

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

**June 26, 2003**

The Executive Council of the Business Law Section of The Florida Bar met on June 26 2003 at the Executive Council Retreat in Orlando, FL. Chair, John Emmanuel called the meeting to order at 3:45 p.m. The members of the Executive Council and other invitees present at the meeting were:

Emmanuel, John D., Chair	Messana, Thomas
Murphy Jr., James B., Chair-Elect	Mullins, Edward
Long, Maxine M., Secretary-Treasurer	Murray, Jason M.
Ackerman, David	Nagin, Stephen E.
Arnold, Mark	Olson, John K.
Austin, Scott	Orlin, Karen J.
Baker, Hon. David	Peretz, Steve
Beyer, David	Rett, Donn
Beyer, Hans C.	Rojas, Jose
Blain, Russell M.	Rothman, Joel
Busey, Steve	Rydberg, Marsha
Chesal, Michael	Saliwanchik, Dave
Colton, Roberta	Schwartz, Philip B.
Conti, Louis	Seewald, Jeanne
Davis, Edward H., Jr.	Shuker, Scott
Davis, Gardner	Singerman, Paul
Doppelt, Ava	Smith, Hon. Thomas
Gale, James	Teblum, Gary
Gilbert, Irwin	VanNortwick Jr., Hon. William A.
Higer, Michael	Wells, Diane
Hirsch, Jeffrey A.	Wiley, Bill
Howard, G. Alan	Wolfson, Mark
Jabbar, Haseeb	Workman, Donald
Koch, Jonathan	
LaRose, Edward C.	
Macdonald, John B.	
Mahle, Steve	
McGihon, Anne	

**I. Approval of Minutes**

M/S/A. On motion of Honorable William A. VanNortwick, the minutes of the April 26, 2003 meeting of the Executive Council were approved as submitted.

**II. Treasurer's Report and Budget Committee Report**

Treasurer Maxine Long reported that the Section is in better financial shape than last year. The statement of operations distributed at the meeting shows a total current fund balance of \$175, 616..

### III. Special Committee Reports

A. **IP Special Committee:** Phil Schwartz gave the IP Special Committee report, thanking Ed LaRose for his white paper on the federal preemption issue, and thanking all members of the committee: Jim Gale, Chris McLeod, Hal Litchford, and Ed LaRose. He recommended that the Executive Council approve the guidelines for certification set out in the January 2003 supplement re standards for certification. The proposal is the unanimous recommendation of the special committee after careful consideration of all issues raised.

Greg Mayback commented that the Patent Office is considering a certification proposal, and Jim Gale responded that the proposed Florida certification standards do not conflict with the proposed PTO standards.

**M/S/A** On motion of Jim Gale, seconded by Stephen Nagin, the Executive Council approved by hand vote the IP certification as recommended by the IP Special Committee.

Chair John Emmanuel again thanked the Special Committee for its hard work.

B. Jim Murphy reported on a meeting with Chief Justice Anstead, who had requested a meeting to ask for the Section's assistance with getting full funding for the courts pursuant to the Art V Revision 7 constitutional amendment shifting funding. He proposed an ad hoc task force to work on the problem. Members of the Executive Council plan to meet with Chief Judge Beckman Perry in Orlando regarding what we can do to help. Judge VanNortwick commented that the court system has not been able to reach business community.

C. David Mann and Jay Kassees of the Secretary of State's office, Division of Corporations, appeared and were acknowledged by the Chair.

### IV. COMMITTEE REPORTS

A. **Antitrust Franchise and Trade Regulation.** Jason Murray gave the committee report. Total membership is now at 107, and the committee has decided to change the time of meeting to allow members' participation in other committees. They discussed the issue of franchise law certification; 25 members are interested so a committee was appointed to draft proposed standards for consideration.

**B. Bankruptcy/UCC.** Russ Blain gave the committee's report. Judge Alexander Paskay's 40th anniversary on the bench is this year, making him the longest continuously sitting bankruptcy judge in the U.S. There will be a reception in Fort Myers to honor him on July 17.

November 6-7 View from the Bench seminar was discussed. Robert Colton says the Middle District of Florida is moving toward a "mega case" rule like Southern District of Florida's rule, to make Florida more attractive for big Chapter 11 case filings.

If the bankruptcy reform bill is passed by Congress, the Section was asked to review the homestead cap issue re debtor being forced into insolvency. The committee has decided to recommend that individuals contact their congressional representatives regarding the issue, and formed a study committee to review issue and report back.

Chapter 727 assignment for benefit of creditors statute originated with this committee as a bankruptcy alternative. A Third DCA case (*Kaplan*, 10-23-02) involves malpractice action in which the claim was assigned. The defendant moved to dismiss based on lack of standing. Third DCA analogized to a trustee in bankruptcy, who has standing to collect, and also held that legal malpractice claims are assignable, not personal. The case is now before Supreme Court, and an amicus brief supporting the Third DCA's opinion has been requested from the Section. Paul Singerman and Berger, Singerman volunteered to draft the brief.

**M/S/A** - On motion of Jon Olson, seconded by Mark Wolfson, the Council approved the submission of an amicus brief by the Section. Per Paul Hill, Bar counsel, the request now has to go to the Board of Governors Executive Committee.

