

THE FLORIDA BAR – BUSINESS LAW SECTION –
SECTION ANNUAL MEETING AND
MEETING OF THE EXECUTIVE COUNCIL
Minutes of Meeting
June 24, 2010 – 3:30 p.m.
Boca Raton, Florida

The following members of the Business Law Section and the Executive Council were recorded as being present:

Alan Aronson	Leora Herrmann	Stephen Milbrath
Alan Howard	Lewis Killian	Steve Manle
Anne McGihon	Leyza F. Blanco	Steven Fender
Ava Doppelt	Lori V. Vaughan	Thomas Smith
Bill Van Nortwick	Lynn Sherman	Tom Messana
Bill Wiley	Manuel J. Dominguez	Zachary Hyman
Brian Gart	Manuel Utset	
Cathy McEwen	Mark Nichols	
Don Workman	Mark Stein	
Edward LaRose	Marsha Rydberg	
Gary Teblum	Maxine Long	
Greg Yadley	Melanie Damian	
Hal Litchford	Michael Chesal	
J.C. Ferrer	Michael Higer	
James Marx	Mike Williamson	
Jason Burnett	Mindy Mora	
Jason M. Murray	Nancy Yablon	
Jeanne Seewald	Paul Hyman	
Jeff Davis	Paul Singerman	
Jennifer Morando	Peter Valori	
Jim Gale	Philip Schwartz	
Jim Glenn	Randall Vitale	
Jodi Cooke	Rick Gross	
John Emmannel	Rob Brighton	
John Olson	Robert Thornburg	
Jon Polonberg	Roland Sanchez-Medina, Jr.	
Jude Cooper	Russ Blain	
Kevin Levy	Samuel Lewis	
Laurel Isicoff	Stephen Nagin	

THE SECTION'S ANNUAL MEETING

I. Call to Order

Louis Conti called the annual meeting of the Section to order.

II. Announcement of the Nominating Committee

Greg Yadley, on behalf of the nominating committee, announced the proposed slate of officers for the 2010-2011 program year. Mr. Higer was nominated to serve as chair of the Section; Ms. Mora was nominated to serve as chair-elect; and Mr. Gart was nominated to serve as secretary-treasurer. Mr. Conti put the slate to a vote of the Section. The slate of the nominating committee was approved by acclamation.

III. Award for Outstanding Member

Mr. Conti presented the award for the outstanding member of the Section. The award is being made to a past chair of the Section, who has spent a considerable amount of time advocating on behalf of the Section, and providing an exceptional level of effort and commitment on behalf of the Section. This award was presented to Phillip Schwartz for his extraordinary commitment and time for the Section in connection with the Opinions Report he chaired on behalf of the Section. Mr. Schwartz accepted the award on behalf of the entire Opinions Committee that worked on the Report.

IV. Conclusion

The annual meeting of the Section was closed by Mr. Conti.

THE EXECUTIVE COUNCIL MEETING

I. Call to Order; Introductions

The Chair, Louis Conti, called the Council to order and welcomed the attendees to the meeting. Each of the attendees introduced themselves and identified the city in which he or she practices or maintains an office.

Mr. Conti introduced Manuel A. Utset who is the Charles W. Ehrhardt Professor from FSU School of Law and has agreed to join the Section, and participate particularly in the Corporations, Securities and Banking Law Committee.

II. Report of the Board of Governors

Gwynne Young provided the report as liaison to the BOG, and reported on the work of the BOG with respect to advertising rules, including the use of websites by Florida lawyers.

Initially, the Bar treated information on a website as “information upon request.” Florida Bar rules require pre-approval of websites, but there are 40,000 websites regarding Florida lawyers. To comply with Supreme Court directives, the Bar has come up with a set of rules regarding advertising. It will require a disclaimer for a website user to agree to prior to accessing information on a firm’s website. The BOG sought a stay of the effectiveness of this rule, which goes into effect on July 1, 2010. The comment period ends July 1, 2010. This rule appears to apply solely to the website maintained by the lawyer, and not necessarily to social networking websites, such as Linked In, Facebook, etc. The information about this rule is available on the Bar’s website under Advertising Rules.

An issue arose as to whether the Section would make comments, or if the Computer Committee would make comments on behalf of the Section. The issue is whether as a Section we will have sufficient time to review proposed comments and adopt them as a Section position. After discussion, and with the expectation that the July 1 date will be extended, the Computer Committee accepted the charge to review the proposed rules and prepare a proposed comment on behalf of the Section. Any position the Section will wish to take can be done without Bar approval.

III. Secretary Treasurer Report:

Ms. Mora presented the minutes from the January 21, 2010 meeting, reviewed the budget, and requested that the Council approve certain budget amendments to conform the budget to actual expenditures. Ms. Mora made a Motion seeking approval of the budget amendments, which was seconded, and the motion carried unanimously.

