

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

Business Law Section 2004 Retreat, Ritz Carlton, Manalapan, FL

August 22, 2004

The Executive Council of the Business Law Section of The Florida Bar (the "Section") met on August 22, 2004 at the annual Section retreat held at the Ritz Carlton in Manalapan, Palm Beach County, Florida. Chair Maxine Long called the meeting to order at 8:35 a.m. The members of the Executive Council (the "Council") and other invitees present at the meeting were:

The following members were in attendance:

Scott Austin	Michael Higer	Stefan Rubin
Hans Beyer	Jeffrey Hirsch	Marsha Rydberg
Russell Blain	Alan Howard	Dave Saliwanchik
Steve Busey	Paul Hyman	Lisa Schiller
Michael Chesal	Katherine Lake	Scott Shuker
Lou Conti	Ed LaRose	Paul Singerman
Kenneth Darrow	Samuel Lewis	Thomas Smith
Jeff Davis	Maxine Long	Gary Teblum
Ava Doppelt	Stephen Maher	William Van Nortwick
John Emmanuel	Steven Mahle	Diane Wells
Manny Farach	Thomas Messana	William Wiley
Stephen Feidelman	James Murphy	Michael Williamson
Dave Felman	Jason Murray	Mark Wolfson
Steven Fender	John Olson	Greg Yadley
Henry Fox	Karen Orlin	
Jim Gale	Steve Peretz	
Irwin Gilbert	Mark Roher	
Rick Gross	Joel Rothman	

I. Introduction

Chair Maxine Long recognized the new members of the Council and thanked the continuing members for their service to the Council and Section. She also thanked the retreat committee for an outstanding weekend and seminar. The Council then discussed suggestions for the August 2005 retreat.

II. Approval of Minutes

Upon motion, and a second, the minutes of the June 24, 2004 meeting of the Executive Council were approved as submitted.

III. Treasurer's Report

A. Final Year End Statement. Treasurer Diane Noller Wells presented the current financial status of the Section and reported that the Section continues to be in good financial condition. The Unaudited Statement of Operations dated July 22, 2004 was distributed to members and a brief discussion

was held. It was noted that the net operations for fiscal year 2003-2004 was \$58,736.00, leaving a total current fund balance of \$207,956.00. The projected budget for fiscal year 2004-2005 was discussed, which budget projects net operations of \$14,334.00, with a total current fund balance at year end of \$122,269.00.

B. Budget Task Force Memo. Chair Maxine Long asked Marsha Rydberg, Chair of the Council of Sections, to report on the budget task force memo distributed as Exhibit C in the Council's materials. Chair Rydberg reported on a meeting of the Council of Sections to be held September 15, 2004. The Council of Sections intends to vote on the suggestion of the Budget Committee of The Florida Bar Board of Governors to either eliminate the historical reimbursement for printing costs and other particular materials or increase the Bar's share of revenue from member dues. Ms. Rydberg presented her analysis that if the member dues split was changed with an increase of \$3.50 per paying member to the Bar, then eight sections would fare better by eliminating the refund for printing and eleven sections would fare better with the increased dues split. BLS was one of the eleven sections that would fare better.

A discussion was then held. Upon motion of Diane Noller Wells, seconded by Judge Van Nortwick, as amended by Alan Howard, the Council unanimously authorized the Section's representative at the September 15th meeting to support a "no change" position with the Bar until the Bar provides a full and complete explanation regarding how it allocates expenses for overhead, including general administrative expenses, to each section, the formulas used for each section, and whether sections are treated similarly or differently.

Upon motion of Diane Noller Wells, seconded by Jason Murray, the Council further authorized the Section's representative and Ms. Rydberg, as Chair of the Council of Sections, to support policies by the Bar that allow each section to maintain autonomy in the operations of each section, the use of funds and maintenance of reserve levels.

Upon motion of Ava Doppelt, seconded by Mike Chesal, the Council authorized the Section's representative to the Council of Sections to support all policies that will increase Section membership including Bar President Kelly Overstreet's efforts and endorsements to increase section membership by focusing on efforts including, but not limited to, identifying what website, marketing materials and other promotional materials and services the Bar provides to each section to grow their own membership.

IV. Special Committee Reports

A. Multi-Jurisdictional Practice. Steve Maher reported that the oral argument before the Florida Supreme Court was scheduled for September 3, 2004. The Court is providing each side 45 minutes. He further reported that a good collaborative effort is underway to organize the argument among 6 speakers. Further, the Legislature has imposed a \$100 fee, while the Bar is advocating a \$250 fee from non-Florida lawyers.

