

**MINUTES OF THE EXECUTIVE COUNCIL OF THE
BUSINESS LAW SECTION OF THE FLORIDA BAR
APRIL 13, 2002**

The Executive Council of the Business Law Section of The Florida Bar (the “Section”) held a meeting at Hawk’s Cay Resort in Duck Key, Florida, on April 13, 2002. Chair David Felman called the meeting to order at 9:03 a.m.. The members of the Executive Council who were present at the meeting were:

David Felman
John Emmanuel
Jim Murphy
Honorable Michael Williamson
Stu Ames
Greg Yadley
Scott Shuker
Gardner Davis
Karen J. Orlin
Ed LaRose
Larry Silverman
Stuart Cohn
Diane Wells
Alan Howard
Mark Wolfson
James Gale
Russ Blain
Herb Allen
Ava Doppelt
Honorable David A. Baker
Marilyn Cane
Jeff Hirsch
Paul Hyman
Steven Peretz
Stephen Nagin
Joel Rothman
Maxine Long
Philip B. Schwartz
Steve Mahle
Honorable William A. Van Nortwick
Scott Austin
Lou Conti
Honorable Thomas B. Smith
Michael Higer

Also present by invitation were Bill Wiley, Section Legislative Consultant, Alina Cooper, The Florida Bar Staff Liaison, and Gregory L. Mayback, Lawrence A. Greenberg, Herb Allen, and David Sigalow.

Chair David Felman welcomed everyone to the meeting. The minutes of the January 20, 2002, meeting of the Executive Council were approved with the following corrections: Mark Wolfson, Lou Conti, and Professor Stuart Cohn should be added to the list of persons who were present at the meeting and the spelling of the names of John Olsen [sic] and Tim Grigham [sic] should be corrected to John Olson and Tim Brigham, respectively.

Treasurer's Report and Budget Committee Report

Jim Murphy reported that the Section's fund balance at the beginning of the current fiscal year was \$165,319, and that he anticipated that the fund balance at the end of the fiscal year would be approximately \$100,000, reflecting about a \$65,000 operating loss. Factors which contributed to the operating loss were the start up costs for the website, the deficit for the 2001 Section Retreat, and declining revenues from CLE seminars.

Judge Williamson reported on the Budget Committee's review of the 2002-2003 Section Budget. He reviewed an analysis of historical budgets and actual income and expenses of the Section over the past six years. Judge Williamson stated that due to the increase the Section dues which the Executive Council had approved and expense savings on the Retreat and other items, the Section should realize a slight increase (about \$8,000) in its beginning fund balance at the end of the 2002-2003 fiscal year, which would be the first year since the 2000-2001 fiscal year when the Section had not sustained an operating loss. The Chair thanked Judge Williamson, on behalf of the Section, for his work on the Budget Committee.

Legislation

Maxine Long reported that the Section had achieved great success on its legislative agenda during the past legislative session, despite the battles over reapportionment and financial issues which consumed much of the legislators' time. The UCC Revised Article 9 Glitch Bill and the LLC Glitch Bill sponsored by the Section both passed. Maxine added that a glitch bill on Article 607 sponsored by the Secretary of State, about which the Committee had significant concerns, was withdrawn for further study.

Bill Wiley expressed special thanks to Gary Teblum, Lou Conti, Stuart Cohen, Scott Austin, and Karen Orlin for their assistance during the session. Chair David Felman added further thanks to Mark Wolfson for his continuing work on UCC Article 9 and to Maxine Long for her work as Chair of the Legislative Committee. Bill informed the Council that all Section bills would sunset this year. He said that, although the legislative session would begin again in March 2003 with a large number of new legislators. Bill asked Committees to present their legislative proposals to the Executive Council by the Section Annual Retreat in August if possible. Bill further stated that, to give the Legislative Committee flexibility and direction in addressing matters arising during the legislative session, he would try to develop some general position statements for the Executive Council's consideration.

