

- VIII. Chair-Elect's Report: James B. Murphy
1. Legislative Contract 2004

- IX. Future Meetings for the Executive Council:
Annual Section Retreat August 21- 24, 2003 - The Ritz Carlton Palm Beach
(For reservations call 561/533-6000, room rate \$ 135)

**Minutes of the Meeting of the Executive Council
of the Business Law Section of The Florida Bar**

April 26, 2003

The Executive Council of the Business Law Section of The Florida Bar met on April 26, 2003 at the Executive Council Retreat in New Orleans, LA. Chair, John Emmanuel called the meeting to order at 9:00 a.m. The members of the Executive Council present at the meeting were:

Emmanuel, John D., Chair	Messana, Thomas
Murphy Jr., James B., Chair-Elect	Murray, Jason M.
Long, Maxine M., Secretary-Treasurer	Nagin, Stephen E.
Baker, Hon. David	Olson, John K.
Beyer, David	Roman, Ronald
Beyer, Hans Christian	Schwartz, Philip B.
Blain, Russell M.	Shuker, Scott
Cohn, Stuart	Teblum, Gary
Conti, Louis	VanNortwick Jr., Hon. William A.
Davis, Jeffrey	Williamson, Hon. Michael G.
Fox, Henry H. (Bucky)	Yadley, Gregory
Gale, James	
Hirsch, Jeffrey A.	
Howard, Alan	
Hyman Jr., Hon. Paul G.	

I. Approval of Minutes

M/S/A. On motion of Stephen Nagin, the minutes of the January 16, 2003 meeting of the Executive Council were approved as submitted.

II. Treasurer's Report and Budget Committee Report

Treasurer Maxine Long reported that there is a surplus in the budget due to the CLE and Website revenue.

III. Special Committee Reports

A. IP Special Committee: Phil Schwartz gave the IP Special Committee report. There has been no comment from the patent community, although the committee's recommendation has been well-publicized and standards discussed. The committee will meet again next week and expect to approve standards in final form for Executive Council approval in June. The June meeting will be the final opportunity to comment. The preemption issue proved to be a red herring and those who had been most vocal are now satisfied. The Executive Council commended Phil on his efforts.

B. Long Range Planning Committee: Report given by Greg Yadley for Roberta Colton. Greg reported that the main issue is how to get young lawyers to participate, but advised

EXHIBIT A

that the ABA faces the same issue. He reported that firms are not encouraging young lawyers to participate in non-billable activities like Bar work. He suggested the following:

- 1) Offer a discount at the Annual Retreat;
- 2) Stu Ames will speak to firm managers;
- 3) Paul Singerman will speak to the small to mid-size firms;
- 4) Get out of state firms with Florida offices involved;
- 5) Talk to young Bar leaders and have them get involved; and
- 6) Start a Young Lawyers Division of the Section, noting that the by-laws should be reviewed re need to amend prior to adding this division.

Mark Wolfson commented that economics was a big factor in the lack of participation. He suggests that the first year membership be free for young lawyers.

Tom Messana advised that he could reach young lawyers in law school at business clinics sponsored by the Southern District Bankruptcy Bar Association. This would be a good way to reach them, but we also need to give them meaningful participation.

Greg Yadley also commented that faculty liaisons are helpful.

Judge VanNortwick spoke about the FSU reception he, Bill Wylie and David Ackerman attended. FSU is starting a Business Law Review which the Section could help, and this would give continuity to our efforts. He thinks that the reception concept works well. Judge Williamson suggested that we establish a formal relationship with the Business Law Review in the way of a sponsorship. Judge Van Nortwick will follow up.

John Emmanuel, Jim Murphy, Ed LaRose and Judy McCaffrey went to the Stetson Law reception. Jim said it was very beneficial. He invited students to our Orlando Annual Meeting to sit in on the committee meetings. John advised that we need to establish a contact person to make this a continuing event. Phil Schwartz reported that we do a good job of reaching out to law schools and we need to keep it up for effectiveness. Participation in drafting of legislation is a good entree into Section activities.

Stu Cohn reported that student interest is high because of their wanting real world contact. Our problem has been following up. Our Chapter 607 project had students doing research but no one got back to them. An idea would be to maybe assign law schools responsibility in different areas for our publications, or research on case law updates for committees, especially because state law is not a focus of law schools.

Jeff Hirsch agrees with Stu that there has been a disconnect between our goals and the students' needs. Each committee should incorporate students in its work. We need to establish contact points at law schools for interaction. Each of us should bring at least one young lawyer in each year. We also need to promote the benefits of membership. Jim Gale advised that the University of Florida has an IP

law program, and we should extend an invitation to them to attend our IP committee meetings.

