

THE FLORIDA BAR—BUSINESS LAW SECTION
Minutes of Annual Meeting
JUNE 28, 2007—ORLANDO WORLD CENTER MARRIOTT

The annual meeting of the Business Law Section of The Florida Bar was held on June 28, 2007, at the Orlando World Center Marriott in conjunction with the annual convention of The Florida Bar. Chair Diane Noller Wells called the meeting to order at 3:46 p.m.

Diane called on Nominating Committee Chair John Emmanuel. John presented the report of the Nominating Committee and reported the following slate of section officers proposed by the Nominating Committee for the 2007-2008 year:

<i>Chair:</i>	Merrick L. Gross
<i>Chair-Elect:</i>	Russell M. Blain
<i>Secretary/Treasurer:</i>	Louis T.M. Conti

Diane opened the meeting to additional nominations from the floor. There being none, Diane closed the nominations and called for a vote. Upon motion duly made and seconded, the slate proposed by the Nominating Committee was approved and the slated officers elected by unanimous vote of the section members present.

Diane congratulated the newly elected officers, and the section members present gave them a round of applause.

There being no further business to come before the annual meeting of the section, Diane adjourned the meeting of the section at 3:48 p.m. and convened the meeting of the Executive Council.

Respectfully submitted,

/s/ Russell M. Blain

Russell M. Blain
Secretary/Treasurer

THE FLORIDA BAR—BUSINESS LAW SECTION—EXECUTIVE COUNCIL
Minutes of Meeting
JUNE 28, 2007—ORLANDO WORLD CENTER MARRIOTT

The regular meeting of the Executive Council of the Business Law Section of The Florida Bar was held on June 28, 2007, at the Orlando World Center Marriott in conjunction with the annual convention of The Florida Bar. Chair Diane Noller Wells called the meeting to order at 3:48 p.m., immediately following the adjournment of the annual meeting of the section.

The following members of the council were recorded as being present:

Diane Noller Wells, Chair	Jeffrey A. Hirsch
Merrick L. Gross, Chair-Elect	G. Alan Howard
Russell M. Blain, Secretary-Treasurer	Hon. Paul G. Hyman, Jr.
David P. Ackerman	Katherine C. Lake
Stuart D. Ames	Samuel A. Lewis
Alan H. Aronson	Hal K. Litchford
Scott R. Austin	Maxine Master Long
Robert W. Barron	John B. Macdonald
Douglas A. Bates	Thomas M. Messana
Hans Christian Beyer	Stephen D. Milbrath
Jason B. Burnett	Mindy A. Mora
Stephen D. Busey	Jason M. Murray
Prof. Marilyn B. Cane	Stephen E. Nagin
Douglas A. Cherry	Hon. John K. Olson
Michael B. Chesal	Joel B. Rothman
Louis T.M. Conti	Stefan A. Rubin
Betsy C. Cox	Marsha G. Rydberg
Melanie Emmons Damian	Bradley M. Saxton
Kenneth F. Darrow	Lisa M. Schiller
Prof. Jeffrey Davis	Philip B. Schwartz
Ava K. Doppelt	Jeanne L. Seewald
John D. Emmanuel	Paul Steven Singerman
Manuel Farach	Hon. Thomas B. Smith
G. Steven Fender	Mark E. Stein
Henry H. "Bucky" Fox	Gary I. Teblum
James A. Gale	Peter F. Valori
Brian K. Gart	Hon. William A. Van Nortwick, Jr.
Joseph R. Gomez	Donald A. Workman
Michael J. Higer	Gregory C. Yadley

Also recorded as being present were the following:

Philip Landau
Sean McGhie
Sean Steele
George Sullivan
William Wiley, Section Lobbyist
Austin Newberry, Program Administrator

Approval of Minutes: The minutes of the previous meeting held on January 18, 2007, at the Hyatt Regency in Miami, in conjunction with the midyear meetings of The Florida Bar, were read and approved as read.

Treasurer's Report: Secretary/Treasurer Russ Blain presented the treasurer's report. Russ reported on the current financial statement reflecting the financial condition of the section and the sound financial condition as of the upcoming June 30 fiscal year end. The financial report reflects the section having benefited from the modification of the division of continuing legal education revenues between the section and The Florida Bar. Upon motion made and seconded, the treasurer's report was approved.