Committee Reports

Antitrust, Franchise and Trade Regulation

Ed LaRose reported that franchise rules were to be revised this summer, and that the Committee would be looking at putting together a CLE seminar to address the revisions. Ed also advised the Council that one additional attorney, Larry Silberman, had become Board Certified in Antitrust and Trade Regulation.

Bankruptcy/UCC

Russ Blain reported on a special meeting of the Committee held by teleconference on April 8, 2002, to address suggestions by the American Bar Association regarding to a proposal before Congress, as part of the proposed Bankruptcy Reform Act, to impose new liability standards and regulations on debtor's attorney's in bankruptcy cases. A copy of the minutes of the special meeting of the Committee is attached. Russ summarized that the Committee believed that the proposed standards would required attorneys to be "guarantors" of debtors' facts and almost would force attorneys to become "private investigators" with regard to information given to them by their clients. He said that the Committee had unanimously recommended sending a letter stating the Section's opposition to the proposal to congressman and senators on the Conference Committee considering the Act. Following discussion, the Council approved a triple motion authorizing this letter, with copies to be distributed to all the members of the Florida congressional delegation. Judge Williamson, Judge Hyman, and Judge Baker abstained from the vote on this issue.

Business Courts

Michael Higer advised the Council that Judge Smith had met with the Chief Judge of the Ninth Judicial Circuit to discuss a possible pilot project in that Circuit. Michael also stated that the Committee would be looking at whether support for the project could be garnered from the Orange County Commission.

Business Litigation

Steve Mahle reported that the Committee planned to present two CLE seminars. He said that, after lengthy debate, the Committee had approved producing a review course for Business Litigation Certification on audiotape, rather than through a live presentation. The Committee also planned to present a live seminar on September 27, 2002, in Miami, in cooperation with West Publishing Company (which publishes a six volume treatise on business litigation) on "Winning Business Litigation Cases."

Chair David Felman commented that producing seminars on audiotape was an alternative other committees should consider. Stuart Ames added that the ABA had begun presenting on-line seminars and requested that the CLE give consideration to this alternative.

CLE

Larry Silverman reported that registration was low for two upcoming live seminars, a bankruptcy seminar in Miami on May 1 in Miami and an IP seminar on May 2 in Orlando. He asked members of the Executive Council to assist in “talking up” these seminars and encouraging attorneys in their firms to attend.

Larry added that other Sections were grappling with the same problem of declining CLE seminar attendance, and that the Committee was investigating new alternatives for presentation formats for seminars. Larry said that with respect to all committee sponsored seminars, other than the Annual “View from the Bench” seminar, committees would be asked to present their seminar proposals to the CLE Committee for screening and approval. Larry added that this process was not intended to be adversarial in nature, but was to assist in assuring that seminars were developed and presented in a manner which would maximize chances for strong attendance and economic success. Judge Williamson noted that 60 attendees were about the break-even point for most live seminars. John Emmanuel suggested that committee chairs build in enough time in planning their seminars for CLE Committee screening and approval.

Jim Gale noted that advance registrations were very low at the recent “Law of the Internet” seminar, despite an outstanding faculty and program. It was only by hiring a publicist to assist in promoting the seminar and by publishing the seminar by email that attendance increased to forty attendees. Mark Wolfson commented on the impact of firms purchasing videotapes for mass viewing by firm attorneys. Steph Nagin commented on the impact of private companies presenting CLE seminars. As a means for insuring that each attorney who viewed a video or audio tape paid for it, Steph suggested that the Bar consider charging each bar member for registering each CLE course for CLE credit, in addition or in lieu of the cost of attendance at seminars or purchase of tapes.

Chair David Felman appointed himself, Larry Silverman, Brian Gart, Jim Gale, Jim Murphy, John Emmanuel, Joel Rothman, and Scott Shuker, to a task force to consider and evaluate CLE programs and presentation methods, and to make recommendations for changes or improvements to the Council, in light of these circumstances.

Computer Law

Joel Rothman advised the Council that the Committee planned to present a seminar on “Electronic Filing” at The Florida Bar Annual Meeting. Joel added that he had recently been appointed to a special task force of The Florida Bar addressing technology issues. He also advised the Council that the Committee was gathering articles published by Committee members to post on the Section website.

