaluation.
- b) List at least 3 mobile ~~websites~~ Web sites your firm has produced and provide URL for each.
- c) Provide examples of at least 5 logos your firm has created.
- d) Describe your experience in producing ~~websites~~ Web sites for non-profit and/or community-focused projects.

- e) Provide current reference information for three former or current clients.
- f) Briefly describe your firm's organizational capacity to produce our [websiteWeb site](#) and update our logo (e.g. staff, equipment, software, physical space, office location, etc.).
- g) How many full-time staff does your firm employ? Please include a copy of your firm's organizational chart.
- h) Provide a company profile, length of time in business and core competencies.
- i) Briefly describe the percentage of your web staff that would be working on this project relative to your entire staff (using full time equivalents). For example, if you would use five staff on the project and you have ten web designers and developers, the percentage would be 50%.
- j) What type of team will be assigned to this project? What will each person's role be? Please include a brief background summary for each key staff member assigned to this project. Identify an assigned project manager who will be made available to present information and coordinate with BLS staff, including a reasonable number of meetings to present design and development solutions.
- k) Please discuss any hardware/software vendor partnerships relevant to this project.
- l) Time frame for completion. The time frame for completion of the project will be evaluated. In addition, time frames will be part of the contractual agreement; therefore, a realistic time frame for completion is requested.
- m) Terms and conditions.
- n) Winning vendor hosts at no additional charge [websiteWeb site](#) for minimum of one year. Document ongoing fees for additional hosting.
- o) Winning vendor will provide training to BLS staff regarding site maintenance and updates.
- p) Ability to provide 24/7 technical support and [websiteWeb site](#) maintenance.

10. **Evaluation Criteria**:-

The following criteria will form the basis upon which BLS will evaluate proposals. The mandatory criteria must be met and include:

- a) Your proposal must be received no later than 5:00 pm EDT,

~~\_\_\_\_\_~~, Thursday, May 30, 2013. Your proposal must include a cost proposal as described above. All costs associated with the delivery of the project should be presented in a flat rate, fee for service format.

- b) Proposals must be delivered digitally (Dropbox available if necessary) to **lynn.sherman@arlaw.com**. ~~(Dropbox available if necessary)~~.
- c) Proposals that meet the mandatory requirements, as stated above, will be evaluated with the following criteria:
  - i) Suitability of the Proposal – the proposed solution meets the needs and criteria set forth in the RFP.
  - ii) Expertise in recommending and communicating appropriate technical and aesthetic solutions as evidenced by the proposal and references.
  - iii) Aesthetic Capabilities – Prior work demonstrates artistic and innovative, user friendly interfaces that engage communities and viewers.
  - iv) Candidate Experience – Candidate has successfully completed similar projects and has the qualifications necessary to undertake this project.
  - v) Value/Pricing Structure and Price Levels – The price is commensurate with the value offered by the proposer.
  - vi) Depth and Breadth of Staff – The candidate firm has appropriate staff and infrastructure to develop the mobile enabled site in the time frame needed.
  - vii) Proposal Presentation – The information is presented in a clear, logical manner and is well organized.
  - viii) All proposals must include a statement of authorization to bid signed by a principal of the responding company
  - ix) Bidder status -- Bidder must disclose any relevant conflicts of interest and/or pending lawsuits

BLS reserves the right to reject all proposals if none conform to requirements.

**d) 4.1. Format For Proposals**

Please use the following as a guideline to format your proposal:

- i) a) Length and Font Size**: Please use fonts no smaller than 10 point. Maximum proposal length including title page, cover letter, proposal, qualifications and budget should not exceed 15 pages

- ii) ~~b)~~ **Title Page:** BLS ~~Website~~Web site Development and Logo Update Proposal, your company name, address, ~~website~~Web site address, telephone number, fax number, e-mail address and primary contact person.
  - iii) ~~e)~~ **Cover Letter:** Signed by the person or persons authorized to sign on behalf of the company. The cover letter must include a statement that the proposal and budget will remain open for a period of 120 days.
  - iv) ~~e)~~ **Proposal:** Discuss your proposed solution, including the features, benefits and uniqueness of your solution. You should also touch on your ability to deliver the project in the timeframe.
  - v) ~~e)~~ **Qualifications:** Provide the information requested above concerning the bidder.
  - vi) ~~f)~~ **Budget and Fees:** List budgets as requested above. Identify staff you anticipate will be working on the project and their hourly rates for work.
  - vii) ~~g)~~ **Hosting options/information:**
    - ~~i)~~ ~~—~~ ~~Do~~lf you will provide hosting? ~~If so~~, please ~~provide answers~~ to answer the following questions:
      - (1) How often do you backup or what backup method is provided?
      - (2) How often do you have “scheduled” down time? For how long is the down time?
      - (3) Describe your hosting capacity, limitations, and/or any fees associated with the process.
      - (4) Please describe your technical support options and any fees associated with each such option.
      - (5) Please describe your (a) premises security, and (b) cyber-security.
      - (6) Please describe analytics available for ~~website~~Web site activity.
      - (7) ~~Pricing~~Please state your pricing, terms and conditions.
  - viii) ~~ii)~~ If you do not provide hosting, please suggest a vendor/partner to provide this service and provide answers to the above questions for that vendor/partner.
- e) ~~h)~~ **Special Considerations:** Please provide us with any additional information you believe would be helpful for us to know in evaluating your proposal, such as

knowledge or experience with the target audience or prior experience with professional associations.

11. ~~12.~~ **Suggested Websites For Review** **Web sites For Review:**

~~The following websites contain the graphics style and information accessibility (layout, links and downloads) desirable in the new BLS website. They are provided as inspiration:~~

The following Web sites deal with attorneys. They are guides in the event you have not previously worked with a professional association or because we see features we deem desirable (as noted). These are not intended to stifle your initiative and creativity:

- American Bar Association ([www.americanbar.org](http://www.americanbar.org)). Entire site.
- Defense Research Institute ([www.dri.org](http://www.dri.org)). Entire site.
- Midwest Association of Colleges and Employers ([www.mwace.org](http://www.mwace.org)). ~~Note the calendar and~~ We mention this because of its calendaring ability to register for conferences online, and front page with defined sections for news, upcoming events, and online membership application.
- The Canadian Bar Association ([www.cba.org](http://www.cba.org)). Note the ability to update content, logo, social media buttons on each page, sponsor logos, sections for news, blogs, and pull down menus for each item on top bar.
- Florida Chapter of American Institute of Architects ([www.aiafla.org](http://www.aiafla.org)). Note the clearly defined tabs, store, and member login.
- Panera Bread Mobile site ([m.panerabread.com](http://m.panerabread.com)). Easy to navigate buttons; use of color buttons; social media links.
- Texas Medical Association ([www.texmed.mobi](http://www.texmed.mobi)). Note member login and easy to navigate. Ability to view full site.
- [The State Bar of California: \(www.calbar.ca.gov\)](http://www.calbar.ca.gov).

Document comparison done by Workshare DeltaView on Wednesday, May 15, 2013 5:56:08 PM

Input:	
Document 1	file://C:/Documents and Settings/shermalw/Desktop/BLS RFP lws final.doc
Document 2	file://C:/Documents and Settings/shermalw/Desktop/BLS RFP Steph changes.doc
Rendering set	standard

Legend:	
<u>Insertion</u>	
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<u>Moved from</u>	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	359
Deletions	294
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	655

## Features

### The Mobile Lawyer

Posted Apr 1, 2013 5:30 AM CDT

By Joe Dysart



While the format has its skeptics, mobile apps are revolutionizing the way law is being practiced in the U.S.—a trend that will only intensify this year, according to ardent supporters.

Indeed, the latest smartphone or must-have tablet is no longer a technological fashion statement; it's a critical, competitive tool that many attorneys simply refuse to live without. "Smartphones and tablets are not just shiny objects to catch up on the news or update Facebook," says [Chad E. Burton](#), whose virtual law firm serves Ohio and North Carolina. They "can play a key role in producing work product for clients and managing a law firm."

[Click to view the Mobile Apps for Lawyers gallery now.](#)

"I can run our entire practice off my iPad," says Burton, whose headquarters is in Dayton, Ohio. "One example: You could Skype in a client or another lawyer to a deposition or hearing to let them observe

what is going on—which naturally saves time and money."

Jeff Richardson, a New Orleans lawyer and author of the blog [iPhone JD](#), would not think of hitting the legal trenches without GoodReader, which he calls "the most useful app on my iPad." It allows tablet, iPod Touch and iPhone users to read virtually any document—PDFs, books, maps, even pictures and movies.

And Jeff Taylor, an Oklahoma City lawyer and author of the [Droid Lawyer](#) blog, is similarly smitten with Fastcase, a legal research app that enables an attorney to pull up cases, statutes, court rules and other documents virtually anywhere on the planet using any Android device.

