

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

**August 24, 2003**

The Executive Council of the Business Law Section of The Florida Bar (the "Section") met on August 24, 2003 at the annual Section retreat held at the Ritz Carlton in Manalapan, Palm Beach County, Florida. Chair James B. Murphy Jr. called the meeting to order at 8:35 a.m. The members of the Executive Council and other invitees present at the meeting were:

Murphy Jr., James B., Chair	McCaffrey, Judith E.
Long Maxine, Chair-Elect	Messana, Thomas
Wolfson, Mark, Secretary/Treasurer	Mora, Mindy
Ackerman, David	Murphy, Jim
Ames, Stuart D.	Murray, Jason M.
Berlin, Howard	Nagin, Stephen E.
Blain, Russell M.	Neway, Douglas (Guest)
Busey, Steve	Olson, John K.
Conti, Louis	Orlin, Karen J.
Davis, Jeff	Redmond, Patricia (Guest)
Doppelt, Ava	Roman, Ron
Emmanuel, John	Rothman, Joel
Farach, Manny	Rydberg, Marsha
Fender, Steven	Saliwanchik, Dave
Gale, James	Schiller, Lisa
Gilbert, Irwin	Schwartz, Philip B.
Gomez, Joseph	Seewald, Jeanne L.
Gross, Rick	Shuker, Scott
Hirsch, Jeffrey A.	Singerman, Paul
Howard, G. Alan	Smith, Hon. Thomas B.
Hyman, Paul	Sutton, Kevin
Koch, Jonathan	VanNortwick, Hon. William A.
Lake, Kacy	Wells, Diane
LaRose, Edward C.	Wiley, Bill
Lewis, Samuel	Workman, Donald
Long, Maxine M.	Yadley, Gregory C.
Mahle, Steve	

**Introduction**

The chair recognized the following new Executive Council members: Joe Gomez, as Vice-Chair of Communications; Kevin Sutton and Lisa Schiller as members of the CLE Committee; Jeanne Seewald as Vice-Chair of Intellectual Property; Kacy Lake as Vice-Chair of Business Litigation; Irwin Gilbert as Vice-Chair of Computer Law Committee . Judge Michael Williamson, who was not able to attend due to a prior scheduled family event, sent a letter to the Section thanking the Section for his Lifetime Service Award.

## **I. Approval of Minutes**

**M/S/A.** On motion of Russ Blain, the minutes of the June 26, 2003 meeting of the Executive Council were approved as submitted.

## **II. Treasurer's Report**

Treasurer Mark Wolfson reported that the section continues to be in excellent financial condition. The final budget was distributed to all members and a brief discussion was held regarding status of year to date accruals for fiscal 2002-2003 versus the budget for 2002-2003. Total revenues were \$156,101 vs. \$164,071 and total expenses were \$98,185 vs. \$151,565. It was noted that these results were as of July 30, 2003 and did not include many expenses that had been recently incurred. The year to date fund balance was \$163,000.

## **III. Special Committee Reports**

**A. Article V** – Chair-Elect Maxine Long reported on the status of the work of the Section's Article V, Revision 7, Special Committee. She reported on the meeting that the Special Committee had with Circuit Judge Blevin Perry at which Judge Tom Smith and Judge Van Nortwick were also present. The Special Committee also includes Mark Wolfson, John Koch, and Diane Wells. Bill Wiley is advising this committee. Judge Perry is requesting that the Section help spread the message and educate the business group and business leaders throughout the state on the need to support full funding for the court system. The Chair-Elect noted that Judge Perry said that all sectors of the legal system would suffer without adequate funding, including the delay in timely adjudication of business litigation. Judge Perry explained to the committee that the clerks of the court pursuant to Statute receive and fund their operations from filing fees but that the court system gets its funds from general revenues.

A discussion was then held on the best way that the Section could support Judge Perry's request and adequate funding for the court system pursuant to Article V, Revision 7, Constitutional Amendment. Steph Nagin recommended that members write letters to their clients in support of full funding for the courts. Marsha Rydberg discussed the impact on the prison system and drug diversion programs in the event of lack of full funding.

It was the sense of the Council that the Special Committee focus on state business groups such as the Florida Chamber of Commerce, Associated Industries, the Florida Bankruptcy Association, and the Florida Retail Association and the like, as well as state legislative delegations. The Committee was also encouraged to work with key circuit court judges to see what aid the Section could provide. It was decided that the Special Committee would obtain supporting documentation from the court system and hold committee meetings to discuss the best way for the Section to support Judge Perry's efforts.

**B. Multi-Jurisdictional Practice Committee** – Lou Conti, the Special Committee Chair, discussed the background of the issue regarding the proposed enactment by the Florida Bar of rules limiting practice with respect to multi-jurisdictional practice and arbitration and litigation proceedings. The MJP Commission is seeking to enact a new rule that limits arbitrations, other than purely international arbitrations, to three appearances per year by a non-

licensed Florida lawyer. With respect to pro hac vice admissions in court proceedings, the MJP Commission has proposed eliminating the words “and unrelated” when used to modify no more than three appearances in separate matters in any one year time period. The MJP Commission also has proposed eliminating the discretion given the judges to exceed more than three appearances in Florida courts.

