

The Florida Bar – Business Law Section

MEETING OF THE EXECUTIVE COUNCIL

Minutes of Meeting - Thursday, January 20, 2011 – 3:30 p.m.

Tampa Airport Marriott

(flabiz.org)

The following members of the Business Law Section and the Executive Council were recorded as being present at the meeting of the Executive Council on Thursday, January 20, 2011 commencing at approximately 3:30 p.m.

Brian Gart	Mindy Mora	Stephen Nagin
Mary Scriven	Robbie Colton	James Moon
Steven Fender	Lewis Killian	Michael G. Williamson
Philip Schwartz	Bill Wiley	Gary Teblum
Jennifer Morando	Mark Nichols	Drew Jenkins
Peter F. Valori	Cathy McEwen	Melanie Damian
Jodi Cooke	Leyza Blanco	Douglas Bates
Phil Landau	Paul G. Hymen	Jon Polenberg
Jude Cooper	Ed LaRose	Doug Cherry
Steve Milbrath	Robert Thornburg	Michael Chesal
Nathaniel Roland	Jeffrey Hirsch	Ryon McCabe
Kacy Donlon	Robert Barron	Russ Blain
Jason M. Murray	John Emmanuel	Stuart Ames
Stuart Cohn	Gwynne Young	Rick Gross
Matt Kramer	John Olson	Manuel Farach
Louis Conti	Tom Messana	Karmika Rubin

Kenneth Murena

Jeff Davis

Paul Steven Singerman

Jason Burnett

Lynn Welter Sherman

Don Workman

Laurel Isicoff

Juan Martinez

Marsha Rydberg

Michael J. Higer

I. Chair's Call to Order and Opening Remarks

The Chair, Michael Higer called the meeting of the Executive Council to order at approximately 3:30 p.m. and welcomed all attendees and guests. In lieu of introductions a sign-in sheet was circulated to record attendance.

Mr. Higer then reported on the current progress and initiatives of the Pro Bono Committee and sought approval by the Executive Council of a resolution proposed by the Pro Bono Committee, as follows:

“Be it resolved that the Business Law Section, encourages Pro Bono service and 100% participation in Pro Bono service by all Business Law Section members and the attorneys within their firms.”

The Motion to approve the resolution was made by members of the Pro Bono Committee, seconded by Louis Conti, immediate past-Chair of the Business Law Section, and the resolution passed unanimously.

Additionally, Mr. Higer introduced Andrew Jenkins who will serve as the liaison to the Business Law Section from the Young Lawyers Division of the Florida Bar.

Mr. Higer also announced that Mr. Schwartz, a former Section Chair, had agreed to be the Section's Historian and Parliamentarian, responsible for recording and developing a history of the Business Law Section and to review, as Parliamentarian, all existing by-laws and address points of order at future Executive Council meetings.

II. Secretary Treasurer Report

Mr. Gart presented the minutes from the September 6, 2010 Meeting of the Executive Council at the Annual Retreat, which were approved with one amendment to reflect Mr. Conti's attendance. Additionally, Mr. Gart moved for final approval of the 2011-2012 Proposed Budget based on an increase of approximately \$46,000 in revenues from that portion of the members' Florida Bar dues retained by the Section, reflecting an annual increase from \$40 to \$50 for Section membership dues. Mr. Gross seconded the Motion and the dues increase was approved by unanimous consent. This Program Year's Budget and next Program Year's Budget were amended to allow for one night's attendance by the Clerks of the Bankruptcy Courts at both the

Annual Meeting and the Annual Retreat, and to allow for the reimbursement of their reasonable travel expenses for attending the meeting.

### III. Opinions Standards Task Force

Mr. Schwartz reported that final revisions to the Committee's report and standards for final publication would be presented to the Executive Council at the Annual Meeting in June, and that such final revisions were also being reviewed and input provided by the Real Property Section.