### WHY SO POPULAR?

App fanatics cite all sorts of reasons why they believe mobile is the future of law computing, but the ability of apps to technologically arm an attorney on the go continues to be one of the format's greatest draws. As [Brett Burney](#) of Burney Consultants in Beachwood, Ohio, says, "The fact that you can do so much work today on a small iPad that used to require a heavy, bulky laptop a few years ago is a tremendous leap forward in productivity."

Apps also have a reputation for appealing to an extremely specific need and no more—a welcome change for attorneys with little time for learning software overgrown with features they'll never need.

"My 2-year-old knows how to navigate back and forth between apps," Burton says, "so lawyers should be able to do the same."

Burney's firm advises corporate executives and legal professionals on e-discovery, offers litigation support, and provides guidance on choosing legal software. He adds, "When you're in an app, you're not stressed out by a bloated number of iStockphoto



features. The interface is usually intuitive with only the buttons and features that you need to complete the task in front of you.”

Plus, the “instant-on” capability of mobile devices makes the alternative—waiting for a PC to boot up for what seems like an eternity—seem hopelessly antiquated. With an app, you flip the switch on a phone, tablet or similar device and you’re working.

Many apps also offer attorneys fingertip access to all the firm’s data that’s stored in the cloud, no matter where they happen to be. “If the firm or lawyer uses cloud platforms for practice management and document management,” Burton says, “apps allow instant access to a client’s information whether the lawyer is in a conference room at the firm, at the client’s office or traveling.”

“I no longer need to worry about wasting time while waiting for a doctor’s appointment or sitting idly on a train,” says [Jennifer Ellis](#), vice president of Freedman Consulting Inc. in Lansdale, Pa. “My smartphone apps enable me to catch up on and act in response to emails, communicate with social media networks and perform work for my clients at any time.”

With a smartphone or tablet ever at the ready, the perennial problem of tracking billable hours also becomes eminently manageable. “Trying to remember time later invariably results in lost billable hours,” says Ellis. “Keeping track of time with an app that is always in the attorney’s pocket is a great way to help with this problem.”

With the installed base of mobile devices now pervasive throughout all strata of society, apps offer attorneys the opportunity to communicate with clients on a much more intimate level, if they so choose. With “lawyers carrying their phones with them all the time,” Burney says, “I believe that [videoconferencing programs] Skype and Facetime will become more prevalent in communication.”



Illustration by Stephen Ravenscraft

## APP HUMBUG?

Granted, there are those who are less than enamored when it comes to computing’s latest wrinkle.

Barron K. Henley, a Columbus, Ohio-based partner at Affinity Consulting Group, a legal consulting business, sees today’s current crop of mobile devices as little more than toys.

“I have an iPad, and although I like using it to read things, I find it slow and inefficient to use for almost anything else,” Henley says. “Because I can type fast, I much prefer the full-size keyboard on my laptop. Even if I bought an external keyboard for the iPad, I would much prefer the 15.5-inch screen on my laptop over the 9.7-inch screen on the iPad.”

What’s more, he says, “for creating content, I find tablets to be awful. Microsoft Office isn’t installed on my iPad, nor can it be, and almost none of the programs I use daily will run on an iPad. Of course I could try to find apps that do some of the same things. But to me, it’s just a big waste of time. I already have the programs on my laptop.

“So I view tablets as an accessory. I can’t run my practice or business on one. But they’re fun to use, easy to take with me and pretty nice for reading. If ultrabooks live up to their potential of being the best of a PC and a tablet in one package, I’ll give my iPad to my kids, who will use it for what it seems designed for in the first place—playing games.”

Fortunately for app makers, there are hordes of attorneys who do not share Henley’s view. Consequently, app fans can look forward to another torrent of fresh product—both from software vendors and firms looking to stay technologically current—during the coming year.

“Tablet penetration in the legal field is on a very steep and rapid adoption curve, and that creates the pull for more

apps,” says Paul Mansfield, president of his own legal technology consulting firm in Corrales, N.M. “So we’ll see all of the legal market vendors vying for position by tying mobile devices to their core systems, either directly or via a cloud interface.”

## **ADD ULTRAPORTABLES**

Further intensifying the availability of apps is the anticipated emergence of ultraportable laptops as a serious alternative to tablets and smartphones, Mansfield adds. These devices will appeal to lawyers who are looking for something in a larger format that is still thin and light and offers instant-on capability by using a solid state drive.

Also, Microsoft’s rollout of Windows 8, a touch-screen operating system designed to run on all hardware formats, will only create more demand for apps. “Add Windows 8 to the mix,” Mansfield says, “and the user interface becomes totally transparent across the spectrum of devices: desktop, laptop, tablet and smartphone all look alike. That’s all good.”

The only major caveat amid all the app fervor is security. Over the years, law firms and corporate clients have put all sorts of safeguards in place regarding the data they’re entrusted to guard on mainframes, desktops and, more recently, laptops. But the seemingly overnight proliferation of mobile devices across the legal profession, sometimes without the development of policies for protecting client data, has put too many attorneys at risk.

“Like anything else that puts client data outside the safety of the office, we have to be sure proper security precautions are in place,” Mansfield says. “Attorneys who purchase these devices and ‘go rogue’ with them—not hooking them into the firm’s network and security—are taking unnecessary risks. It’s better to have total buy-in from the firm.”

He adds: “Be careful out there. It’s a jungle.”

Debbie Foster, a Tampa, Fla.-based partner at Affinity Consulting Group, agrees.

“There are simple security measures that lawyers need to take with their mobile devices,” she says. “They must understand the risks of carrying around client data on your device, and all devices should have strong passwords and remote-wipe capabilities in the event the device is lost or stolen.”

## **Sidebar**

### **Go native or HTML5—an Appportunity**

Law firms with ambitions of releasing their own apps in the near future will first need to decide whether they want a single version to run on all devices or take a more customized approach.

Unwittingly, the decision will force them to pick sides in a debate raging across the Web—whether to program in HTML5, a one-size-fits-all solution, or design multiple versions of the app for each of mobile’s native operating systems: Android, Apple iOS, Microsoft Windows Mobile OS, BlackBerry and the like.

It’s a conundrum that has befuddled some of the digerati’s savviest, including Mark Zuckerberg, CEO of Facebook. “I think that the biggest mistake we made as a company is betting too much on HTML5 as opposed to native—although long term, I’m really excited about [HTML5],” Zuckerberg told showgoers at TechCrunch Disrupt this past September. An early adopter of the language, Zuckerberg backtracked after watching HTML5 apps designed for Facebook run at a crawl. His firm is now in the process of releasing rewritten versions designed to run on specific mobile operating systems.

Like many techies, Zuckerberg was lured in by the seemingly elegant simplicity of HTML5, which enables developers to write an application for the Web that can be run on any mobile device having a browser.

With HTML5 there are also no royalty fees to pay because it is not proprietary; anyone can design for free in the language. And there is also no 30 percent distribution fee to pay the Apple App Store, since HTML5 apps can be freely

shared across the Web.

There are several heavyweight firms getting behind the HTML5 standard, including the software company SAP, which announced last spring it was partnering with Adobe and a number of significant software partners to champion apps in HTML5.

“SAP, customers, partners and the entire ecosystem now have a tremendous opportunity to rapidly produce millions of high-quality apps using the tool of their choice,” says Sanjay Poonen, SAP president of global solutions.

But for some, HTML5 has not completely lived up to its press. Its apps sometimes run slower than the same apps designed for specific, mobile operating systems. In addition, mobile browsers sometimes lag behind the latest advances in HTML5, causing cutting-edge apps to run less efficiently than envisioned.

Still, the alternative—designing different versions of your law firm app to run on different operating systems—can seem equally unappealing, especially if your law firm has limited IT funds.

If you're caught between that rock and a hard place, you may want to try a third approach. Software firms like ViziApps, for example, are offering app-authoring software that claims to combine HTML5 and native app authoring in one. To users, hybrid apps are like native apps in that they can take advantage of device features, such as the camera and GPS, according to George Adams, ViziApps CEO. And the apps can be distributed through an app market like the Apple App Store or Google Play.

But unlike native apps, hybrid apps also seamlessly integrate Web content and add Web features where needed, with coded extensions, Adams says.

As a result, he says, hybrid apps provide the flexibility for mobile business apps to access Web content and integrate advanced functionality, such as that needed for mobile games and complex app logic.