V. Committee Reports

A. Antitrust, Franchise & Trade Regulations. Steve Feidelman gave the Committee report. Barry Blum of Burger King Corporation spoke at the meeting on Tortious Interference in Franchising Law (which earned members CLE credit). He also reported on the Committee's January 21, 2005 CLE in Miami, "A Low Carb Guide to Franchise Law."

B. Bankruptcy/UCC. Scott Shuker gave the Committee report. He noted that the Committee's most successful CLE, the View from the Bench, was scheduled for November 4th in Tampa and November 5th in Miami. Judges Williamson and Jennemann will participate on the panel. He announced that Professor Jeffrey Davis will present the topic of the doctrine of *in pari delicto* as it applies to Chapter 11 bankruptcy trustees at the upcoming January meeting. He also noted that his Committee would vote on the glitch bill in January, and they would not proceed with a BAP in the 11th Circuit at this time, but would wait to pursue that effort once the Southern District of Florida completed the process of concentrating bankruptcy appeals with a few specific judges.

C. Bankruptcy Judicial Liaison Committee. Judge Hyman gave the Committee report. He noted that the Southern District of Florida had adopted more local rules concerning first day motions, cash collateral orders and fee applications. He announced that the Southern District of Florida would go live with electronic filing on January 4, 2005 and that the District was in serious discussion regarding the 14% budget cut that had been announced for their fiscal 2004-05 year and how to train lawyers on electronic filings systems within that budget. As to the Middle District, there was a discussion regarding its Uniform Chapter 13 order and Rules. Lastly, he discussed testimony by Professor LoPucki testimony with respect to Article 3 Bankruptcy Judges and whether to adopt regional courts for mega cases. LoPucki's theory was that Bankruptcy Judges were being corrupted by bankruptcy lawyers because a Bankruptcy Judge is reappointed every 14 years and there is a peer review process.

Upon motion by Karen Orlin, seconded by John Olsen and others, the Counsel (excepting each Judge present who abstained) authorized Chair Maxine Long, to write to the appropriate House Judiciary Chair and Florida Delegates to support full and adequate funding of the Federal Courts in order for such courts to provide full services to the business community.

D. Business Litigation. Rick Gross gave the Committee report. He noted that the 5th Edition of the Business Litigation Manual was in process with Melanie Damian as the case law editor. His Committee supports Chapter 77 revisions and was looking for volunteers for moot court programs. He also noted that Judge Rene Roche spoke to the Committee about her business courts program.

E. CLE Committee. Michael Higer gave the Committee report. He announced that all CLE slots are full and that the Committee will sponsor one hour luncheon seminars at local firms hoping to attract 30 to 40 people. Alan Aronson of the Akerman firm and Steve Peretz of the Kluger, Peretz firm had volunteered their firms for the initial presentations. Mark Wolfson addressed the Counsel and reminding members of its goal to improve attendance at Committee meetings by offering free CLE credit for substantive programs at the meetings. He noted that the agendas and materials would need to be submitted in advance of the meeting.

F. Communications Committee. Alan Howard gave the Committee report. The Committee is conducting an in-depth analysis of the website. One issue he sought further discussion on was which portion of the website should be “public” versus “private.” A discussion ensued by all members. Upon motion by Alan Howard, seconded by Ava Dopplet, the Counsel authorized the entire website to be made public. Upon a further motion by Alan Howard, seconded by Jim Murphy, the Counsel directed each Vice Chair or their designee of a substantive law Committee to serve as liaison to the Communications Committee. Alan Howard also announced that Steve Fender was taking over the role of coordinating The Quarterly publication.

G. Computer Law. Manny Farach gave the Committee report. His Committee had discussed the 4th District Court of Appeals e-filing program which was to start the following Monday and included a document management system. He discussed the Committee’s CLE efforts and a decision by the 1st District Court of Appeals in *United States v. Councilman*, 373 F.3d 197 (1st Cir. 2004), regarding the issue of confidentiality of email transmissions. He also discussed possible rule-making by the Florida Department of Revenue. An ad hoc committee of Bill Wiley, Manny Farach and Scott Austin was created to review such issues and report back to the Counsel. Upon motion by Manny Farach, seconded by Karen Orlin, the name of the Computer Law Committee was changed to Computer and Cyber Law Committee.