### IV. LLC Task Force

Mr. Conti updated the Executive Council with respect to the current status of the LLC Task Force and efforts to have the Olmstead patch approved during the upcoming legislative session. Mr. Conti and other members of the Task Force were making efforts to obtain the support of other Sections of the Florida Bar and have Representative Stargell sponsor the Olmsted patch as a pre-filed bill for the 2011 legislative session. The Business Law Section is working with members of the Real Property and Tax Sections (which have also proposed their own patch to the LLC statute in light of Olmstead) to reconcile the positions amongst the various Sections. Mr. Conti went on to report that the Florida Banker's Association is sponsoring a competing bill which he believed that the various substantive law Sections of the Florida Bar would ultimately oppose, which as proposed would allow judgment creditors to reach through the LLC to single-member owner based on a control determination, and allow Florida Courts to disregard the law of other jurisdictions. Recent drafting sessions have focused primarily on the Olmstead patch and the Tax Section's proposed compromise based on the new NUCASAL proposed modifications, which as proposed would allow a judgment creditor of a multi-member LLC to foreclose on a transferable interest and with respect to a single member LLC allow judicial foreclosure of the controlling interest.

Gary Teblum, Chair of the Legislation Committee, reported that the "Big Bar" had approved the Section's legislative position with respect to the Olmstead patch. Mr. Higer thanked Mr. Conti and, Mr. Teblum and the entire membership of the Task Force for their work on the Olmstead patch.

### V. Antitrust, Franchise and Trade Regulation

Mr. Jason Murray reported that the Committee was planning a joint CLE presentation with the ABA for a full day on the fundamentals of foreclosure law and that advertising for the CLE program had already begun. The Committee is also planning to have a CLE speaker at the Committee's meeting during the Annual Meeting of the Florida Bar from the Attorney General's office and were addressing inclusion of an article in the BLS Journal for 2011.

## VI. Bankruptcy / UCC

Chair Leyza Blanco reported that the Committee's meeting was very well attended and consisted of an agenda focused on reviewing pre-filed bills and proposed legislation, including rights of residential tenants in foreclosure; available exemptions for inheritance of an IRA; and the formation of a study group to address non-judicial foreclosure bills in the upcoming legislative session. Ms. Blanco also reported that the Committee is closely reviewing other pre-filed bills from the Florida Banker's Association, and that there could be a need to review and vote by future e-mails to establish the Committee's position before the start of the legislative session. The meeting concluded with a CLE presentation on distressed asset sales by Ken Mann from Equity Partners Inc.

## VII. Bankruptcy Judicial Liaison Committee

Chief Judge Paul Hyman, Judicial Chair reported that the meeting had focused on public outreach programs, a discussion on pre-filing considerations, individual Chapter 11 cases, reports from the Districts and recent developments with respect to fees in consumer cases.

## VIII. Business Litigation Committee

Ryon McCabe reported that the proposal with respect to Florida Statutes Section 57.106 to allow for a new provision which would permit an award of attorney's fees for the time spent litigating the amount of attorney's fees (which had been approved by the Executive Council, at the meeting on September 6, 2010) would be sponsored and lobbied by Bill Wiley, but that no sponsor had been obtained for the bill for the coming legislative session. Mr. Wiley added that the white paper in support of the bill would need to be "beefed-up" and thereafter sponsorship pursued. Additionally, the Committee put together a sub-committee to address other legislative initiatives including, support of the Olmstead patch and the work of the LLC Drafting Committee, arbitration and recent e-discovery rules. He also reported that the revised Uniform Arbitration Act would likely be brought before the Executive Council for approval at the time of the Annual Retreat in Naples. Lastly, Melanie Damian made a motion to allow \$1,000 to be drawn from the current Budget for BLS sponsorship of the Annual Judicial Roundtable, which matter was seconded and approved by unanimous consent.

## IX. Communications, CLE and Membership

Mr. Valori, with the assistance of Zack Hyman and Alan Aronson, gave a report concerning the joint efforts of Communications, CLE and the Membership Committee, those Committees having been reorganized for the current Program Year, and addressed or presented the following:

- The materials for certification for business litigation would be made available through the BLS website;

- Sought and obtained Executive Council approval to review the contract for website manager Tracy Eller for the coming year;
- At Zack Hyman's request asked members of the Executive Council and Business Law Section in connection with the work of the Communications, Membership and CLE Committee to encourage BLS members to attend the University of Florida Reach-Out to Law Students and requested \$2,500 be allocated from the current Budget to sponsor a reception in connection with that program, which request was approved by unanimous consent;
- The focus of membership efforts for the coming year is to be on reach-out programs to law students, starting with the organization of the upcoming Nova Southeastern University program. The goal is to reach out to all of the law schools in the State;
- To plan for at least of one CLE program by each substantive law sub-committee of the Section during each program year;
- There will also be efforts to develop a formal mentoring program to young lawyers;
- To contact formerly active members; and
- Develop materials to highlight membership benefits on the website, at Section meetings and CLE programs.