*Joe Dysart is a freelance writer based in Manhattan.*

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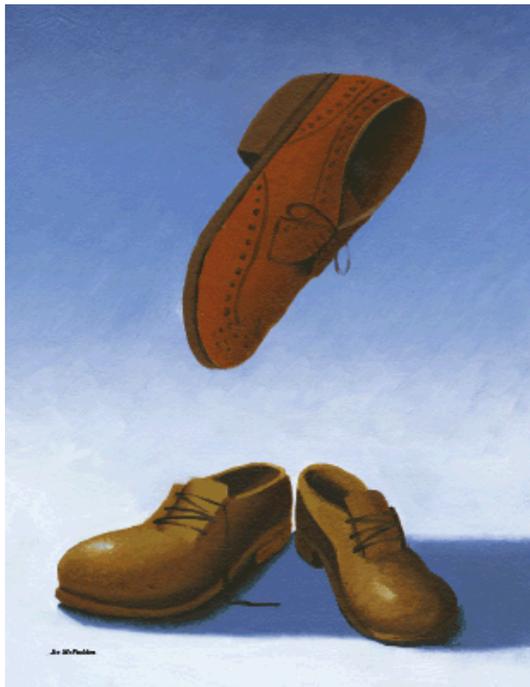
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## Caught in the Web of Florida's Statutory Proceedings Supplementary: Procedural and Constitutional Problems Facing Impleaded Third Parties

by Benjamin H. Brodsky

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Consisting of a mere 11 provisions, and designed to provide judgment creditors a "swift, summary"<sup>1</sup> means to execute on the judgments that they have received, Florida's proceedings supplementary statute, F.S. §56.29, creates an extremely powerful but profoundly flawed collections procedure. The most important, yet fraught, aspect of that collections procedure is the right of a judgment creditor to implead third parties into the already open and pending matter in which the judgment was entered. The rights of a judgment creditor against impleaded defendants in proceedings supplementary are plenary. Based on the statute's broad grant of authority to enter "any orders required" to marshal assets to satisfy the outstanding judgment, a judgment creditor in proceedings supplementary is entitled to the panoply of remedies available to any civil litigant, including injunctive relief, piercing the corporate veil, and money damages. However, inherent within the abbreviated, expedited, and creditor-friendly nature of proceedings supplementary is a conflict with the constitutional and procedural rights of the third-party impleaded defendants who find themselves unwittingly roped into post-judgment collections

proceedings in which their own property rights may be at stake. This constitutional and procedural tension is reflected by splits in the case law covering the proper interpretation and application of the statute.

This article identifies and discusses the various divisions in the case law with respect to three of the statute's primary procedural and constitutional infirmities: 1) the inconsistencies and omissions in the statute regarding the proper procedure for bringing claims against impleaded defendants, which makes prosecuting or defending against such claims an exercise in guesswork and frustration; 2) the imperfectly defined statutory "examination" procedure, and its failure to afford basic procedural protections — including, among others, the right to a jury trial — to impleaded defendants; and 3) the undefined scope of judgment creditor remedies under the statute. After diagnosing the statute's procedural and constitutional problems, the article makes some suggestions to Florida's legislature to resolve the issues so that the statute can provide a truly workable mechanism to assist creditors in collecting on their judgments without unduly infringing on the rights of others. The statute, first enacted nearly 100 years ago, is ripe for

reevaluation.

### **Florida's Proceedings Supplementary Statute**

Proceedings supplementary in Florida are creatures of statute and did not exist at common law. The common law procedure for discovering and executing on a judgment debtor's assets was through a creditor's bill in chancery, through which a creditor suing a debtor at law could institute a parallel equitable proceeding to enjoin the fraudulent disposition of the debtor's property prior to the debt being reduced to judgment.<sup>2</sup> The Florida Legislature passed the proceeding supplementary statute in order to provide "a more expeditious and appropriate remedy to reach the concealed assets of the debtor."<sup>3</sup> The statutory procedure was designed to avoid a step required by a creditor's bill, that the judgment creditor initiate an entirely separate action. As explained by the Florida Supreme Court, "[t]hese statutes intended to empower the court to follow through with the enforcement of its judgment, so that there would be no necessity for an independent suit to reach property which legally should be applied to the satisfaction of the judgment."<sup>4</sup>

Since its inception, the proceedings supplementary statute has given circuit courts "broad discretionary powers" to "subject any and all property, or property rights of any defendant in execution, however fraudulently conveyed, covered up, or concealed the same might be, whether in the name or possession of third parties or not, to the satisfaction of an execution outstanding against him."<sup>5</sup> The broad powers granted to circuit courts in proceedings supplementary are entirely consistent with and necessary to effectuate the intent of the statute: to enable a judgment creditor, frustrated in its efforts to satisfy an outstanding judgment, to discover assets that the judgment debtor may be concealing, and to reach equitable interests not subject to levy of execution.<sup>6</sup> Because proceedings supplementary are "equitable in nature," Florida courts have indicated that the statute authorizing their existence should be "liberally construed."<sup>7</sup> However, that liberality of construction — coupled with crucial gaps in the statute, examined below — has resulted in a statutory procedure riddled with inconsistencies and problems.

### **The Statute's Procedural and Constitutional Infirmities**

- *The Murky Procedure for Impleading and Stating Claims Against Third Parties in Proceedings Supplementary* — Logically, most proceedings supplementary will involve actions against an impleaded third party, because if the judgment debtor held the assets in his or her own name, then the judgment creditor would simply proceed with levy.<sup>8</sup> By the very nature of the proceedings, then, a third party impleaded into a proceeding supplementary faces the prospect of liability for all or at least part of an existing money judgment. It would seem both necessary and fair that the third party be afforded basic procedural and substantive due process. After all, the impleaded defendant is, at least in name, a stranger to the underlying case. The proceeding supplementary, while brought in the original action, is essentially a new lawsuit against a new party, the impleaded defendant.

Yet, from procedural "square one," the statute is chronically ambiguous or outright silent regarding the most basic steps for impleading and summoning previously unnamed third parties in proceedings supplementary. For example, the statute sets forth the minimal requirements for initiating proceedings supplementary: The judgment creditor must file an affidavit showing that the sheriff holds an unsatisfied writ of execution on a money judgment and that the unsatisfied execution is valid and outstanding.<sup>9</sup> Notably, the statute is silent as to whether third parties can be impleaded through this process, or whether an additional showing by the judgment creditor is required. In the end, it took the Florida Supreme Court to sort out conflicting appellate decisions on the requirements for impleading third parties into proceedings supplementary.<sup>10</sup> In *Exceletech, Inc. v. Williams*, 597 So. 2d 275 (Fla. 1992), the Florida Supreme Court agreed with the Fifth District and held that there was no requirement that the judgment creditor be examined orally under oath as a condition precedent to impleading a third party, and that simply filing an affidavit showing the existence of a valid, outstanding, and unsatisfied writ of execution was sufficient.

- *The Order to Show Cause and Due Process Considerations* — Once this requisite showing is made, the next step to implead a third-party defendant is similarly obscure. It turns out that, after the judgment creditor initiates proceedings supplementary, the court is to issue an order to show cause to the impleaded defendants. The statute references an order to *the* defendant-in-execution to appear for an examination,

but is again silent regarding what sort of pleading must be served on an impleaded defendant.<sup>11</sup> Cases and authorities have read into the statute that an order to show cause is the appropriate method for formally impleading a third party into proceedings supplementary.<sup>12</sup> Such impleading, however, “does not in and of itself imply liability for the underlying judgment on the part of the impleaded third parties.”<sup>13</sup> Instead, it provides impleaded defendants with an opportunity to raise their defenses and protect their interests consistent with the fundamental principles of due process.<sup>14</sup>

However, what level of notice must the order to show cause contain to satisfy due process, and what sort of defenses to the sufficiency of that pleading are permitted? The statute is completely silent, while the cases reflect diverging views.