John suggested that the chair of each committee should identify projects where a student could receive a stipend for doing a research project. The ABA Business Law Section has a student scholarship for meetings on the condition that the student attend all meetings and remain active for two years. We may want to consider allocating a stipend for hotel and registration, with the young lawyer's firm to pay for travel, or use the funds to subsidize retreat registrations. Alina suggested that we could sponsor a reception after one of the Young Lawyers Division seminars, since they do a lot of them. We could reserve a room for this and can prepare hand-outs to explain what the Section and committees do. Judge Paul Hyman suggested that we waive retreat registration fee for all first and second year lawyers. John asked Greg and the Long Range Planning Committee to meet again and consider these suggestions.

IV. COMMITTEE REPORTS

A. Antitrust Franchise and Trade Regulation

Ron Roman gave the committee report. The committee is working on a certification proposal. Jason Murray is working on a seminar with an antitrust focus and topics on trade secrets and non-compete agreements, to be co-sponsored with Intellectual Property or another committee.

B. Bankruptcy/UCC

Russ Blain gave the committee's report. The committee is working on the View from the Bench seminar. Federal Bankruptcy Reform Act did not pass, so the seminar by Judge Williamson is on hold. They are in the process of planning a spring seminar. The proposal for an Eleventh Circuit bankruptcy appellate panel is still waiting for good timing to advance this issue.

A former member of Senator Heflin's Judiciary Committee staff approached the Bankruptcy/UCC committee re the homestead cap issue and different proposals by House and Senate, a political position that the Bar may not be able to act on. The issue is disparity between voluntary and involuntary bankruptcy: if there is a cap on homestead under state law, a debtor would voluntarily waive homestead protection, but in an involuntary bankruptcy, the creditors could force waiver of protection. The Section's help is requested in drafting state legislation to keep full homestead protection in case of involuntary bankruptcy. John Emmanuel suggested a paper stating the problem and anticipated consequences of the homestead cap.

C. Business Courts Committee

Jeff Hirsh will report and give an update on Business Courts at June meeting - Orlando moving forward with pilot program.

D. Business Litigation Committee

Jeff Hirsh reported that an Orlando seminar is planned, like the South Florida program on Business Litigation in the Federal Courts. There is a "glitch" bill proposed regarding enforcement of judgments/recordation of liens, but it's not expected to advance until next year. There will be a seminar in the Spring of 2004 on enforcement of judgments.

E. CLE Committee. There was no report.

F. Computer Law Committee. There was no report

G. Communications Committee

Alan Howard gave the report for the committee. Sponsorship on the Section website is now in place, and the charge to link to your firm is \$500.00. All tools on the website are up and functioning, so you can post documents, launch listserves, send blast e-mails, and electronically update membership list e-mail addresses. They will also start a monthly e-mail. A Bar-wide administration has been suggested, but we have our own administrator, Tracy Eller. A student page is available on the website. The committee will work with the Long Range Planning committee on increasing student involvement. He encourages committee submissions to the website.

H. Corporations, Securities and Financial Services

Gary Teblum gave the report of the Committee. Phil Schwartz reported on the Federal Securities Institute seminar, which had 140 attendees to learn about the Sarbanes-Oxley Act and new SEC releases. He felt it was the best seminar we have had, and is getting national recognition, thanks to a strong federal panel. The committee focused on Chapter 607, which Bill Wylie has pushed well. There are two challenges: (1) advertisers challenged re handling of unknown claims in dissolution - instead of filing with Secretary of State, wanted to require publishing for two weeks re unknown claim. Ultimately two alternatives were agreed as a compromise, either to publish in county of incorporation or publish by filing with Secretary of State with a four year claim bar. (2) A Senator and lobbyist were concerned re minority shareholder rights and lobbied against it. Stu Cohn and Marilyn Cane responded to lobbyist concerns and we agreed to eliminate oppression as ground for dissolution and eliminate provision that a discount could not be taken against minority shareholder rights.

There are concerns re Secretary of State, Division of Corporations, web site delays in getting filings completed. Jay Kassees is having a conference call this week re problem on timing of filing. Rick Gross raised the issue of funding of courts.

I. Intellectual Property

Chair Stephen Nagin gave the Committee's report. James Rogan, who will be the Annual Meeting luncheon speaker, is Undersecretary of Department of Commerce and head of the Patent and Trademark Office. He has requested reimbursement of travel expenses for a staff person, and this was agreed. A CLE program was planned but canceled due to speaker unavailability. The IP certification issue will be up for approval at the Annual Meeting.

J. Judicial Liaison Committee

Judge Paul Hyman reported for the Committee. The Bankruptcy Reform Act passed the House, but will probably not pass in Senate. Bills to add new judges in Florida are also pending. The Southern District of Florida is again amending its Local Rules and implementing e-filing. Young lawyers are invited to come to the Judicial Liaison meeting at the annual retreat, as all Southern District judges will be invited.