IV. Membership

Mr. Bates provided the report. The Committee has been doing a good job getting law students involved, including from FIU and UF. Zach Hyman, new president of UF Association for Law and Business, provided a report as well. Mr. Hyman made a request for the Section to have receptions for the Association, as well as to appear at lectures on business law issues and practice.

Mr. Bates advised the Section already provides the students with a reduced cost for Section membership. Mr. Hyman requested financial support for the Association’s receptions, as well as volunteers to speak to the students. Mr. Conti requested a budget and schedule for these receptions. Mr. Bates estimated the cost at \$4,500 for several receptions, which would be open to all students, not just from UF, but from other law schools within the state. Mr. Aronson also suggested that the Retreat Committee consider a reduced fee to enable law school students to attend the Retreat.

Reports of the Special Committees:

V. Opinions Committee

Mr. Schwartz provided the report. The Opinions Committee met with the Business Litigation Committee and resolved the differences they had and revised the Opinions Report so that it could be approved by acclamation. The comment period runs through the end of June 2010. Don Glazer, a former chair of the tri-bar opinions committee, is expected to comment. Once the comments are evaluated, the Committee will bring the Report back for final approval, probably in January 2011.

VI. LLC Task Force

Mr. Conti provided the report, and expects to come to the Council in January 2011 for approval of the proposed legislation so it can be considered in the 2011 legislative session. Committees are expected to begin their review at the Naples Retreat in September 2010.

Mr. Conti reported on the Ohmstead case, which was decided today on June 24, 2010. A scam was run through some LLC's. They were single member LLC's. The FTC wanted to exercise its rights as a judgment creditor to take over the LLC's and not merely obtain a charging order. The statute currently provides that a judgment creditor can only obtain a charging order, even as against a single member LLC. This was a case of first impression. In most states, the rule is that the exclusive remedy is a charging lien. Previously, the courts in Florida had split on this issue. The holding was that a judgment creditor can reach through the LLC to obtain the underlying ownership interest in the single member entity, and the charging lien is not an exclusive remedy.

Committee Reports:

VII. Antitrust, Franchise and Trade Regulations:

Jason Murray provided the report. The meeting was well attended. The Committee discussed a proposed CLE program, which is envisioned as a fundamentals program in the area of franchising, and may be done with the ABA. Issues with revenue sharing will have to be addressed if it is done as a joint program with the ABA.

VIII. Bankruptcy/UCC

Mr. Burnett provided the report. The Committee had a very active year with respect to legislative issues, which were handled in large part by Brian Gart, Jeff Davis, Diane Noller Wells and Mindy Mora. The Committee made a motion that the Section pay for clerks of the bankruptcy courts be able to attend two meetings per year for the next year at the expense of the Section. The motion was seconded. This would cover three clerks, one from each district, for travel and one night of hotel. The motion carried unanimously. The Committee also reported that members have provided pro bono services to Florida Attorneys Saving Homes, and that the focus is turning now to mediation efforts. A request for additional volunteers was made.

IX. Bankruptcy Judicial Liaison Committee:

Ms. Vaughn provided the report. The meeting was well attended, reports were received from all of the districts, rule changes were discussed, and practice issues were also addressed. After the meeting, the Committee retired to Maggiano's for dinner and networking.

X. Business Litigation Committee:

Mr. Polenberg provided the report. The Committee discussed the certification process, business courts, and two legislative initiatives (amendment to §37.05, and the arbitration act).

XI. Communications

Mr. Valori provided the report. The Committee discussed updating the business courts' website, which is estimated to cost approximately \$2,000. A motion was made for the Section to approve this cost, and the motion was seconded. The motion was carried unanimously.

Ms. Leora Hermann provided a report on the Journal, and suggested that in addition to having an editor who deals with content, a publisher should also be appointed to deal with the costs of publishing the Journal. Steph Nagin, Berger Singerman, Damian & Valori, and Peretz Chesel & Hermann provided financial support to get the Journal printed this year.

Each Committee chair was reminded to furnish Tracey Eller with the committee's agenda and minutes to be posted on the Section's website. A request was also made for articles for the Florida Bar Journal.

Finally, the Council discussed having telephonic appearance at certain meetings of the Section, the Council and Committees.

XII. Computer/Cyber Law Committee

Mr. Teppler provided the report. The Committee is going to have a mock trial on electronic discovery and a seminar on this topic. A second seminar is also being discussed. The Committee also discussed changes to rules of procedure that are anticipated. The Committee also moved to change its name to the Computer and Technology Law Committee. The motion was seconded. The motion was carried unanimously.

XIII. CLE:

Mr. Aronson provided the report. The Committee has sponsored 15 lunchtime programs. The next one is scheduled for the following Wednesday on securities law issues. Telephonic attendance is available. Any Committee that wishes to present at a lunchtime program can do so by coordinating with the CLE Committee.