The minority position is exemplified by a decision from the Fourth District Court of Appeal in *Sverdahl v. Farmers & Merchants Sav. Bank*, 582 So. 2d 738, 740 (Fla. 4th DCA 1991), which envisions pleadings and a procedure similar to that governing original actions, and holds that:

[I]f the nature of the creditor’s third party claim is not apparent from the order to show cause, that can be elicited with a response seeking a more definite statement, or the like. And, of course, once the parties’ positions have been sufficiently stated in written filings, the court can later hold a trial on the issues created and only then determine the rights and liabilities of the parties to the subject property.<sup>15</sup>

On the other hand, exemplified by a line of cases from the Fifth District Court of Appeal, is the majority view that rejects the notion that impleaded defendants are allowed to challenge the legal sufficiency of the order to show cause. As explained by the Fifth District, in the context of a procedural challenge by impleaded defendants:

The third-party defendants next argue that the trial court’s order is procedurally invalid because “there was no pending motion, complaint or other request for relief at the time it was entered.” We disagree. The filing of a motion for impleader is a sufficient pleading in order to assert a valid claim against third-party defendants in a supplementary proceeding.<sup>16</sup>

The rationale behind these decisions is that the impleaded defendant is entitled to “fair notice” of the claims against it to be adjudicated at a hearing, and nothing more.<sup>17</sup> Federal district courts necessarily applying Florida’s proceedings supplementary statute<sup>18</sup> have similarly held that a “well-plead” complaint (or order to show cause) is unnecessary in proceedings supplementary against an impleaded defendant.<sup>19</sup>

The minority position — providing for pleadings and a procedure similar to that governing original actions — is surely the correct one. This conclusion is mandated by the Florida Rules of Civil Procedure, which, by their terms, “apply to *all actions of a civil nature and all special statutory proceedings in the circuit courts and county courts.*”<sup>20</sup> Following this logic, the claims against the impleaded defendant(s) contained in the order to show cause should contain “a short and plain statement of the ultimate facts” showing that the judgment creditor is entitled to relief against the impleaded defendants, and the impleaded defendant should have the opportunity to present an answer or move to dismiss on grounds of legal insufficiency.<sup>21</sup>

This position is also sensible from the perspective of orderly judicial administration. After all, just as a complaint is required to advise the court and the defendant of the nature of a cause of action asserted by the plaintiff,<sup>22</sup> so should the order to show cause (or other offensive pleading by the judgment creditor) similarly satisfy that basic requirement. “[O]nce the parties’ positions have been sufficiently stated in written filings, the court can later hold a trial on the issues created and only then determine the rights and liabilities of the parties to the subject property.”<sup>23</sup> Indeed, impleaded defendants are permitted to conduct discovery on the claims brought against them.<sup>24</sup> It is completely incongruous that an impleaded defendant is allowed discovery on the claims brought against him or her, yet he or she is not entitled to a properly framed pleading to ascertain the nature and limits of those claims.

While a judgment creditor may view a more formalized pleading procedure as just another opportunity for a recalcitrant judgment debtor to stall the collections process, it is ultimately in the best interest of all parties to a proceedings supplementary to have well-drawn pleadings before the court. For example, imagine a scenario in which a judgment creditor in a proceedings supplementary is seeking to avoid hundreds of transfers of personal property made by a judgment debtor to his business partner over the

course of a number of years. Without a properly framed pleading before the court, it may be impossible for the court and the parties to keep track of which of the transfers are subject to the shifting burden of proof provided for in the statute, discussed below, which could end up harming the judgment creditor as easily as the impleaded defendant business partner.

Finally, and most importantly, requiring ultimate fact pleading and allowing for the interposition of legal defenses are mandated by the requirements of due process. While the Florida Supreme Court has indicated that an order to show cause in a proceedings supplementary violates due process if it fails to notify an impleaded defendant that his or her own property is at risk of being taken,<sup>25</sup> it is apparent that something more than mere notice that property rights are at stake is necessary to satisfy due process. As stated recently by the Third District Court of Appeal: "It goes virtually without saying that the purpose of a pleading is to notify a defendant that he is being sued and for what he is being sued. Due process demands nothing less."<sup>26</sup>

- *Constitutional and Procedural Uncertainties Inherent in the Statutory "Examination"* — The uncertainty of an impleaded defendant's rights and obligations in proceedings supplementary extends to the "examination" provided by statute. The statute provides for examination of the defendant before the circuit court concerning his or her property,<sup>27</sup> but is conspicuously silent regarding whether the right to examination extends to impleaded third-party defendants. At least one court has indicated in dicta that it does not.<sup>28</sup> While that dicta is questionable — it would make no sense that a procedure used to discover the assets of judgment debtor would prohibit examination of persons to whom the assets were transferred, and there are countless cases noting without objection the examination of third parties in proceedings supplementary<sup>29</sup> — it illustrates the problems inherent in a statute that creates a powerful procedure, but insufficiently defines its limits.<sup>30</sup>

Is the examination a trial on the merits — or just a discovery mechanism? That is, at the end of a statutory examination, during which the circuit court has taken testimony on the location of the judgment debtor's assets, may the circuit court then enter a judgment against an impleaded defendant who is found to hold some of those assets? Again, the statute only obliquely addresses such a crucial question, providing that, "[t]estimony shall be under oath, shall be comprehensive and cover all matters and things pertaining to the business and financial interests of defendant which may tend to show what property he or she has and its location," and that "[e]xamination of witnesses shall be as at trial and any party may call other witnesses."<sup>31</sup> The Florida Legislature may have intentionally left the contours of the examination procedure vague in order to provide judgment creditors maximum flexibility in dealing with a judgment debtor who attempts to hide assets. Regardless, under the current formulation of the statute, circuit courts and lawyers are faced with the unenviable task of improvising the procedure for adjudicating the fundamental rights of impleaded defendants.

Questions regarding the role of judge and jury at examinations in proceedings supplementary are similarly obscured by the statute. The statute vests in the circuit court the right to refer the proceedings to a general or special magistrate for reports of factual and legal findings.<sup>32</sup> But this is in conflict with the Florida Rules of Civil Procedure, which prohibit the reference of any matter to a magistrate without the consent of *the parties*.<sup>33</sup>

As to the right of an impleaded defendant to have a jury decide whether a judgment creditor can levy on his or her property to satisfy the judgment of another, the statute is silent. The Florida Supreme Court, the district courts of appeal, and federal courts have held that an impleaded defendant does not have the right to a jury trial in a proceedings supplementary, even when the judgment creditors are suing for monetary damages.<sup>34</sup> The holdings of these courts are consistent with the underlying purpose of this special statutory procedure, to provide judgment creditors with an abbreviated and expedited means of discovering and marshaling an uncooperative judgment debtor's assets. But the remarkable constitutional implications of these decisions seem difficult to square with the inviolable right to a jury trial in actions at law.<sup>35</sup>

Constitutional concerns also underlie the shifting burden of proof for fraudulent transfer claims adjudicated

at the statutory examination/hearing in proceedings supplementary. In one of the more troubling provisions of the proceedings supplementary statute, the burden of proving the fraudulent intent behind a transfer is shifted from the judgment creditor to the judgment debtor/transferor and impleaded defendant/transferee. More specifically, the statute provides that:

When, within [one] year before the service of process on him or her, defendant has had title to, or paid the purchase price of, any personal property to which the defendant's spouse, any relative, or any person on confidential terms with defendant claims title and right of possession at the time of examination, *the defendant*<sup>36</sup> has the burden of proof to establish that such transfer or gift from him or her was not made to delay, hinder, or defraud creditors.<sup>37</sup>

By this provision, the proceedings supplementary statute "turns on its head" the general rule that a creditor bears the burden of proving the elements of its fraudulent transfer claim.<sup>38</sup> It also puts the impleaded defendant in the unlucky and unfair position of proving the absence of fraudulent intent.<sup>39</sup> While a judgment creditor may be justifiably entitled to certain evidentiary presumptions given that it may be facing a wily judgment debtor intent on evading satisfaction of a valid and outstanding judgment, it is a fair question whether this seemingly unequal treatment of impleaded defendants within proceedings supplementary runs afoul of the federal and state constitutional requirements of equal protection.<sup>40</sup>

• *The Undefined Scope of Judgment Creditor Remedies Under the Statute* — The fog surrounding proceedings supplementary does not clear once a judgment debtor's property is discovered in the possession of an impleaded defendant. On the one hand, the statute is clear enough regarding the circuit court's authority, as it grants broad remedial power to the circuit courts with respect to executing on property of the judgment debtor.<sup>41</sup> The statute further entitles the circuit court to "enter any orders required to carry out the purpose of this section to subject property or property rights of any defendant to execution."<sup>42</sup> To that end, subsection (6) of the statute provides for avoidance of actually fraudulent transfers.<sup>43</sup>

However, on the other hand, the statute is completely silent regarding whether a judgment creditor may obtain a money judgment against an impleaded defendant. Not surprisingly, the cases are conflicting. Some federal courts applying the proceedings supplementary statute have held that it "does not create substantive rights of recovery nor provide a basis for entry of a money judgment."<sup>44</sup> Under those cases, "proceedings supplementary through §56.29 are a procedural mechanism that provide a judgment creditor with means to investigate assets of the judgment debtor that might be used to satisfy a judgment."<sup>45</sup>

The Florida district courts of appeal, however, have taken a far more expansive view regarding the scope of available remedies under the statute. For example, in *Pollizzi v. Paulshock*, 52 So. 3d 786 (Fla. 5th DCA 2010), the Fifth District held that the liberal construction to be afforded the statute enabled the circuit court to enter money judgments against the impleaded defendants.<sup>46</sup> Scholarly authorities have similarly concluded that when supplementary proceedings are "carried to their proper conclusion, they can result in a judgment against third persons who hold property belong[ing] to the debtor."<sup>47</sup> Given the broad mandate to the court to enter any orders necessary to marshal assets to satisfy the outstanding judgment, this view makes sense.<sup>48</sup> After all, Florida courts have authorized many other forms of relief not otherwise explicitly provided for in the statute. For example, it is by now settled that proceedings supplementary can be used to collect against choses in action, including the judgment debtor's interest in the proceeds of an insurance policy.<sup>49</sup> Additionally, the Florida courts have held that trial courts may enter injunctive relief against impleaded defendants in proceedings supplementary<sup>50</sup> and pierce the corporate veil between judgment debtors and impleaded defendants.<sup>51</sup>

## Conclusion

It is obvious that, at a minimum, Florida's proceedings supplementary statute suffers from lack of clarity, and omits crucial procedural direction to courts and litigants.<sup>52</sup> The process for impleading defendants into proceedings supplementary needs to be set forth more explicitly in the statute, the nature of the statutory examination needs to be explained in more detail, and the remedies available to judgment creditors must be elucidated further. The constitutional concerns permeating the statute also need to be resolved: 1) impleaded defendants should be provided the same protections of fair notice and other forms of procedural due process afforded defendants in original actions; 2) the right of an impleaded defendant to a jury trial

on claims for money damages brought in proceedings supplementary needs to be spelled out in the statute; 3) reference to magistrates must be done only upon the parties' consent; and 4) the burden shifting provision of the statute should be removed.