H. Corporations, Securities & Financial Services. Karen Orlin provided the Committee’s report. The Committee is reviewing actions by Enterprise Florida to revise Florida’s blue sky laws. This action was initiated by the Governor’s office. The Committee also discussed the possibility of certification, reviewed and approved the Re-FRUPLA legislation as drafted the Tax Section, this Section, and Real Property, Estate and Trusts Section and approved by the Tax Section and the Real Property, Estate and Trusts Section, and discussed ways to build membership. Upon triple motion by Lou Conti, seconded by Greg Yadley, the Counsel approved the Re-FRUPLA legislation. Ms. Orlin also asked the Minutes to reflect the Section’s special thanks to Greg Marks of Greenberg Traurig for his hours of time and effort in preparing and finalizing the Re-FRUPLA legislation.

I. Council of Sections. No further report was given. See III.B. above.

J. Intellectual Property Committee. Jim Gale gave the Committee’s report. He noted that the Committee has conducted an email survey in the last four to six weeks regarding who will seek certification. 350 patent, trademark and copyright lawyers were contacted. Of the responses returned, half said they would seek certification in one or more areas. The email survey did not include members of the Committee or the Florida Intellectual Property Committee. He noted that each of those committees will be surveyed separately. He noted that the Committee had discussed the issue of malpractice insurance for IP lawyers and the explosive costs of that insurance. The Committee is exploring forming a consortium or captive insurance company to

address the cost of insurance. He further noted that Steve Peretz, Brian Spector, and others were working on a local rule proposal for the Southern District of Florida which provides a default confidentiality order if no separate confidentiality agreement is entered in a case. He lastly noted that the Committee was reviving its newsletter under the direction of Michael Higer.

K. Legislative Committee. Rick Gross gave the report. He reminded the Counsel that pending legislation had been approved by the Counsel in June pursuant to a triple motion and that the Section's positions were being carried forward. Upon motion by Rick Gross, with a second, the Counsel approved two changes to the judgment lien garnishment legislation, to: (1) delete the language "no other visible property" and (2) enlarge the time frame from two business days to three business days for a judgment creditor to object to a debtor's claim of exemptions from garnishment. He announced that members should watch for possible legislation from the International Law Committee regarding F.S. §48.181.

L. Long Range Planning Committee. No report.

M. Membership & Law School Relations Committee. Jason Murray reported for the Committee. The Committee has conducted a survey regarding the age of the members of the Section. Most members are between the ages of 36 and 55 (over 2,000). 859 are under 35, and 718 are over 56. The Committee's focus is on increasing membership at the 35 and under level. It is considering more CLE at meetings, mentoring on both sides of the graduation line, mentors to young lawyers, mentors to law students, receptions at Nova, FSU, UF, UM, Stetson, Florida Coastal, and forming associations at additional law schools to develop further relationships. Members suggested as additional schools: FMU, FIU, Barry and St. Thomas. Judge VanNortwick suggested looking into whether CLE credit can be provided for attorneys helping with moot court and with materials for seminars, including national securities law and the Vail Corporate Law seminar.

N. Opinions Committee. No report.

O. State/Federal Court Liaison Committee. Judge VanNortwick presented the report for the Committee. He discussed Florida Supreme Court Justice Parenti's ideas on how the Section can help the Court improve relations with the wider business community. Two ideas are to adopt a Circuit, such as Hillsborough County, and focus on the local business leaders and organizations. Another idea was for the Section to sponsor a retreat in Tallahassee in January 2005 with major business leaders. Jim Gale offered the services of Feldman, Gale & Webber to develop an article for The Quarterly and other publications regarding funding issues and how it impacts business litigation.

VI. Chair's Report: Maxine M. Long

A. Supreme Court Resolution. Chair Maxine Long referred the Council to the Supreme Court Resolution attached to the materials as Exhibit D. The Supreme Court recognized the efforts of the Business Law Section with respect to the great result obtained for Article V funding.

B. Retreat. Maxine Long thanked everyone for attending the Counsel meeting and again complimented the Retreat Committee and all those working on the Retreat on great it was and how much fun everyone was having.

VII. Chair-Elect's Report: Mark J. Wolfson

Mark Wolfson asked for volunteers to work on the retreat committee for August 2005 and suggested the Council investigate whether to add a Fall meeting beginning in the Fall 2005 in order for the Section to attract more members and provide more opportunities for involvement.

Thereupon, the Council adjourned at 12:17 p.m.

Respectfully submitted,

Diane Noller Wells
Secretary/Treasurer