Special Report on Florida Gulf Coast University Program: Diane called on Associate Professor Pamela Seay of the Division of Justice Studies of Florida Gulf Coast University to present a report on the program that the section is co-sponsoring in Rio de Janeiro on September 3-4, 2007. The focus of the program is on environmental and energy policy issues and the hottest issues in Brazilian/United States relations. Speakers include people from PetroGas, Deloitte Touche, law firms from Rio de Janeiro, and United States law firms. Pamela invited sponsors and attendees to the program.

Special Task Force on Chapter 517: Greg Yadley presented the final report of the Special Task Force on Chapter 517. The task force was created with a two-year time horizon and a broad mandate to consider issues under Florida Statutes Chapter 517 that might be ripe for legislative review. Among the goals of the task force has been the building of a bridge with the Office of Investor Protection. The task force has concluded that it will not bring forward any legislative agenda items. The task force uncovered few areas where legislation is appropriate in light of disparate perspectives of various clients affected by the statute. In terms of bridge-building, the efforts of the task force have been very successful. Greg commended the work of Don Saxton and Rob White and Professor Stuart Cohn as co-chair and Lou Conti as vice-chair. Greg also thanked Alan Aronson, Kacy Lake, and Judge Bill Van Nortwick for their contributions to the work of the task force.

Special Bar Committee on Attorney-Client Privilege: Kacy Lake presented a report on the work of the special committee of The Florida Bar charged with examining the attorney-client privilege. The committee arose out of issues raised by the Topps and

McNulty memoranda and U.S. Attorney efforts to obtain cooperation by suggesting the turnover of privileged materials. Other state bars have looked at the issue. Florida Bar President Hank Coxe appointed the committee to examine the issue, and the committee has been meeting for the past ten months. The committee has presented an interim report, in which it has taken some of the same positions adopted by the American Bar Association and by other state bars. Kacy reported that the current hot topic is the federal Specter legislation designed to counteract the McNulty memorandum and the effect of it. The committee has recommended support for that legislation, and the Board of Governors of The Florida Bar has approved that position. The New York State Bar Association is considering that issue and likely will be the next state to weigh in on the issue. Kacy referred members of the council to the recent front-page article appearing in *The Florida Bar News*.

Antitrust Committee: Hal Litchford presented the report of the committee. Hal reported that Jason Murray is coordinating a lunch-and-learn seminar on noncompetition agreements to be conducted in Miami. The committee has also discussed joint sponsorship with Nova University of a franchising institute. The institute would target both the franchising community and lawyers and would focus on assisting individuals interested in franchising opportunities. Professor Marilyn Cane will chair a feasibility committee.

The committee also has discussed recent United States Supreme Court cases decided during the tenure of Chief Justice John Roberts that appear to have imposed a higher standard of proof in antitrust conspiracy cases.

Bankruptcy/UCC Committee: Brad Saxton presented the report of the committee. Brad reported on the successful legislative initiatives arising out of the committee, including the revamping of Chapter 727 on assignments for the benefit of creditors, amendments to Article 1 of the Uniform Commercial Code, and the expansion of the personal property exemption. Brad commended the efforts of Mindy Mora, Professor Jeff Davis, Doug Neway, and others who contributed to those legislative successes.

The annual View from the Bench program sponsored by the section and the bankruptcy committee is scheduled for October 18, 2007, in Tampa and October 19, 2007, in Miami. The committee is also working on the presentation of lunch “teleseminars” and a program on condominium bankruptcies. Doug Bates is chairing a study group on Articles 3 and 4 of the Uniform Commercial Code. Brad also reported on the efforts of Southern District Bankruptcy Judge Laurel Isicoff to spearhead the implementation of financial literacy programs in school classrooms.

The Bankruptcy/UCC Committee and local bankruptcy bar groups are organizing a social event in connection with this year's annual National Conference of Bankruptcy Judges to be held in October at the Orlando World Center Marriott Resort.

Brad also reported on two CLE programs presented at the committee's meeting. Lisa Cohen presented a program on the status of Florida homestead following enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Ed Foster and Ralph Lobey presented a program on electronic discovery issues.