Judgment creditors facing a recalcitrant judgment debtor should enjoy an expedited procedure for discovering and marshaling assets to satisfy their judgments, but they should do so within the confines of a well-defined statutory procedure that adequately protects the rights of third-party impleaded defendants that find themselves a target of the judgment creditors' efforts.

<sup>1</sup> See *381651 Alberta, Ltd. v. 279298 Alberta, Ltd.*, 675 So. 2d 1385, 1388 (Fla. 4th DCA 1996) (quoting *Allied Industries International, Inc. v. AGFA-Gevaert, Inc.*, 688 F. Supp. 1516 (S.D. Fla. 1988), *aff'd*, 900 F.2d 264 (11th Cir. 1990)).

<sup>2</sup> See, e.g., *Stewart v. Manget*, 181 So. 370 (Fla. 1938). The procedure of a creditor's bill still exists by statute, Fla. Stat. §68.05, although it has been almost completely replaced by proceedings supplementary. See The Florida Bar, *Basic Creditors' & Debtors' Rights in Florida* §11.26 (2007).

<sup>3</sup> *George E. Sebring Co. v. O'Rourke*, 134 So. 556, 561 (Fla. 1931).

<sup>4</sup> *Virginia-Carolina Chemical Corp. v. Smith*, 164 So. 717, 719 (1935) (quoting *Florida Guaranteed Sec. v. McAllister*, 47 F.2d 762, 765 (S.D. Fla. 1931)); see also *Regent Bank v. Woodcox*, 636 So. 2d 885, 886 (Fla. 4th DCA 1994).

<sup>5</sup> *State v. Viney*, 120 Fla. 657, 663, 163 So. 57, 60 (1935).

<sup>6</sup> *Gantz v. First Nat. Bank of Miami*, 138 So. 2d 367, 368-69 (Fla. 3d DCA 1962).

<sup>7</sup> *Zureikat v. Shaibani*, 944 So. 2d 1019, 1023 (Fla. 5th DCA 2006) (quoting *Ferguson v. State Exchange Bank*, 264 So. 2d 867, 868 (Fla. 1st DCA 1972)). It is an open question — and one perhaps too broad to address in this article — whether this judicial admonition to “liberally” construe the proceedings supplementary statute is at odds with the rule of statutory construction that a statute in derogation of the common law must be strictly construed. See *Ady v. Am. Honda Fin. Corp.*, 675 So. 2d 577, 581 (Fla. 1996).

<sup>8</sup> See The Florida Bar, *Basic Creditors' & Debtors' Rights in Florida* §11.17 (2007).

<sup>9</sup> Fla. Stat. §56.29(1). See also *Regent Bank*, 636 So. 2d at 886.

<sup>10</sup> The decisions in conflict were *Exceletech, Inc. v. Williams*, 579 So. 2d 850 (Fla. 5th DCA 1991), and *Robert B. Ehmman, Inc. v. Bergh*, 363 So. 2d 613 (Fla. 1st DCA 1978).

<sup>11</sup> This problem has long been acknowledged. As one commentary noted over 50 years ago, “the statutes are silent on the procedure for bringing in third parties in order to protect their interest.” The Florida Bar Continuing Legal Education Division, *Florida Civil Practice After Trial* §3.30 (1966).

<sup>12</sup> See, e.g., *Ryan's Furniture Exchange, Inc. v. McNair*, 162 So. 483, 487-88 (1935); *Patterson v. Venne*, 594 So. 2d 331, 332 (Fla. 3d DCA 1992); *Standard Prop. Inv. Trust, Inc. v. Luskin*, 585 So. 2d 1099, 1100 (Fla. 4th DCA 1991).

<sup>13</sup> *Mejia v. Ruiz*, 985 So. 2d 1109, 1112 (Fla. 3d DCA 2008) (internal citations omitted).

<sup>14</sup> *Id.* It is unquestionable that due process rights extend to impleaded defendants in proceedings supplementary. *Tomayko v. Thomas*, 143 So. 2d 227, 229 (Fla. 3d DCA 1962) (“In each case where such

proceedings are followed, the rights of third parties may not be adjudicated unless such third parties have been first fully impleaded and as parties given an opportunity to adequately present their defenses, since these statutes must be enforced so as to afford due process.”). The question this article considers is whether those due process rights are being adequately protected by the statute and the courts.

<sup>15</sup> *Sverdahl*, 582 So. 2d at 740.

<sup>16</sup> *Pollizzi v. Paulshock*, 52 So. 3d 786, 790 (Fla. 5th DCA 2010).

<sup>17</sup> *Zureikat*, 944 So. 2d at 1025 (“Fair notice of [judgment creditor’s] allegations in seeking to collect on his judgment was afforded to [impleaded defendant], who was given the opportunity to present her case at a hearing before an impartial decision maker; she was entitled to no more.”).

<sup>18</sup> See Fed. R. Civ. P. 69(a) (providing that state law concerning supplementary proceedings will govern to the extent that it is not preempted by federal law).

<sup>19</sup> See *Kobarid Holdings, S.A. v. Reizen*, 2007 WL 14294 at \*2 (S.D. Fla. 2007) (“[The judgment creditor] was not required...to set forth all transactions that may become part of the evidentiary hearing in the supplementary proceedings, in part because additional information may be obtained through future discovery from the Impleader Defendants.”). See also *Zhejiang Shaoxing Yongli Printing & Dyeing Co., Ltd. v. Microflock Textile Group Corp.*, 06-22608-CIV, 2011 WL 2672266 at \*2 (S.D. Fla. 2011) (holding that allegation in motion to implead that the judgment debtor “transferred funds or assets to [the implead third parties] with the intent to hinder the Plaintiff/Judgment Creditor’s ability to satisfy its judgment and [that the implead defendants] are alter egos or mere continuations of Defendant” was sufficient to allow hearing on claims against implead defendants).

<sup>20</sup> Fla. R. Civ. P. 1.010 (emphasis added). The district courts of appeal have confirmed that the Florida Rules of Civil Procedure apply in proceedings supplementary. See, e.g., *Patterson v. Venne*, 594 So. 2d 331, 332 (Fla. 3d DCA 1992) (citing Fla. R. Civ. P. 1.010 and *Exceletech, Inc. v. Williams*, 579 So. 2d 850, 852 (Fla. 5th DCA 1991)).

<sup>21</sup> See Fla. R. Civ. P. 1.110(b) (“A pleading which sets forth a claim for relief, whether an original claim, counterclaim, crossclaim, or third-party claim, must state a cause of action and shall contain . . . a short and plain statement of the ultimate facts showing that the pleader is entitled to relief.”); Fla. R. Civ. P. 1.140 (providing for interposition of legal defenses by motion).

Some courts have found that because proceedings supplementary are entirely statutory, and because there is no express provision for it in the statute, the impleaded defendant is prohibited from bringing a counterclaim against the judgment creditor, even though such a right is provided for by the rules. See *Mystique, Inc. v. 138 Intern., Inc.*, 07-22937-CIV, 2010 WL 3008809 (S.D. Fla. 2010) report and recommendation adopted sub nom. *Mystique, Inc. v. 138 Intern. Inc.*, 10-21421-CIV, 2010 WL 4316957 (S.D. Fla. 2010) (Jordan, J.). While this holding squares with the notion that a proceeding supplementary is intended to provide expedited relief to a judgment creditor, it also puts the impleaded defendant at a serious strategic disadvantage.

<sup>22</sup> *Connolly v. Sebeco, Inc.*, 89 So. 2d 482, 484 (Fla. 1956).

<sup>23</sup> *Sverdahl*, 582 So. 2d at 740.