**C. Business Courts Committee.** Mike Higer announced that Chief Judge Belvin Perry of the Ninth Circuit has today approved a Business Courts subdivision of the civil division by Administrative Order. The committee thanked Paul Singerman, Phil Schwartz, Rick Gross and Howard Berlin for their years of hard work to achieve this. Judge Tom Smith and Ava Doppelt chaired the committee appointed by Judge Perry. In August 2003 there will be a new civil cover sheet in Orange County with a check-off for the business court division; pending business cases will be identified. The new court will begin in January 2004, and Gov. Bush will deliver a speech on the issue. A full time Special Master will be employed by the court. Ava Doppelt thanked all who worked on this project for so long, especially Judge Smith and Judge Perry for the final push.

**D. Business Litigation Committee.** Jeff Hirsh gave the report of the Business Litigation Committee. There will be an October 10 seminar in Orlando on litigating business cases in the federal courts. A judgment enforcement seminar is also planned. Proposals for amendments to the garnishment statute are also being drafted. The committee celebrated the business courts announcement.

The Multijurisdictional Practice (MJP) Rule proposal for amendments to the Rules Regulating the Florida Bar was presented by Ed Davis and Ed Mullins of the International Law Section. The Business Litigation Committee adopted a proposal to send the issue to a third or interim commission for further study.

Ed Davis described the proposed MJP rule and its effect to Executive Council.

**M/S/A** Jeff Hirsh moved, seconded by Michael Higer, and approved by the Council, that paragraph 5 of the proposal be adopted as follows:

The Business Law Section of the Florida Bar supports the establishment of a Third or Interim Special Commission on the Multijurisdictional Practice of Law, which shall, with input from the Business Law Section and members of the international financial, business and legal communities, specifically consider the effect of any proposed changes on international banking, international commercial business transactions and international arbitrations.

Jose Rojas, Vice Chair of the Greater Miami Chamber of Commerce Services Group for export of services from Florida, commented that the MJP rule as presently proposed would adversely affected international services and getting the Free Trade Area of the Americas located in Miami. The Corporations Committee, Scott Austin, concurs.

**E. CLE Committee.** Lou Conti reported on upcoming seminars. There will be a Corporations and Securities Committee seminar on Sarbanes - Oxley. Eight programs are planned. Russ Blain mentioned the Assignment for the Benefit of Creditors seminar planned for September.

**F. Communications Committee.** Diane Wells was recognized with a plaque for her services to the Communications Committee. Alan Howard reported on the Section's blast email capability for mass mailings to members - he urges members to update their email addresses on the Bar web site.

**G. Computer Law Committee.** Joel Rothman reported for the committee. October 1, 2003, is the effective date of new statute § 812.15, which criminalizes use of devices such as routers to allow more than one device/computer to link to cable/DSL.

Jose Rojas reported on the computer law court-certified mediator program. There's a list of certified mediators with a computer law specialty on the Section Web site.

**H. Corporations, Securities and Financial Services.** Scott Austin and Jim Porter reported on Chapter 607. Scott thanked Bill Wiley for getting this passed in a bad legislative year. The oppression measure was cut from the bill and parts of the appraisal rights provision. Stuart Cohen prepared an excellent white paper on the issues.

Chapter 609 regarding business trusts will be reviewed for possible amendment. Also, next to be reviewed will be the limited partnership act, ReRULPA.

**I. Intellectual Property.** Chair Stephen Nagin and Jim Gale gave the Committee's report. Possible changes in the Uniform Trade Secret Act were discussed.

**J. Judicial Liaison Committee.** No report given.

**K. Legislative Committee.** Chair Mark Wolfson reported for the Committee. **Triple M/S/A** motion by Mark Wolfson to support adequate funding of the state court system.

**L. Long Range Planning Committee.** Robert Colton gave the Committee's report. She urged the Retreat Committee to consider giving a significant discount to new or young attorneys. Jim Murphy noted that a 50% discount is already in effect for first time attendees.

**M. Opinions Committee.** Phil Schwartz reported that there is nothing new to report at present.

**N. Student Liaison Committee.** David Ackerman suggested that student receptions be expanded to all Florida law schools.

## **V. Chair's Report**

A Lifetime Achievement Award was presented to The Honorable Michael G. Williamson for his contributions to the Section, and in particular his longtime involvement in the View from the Bench seminar; preparation of the Budget Committee spread sheets, and his leadership in long range planning.

The Member of the Year Award was presented to Rick Gross for his leadership on the Business Courts Committee; the Retreat Committee and sponsorship recruitment; and the successful Advice From the Experts Seminar.

Special recognition was also given to Phil Schwartz for his leadership of the- IP Special Committee on certification.

## **VI. Chair Elect's Report**

Jim Murphy reviewed the Section's Legislative Contract with William B. Wiley and his firm. Bill Wiley left the room during consideration of the contract.

**M/S/A** - Upon motion by Maxine Long, which was seconded, the Legislative Contract was approved for renewal, and Mr. Wiley returned to the room.

Executive Council members were reminded that the Executive Council Spring Meeting will be in London in April, and all are urged to make their reservations and arrangements early.

Appointments for 2003-2004 Executive Council were announced. CLE will be focused on in the upcoming year.

John Emmanuel was recognized and thanked for his leadership, contributing to the success of the Business Law Section, both financially and substantively. A plaque and gift were presented in appreciation.

Thereupon the Council adjourned.

Respectfully submitted,

Maxine M. Long, Secretary/Treasurer