Lou Conti discussed his and Rick Gross’ recent appearances before the MJP Commission and elaborated on his July 29, 2003 letter submitted as part of the agenda package. Lou mentioned it appeared the Commission felt these issues had been debated and decided and was reluctant to consider argument from this Section about them. It was noted that the Commission had, however, agreed to not impose any requirements with respect to international arbitrations held in Florida. This change was sought by the International Law Section who also made an appearance before the Commission on July 23<sup>rd</sup>.

Lou Conti made a motion that the Section should take a formal position at the Florida Bar to support the ABA rule unmodified with respect to domestic arbitration proceedings and also object to any change the current rule in Florida with respect to pro hac vice admissions.

Steph Nagin made a motion to divide the prior motion into two parts and separately vote on domestic arbitration and pro hac vice admissions. The motion to divide was adopted, and following a lengthy debate, the Council approved both the motion to support the ABA rule unmodified with respect to domestic arbitration proceedings and to object to any change in the rule regarding pro hac vice admissions. The Chair

**Special Committee on Relations with the Florida Bar** – Marsha Rydberg, who is serving on the Special Committee established by President McGrane on relations between The Florida Bar and The Florida Bar Sections, reported on the status of the Special Committee. Marsha serves on the Special Committee as a representative of the Council of Sections. The Special Committee has been charged with considering whether or not there needs to be any adjustment with respect to splitting of dues charged by the various sections to their members and whether or not there needed to be any adjustments with respect to the CLE split between the Bar and the sections. Marsha reported that she attended an initial meeting of the Committee on August 21, 2003, when these issues were discussed, but no decisions or recommendations were made. Marsha advised that the Special Committee is still gathering data and information and that it was uncertain what, if any, recommendations would be made.

#### **IV. Committee Reports**

**A. The CLE Committee.** Due to his schedule, Lou Conti was permitted to report on behalf of the CLE Committee first. Lou reported that there be an open slot. He further reported that October 3, 2002 in Tampa would be a Chapter 607 revision seminar led by Scott Austin. The Business Litigation seminar was scheduled for October 10 in Orlando at which nine federal judges and general counsel would participate. The Bankruptcy/UCC Committee’s annual “View from the Bench” seminar was scheduled for November 6 in Tampa, November 7 in Miami. On January 16, 2004, in conjunction with the Miami meeting, the Antitrust, Franchise, and Trade Regulation Committee, along with the Computer Law Committee and the IP Committee, were sponsoring a seminar. Jim Gale was one of the Steering Committee chairs. Lou noted that the

annual Federal Securities Institute was scheduled for February 11 and 12. This is the co-sponsored seminar with the Glasser Legal Works and the Section receives the profits. The Bankruptcy Procedures seminar sponsored by the Bankruptcy/UCC Committee was scheduled in Tampa for February 26, involving alternative insolvency proceedings and bankruptcy workouts. Liz Rice is one of the co-chairs. A Merger and Acquisitions Seminar was tentatively scheduled for April 16, 2004, in Orlando, sponsored by the Corporate, Securities and Financial Services Committee.

**B. Antitrust Franchise and Trade Regulation** – Jason Murray gave the Committee report. The committee discussed ways to increase member participation and further discussed certification and franchising law. There was a discussion about the amendments and modifications to Antitrust Certification that are being presented to the Florida Board of Governors.

**C. Bankruptcy and UCC Committee** – Tom Messana, the Chair who gave the report. There were over 40 members in attendance and Judge Alexander Paskay gave a presentation. The Committee presented Judge Paskay with an 1885 form of a bankruptcy reporter as a sign of appreciation from the Committee to the judge's long participation in the Committee's activities. Tom reported on the amicus brief filed in connection with the Assignment for Benefit of Creditors statute that the Executive Council had previously approved. Tom thanked Russ Blaine for his efforts in shepherding the matter through the process. On a related subject, Tom reported that the Committee was going to schedule an Assignment for Benefit of Creditors program in Tampa and Miami. Michael Moecker and Associates was going to cover the expenses. Tom gave a report on the status of the Bankruptcy Appellate Panels Committee led by Steve Busey and Jules Cohn, and the lack of movement at the time, but also possible interest by the Eleventh Circuit. He further reported on legislation by Senator Aronberg dealing with the sale of databases and the effort of his committee to follow the legislative process and proposed changes as appropriate.

**D. Business Courts** – Rick Gross gave the Committee report. He noted that the Ninth Judicial Circuit approved the implementation of a pilot Business Court program. Judge Perry was supportive and council member Judge Tom Smith was instrumental in shepherding the matter through the Ninth Judicial Circuit process along with Ava Dopplet. The Ninth Circuit was still deciding on which judge would be assigned to this special division.