#### X. Computer Law

Mr. Milbrath gave the report concerning planning for an upcoming CLE presentation at their regular meeting during the Annual Meeting of the Section in June, 2011 on cyber security law and new developments in e-discovery and forensics.

#### XI. Corporations, Securities and Financial Services

Alan Howard presided over the meeting and provided the report which included a presentation by PCE entitled "The State of the M&A Markets." Mr. Teblum gave a report concerning the work of the LLC Drafting Committee and progress on the Olmstead patch. Additionally, the Committee considered and presented two legislative items for executive council consideration and "triple motion", both which were passed by unanimous consent. The first concerned finalizing BLS approval of House Bill 7157 on transferee tax liability, which Mr. Wiley reported was now much more balanced and provided for greater due-process and would likely receive Department of Revenue cooperation. Additionally, the Committee presented and requested the Executive Council adopt the position of the Tax Section which would allow for a clarification of Florida Statute Section 213.758 with respect to "transfer of tax liabilities," in order to streamline the transfer of businesses and stock of goods. Mr. Teblum then moved for

Executive Council support of the clarification, the matter was seconded by Stuart Ames and approved by unanimous consent. Mr. Wiley also presented for review purposes the requirements of the “triple motion” process and Board of Governor review.

## XII. E-discovery Committee

Doug Cherry reported on the work of this special Committee, comprised of members of Business Litigation, Computer Law, and Intellectual Property, to review and approve further procedural amendments to the e-discovery amendments of the Florida Rules of Civil Procedure and moved to approve the recommended rule changes. Mr. Valori seconded the Motion and the matter passed unanimously.

## XIII. Diversity Committee

Mr. Murray provided the report concerning the continuing efforts of the Committee to support minority mentoring picnics and diversity programs around the State, including continuing give-aways and raffles for mentees, and a two night stay during the Business Law Section Retreat at the Ritz Carlton in September, and sought approval to allocate \$2,000 from the Budget for sponsorship of the Central Florida Mentoring Picnic, with the funds to be allocated out of the Membership line item and/or Diversity line item in the Budget. The matter was seconded by Mark Nichols and passed by unanimous consent. Mr. Murray also then discussed the current status of the Sections’ diversity plans, the short and long-term goals and gave his view of the current progress of the Committee and recent conference calls during which the strategic plan had been discussed and developed. The Committee plans to present the final diversity plan for approval at the Executive Council meeting in June. Mr. Higer added that the diversity plan is a priority of this Section, a “must do” and that the Committee needs the support of the entire Section membership with respect to participation and events to be outlined in the diversity plan and confirmed that the roll-out of the diversity plan would go forward in June.

## XXIV. FICPA Liaison Committee

No formal meeting was conducted but it was stated that conference calls to address the continuing business of the Committee were to be scheduled in advance of the June meeting.

## XXV. Intellectual Property

Robert Thornberg, reported that the meeting had been well attended, that approval of the e-discovery rules had been discussed, and that the Committee was not considering any immediate legislative issues. The Committee has also put together a three member task force to address new trade-mark registration examination procedures. Additionally, the Committee had been able to overcome the past lapse of CLE programs and has coordinated a joint sponsorship with the Hillsborough County Bar Association IP sub-committee of the Second Annual Symposium on IP Law scheduled for April 14 and 15 in Tampa.

## XXVI. Legislation

Gary Teblum provided the report and reviewed the annual process for the review of pre-filed bills by members of the substantive law committees and the restructuring of the Legislation Committee to include standing membership of the vice chairs of the substantive law committees for purposes of assigning pre-filed bills to be analyzed and determine whether they would obtain Section support or opposition. Mr. Teblum, with the assistance with Mr. Wiley then reviewed the current legislative positions of the Section and presented Mr. Wiley's legislation status memo and a number of Section positions, including bills concerning transferee tax liability; carry over positions from 2010; Section 57.106; the opposition of non-judicial foreclosure; the development of white papers in opposition of non-judicial foreclosure bills; and the remainder of the LLC Drafting Committee's work likely being a 2012 project. The Committee also considered the request of Business Litigation Committee for the review of the proposed recusal statute.