<sup>24</sup> See, e.g., *Patterson v. Venne*, 594 So. 2d 331, 332 (Fla. 3d DCA 1992).

<sup>25</sup> *Meyer v. Faust*, 83 So. 2d 847, 848 (Fla. 1955).

<sup>26</sup> *J.S.L. Const. Co. v. Levv*, 994 So. 2d 394, 399 (Fla. 3d DCA 2008) (internal citations omitted).

<sup>27</sup> Fla. Stat. §56.29(2).

<sup>28</sup> *Patterson*, 594 So. 2d at 332 n.1.

<sup>29</sup> See, e.g., *Meyer v. Faust*, 83 So. 2d 847, 848 (Fla. 1955); *Young v. McKenzie*, 46 So. 2d 184, 185 (Fla. 1950); *Zureikat v. Shaibani*, 944 So. 2d 1019 (Fla. 5th DCA 2006).

<sup>30</sup> Similarly troublesome, although not addressed in this article, is the provision of the statute providing that witnesses in statutory examinations are not entitled to assert their Fifth Amendment privilege against self-incrimination, although the statute purports to grant immunity to the witness. Fla. Stat. §56.29(8) (“An answer cannot be used as evidence against the person so answering in any criminal proceeding.”). Several courts have held that this provision cannot restrict a witness from asserting his or her Fifth Amendment rights, see *Novak v. Snieda*, 659 So. 2d 1138, 1141 (Fla. 2d DCA 1995); *Compton v. Societe Eurosuise, S.A.*, 494 F. Supp. 836, 841 (S.D. Fla. 1980), providing further grounds for clarification of the statute.

<sup>31</sup> Fla. Stat. §56.29(4).

<sup>32</sup> Fla. Stat. §56.29(7).

<sup>33</sup> Fla. R. Civ. P. 1.490(c). And, of course, when a rule of civil procedure conflicts with a statute — at least on procedural matters — the rule prevails. Fla. Stat. §25.371.

<sup>34</sup> *Dezen v. Slatcoff*, 66 So. 2d 483, 485 (Fla. 1953) (holding that “this was a summary proceeding especially authorized by law and limited as above set forth, and no trial by jury was required”); *Jackson v. Ventas Realty*, 812 F. Supp. 2d 1306, 1310 (M.D. Fla. 2011) (“[B]ecause Section 56.29 codifies the formerly equitable proceeding for a creditor’s bill, no jury trial right attaches in a supplemental proceeding.”); *381651 Alberta, Ltd.*, 675 So. 2d at 1388 (holding that no jury trial right attaches to actions under §56.29, since “such an action is equitable in nature”); *Ferguson v. State Exchange Bank*, 264 So. 2d 867, 868 (Fla. 1st DCA 1972) (“The right asserted by appellant to a jury trial collides directly with the statutory language [in Fla. Stat. §56.29(7)] whereunder findings of fact may be made by a commissioner or master.”); *Brownstone, Inc. v. Miami Nat’l Bank*, 165 So. 2d 262, 264 (Fla. 3d DCA 1964) (“[T]his was a summary proceeding ... and no trial by jury was required.”) (quoting *Dezen*, 66 So. 2d at 485). As discussed below the consensus among courts is that the judgment creditor is entitled to both monetary damages and equitable relief against impleaded defendants in a proceedings supplementary.

<sup>35</sup> Actions at law clearly trigger the right to a jury trial. See *Miller v. Rolfe*, 97 So. 2d 132, 135 (Fla. 1st DCA 1957) (“Throughout the annals of our jurisprudence the right to trial by jury in actions cognizable at law, as guaranteed by the clear mandate of our Constitution, has remained sacred and inviolate”). See also *Hobbs v. Florida First Nat. Bank of Jacksonville*, 480 So. 2d 153, 156 (Fla. 1st DCA 1985) (“even though some of the issues in the mortgage foreclosure proceeding were equitable, the issues to be tried in the deficiency proceeding against petitioners are legal ones and petitioners are entitled to a jury trial on these.”). For cases providing for a defendant’s right to a jury trial in an original proceeding on a fraudulent transfer claim see *Fox v. City of Pompano Beach*, 984 So. 2d 664, 668 (Fla. 4th DCA 2008); *Hansard Const. Corp. v. Rite Aid of Florida, Inc.*, 783 So. 2d 307, 309 (Fla. 4th DCA 2001).

<sup>36</sup> Although the statute refers to the “defendant” carrying the burden of proof, Florida courts have held that the term “defendant” includes not only the judgment debtor but any transferee who has been impleaded as a defendant. See *Morton v. Cord Realty, Inc.*, 677 So. 2d 1322, 1324 (Fla. 4th DCA 1996) (emphasis added).

<sup>37</sup> Fla. Stat. §56.29(6)(a) (emphasis added).

<sup>38</sup> The Florida Bar, *Creditors' and Debtors' Practice in Florida* §7.19 (2007). *Wilder v. Punta Gorda State Bank*, 129 So. 865 (Fla. 1930) (holding that party attacking transfer of note on ground transfer was made in furtherance of scheme to defraud has burden of proof); *Perlman v. Delisfort-Theodule*, 09-80480-CIV, 2010 WL 4514249 (S.D. Fla. 2010), *aff'd*, 451 Fed. Appx. 846 (11th Cir. 2012) ("Once a transfer has been proven fraudulent, the recipient of the transfer bears the burden of showing why the transfer should not be avoided.").

<sup>39</sup> See *Palm Beach County v. Town of Palm Beach*, 426 So. 2d 1063, 1067 (Fla. 4th DCA 1983) ("Even in the simplest of transactions the burden of proving a negative can be an onerous one.").

<sup>40</sup> See *Dep't of Ins. v. Se. Volusia Hosp. Dist.*, 438 So. 2d 815, 821 (Fla. 1983) ("Under the equal protection clauses [of the Florida and Federal constitutions], governmental acts that classify persons arbitrarily may be invalid if they result in treating similar people in a dissimilar manner.").

<sup>41</sup> Fla. Stat. §56.29(5) ("The judge may order any property of the judgment debtor, not exempt from execution, in the hands of any person or due to the judgment debtor to be applied toward the satisfaction of the judgment debt.").

<sup>42</sup> Fla. Stat. §56.29(9).

<sup>43</sup> The burden shifting provision of the proceedings supplementary statute has its own serious due process concerns, dealt with below.

<sup>44</sup> *Estate of Jackson v. Ventas Realty, Ltd. P'ship*, 812 F. Supp. 2d 1306, 1309 (M.D. Fla. 2011) (quoting *In re Hill*, 332 B.R. 835, 843 (Bankr. M.D. Fla. 2005)).

<sup>45</sup> *In re Hill*, 332 B.R. at 843 (citing *Conrad v. McMechen*, 338 So. 2d 1306, 1307 (Fla. 4th DCA 1976)). *Accord Mystique, Inc. v. 138 Intern., Inc.*, 2010 WL 3008809 (S.D. Fla. 2010) report and recommendation adopted sub nom. *Mystique, Inc. v. 138 Intern. Inc.*, 2010 WL 4316957 (S.D. Fla. 2010) ("[p]roceedings supplementary are entirely statutory and [are] of limited purpose: to aid a judgment creditor ... to discover then effectuate the assets of a judgment debtor.").

<sup>46</sup> *Pollizzi*, 52 So. 3d at 789 (citing *Allied Industries Intern., Inc.*, 688 F. Supp. 1516).

<sup>47</sup> Charles Kline, *Collection Pursuant to Florida's Supplementary Proceedings in Aid of Execution*, 25 U. Miami L. Rev. 596, 608 (1971).

<sup>48</sup> This broad mandate is not intrinsically contradictory with the notion of this article — that impleaded defendants should receive greater constitutional and procedural protection in proceedings supplementary. After all, it is a given that circuit courts sitting in civil cases have extremely broad equitable and legal powers, yet the due process rights of parties to those proceedings remain a crucial consideration. A similar balance can easily animate proceedings supplementary.

<sup>49</sup> *General Guaranty Insurance Co. of Florida v. DaCosta*, 190 So. 2d 211 (Fla. 3d DCA 1966).

<sup>50</sup> See, e.g., *17315 Collins Ave., LLC v. Fortune Dev. Sales Corp.*, 34 So. 3d 166, 169 (Fla. 3d DCA 2010).

<sup>51</sup> See, e.g., *Ocala Breeders' Sales Co. v. Hialeah, Inc.*, 735 So. 2d 542, 543 (Fla. 3d DCA 1999).

<sup>52</sup> It should be noted that many of the problems with the proceedings supplementary statute identified in this article were previously diagnosed over 40 years ago in Charles Kline's excellent law review article, *Collection Pursuant to Florida's Supplementary Proceedings in Aid of Execution*, 25 U. Miami Law Rev. 596 (1971). As illustrated herein, since that time, the cases interpreting the statute have only multiplied its inherent uncertainty.