Judge David Baker reported that the Middle District of Florida intends to start e-filing internally this September and next year will extend it to the Bar generally, to reach all attorneys. They will establish special *pro se* rules. They are also starting a fax-back program and a kiosk at the clerk's office for scanning of filings. Clerk will scan for *pro se* litigants. This will be on the Business Litigation committee agenda for June meeting.

Judge Mike Williamson reported that the Middle District Bankruptcy Court has converted to electronic case management but the process is not going well, and may take up to two years. It will speed up once e-filing is implemented for the Bar generally.

K. Legislative Committee

Chair Mark Wolfson reported for the Committee. There is a 50/50 chance of passage on the corporate bill per Bill Wylie despite the hard work of the committee. The bankruptcy/UCC glitch bill is now a uniform bill, and has passed, treating filing provisions as other states do. Other issues in legislation were a proposal affecting customer lists that would override bankruptcy provisions. Mark Wolfson rewrote the bill and raised the issues, so hopefully it won't go further.

On Article V funding issues, Gary Teblum reported that all bills in House and Senate show cuts in court funding. Bill Wylie stated that businesses that need judicial relief are being slowed – economic cost to businesses – and asks the Section to take a position against judicial spending cuts, and urges members to contact the sponsors. A letter from John Emmanuel as chair re impact on business and getting support from Associated Industries and the Florida Bankers Association was discussed. There is going to be a disproportionate cut in judiciary support, targeted at support staff and trial judges. At the appellate level, ½ of the secretaries have been eliminated and ½ of staff clerks, and the Supreme Court is losing 2/3 of its staff law clerks. Mark will call Bill Wylie to discuss the issues.

Triple M/S/A - Mark Wolfson and Bill Wylie will draft a letter for John Emmanuel's review and signature, to oppose disproportionate cuts in judicial funding, in order to avoid any adverse impact on business climate/economics in Florida.

Jeff Hirsh reported that in the 17th Judicial Circuit, several judges are now implementing statutory mandatory mediation and compulsory non-binding arbitration – if you don't get a better result at trial, fee shifting may be imposed. In Hillsborough 495 cases were sent to non-binding arbitration and 490 were disposed of. There is a need for certified arbitrators. Judge Van Nortwick commented that more efficient docket management will result from creating a Business Court.

L. Long Range Planning Committee. No new business to report.

M. Opinions Committee

Phil Schwartz says there is continuing activity at ABA level on standards and opinions. There are guidelines for inhouse counsel but nothing to guide business lawyers day by day. In June he wants to get people to do a forum to review the old standards still being used by Bar. Dave Beyer agreed the standards should be reviewed in light of UCC revisions.

Phil reported that Arthur Fields and Steve Weiss of the ABA did study of opinion standards. We should look at ours to assist practitioners. Mark Wolfson is supportive of revision and suggested a special committee using new members to review the standards. We charge \$5.00 for opinion standards

pamphlets, and receive 2-3 requests a month. Permission to use the material has always been granted at no charge. Phil asks that we provide names of opinion writers in our firms to assist the reviewers.

Peggy Rolando's request for permission to use a portion of the opinions standards as an appendix was approved. Maxine Long will inform her.

N. Student Liaison Committee. There was no report.

V. Chair's Report

John Emmanuel asked for input from the council to respond to a letter he received regarding ancillary businesses. He also received a request for comments on proposed changes to Rules of Professional Conduct. The Florida Bar website has the proposed changes.

VI. Chair Elect's Report

Jim Murphy gave an update on the Section Retreat. The committee is doing really well, thanks to Rick Gross and Mark Wolfson, and Irwin Gilbert who is getting involved in West Palm Beach. The Thursday evening speaker will be Judge Paskay. The ethics program will be repeated in the morning and afternoon on Friday. Senator Bill Nelson has verbally confirmed as speaker at the Friday luncheon.. On Saturday Julie Einhorn will do an interactive business of law presentation.

For a contribution of \$750 to \$1000, the donor receives one free \$300 registration. For a donation of \$1500 to \$2000, two free \$300 registrations will be awarded. Phil Schwartz suggests a package deal for ads. Lou Conti also suggested that an annual sponsorship deal be offered, as the Tax Section does. This will be considered as a project for next year.

Next year's Executive Council Retreat will be March 31, 2004 - April 2, 2004. Jim Murphy is still looking for a hotel. A river cruise on the Thames is planned to be included. Cost will be \$1900 each - air and hotel included. It was noted that Monday, April 5, 2004 is the first Seder of Passover, and will create a conflict for some people.

Thereupon the Council adjourned shortly before noon.

Respectfully submitted,

Maxine M. Long, Secretary/Treasurer