Bankruptcy Judicial Liaison Committee: Judge Paul Hyman presented the report of the committee. This year being the first year in which a meeting of the committee had been scheduled in conjunction with the annual convention in June, the question had been raised as to whether attendance would be good. That question was answered in the affirmative, the meeting having been a resounding success with more than 50 people in attendance—the largest attendance ever at a Bankruptcy Judicial Liaison Committee meeting. Judge Hyman reported on the Eleventh Circuit reappointments of Middle District Bankruptcy Judges Paul Glenn, Jerry Funk, Arthur Briskman, and Karen Jennemann and Southern District Bankruptcy Judges Paul Hyman and Raymond Ray. Judge Hyman also informed the council of the report from Judge Catherine Peek McEwen on efforts through the Turnaround Management Association to educate turnaround managers and specialists on court procedures to assuage any concerns about filing bankruptcy cases in Florida. Judge Hyman also reported on the committee's discussion of the issue of law students practicing on a limited basis before the bankruptcy bench.

Business Litigation: Steve Fender gave the report of the committee. The committee has been contacted by state Senator David Aronberg's legislative staff in connection with legislation Senator Aronberg intends to introduce to close existing loopholes in service of process on corporations. The proposed legislation would require an in-state office to be open for some set amount of time every day. The committee and the council will be asked to comment on the proposed legislation when it is received.

Steve also reported on the committee's discussion of a recent Second District Court of Appeal decision and the decision as to whether the section should seek to appear as *amicus curiae*. The issue is whether a law firm, having been served with a writ of garnishment, has an obligation to stop payment on checks issued from its trust account but which the client has not yet negotiated. The question has not yet been certified to the Florida Supreme Court.

Communications Committee: Sam Lewis gave the report of the committee. Sam reported on the successful publication of the inaugural edition of *The Journal*. *The Journal* was published under a publishing and marketing agreement with LexisNexis,

which printed *The Journal* and will deliver it to section members. The license agreement has been changed with respect to the representations that LexisNexis requires be made. Section members will soon receive copies. Melanie Damian reported on next year's *The Journal*. The committee has signed contributors for all areas except UCC Articles 3 and 4. Melanie requested a volunteer contributor for that area.

Sam also reported on “tweaks” made to the section website. The section has received fewer complaints than ever regarding about the website during a year in which the number of monthly visits to the website has increased from 1,500 to 2,500. Steph Nagin commented that various pages of website are not current and on the need for great user-friendliness and ease of use of the current list-serve. Diane emphasized the importance of posting agendas and minutes to the website and sending them to members. Sam reported that the list-serve is in place and ready for use.

CLE Committee: Michael Chesal presented the report of the committee. Michael reported that the substantive committees have been very successful at conducting CLE programs at Committee meetings and at sponsoring lunch-and-learn programs. Michael commented that the CLE Committee is charged with the responsibility of overseeing substantive-committee chairs to ensure that CLE programs are being planned and implemented. Michael reported on the intellectual property certification course scheduled for July. The committee expects the course to be financially successful and a good CLE service.

Incoming section Chair Rick Gross reported that each substantive committee will have representation on the CLE Committee for 2007-2008 so that the CLE Committee serves as liaison to the substantive committees. Rick commented on the tremendous growth of CLE in the past several years, especially the lunch-and-learn programs, and commented on the concurrent need for greater coordination among committees and with other sections. Rick also commented on the importance of including CLE programs as part of committee meetings, particularly at the section retreat, thereby giving members an additional hour or two of CLE credit every day. Sponsors appear to be more willing to give money and benefits when CLE programs are presented at committee meetings. Successful CLE programs this year have pushed the section over budgeted revenues. Rick also commented that he has added additional judicial members to the council for the upcoming year.

Computer and Cyber Law Committee: Doug Cherry gave the report of the committee. Doug reported that the committee's lunch-and-learn programs have been productive and essentially risk-free. The committee is considering a full-day CLE program on electronic discovery.