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# EXHIBIT “K”



### Chair's Message for Spring

It is with great pleasure and extreme pride that I get to formally brag about the Section's legislative and leadership accomplishments this year!

As some of you may have heard, but I cannot help repeating, the Section's special task force - headed up by former Chair of the Section, Lou Conti (2009-2010) - which has been working on the revisions to Florida's LLC statute for more than 3 years, scored a big win! On Friday, May 3, after an all-out effort by everyone involved to maintain momentum and get it done this year, the [Revised LLC Act](#) was passed as the last bill enacted by the 2013 Florida Legislature with 117 yeas and 0 nays in the Florida House!

It was (by all accounts) an extraordinary effort by our sponsors Representative Charles McBurney in the House, and State Senator, David Simmons in the Senate (both of whom were incredibly proactive and out there for us), and by our Lobbying team of Bill Wiley, Aimee Diaz Lyon, and Greg Black. Huge thanks also goes to the core group of the LLC drafting task force who have literally been working daily since January to ensure passage, including Lou Conti, Greg Marks, Steve Lear, Gary Teblum, Phil Schwartz, Manuel Utset and Brenda Tadlock.

This has been an unforgettable experience for everyone involved, and the leadership of the Section wants to thank all you and all the other Section members involved (too numerous to mention, but no less important to the cause) for your contributions, patience, and good humor when disagreements arose, or times got tough and the hours long.

While passage of the Revised LLC Act was definitely a sweet and dramatic success for the Section, you also need to know that the outcome of the [Revised Uniform Arbitration Act \(RUAA\) \(SB 530/HB 693\)](#) was equally in the same category. Suffice to say it took tremendous energy and efforts by lots of folks involved in the Section - with Jon Polenberg, our Vice Chair for Legislation walking the point—to get that bill passed. The legislative sponsors for this bill are Senator Thrasher and Representative Moraitis who deserve our gratitude and admiration for all their support - they are real friends of the Section.

In addition to the Revised LLC Act being passed at the 11th hour, we learned late on Friday that all of the Section's nominees to the Inaugural Class of The Florida Bar Leadership Academy have been accepted and will now be our sponsored Fellows to the Academy. This is a tremendous accomplishment for the future leadership of the Section and The Bar - we have every reason to be extremely proud of our colleagues, Jodi Cooke, Doug Bates, Alvin Benton and Kelly Swartz.

Congrats to all of you - you make us proud! I want to thank former Chairs, Mike Higer and Mindy Mora, as well as Chair Elect, Steph Nagin and Secretary/Treasurer, Judge Van Nortwick for their assistance in the review and nomination process. Although our candidates were very strong and deserving, it certainly helped to have the existing leadership of the Section involved in our commitment to this new program! Thanks to all of you.

At the [Executive Council Retreat](#) late last month in Napa Valley, a concern (surprising to some, well known to others) was expressed by members of our Long Range Planning Committee ("LRP," comprised of our former Section Chairs, and this year Chaired by Greg Yadley at my request) that the Section does not have an entirely accurate common understanding of our Committee chairs' and vice chairs' total involvement, in the Section, national, regional and local bar organizations, as well as in the Big Bar. As a matter for our Historian, Phil Schwartz and current leadership, we believe that taking inventory of each person's participation would be helpful in LRP's future discussions and recommendations for leadership in the Section. To that end, Greg will be following up with each and every member of the Executive Council in this project - the Section will be putting together a service history of the Section, and we are requesting each member to submit a list of all years served on EC, positions held over the years, and any honors or special recognition awarded by, the Section, the Florida Bar, a local Bar association and the ABA. We will also be asking members of the EC for two or three accomplishments the member considers his or her most important contributions to the Section and perhaps a one or two sentence quote about the Section's influence on his or her professional career. This should be a valuable tool for all of us.

Although June is right around the corner, we still have a lot to do before the June meeting, including finalizing the RFP candidates for the Section's social media platform discussed in greater depth at our January meeting. So, let's finish strong for this Program Year. If you have any items that need to be on the Agenda for the June meeting, please let me know as soon as you can.

Have a great week and see you in Boca in June!

Brian

# **EXHIBIT “K”**

## BYLAWS OF THE BUSINESS LAW SECTION

### Article I NAME AND PURPOSE

**Section 1. Name.** The name of the section shall be "Business Law Section, The Florida Bar" (hereinafter referred to as the "section").

**Section 2. Purposes.** The purposes of the section are:

(a) to provide an organization within The Florida Bar open to all members in good standing of The Florida Bar who have a common interest in corporation, banking, business, and related areas of law;

(b) to provide a forum for discussion and exchange of ideas leading to the improvement of the laws relating to corporation, financial institutions, business, and related areas of law including, but not limited to, the substantive areas of the law within the purview of the committees of the section;

(c) to provide education and professional development in substantive areas of the law that are within the purview of the committees of the section, and to enhance business law education generally; and

(d) to propose and comment upon legislation and regulations in the substantive areas of law that are within the purview of the committees of the section.

### Article II MEMBERSHIP

**Section 1. Eligibility.** Any member in good standing and any law faculty affiliate (under Rule 1-3.9) of The Florida Bar interested in the purposes of the section is eligible for membership upon application and payment of the section's annual dues. Any member who ceases to be a member in good standing of The Florida Bar (or ceases law faculty affiliate status) shall no longer be a member of the section.

**Section 2. Affiliate Members Eligibility.** The executive council may enroll, upon request and payment of the prescribed dues, as affiliate members of the section, other persons who have an interest in and intent to make a contribution to the section's activities as defined herein. The purpose of affiliate membership is to foster and promote the development and communication of information concerning business law, but not to encourage the unlicensed practice of law. The number of affiliates shall not exceed one-third of the section membership. An affiliate member shall be and affiliate of this section only. Affiliate membership shall afford such affiliate member no status as or any of the rights of a member of The Florida Bar.

(a) To qualify as an "affiliate" or "affiliate member," a person must:

(1) hold a Juris Doctor degree from an accredited law school and be employed full time as a professor of law at an accredited law school;

(2) be an "authorized house counsel" pursuant to chapter 17 of the Rules Regulating The Florida Bar;

(3) be duly admitted to practice law and in good standing under the laws of any state or territory of the United States or the District of Columbia;

(4) be a student currently enrolled in an accredited law school; or

(5) be a graduate of an accredited law school who has applied for, but not yet admitted to membership in The Florida Bar.

(b) Affiliates shall not vote or hold a section office, or participate in the selection of officers or members of the executive council.

(c) Affiliate members shall pay dues as prescribed by the section from time to time. The section shall reimburse The Florida Bar for expenses incurred by The Florida Bar in administering this section's affiliate membership.

**Section 3. Administrative Year.** The administrative year of the section shall run concurrently with the administrative year of The Florida Bar.

**Section 4 Annual Dues.** The annual dues shall be in an amount fixed by the executive council and approved by the Board of Governors of The Florida Bar. There shall be no proration of annual dues. Upon becoming a member, dues shall be payable thereafter in advance of each membership year. Any member whose dues are in arrears for a period of 3 months shall thereupon cease to be a member of the section.

### **Article III OFFICERS**

**Section 1. Selection of Officers.** The officers of the section shall be a chair, a chair-elect and a secretary-treasurer. The chair-elect shall become chair in the manner provided by these bylaws. The chair-elect and the secretary-treasurer shall be elected at the annual meeting of the section each year in the manner provided by these bylaws. The chair shall during January of each year appoint a nominating committee consisting of 3 members of the long range planning committee, which shall nominate then-active members of the section for each of the offices of chair-elect and secretary-treasurer. Other nominations may be made by any 10 members in good standing of the section who shall file with the secretary-treasurer of the section at least 30 days prior to the annual meeting a petition setting forth the name of any such nominee, and the secretary-treasurer of the section shall forthwith notify the other officers of the section of such nomination. At the election held at the annual meeting of the section, nominations for the office of chair-elect and the secretary-treasurer shall not be permitted unless the nomination shall have been made in the manner herein provided.

**Section 2. Duties of Officers.**

(a) *Chair*. The chair shall preside at all meetings of the section and at all meetings of the executive council of the section. The chair shall appoint the chairs and vice-chairs of all committees, prepare all reports to be submitted to The Florida Bar and perform such other duties as customarily pertain to the office of chair. The chair shall be an ex-officio member of each committee of the section.

(b) *Chair-elect*. The chair-elect shall become chair in the event of the death, resignation or failure of the chair to serve for whatever reason; provided, however, that in case of temporary disability or absence of the chair, the chair-elect shall serve as acting chair only for the duration of the chair's disability or absence. The chair-elect shall be responsible for such duties as the chair may designate. The chair-elect shall be an ex-officio member of each committee of the section.