Communications

Diane Wells reported that letters had been sent to major law firms informing them about the resource for recruiting lawyers available on the Section website. Diane also discussed an inquiry that the Section Chair sent to the University of Florida College of Law to students in the

maintenance and improvements of the Section website. She advised the Council members that Professor Cohen had responded that there were practical problems with involving students in this endeavor, but that the Committee was exploring additional alternatives to decrease the costs of the website maintenance and improvement.

Diane also presented sample materials prepared by a graphic design firm to publicize the Section website, and she reviewed continuing efforts to build and improve upon the website contents, including adding old CLE course materials to the website library. She added that Dot Marketing would be sending out an email to all Section members introducing them to the website and explaining how to register as a Section website user, and that the Committee was planning to send out postcards to Section members publicizing the availability of advertising opportunities on the website. Diane stated that the Committee was continuing its work on a plan for advertising on the website and would report to the Council about its conclusions and recommendations at the next meeting. Diane also informed the members that Dot Marketing had agreed to return a \$4,000 overpayment that the Section had made under its contract to set up the website.

A brief discussion about publication of items over the website followed. Dave Felman stated that a priority for the next year would be to resume publication of "The Quarterly" on a regular basis which would henceforth be published on the website, however, rather than distributed in hard copy. Alina Cooper added that notices of the Annual Meeting and Agenda materials for committee meetings would also be posted on the website, and that Executive Council meeting materials would be distributed electronically, and no longer printed and mailed.

Corporations, Securities & Financial Services

Scott Austin reported that the LLC Glitch Act which the legislature had passed was on its way to the Governor for his signature and would become effective on October 1, 2002. Scott expressed special thanks to Lou Conti, Greg Marks, and Professor Cohn for their efforts in securing passage of this legislation.

Scott stated that Committee members had informally opposed passage of proposed amendments to Chapter 622 dealing with unincorporated associations and had worked with the Secretary of State's office in urging additional study of the broad glitch bill proposed by Secretary of State addressing business topics. He added that the Committee was working on its own proposed amendments to Chapter 607 through a subcommittee chaired by Jim Porter.

Scott also reported that the Committee was jointly sponsoring a CLE program on mergers and acquisitions with the Tax Law Section.

Intellectual Property

Steph Nagin reported that the Intellectual Property Committee was planning to have a joint meeting with the Computer Law Committee in June. Steph added that the Committee had recently sponsored the Fourth Annual Law of the Internet and that Judge Baker and U.S. District Judge Ann Conway would be participating at the upcoming IP seminar in Orlando.

Steph then summarized a proposal by the IP Committee for certification standards for IP Lawyers. The proposal allows for certification in one or more of sub-specialties -- Patent Law, Patent Litigation, Trademark Law, and Copyright Law, as well as for general certification in Intellectual Property for attorneys who meet the qualifications for certification in all four sub-specialties. Steph reported that the IP Committee at its January 2002 meeting had approved the standards for recommendation to the Council by a vote of 17 in favor, 2 against, and 2 abstentions.

The Committee received comments about the proposed standards from numerous individuals, including Committee Vice Chair Jim Gale and Executive Council and IP Committee member Ava Doppelt, as well as Gregory Mayback, a member of IP Committee and Registered Patent Attorney, and other interested persons who were not members of Council or the IP Committee. Following an extensive discussion, the Council approved a motion to approve in principle the IP certification proposal by the IP Committee subject to further refinement to be taken up by the Council at its June meeting.

Chair's Report

David Felman thanked Alina Cooper for her work on the program for the Council meeting and noted that Committee preference forms had been sent out to Section members.

Vice Chair's Report

John Emmanuel appealed to all Executive Council members for their assistance in securing additional sponsors for the 2002 Section Retreat.

Nominations Committee

Stuart Ames reported that the Nominations Committee recommended the election of John Emmanuel as Section Chair, Jim Murphy as Chair Elect, and Maxine Long as Secretary Treasurer for 2002-2003, with elections to be held at the June meeting.

The Council meeting adjourned at 1:00 p.m.