Doug also reported on the proposed one-stop statewide electronic filing portal. Most proposals from the section have been adopted by the statewide study group. The one exception has been the filing method. The work group proposed multiple filing formats, including Word, WordPerfect, and Adobe Portable Document Format (“.pdf”). The committee and the section early in the process identified problems with integrity and other issues arising from the use of multiple formats and recommended that submissions be limited to the .pdf format. Doug reported that there has been much conversation regarding this issue. Ultimately the .pdf-only recommendation of the section was rejected and a multiple filing format platform was adopted. There has also been discussion about means for the work group better to coordinate with the Business Law Section. Doug reported on the Supreme Court’s decision regarding Pasco County that no data mining be permitted and no fee charged for electronic filing. With the exception of the .pdf-only format concept, most of the other recommendations of the committee and section were accepted and electronic-filing problems addressed.

Corporations, Securities, and Financial Services Committee: Stefan Rubin gave the report of the committee. The committee has considered revisions to both the corporation and limited liability company statutes. The study of Chapter 617, initially intended as a two-year process, has slowed, as discussed by Senator David Aronberg at the section luncheon earlier in the day. Stef reported that another committee of the Real Property Section has expressed the intention to study and weigh in on the Chapter 617 issues.

Council of Sections: Marsha Rydberg gave the report on the Council of Sections. Florida Bar Executive Director Jack Harkness has reported that the Real Property and Business Law sections have fared well under the new formula for division of CLE revenues. Marsha stated that sponsorships and CLE programs have made a significant difference, and she urged the council to continue to focus on those areas.

Intellectual Property Committee: Jeanne Seewald gave the report of the committee and reported that the subcommittee on intellectual property certification has been busy and has accomplished a great deal in preparation for the first round of certification. Applications have been received from 107 lawyers for the first round. The subcommittee has been reviewing applications and is preparing the examination to be administered in early October.

Jeanne also reported on new committee projects, including the establishment of a subcommittee to compile jury instructions for intellectual property litigation. The committee also has addressed the issue of rule changes appropriate under the recently enacted trademark statute.

Legislation Committee: Lou Conti presented the report of the committee. Lou reported on the success of the section's legislative agenda in a year rife with difficult issues, including those arising out of multiple viewpoints within the bar and the need to reach accommodations through negotiations. Lou expressed thanks to the outgoing members of the committee and to section legislative consultant Bill Wiley for having successfully navigated through the complexities of the Florida Legislature and the legislative process, working the halls of the Legislature, and bringing members of the committees and the section to Tallahassee to meet with legislative staff members and legislators.

Bill Wiley further commented on the successful legislative agenda, which included four major pieces of legislation. Bill commended Mindy Mora on her work in connection with the successful enactment of amendments to Chapter 727 on assignments for the benefit of creditors. Mindy chaired the subcommittee that drafted the amendments, shepherded those amendments through the section, and presented explanation and rationale for the statutory changes to legislative staff members. Bill also commended Professor Jeff Davis for his visits to Tallahassee in connection with the consideration and passage of the Chapter 727 amendments. Bill commended Bucky Fox for making strategic contacts that enabled the bill to be brought to a floor vote in the last few days of the legislative session.

The second major piece of section-sponsored legislation to have passed is the bill increasing the personal property exemption. Bill commended Doug Neway for his efforts at the section level and before legislative staff in Tallahassee.

The third successful legislative initiative is the enactment of changes to the Uniform Commercial Code, which Senator David Aronberg discussed at the section luncheon earlier in the day. Bill commended Doug Bates and Professor Jeff Davis for their work on that piece of legislation.

The fourth successful legislative project is the limited liability company name distinguishability bill (addressed by the council at its January 18, 2007, meeting and discussed in the minutes from that meeting). Bill commended Lou Conti and Gary Teblum on their efforts in drafting the legislation and reaching consensus on the final language incorporated into the final bill.

Bill reported that the only legislative disappointment is the failure of legislative approval for business court funding, an issue that became mired in the revenue shortfall confronting the Legislature. The committee and the section will continue to work on business court funding legislation for the 2008 legislative session. Associated Industries of Florida is working with the section on that issue. An early workshop on business court

funding has already been conducted in Tallahassee. Bill commended Rick Gross for his presentation in Tallahassee.