(c) *Secretary-Treasurer*. The secretary-treasurer shall have the responsibility of accounting for all funds of the section, shall approve all disbursements and shall prepare financial statements, shall keep the permanent files and records of the section, including minutes of meetings of the section and of the executive council, and shall keep the various committee reports, except to the extent such services as are performed by The Florida Bar. The secretary-treasurer shall become chair in the event of the death, resignation or failure of both the chair and chair-elect to serve; provided, however, that in the event of temporary disability or absence of the chair and the chair-elect the secretary-treasurer shall serve only for the duration of the disability or absence.

### **Section 3. Term of Office.**

(a) *Chair*. The term of office of the chair shall begin at the conclusion of each annual meeting of The Florida Bar and shall end at the conclusion of the next annual meeting of The Florida Bar, at which time the chair shall be automatically succeeded by the chair-elect.

(b) *Chair-elect*. The term of office of the chair-elect shall run concurrently with that of the chair, beginning at the conclusion of the meeting of The Florida Bar at which the election as chair-elect occurred and ending at the conclusion of the next annual meeting when the chair-elect becomes chair.

(c) *Secretary-Treasurer*. The term of office of the secretary-treasurer shall run concurrently with that of the chair and chair-elect, beginning at the conclusion of the annual meeting of The Florida Bar immediately following election to the office of secretary-treasurer and ending at the conclusion of the next annual meeting.

**Section 4. Vacancies.** The chair shall fill all vacancies except vacancies in the offices of chair, chair-elect and secretary-treasurer, which vacancies shall be filled in the manner provided by these bylaws. In the event that the offices of chair, chair-elect or secretary-treasurer become vacant, then the executive council shall fill such vacancy from among its members for the unexpired term, and at the next annual meeting of the section such vacancies shall be filled in the manner provided for in these bylaws.

## **Article IV EXECUTIVE COUNCIL**

**Section 1. Governing Body.** The executive council shall be the governing body of the section between the annual meetings of the section. The chair of the section shall be the chair of the executive council and the secretary-treasurer shall be the secretary of the executive council. The chair, chair-elect and the secretary-treasurer shall constitute the executive committee of the executive council. The executive council shall conduct its business at regular and special meetings as provided for in these bylaws; provided, however, that the business of the executive council between regular meetings may be conducted by correspondence, telephone, facsimile or other electronic means to the extent authorized by the chair. The executive committee will meet as directed by the chair and may take emergency actions on behalf of the executive council except on legislative matters, between regular executive council meetings. The executive committee shall not conflict with the policies and expressed wishes of the executive council. A majority of the executive committee shall be sufficient to exercise its powers and it shall not be necessary that a formal meeting be held for action, action by correspondence, telephone, facsimile or other electronic means being permitted.

**Section 2. Membership.** The membership of the executive council shall consist of the officers of the section, the immediate past chair, the chair of the section, the chair and 1 or more vice-chairs of each committee of the section, the members of the long-range planning committee, any chair of a subcommittee of the section who is specifically designated by the chair and 5 at large members appointed by the chair of the section.

**Section 3. Term of Office.** Except as provided in Article V, Section 6, each member of the executive council shall serve a term of 1 year. Members of the executive council may be reappointed for 1 or more additional 1-year terms.

**Section 4. Vacancies.** If at any time during the term of office of a member of the executive council such office shall become permanently vacant by reason of death, resignation, ineligibility or other reason, the chair shall appoint a successor to serve for the balance of such term.

**Section 5. At Large Members.** The nominating committee appointed by the chair of the section under Article III, Section 1, shall nominate 10 then-active members of the section who, upon approval of the chair with the concurrence of the chair-elect and the secretary-treasurer, shall become at-large members of the executive council.

## **Article V COMMITTEES**

**Section 1. Committees.** The section=s committees shall include the following standing committees: budget, legislation, continuing legal education/programs, long range planning, and communications. The committees shall also include those that the executive council establishes from time to time in accordance with section 4 of this article. The section shall at least annually

publish a list of all committees.

**Section 2. Functions and Responsibilities of Committees.** The committees shall have responsibility for the subject matter indicated by their respective names, and the committees shall have such further responsibilities as the executive council or the chair of the section may assign.

**Section 3. Organization of Committees.** The chairs and vice-chairs of the committees shall be appointed by the chair of the section with the concurrence of the chair-elect and the secretary-treasurer. The retiring committee chairs shall deliver to the secretary-treasurer the permanent committee files and records and the secretary-treasurer shall arrange for the delivery of such files and records to the incoming committee chairs.

**Section 4. Change in Committee Structure.** The executive council may abolish any committee of the section, merge any 2 or more committees of the section or create any new committee in its discretion at any meeting of the executive council without amendment to these bylaws.

**Section 5. Liaisons.** From time to time the chair of the section may designate 1 or more persons to act as a liaison with a section, committee, subcommittee or other entity of the American Bar Association or any or all of the public and private law schools in the state of Florida (i.e., faculty liaisons) or any or all of the federal or state courts of Florida (i.e., judicial liaisons). The chair of the section may abolish any such designation or make new designations without amendment to these bylaws. Any persons designated as a liaison shall be voting members (except to the extent prohibited or limited by any federal or state statute, regulation or rule) of the executive council.

**Section 6. Legislation Committee.** The legislation committee shall be composed of at least 3 and no more than 9 members appointed by the chair of the section and approved by the executive council. Members shall serve a term of 2 years, with such terms being staggered so that approximately one-half of such members are appointed each year.

**Section 7. Long Range Planning Committee.** The persons eligible for membership on the long range planning committee are: (a) past chairs of the section; and (b) affiliate members with more than 5 years of distinguished service on the executive council who are nominated by the chair-elect and approved for service by both the executive council and a majority of the members of the long range planning committee.

**Section 8. Budget Committee.** The budget committee shall be responsible for overseeing preparation and implementation of the section=s budget. The secretary-treasurer shall chair the budget committee and its members shall include the immediate past chair of the section, a member of the long range planning committee, and 2 other council members appointed by the chair of the section.

## **Article VI MEETINGS**

**Section 1. The Section.** The annual meeting of the section may be held at the same time and place as the last meeting of the executive council immediately preceding the annual meeting of The Florida Bar. The notice to all members as to time and place of such annual meeting shall be given at least 30 days in advance thereof. The members of the section present in person at any annual meeting shall constitute a quorum and a majority vote of those present shall constitute the act of the members and shall be binding.

**Section 2. Executive Council.** Each new executive council shall hold its organizational meeting during the annual meeting of The Florida Bar. The executive council shall meet as directed by the chair of the section; provided, however, that there shall be at least 2 other regular meetings between each annual meeting. The business of the executive council may be conducted between its meetings by correspondence, telephone, facsimile or other electronic means to the extent authorized by the chair. The date and location of each such regular meeting shall be fixed by the executive council at least 14 days prior to the date thereof. Special meetings of the executive council shall be held at such times and such places as the chair may designate by written notice to each member of the executive council at least 14 days prior thereto. It is the policy of the section that such meetings be held in places to best serve the travel convenience of the greatest number of executive council members. At such meetings the written proxy of any member shall be recognized and may be voted by the holder therein designated. Members of the executive council in attendance, whether in person or by written proxy, shall constitute a quorum for any regular or special meeting and an affirmative vote of the majority of those present in person or by written proxy constitutes the act of the executive council and shall be binding. The executive committee may meet and/or take action for the executive council as provided in Article IV, Section 1 of these bylaws.

**Section 3. Committees.** The chair of each committee may call a meeting of the committee at such times and at such places and upon such notice as the chair deems desirable.

## **Article VII AMENDMENTS**

These bylaws may be amended at any meeting of the executive council (but not the executive committee); provided, however, that no amendment so adopted shall become effective until approved by The Florida Bar.

## **Article VIII MISCELLANEOUS**

**Section 1. Action of The Florida Bar.** No action of the section shall be represented or construed as the action of The Florida Bar until the same has been approved by The Florida Bar. All recommendations of the section to The Florida Bar, any branch of the judiciary or to any other group or body to which the recommendations may be directed must first be approved by the

executive council and if made to other than The Florida Bar, it shall have the prior approval of The Florida Bar or be in accord with Florida bar policies and procedures permitting such action without such approval.

**Section 2. Financial Obligations.** Before payment, all financial obligations must first be approved in the manner specified by the executive council.

**Section 3. Compensation and Expenses.** No salary or other compensation shall be paid to any member of the section for performance of services to the section, but the chair of the section may authorize the payment of reasonable out-of-pocket expenses resulting from performances of such services, as well as the expenses of faculty and judicial liaisons for travel to and from, and expenses incurred in connection with, executive council meetings.

**Section 4. Conformance with Policies of The Florida Bar.** No action of the section shall be contrary to the policies of The Florida Bar.