

**MINUTES OF THE EXECUTIVE COUNCIL OF THE  
BUSINESS LAW SECTION OF THE FLORIDA BAR  
AUGUST 26, 2001**

The Executive Council of the Business Law Section of The Florida Bar (the "Section") held a meeting in conjunction with Section Annual Retreat on August 26, 2001, at the Ritz Carlton Hotel in Naples, Florida. Chair David Felman called the meeting to order at 8:40 a.m. Present at the meeting were:

David Felman  
Hal Litchford  
John Emmanuel  
Jim Murphy  
Honorable Thomas B. Smith  
Judith McCaffrey  
Hans Beyer  
Joel B. Rothman  
Paul L. Orshan  
Ron Roman  
Marilyn Cane  
Honorable Paul Hyman  
Steve Mahle  
Jeffrey Hirsch  
Lawrence Silverman  
Ed LaRose  
Gardner Davis  
Gary Teblum  
Bob Duckworth  
Roberta Colton  
Paul Singerman  
Steve Busey  
Scott Shuker  
Rick Gross  
Jeff Davis  
Greg Yadley  
Don Workman  
Bill Wiley  
Diane Noller Wells  
Mark J. Wolfson  
Maxine M. Long  
Honorable David A. Baker  
Steven Fender  
Alan Howard  
John B. MacDonald

Honorable William A. Van Nortwick  
Stephen Nagin  
Tom Messana  
Dave Saliwanchik  
Amanda McGovern  
David Beyer  
Howard Berlin  
Stuart Ames  
Honorable Michael Williamson  
Bucky Fox  
Scott Austin  
Trey Baldy  
Philip Schwartz  
Marsha Rydberg

Chair David Felman welcomed everyone to the meeting. The minutes of the June 21, 2001, meeting of the Executive Council were approved as written.

### **Treasurer's Report and Budget Committee Report**

Jim Murphy gave a combined Treasurer's report and report as Chair of the Budget Committee. Jim reviewed the history and purpose of the Budget Committee which was recently formed to examine and participate in the budgeting process for the Section and to focus particularly on significant financial issues facing the Section. The members of the Budget Committee consist of the Section Treasurer who serves as chair of the committee, Lou Conti, Vice Chair, John Emmanuel, Honorable Michael Williamson and Steve Peretz.

Jim reported that the Budget Committee had met several times. The Committee initially focused on two issues: (1) the Section's reimbursement policy for members of judiciary who serve on the Executive Council and (2) the Section's website expenses.

Jim stated that the Committee had further reviewed the Interim Reimbursement Guidelines that the Section adopted at the June 2001 meeting in light of additional updated financial information regarding expenses incurred by the Section for reimbursement of members of the judiciary during the past fiscal year, and that the Committee did not feel that any changes in the Interim Reimbursement Guidelines were warranted at this time.

Jim reported that, to date, the Section had spent about \$54,000 for development of the website and had about \$8,000 left to pay on the initial contract with the website design company. Although these up front costs were substantial, they were in keeping the significant commitment that the Section made to develop a first quality website. Moreover, the Committee concluded that the ongoing costs for maintenance of the website would be manageable. The Committee estimated that maintenance costs would be approximately \$22,500 in FY 2002-2003, consisting

of \$12,500 for a website administrator, \$3,000 for hosting fees, and \$7,500 for website refreshment services.

Jim then reviewed the current financial statement. Jim summarized that, although the Section still enjoyed a healthy \$186,715 reserve, it sustained an operating deficit of over \$38,000 in FY 2000-2001 and that a \$61,000 operating deficit had been budgeted for this fiscal year. The Committee had determined that the operating deficit was attributable primarily to up-front costs incurred in the website development and to substantial decrease in CL income. Jim reviewed a spreadsheet prepared by Judge Williamson which compared Section revenues and expenses from FY 2000-2001 to the preceding several fiscal years. In addition to decreasing revenue, the Section had been assessed a substantial "charge back" by The Florida Bar to cover expenses incurred though late cancellation of two seminars.

To address the operating deficit, the Committee recommended increased attention to CL expenditures, including encouraging more monitoring of the progress of Section seminars and adherence to Bar cancellation policies and encouraging the Section Chair and CL Committee to explore alternative seminar presentation methods, such as increased use of videotaped seminars, as a means to enhance CL revenue.