## XXVII. Long Range Planning

Ms. Colton reported on the continuing initiative of the Long Range Planning Committee to support two fellowship positions during each program year which would encourage membership and diversity through the fellowship program. Ms. Colton reminded everyone about the current benefits for the fellowship, including a \$2,000 stipend for attendance at the Annual Retreat and non-voting membership in the Section for any law student who qualifies for the fellowship.

## XXVIII. Pro Bono Committee

Melanie Damian provided the report and the statistics on pro-bono participation and efforts of the Committee to start tracking participation of the Section membership. The Committee had resolved to require a regular announcement at each substantive law committee meeting asking each Chair, as part of their agenda to encourage participation and restate the Pro Bono mission as follows:

Be it 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 reaffirming the Business Law Section's support and commitment to propose pro bono service at CLE programming and other appropriate Section events.

The Committee also resolved to have links on the website for pro-bono opportunities; apply to the Florida Bar Foundation and other non-profits for sponsorship of the Bankruptcy Law Clinic; and seek outside general counsel support of the Section's pro-bono initiatives. Additionally, the Committee resolved to provide and profile monthly testimonials and made a motion to have the Executive Council allow a discount of 50% off the registration fee for the

Annual Retreat for any member who took on one pro-bono case a month. The Motion was seconded by Mr. Polenberg and passed by unanimous consent of the Executive Council. Additionally, the Committee moved for expenditure from the current Budget of \$1,000 to purchase frames for “One Campaign” posters outside of the Bankruptcy Courtrooms throughout the State. The Motion was seconded by Judge McEwen. Additionally, Ms. Damian reported on the focus of the Committee and the Section on posting the Pro Bono efforts of law firms throughout the State, and participation in pro-bono activities on the Section website; and to collect various law firm’s pro-bono practices, so they also could be posted on the Section’s website.

### **Other Reports and Initiatives**

#### **XXIX. State and Federal Court Liaison**

Mr. Fender reported on the Committee’s last meeting by telephone conference and the upcoming 11<sup>th</sup> Circuit Judicial Conference.

#### **XXXI. FASH**

Mr. Burnett reported on the recent efforts to educate consumers on the bankruptcy option, opportunities for mediation, Susan Sharpe’s appointment as liaison to FASH, and the mandatory mediation program.

#### **XXXII. Board of Governors**

Now, President-elect, Gwynne Young provided the report as Section liaison and reported concerning the Board of Governors’ December Meeting, as follows:

- Amongst other legislative positions, the Big Bar is supporting the Business Law Sections’ position on the Olmstead patch.
- Steve Metz, Legislation Counsel gave a report on the upcoming session of the legislature being very tough for the Florida Bar and the legal profession as a result of the change in administration, the budget deficit, and that lack of the judicial funding and the Court system would be high priority;
- the Proposed Pension Reform Bill;
- That amongst the Bar’s strategic plan the number one priority was the diversity program and that a \$50,000 diversity grant had been approved at the Big Bar level and approved for funding; and that

- There was a revised professional ethic's opinion concerning contacting government employees when represented by counsel.

XXXIII. Chair's Report

Mr. Higer recognized the participation of Judge Murray Silverstein, emphasized again the importance of the Section's pro-bono initiative, thanked the Young Lawyer Division representative Mr. Jenkins for attending, welcomed new members, and provided a report on the upcoming Amsterdam Executive Council Retreat in May.

XXXIV. Chair Elect's Report

Ms. Mora reported on the Retreat planning and Alan Aronson's acting as Chair of the Retreat and asked for a volunteer to serve as vice-chair for Retreat sponsorship and planning. Ms. Mora also reported on the current planning and organization of the Retreat Committee and requested participation on the upcoming Retreat Committee Calls to address sponsorship activities.

Thereafter the Meeting of the Executive Council was adjourned.