Diane called for a round of applause for Bill Wiley as the effective and beloved legislative consultant for the section.

Opinion Standards Committee. Phil Schwartz gave the report of the committee. The committee has been working jointly with its counterpart from the Real Property Section. The joint committee has prepared and is working with a draft opinion standards report. Phil commented that completion of the final report will take some time, but that the joint committee is well on its way toward that goal. The steering committee is meeting every month, and the section committee is meeting nearly every month. Phil commented that the first stage will be a report on enforceability opinions.

Phil also reported that the section is continuing to work with the American Bar Association on matters of common concern with regard to opinions. The national working group on legal opinions is being formalized and working on legal opinions focused on risk management, hot topics in legal opinions, and litigation involving legal opinions. Phil commented that this effort reflects the first dialog on legal opinions at the national level since the *Silverado* case. The hope is to develop over time a customary practice both at the state and national levels. The national group initially has focused on large New York and California law firms, with the intention to expand that focus geographically. The section's committee is working to increase the level of its participation and its ability to influence the dialog. Phil reported that firms that have an interest in the working group pay \$2,000 per year to fund programs on issues of importance on legal opinions.

Sponsorship & Retreat Committee: Tom Messana gave the report of the committee. Tom thanked the members of the committee for their efforts in obtaining sponsorships and working toward a successful retreat. The committee is moving toward achieving its goal level of sponsorships. Tom asked the members of the council to express thanks to sponsors. Rick Gross reported that the current level of sponsorship participation has reached \$59,250. Rick pointed out that any sponsor looking at Bronze Level sponsorship should consider expanding to Silver Level, which includes a free retreat registration and provide greater exposure. Rick also encouraged the solicitation of additional sponsors.

Rick also reported that during the retreat weekend, the Bankruptcy Judicial Liaison Committee will meet on Saturday afternoon rather than on Friday. Rick also reported on his and Russ Blain's site visit and meeting with Ritz-Carlton representatives in Naples earlier in the week. The hotel representatives have indicated a genuine desire

to have the section back in Naples for the retreat. Rick encouraged section members to register now for the retreat.

Rick also reported that, for the first time, the section has extended-period sponsors. Both LexisNexis and PCE have agreed to three-year sponsorships. To encourage extended sponsorships, the section has offered a discount for multiple year sponsorships. The one-year sponsorship rate of \$6,000 is reduced to \$5,500 per year for a two-year commitment and to \$5,000 per year for a three-year sponsorship. Tom Messana added that new section members can register for the retreat at one-half the regular registration fee.

State/Federal Court Liaison Committee: David Ackerman gave the report of the committee. David reported on the committee initiative of obtaining statistics on the business courts presently operating in Orange, Dade, and Hillsborough counties. David also reported that the committee is monitoring and analyzing the move toward centralized filing.

Legislative Consultant: Chair Diane Wells introduced the issue of the renewal of the section's legislative consulting agreement with Bill Wiley. Bill Wiley excused and absented himself from the meeting during the discussion of his contract. Diane commented that Bill has presented essentially the same contract for the past five years. The two changes proposed for the 2007-2008 year are an increase in the legislative consulting fee from \$60,000 to \$62,000 and the addition of a provision for the reimbursement of Bill's expenses associated with attendance at section meetings. Diane commented that expense reimbursement for attendance at section meetings would apply the same standard to Bill as is applied to professors and judges. Upon motion duly made and seconded, the Wiley agreement was approved unanimously. After Bill was called back into the meeting, Diane called for another round of applause in appreciation for Bill's legislative consulting work and his commitment to the section.

Chair's Report: Diane Wells presented her chair's report. Diane thanked all of the members of the council for their work over the past year, during which activities have been fast-moving and productive. Diane also thanked Program Administrator Austin Newberry for his work on behalf of the section. In writing a section report for *The Florida Bar Journal*, Diane reflected on the activities and accomplishments of the year and the section's effectiveness. Diane cited intellectual property certification as one example. In appointing the IP certification committee, Hank Coxe, president of The Florida Bar, accepted the individuals recommended by the section, and those people became the IP certification committee. As another example, Diane commented on Sam Lewis's idea to produce a substantive publication. That idea and the resulting production of *The Journal* arose from a lunch meeting among Sam, Diane, and Melanie Damian.