In addition, Jim reported that the Committee recommended that the Section increase Section dues for the next fiscal year from \$30 to \$35, which, with 4700 Section members, would generate an additional \$23,500 in revenue to the Section.

Finally, Jim reported that the Committee recommended investigating other sources for revenue for the Section such as website advertisements. It was agreed that the Budget Committee and the Communications Committee, in conjunction with Alina Cooper, would look into this issue.

Following a motion and second, and discussion, the members of the Section approved an increase in the Section dues to \$35 for FY 2002-2003.

### **Long Range Planning**

Roberta Colton reported that the Long Range Planning Committee had met over the summer to consider and advise the Executive Counsel with respect to proposed bylaw amendments.

Ms. Colton also reported that the Long Range Planning Committee represents over 150 years of Florida Bar experience that is available as a resource to all committees and committee chairs. She welcomed the committee chairs to contact her for input from the Long Range Planning Committee on any legislative strategy, CLE or administrative matter. The Long Range Planning Committee can meet quickly and will be responsive to council members.

### **Opinions Committee**

Phil Schwartz reported that the Opinions Committee was working to update the opinions standards which the Section had developed almost ten years ago to (1) integrate the opinions standards together with more recent ABA opinion principles and opinions standards from other bar associations; (2) examine whether Revised UCC Article 9 warranted any changes in the opinions standards; and (3) examine whether the opinions standards should be revised in light of evolving standards and practices.

## **Committee Reports**

### **Antitrust, Franchise and Trade Regulation**

Ed LaRose reported that the Committee was considering forming a subcommittee to examine a possible amendment to the Florida Arbitration Act specifically addressing recent changes to the Uniform Arbitration Act.

He also advised that David Beyer was looking at a possible amendment to the Florida Telemarketing Act to exempt franchisees covered by the FTC from the Florida Act and that Larry Silverman was working on a “white paper” addressing whether reliance is an element of a cause of action under the Florida Deceptive and Unfair Trade Practices Act. Ed stated it was contemplated that this would be an article in the Section Quarterly and that committee members also were working on an article addressing “price discrimination.”

Lastly, Ed reported that the Committee was working to develop a review course for the Antitrust Certification Examination which would be presented on video or CD.

### **Bankruptcy/UCC**

Don Workman reported that the Committee had held a well-attended meeting at the Retreat which included over 40 members. Roy Covert had spoken about the development of a website for centralized filing of judgment liens. Tom Esana was working on assisting practitioners in receivership situations. In addition, Don reported that the Committee was sponsoring a seminar on the new post-judgment lien law and the transitional provisions and non-uniform provisions of the new Florida Revised UCC Article 9.

The Committee also recommended that the Executive Council approve glitch amendments to Revised UCC Article 9 which would correct certain typographical errors and remove nonuniform data required in filings and charges for filings. The Executive Council approved these glitch amendments by triple motion.

## **Business Courts**

Rick Gross reported that the Committee had received information that in light of recent circumstances it would likely be difficult to secure the support at this time of the Florida Supreme Court to the creation of a new division in one or more circuit courts on a pilot basis for handling business disputes. Following a lengthy discussion, the consensus of members of the Council was to seek to engage in further discussions with the Chief Justice as well as with the President of the Florida Bar and the Academy of Florida Trial Lawyers. Marsha Rydberg and Judge Thomas Smith agreed to join the Committee and assist in these efforts.

## **Business Litigation**

Steve Mahle reported on the Committee's meeting during the Retreat which focused primarily on a discussion about the Business Courts project and included a review by Committee member Kacy Lake of recent reported cases involving important issues in business litigation. Steve added that the Committee's planned CL seminars were "on track" and that the new edition of the Business Litigation Manual was finally being published.

## **CLE Committee**

Larry Silverman informed the Council members that CLE Programs for 2001-2002 were on schedule and the Committee was applying a heightened level of scrutiny to insure program planning was following Bar guidelines. The Council also discussed a recent snafu in the preparation of audio tapes for the "Internet Seminar." Chair David Felman asked Marsha Rydberg to raise the issue at the Council of Sections meeting and Larry Silverman to raise the issue at The Florida Bar CLE meeting.