XIV. Corporations, Securities, and Financial Services

J.C. Ferrar provided the report. The Florida Legislature passed a new law unbeknownst to the Committee, which provides that if a person or entity buys shares in a company, all tax obligations of the seller pass to the buyer. A subcommittee is being set up to study this new law. The Committee is also supporting the work on the amendment to chapter 607. During the Committee's meeting, PCE provided the Committee with a CLE presentation.

XV. Diversity Committee

Mr. Murray provided the report. The Committee has arranged to bring in a high profile speaker, namely Rick Calper, the general counsel of General Mills, to speak about diversity issues at the Retreat. The Committee also addressed developing a strategic plan covering goals, self-assessment of the Section, recruitment, retention, talent development and advancement and leadership. The plan is expected to be ready for the Retreat. The Committee also reviewed the work it did last year in connection with the Minority Mentoring Picnics and made plans for attending the upcoming Picnics, including brochures and give-aways.

XVI. IP Committee:

Mr. Thornberg provided the report. The main focus of discussion was reviewing the seminar the Committee presented in March 2010, and how successful it was. The Committee is planning to do the seminar again this coming year, with a change of venue from Tampa to Ft. Lauderdale. The Committee recognized Leora Hermann for her efforts in connection with the seminar. The focus during the coming year will be on less speakers and higher quality content. At the end of today's meeting, the Committee had a terrific CLE program.

XVII. Legislation

Mr. Gart provided the report. The Committee wanted to thank particular people for their efforts this past year, including Jeff Davis, Diane Wells, Tom Messana, and Marsha Rydberg. Non-judicial foreclosure was a particular focus this year, and the Section worked closely with the RPPTL Section to oppose this legislation. A task force should be put together at the Section level to be prepared if there are future efforts to enact non-judicial foreclosure. Marsha Rydberg has agreed to serve on that task force.

Mr. Wiley made a motion that the Section roll over all existing legislative positions. The motion was seconded, and was approved unanimously. This year, most of the work of the Committee was defensive, although there was some offensive efforts including court funding and Article 7. On the defensive side, there was a lot of activity in the area of debt collection, non-judicial foreclosure and assignments for the benefit of creditors, § 57.105, and application of foreign law.

In the absence of Mr. Wiley, Mr. Gart presented Mr. Wiley's agreement for his services for the coming year. Mr. Wiley subcontracted with the Metz firm, and Amy Diaz Leon worked with Mr. Wiley in that regard. The amount of the fee is remaining the same at \$70,000 plus expenses. Mr. Gart moved that the Section approve the contract. The motion was seconded. The motion was carried unanimously.

XVIII. Long Range Planning

The sole report was provided at the meeting of the Section by Mr. Yadley regarding the selection of officers for the Section for the coming year.

XIX. Retreat & Sponsorships:

Mr. Howard provided the report. The Committee is hard at work on the Labor Day Retreat. Mr. Howard provided a sponsor form for the Retreat and emphasized how important it is for each member of the Council to sponsor the Retreat. The Committee also discussed the fee structure for the Retreat, and sought input from the Council members regarding the fee structure.

XX. State and Federal Court Liaison

Judge Van Nortwick provided the report. The Committee discussed the problems with the business court website, and noted the Section approval to get the website updated. Three business court judges attended the meeting and the Committee requested that these judges provide the Committee with more of their orders and judgments. At the Retreat, instead of a roundtable, the business court judges will be involved in the Business Litigation Committee meeting.

XXI. Council of Sections: No report.

XXII. Chair's Report:

Mr. Conti provided the report. He noted that this year is the 40th anniversary of the Section. Mr. Schwartz reported that the Section actually started the year prior and Paul Anton was the first chair. Mr. Conti asked the 11 former chairs in attendance to stand and be acknowledged. Mr. Conti expressed his delight at having had the opportunity to chair the Section, which was the second section he chaired (Mr. Conti chaired the Tax Section ten years ago). The diversity of the Section is energizing, and the involvement of state, federal and bankruptcy court judges provides a particular opportunity for the Section members to have access to the judges that not that many sections have. The Section thanked Mr. Conti for his service, and presented him with a plaque and a gift for his efforts.

XXIII. Chair Elect Report:

Mr. Higer provided the report. All of the appointments for next year's Section have been sent out. Mr. Aronson will be chair of the Membership Committee, with Lori Vaughn and Mike

Chesal as vice-chairs. A Pro Bono Committee has been formed with Judge Van Nortwick, Judge Isicoff, and Melanie Damian. There will be a fly-in meeting in January 2011 in Tampa.

The spring retreat will be in Amsterdam from May 11 to 14, 2011. The hotel will be the Marriott or the Hilton. Activities are being planned, including a tour of the Hague, a red light tour, a tour of Anne Frank's house, the art museums, a canal cruise, and a number of other activities.

XXIV. Adjournment

The meeting was promptly adjourned at 6:30 p.m.