**E. Business Litigation Committee** – John Koch gave the Committee report. He explained the efforts to increase membership. He said the committee was formed to address substantive topics for CLE programs. He noted that the committee intended to restart the Case Law Update of significant business litigation cases in the near future. He mentioned there likely would be some proposals to make modifications to the enforcement of judgment statute and the garnishment statute. Bill Wiley suggested that the Committee consult with Jeff Davis with respect to any proposed changes. The Chair agreed.

**F. Computer Law Committee** – Manuel Farach delivered the Committee's report. He mentioned that the Computer Law Committee would be interested in the sale of customer list legislation being proposed by Senator Aronberg. Manny said that recently enacted legislation regarding electronic devices and tampering might be too broad and a glitch bill may be proposed

by the committee. Manny discussed a computer law mediation program to get expertise to other Section members and their clients. The January 16<sup>th</sup> CLE program was also mentioned.

**G. Communications Committee** – Alan Howard reported for that Committee. He discussed the status of the website, and the need to make it more self supporting, to draw more traffic to the site, and their goal to double the “hits” on the site.

**H. Corporations, Securities and Financial Services Committee** – Scott Austin made the report for that Committee. He discussed encouraging young lawyers to participate in more activities, he advised that Chapter 607 amendments were effective October 1, that the CLE program will be held October 3rd in Tampa. He discussed a joint project with the Tax Law Section with respect to Revised Uniform Limited Partnership Act to bring up to speed with the model act, and a “white paper” was being developed. The annual Securities Seminar with Glasser was mentioned, and he noted that the Legal Opinions Subcommittee was working on updating its report.

**I. Intellectual Property Committee** – Jim Gale provided the report for that Committee. He discussed a seminar, what ways the Committee was considering to increase communication among its members, and possibly set up a listserv for distribution of a newsletter to share, among other items, nonpublished opinions. The Committee was working on an intellectual property brochure and Intellectual Property Certification was going to the Board of Legal Specializations Committee of the Florida Bar. Jim further discussed possible modifications to the state Trademark Act to conform to the federal law.

**J. Judicial Liaison Committee for Bankruptcy** – Judge Hyman gave the report. Approximately 25 people participated in the Committee meeting. They discussed the adoption by the Southern District of Florida of Special Rules for “Large Cases.” The Middle District is considering adoption of similar rules. They discussed the need for attorneys to make sure they obtain consent from clients when proposing they have another lawyer cover for them. There was some discussion about a judicial questionnaire being provided to judges. There was also discussion about electronic filing in bankruptcy cases and the status around the state.

**K. Legislation Committee** – Diane Wells gave the report. Diane reported that her committee would be involved in connection with Article V funding and legislation. She summarized the substantive legislation reported on by the prior committees such as RULPA, 607 Glitch Bill, possible changes to the judgment lien statute, and the Aronberg Privacy Bill for Sale of Information. She reminded everyone to get draft legislation to her by the end of October/early November for consideration in the next legislative session.

**L. Long-Range Planning Committee** – No report.

**M. Opinions Committee** – Phil Schwartz gave the report. He discussed that the Committee is trying to get the Section’s various opinions reports on the website, perhaps with limited access for non-Section members. He reported that some committee members are continuing to address updates to the current opinion standards.

**N. Student Liaison Committee** – David Ackerman presented the report of the committee. The committee discussed increasing overall membership and perhaps encouraging students to attend meetings. It was suggested the committee should attempt to work with Liz Rice, former president of the Young Lawyers Division, to see what ideas the Young Lawyer section or Liz might have with respect to increasing membership. With respect to law school liaisons, he said the committee was going to focus on what students really want. There was discussion about the need to get liaisons for FAMU and FIU, the new law schools. Judith McCaffrey suggested current members bring newer members to meetings. Steph Nagin suggested a possible survey and use of the website and e-mail.

**O. Chair's Report** - Jim Murphy reported on the status of the London Spring Retreat for Executive Council. He mentioned the change from the original hotel to a more family friendly hotel. He noted that the Section Mid-Year Meeting is set to have State Senator Ron Klein as the keynote speaker. Senator Klein has been a active supporter of the Section. Jim encouraged all council members to attend. With respect to the Retreat, there was a discussion about whether to maintain the same time frame and place for the next year; the consensus being that the time and place should stay the same. The Chair gave thanks to Erwin Gilbert and Rick Gross for their hard work in increasing sponsorships to approximately \$35,000, \$10,000 more than the prior year.

**P. Chair-Elect Report** – Maxine Long discussed that one of her prime responsibilities was to oversee next year's Annual Retreat. She mentioned that a 2004 Retreat Committee meeting would be held for interested persons after the conclusion of the Executive Council meeting and the topics discussed will be sponsorships, programming and speakers, as well as comments on the current Retreat. It was noted that the Corporations, Securities and Financial Services Committee apparently had more members attend the Retreat this year because of its location. The Chair-Elect gave thanks to Alina Cooper for doing a fabulous job with this year's Retreat. She also thanked Rick Gross, Irwin Gilbert, Karen Orlin and Don Workman for their work on sponsorships.

Thereupon, the council adjourned.

Respectfully submitted,

Mark J. Wolfson  
Secretary/Treasurer