## **Computer Law Committee**

Steve Krulin expressed the excitement of the Computer Law Committee in recently joining the Section. He reported that the Committee's seminar on "Electronic Privacy" was well attended and that the Committee was working on several CL projects including a joint seminar with the Intellectual Property Committee, an Internet Seminar and a seminar addressing electronic filings of court papers.

## **Communications**

Diane Wells reported that the Communications Committee had just hired Tracey Wells as a website administrator and that the Committee expected to have a "soft launch" for the Section website within the next week. She solicited additional content for the website from committee chairs and vice chairs, including committee reports and narratives explaining committee projects and activities. She stated that Alan Howard would be working on website advertising and Steve Fender was working on a website law student page. The Committee also was developing a brochure about the website and mugs featuring the website to be distributed to law students.

The Chair commended Diane and the members of the Communications Committee for their tireless efforts in developing the website as a showcase for the Section.

### **Corporations, Securities, and Financial Services**

Gary Teblum reported that the Committee had a well attended meeting at the Retreat. The Committee was supporting the proposed rule change by the Florida Division of Securities which would address certain issues in the securities bill drafted by the Committee and approved by the Section which failed to pass during the past legislative session. Gary also stated that the Committee would follow up and support passage during the coming year of the LLC Glitch Bill which also had not passed during the last session and that the new bill would incorporate other glitch issues in the LLC Act.

Gary added that the Committee intended to support and provide input regarding a glitch bill being drafted by the Secretary of State to the Business Trust statute and is monitoring changes being drafted by NCSL to the Uniform Limited Partnership Act.

In that regard, Phil Schwartz stressed the need for continuing the good relations which the Section had enjoyed with the Florida Secretary of State to assist in passage of the Section's legislative agenda.

Gary also reported that the Committee was planning to conduct a comprehensive examination of Chapter 607 in light of changes in the laws of other states and in the Model Business Corporations Act. The Committee's goal is to present new Chapter 607 legislation to the Section for sponsorship during the 2003 legislative session.

Finally, Gary informed the Council of the Committee's CLE program plans, including a seminar in November being planned by Gardner Davis and co-sponsoring a seminar with the Tax Law Section in April.

### **Intellectual Property**

Steph Nagin reported that approximately 20 committee members had attended the Intellectual Property Committee meeting at the Retreat. The Committee is presently pursuing several significant projects, including the fourth annual seminar on "the Law on the Internet" planned for March 1, 2002, a seminar addressing "Hot Topics in IP Litigation," investigating certification for Intellectual Property, including subcertification areas in Patent, Patent Litigation, Trademark/Trade dress, and Copyright, and developing a pamphlet on "intellectual property" for members of the public to be approved by The Florida Bar.

### **Judicial Liaison Committee**

Judge Hyman reported that there was a good turnout at the Judicial Liaison Committee Meeting. The Committee discussed uniform notice of hearing rules and “mega” case rules which would be adopted for bankruptcy courts in all three Florida districts. Judge Hyman added that David Burton spoke at the Committee meeting about positions taken by the U.S. Trustee’s office and that the Committee discussed prospects for passage of the new Bankruptcy law.

### **Legislation Committee**

Maxine Long advised the Council members that, in light of the success the Section’s legislative agenda enjoyed during the last session, the Section had only two carry over bills which failed to pass: the Section 608 LLC Glitch Bill and the Amendments to Chapter 517 (the later of which, as reported by the Corporations and Securities Committee, would be addressed at least in part through rule amendment.) In addition, the Committee would be pushing for passage of the Revised UCC Article 9 Glitch Bill which the Section had just approved.

### **Chair’s Report**

Dave Felman thanked Alina Cooper and the members of the 2001 Retreat Planning Committee for making the Retreat a success. He noted the special contributions of Rick Gross in arranging sponsors for the Retreat and Hal Litchford in arranging for Chief Justice Wells to speak at the Retreat luncheon. Dave commented on the record number of attendees which he attributed to the timing of the Retreat, the lighter agenda, and the high quality of the programs. Dave reported that the plans were to have the Section Spring Meeting in Montego Bay, Jamaica.

### **Chair Elect’s Report**

John Emmanuel advised the Council members that plans already were underway for the 2002 Section Retreat. He solicited ideas from Council members for sponsors and programs. He also asked Committee Chairs and Vice Chairs to consider persons whom they would recommend for future leadership positions in the Section.

The Council meeting adjourned at 10:50 a.m.