Diane commented on the breadth of coverage of *The Journal*. The mantra of the Communications Committee has been to “get it done.” That having been accomplished, the section can begin work on the second-year volume of *The Journal*.

Diane also commented on the decision this past year not to shrink membership on the council but instead to expand it. Diane also mentioned the positive efforts of appointing to the council professors and judges and people with new and expanded ideas that give rise to projects and initiatives for the section.

Diane also commented on the work of the Opinions Standards Committee, which has met frequently and made substantial progress. Phil Schwartz traveled to New York to represent the section at the meeting of ABA opinion standards work study group and has helped put the section at the forefront of the national group, which will be in a position to look to the section for input and involvement.

Diane also commended the section on successful CLE initiatives, including the flagship View from the Bench program, lunch-and-learn seminars, and blast e-mails. These efforts will continue to project the section forward in future years.

At the conclusion of her remarks, the council gave a round of applause to Diane.

Section Awards: Diane then proceeded to the announcement of section awards. The first award presented was for outstanding member. Diane commented on the amount of time and input that is required to evaluate all the good work that people have done for the section and the difficulty of choosing one outstanding member. That said, one member of the section was identified as an outstanding member who has worked tirelessly over the years and in the past year. This member worked with the section in developing its first website and has worked on countless legislation issues. She has served as vice chair and chair of various committees. During the past year, she provided stewardship of the assignment-for-the-benefit-of-creditors statute and led the efforts in rewriting the statute, obtaining Bankruptcy/UCC Committee and Executive Council approval, and the successful passage of the bill. Diane then identified the recipient as Mindy Mora of Miami.

The council gave a stirring round of applause and a standing ovation to Mindy. Diane presented a plaque to Mindy and read aloud the etching on the plaque:

The Florida Bar Business Law Section
Outstanding Member of the Year

Presented to Mindy Mora In Recognition of Her
Exceptional Contributions of Time and Talent to the
Business Law Section of The Florida Bar since 1995, Her
Leadership in the Drafting and Enactment of Revisions to
Chapter 727 of the Florida Statutes, and Her Dedication to
the Mission of the Section and the Continuous
Improvement of the Business Laws of Florida.

Presented June 28, 2007.

Mindy commended the people who worked with her on the Chapter 727 revisions and the lawyers who have given their time to the work of the section and thanked the council for the award.

Diane presented plaques to the chairs of the 2006-2007 committees. Diane also presented gifts to Sam Lewis and Melanie Damian for their work on *The Journal*. Diane also presented to each council member a tombstone-type plaque with the commemorative issue of *The Journal* and a letter from Diane.

Chair-Elect's Report: Rick Gross gave the chair-elect's report. Rick thanked Diane for the inspiration she has given to all the members of the council. Rick presented a plaque to Diane recognizing her outstanding contribution of time, talent, and leadership to the Business Law Section as chair. Rick also presented a spa gift at the Ritz-Carlton Naples to Diane.

Rick encouraged people to register for the section retreat on Labor Day weekend. Rick announced that the next meeting after the September retreat will be held in January at the Hyatt Regency Hotel in Miami in conjunction with the midyear meetings of The Florida Bar.

Rick then announced the spring council retreat, which is scheduled for March 27-30, 2008, in Park City, Utah. There are direct flights on Delta Airlines to Salt Lake City from Fort Lauderdale and Tampa. Group room rates have been negotiated with the Marriott Park City. Meetings, dinners, and other events are being planned. The council will meet in the afternoons so that attendees can ski in the mornings. Rick also mentioned that a brunch has been scheduled for Sunday afternoon at the Stein Eriksen Lodge at Deer Valley.

Next Meeting: Diane announced that the next meeting of the council will be held on Monday, September 3, 2007, in conjunction with the section retreat at the Ritz-Carlton Naples.

Adjournment: There being no further business to come before the council, upon motion duly made and second, Diane Wells as chair adjourned the meeting at 5:16 p.m.

Respectfully submitted,

/s/ Russell M. Blain

Russell M. Blain
Secretary/Treasurer