

THE FLORIDA BAR – BUSINESS LAW SECTION – EXECUTIVE COUNCIL
 Minutes of Meeting
 September 7, 2009 – 8:30 a.m.
 Naples, Florida

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

Alan H. Aronson	Mark Roher
Bill Wiley	Marta Alfonso
Brian Gart	Melanie Damian
Denise Dell-Powell	Michael Chesal
Doug Bates	Mindy Mora
G. Alan Howard	Paul S. Singerman
Gary Teblum	Peter Valori
Greg Yadley	Philip Schwartz
Gwynne Young	Rick Gross
J.C. Ferrer	Robert W. Barron
James Marx	Russell M. Blain
Jason B. Burnett	Samuel Abraham Lewis
Jason M. Murray	Stefan A. Rubin
Jeanne Seewald	Stephen D. Milbrath
Jeff Davis	Stephen E. Nagin
Jim Murphy	Steven Fender
Joe Gomez	The Honorable Catherine Peek McEwen
Joel Rothman	The Honorable Edward LaRose
Jon Polenberg	The Honorable John K. Olson
Kacy Donlon	The Honorable Michael G. Williamson
Leora Hermann	The Honorable Paul Hyman
Leyza Blanco	The Honorable Thomas Smith
Lisa Schiller	The Honorable William Van Nortwick
Lori V. Vaughan	Thomas M. Messana
Louis Conti	Valerie Yarbrough
Mark Nichols	Willard A. Blair

I. Call to Order; Introductions

The Chair, Louis Conti, called the council to order and welcomed the attendees to the meeting of the Executive Council. The Chair skipped the traditional introductions in light of the extensive socializing the council members had had the opportunity to partake in during the Business Law Section Retreat activities during the preceding weekend. The Chair noted the unfortunate absence of the Chair-Elect, Michael Higer, due to preparation for an impending trial.

II. Approval of the Minutes

The Chair presented the amusing and comprehensive minutes from the June 25, 2009 meeting of the council prepared by the Chair-Elect as one of his last acts as secretary/treasurer, and moved for the minutes to be approved. The motion was seconded by Rick Gross, and the minutes were unanimously approved by the council.

III. Treasurer's Report

Mindy Mora, secretary/treasurer of the council, presented the Treasurer's Report. Ms. Mora reported on the financial statements prepared by The Florida Bar as of August 24, 2009 for the Section, which reflected that the Section had expenses exceed income by \$28,281 for the program year through June 2009. A significant reason for the loss arose from the investment allocation loss in the amount of \$34,154 passed onto the Section by the Bar. But for the investment allocation, the Section would have had revenues exceed expenses. This indicated that the Section had obtained better control over its expenses.

In light of the continuing loss to the Section's Fund Balance, Ms. Mora reported that the Retreat Committee had carefully reviewed the financial experience of the Section during prior Retreats, and had concluded that a modest increase in fees to attend the Retreat was warranted. As a result, Ms. Mora was hopeful that the Retreat would not result in a further loss to the Section this year.

By continuing to keep costs in check, and ensuring adequate charges for Section events, the treasurer reported that she hoped to keep the Section on a cash flow neutral basis for the coming program year, so that the current fund balance of \$315,267 is not further depleted.

IV. Reports of Committees and Task Forces

A. Antitrust, Franchise & Trade Regulation

Jason Murray reported that the Antitrust Committee is focusing on three areas. First, it is seeking to increase its visibility to attract new members. The committee members discussed preparing a number of white papers and articles for publication, as well as the content of this committee's pages on the Section's website. The goal is to increase traffic to the website page for this committee. The members also discussed setting up special groups on social media, such as Facebook and Linked In.

Second, the committee members discussed with Bill Wiley legislation updates that are needed in the area of restrictive covenants and covenants not to compete, in order to address recent court decisions in this area. The committee hopes to finish its analysis and draft proposed legislation on this topic prior to the June 2010 meeting. Further, as a result of that analysis, the committee plans on presenting a half-day seminar on the proposed legislation at the June 2010 Annual Meeting.

Third, the committee plans to present a seminar on Florida antitrust law, as well as a seminar on the automobile industry and the effect on franchise agreements. This area may also result in the issuance of a white paper during the coming year.

B. Bankruptcy/UCC

Jason Burnett delivered the report of the Bankruptcy/UCC Committee. There were 40 committee members in attendance at the committee meeting, making it one of the best attended committee meetings at the Retreat. Mr. Burnett described various legislative projects on which the committee is focused, including Article 7, exemptions, replevin, and assignments for the benefit of creditors, and announced that the committee's upcoming View from the Bench Seminar is scheduled for October 15 and 16 in Tampa and Miami, respectively.

C. Bankruptcy Judicial Liaison

The Honorable Paul Hyman reported that the Bankruptcy Judicial Liaison Committee meeting was particularly well-attended due to the meeting being combined with the Bankruptcy/UCC committee meeting. However, due to the meeting combination, there was inadequate time for the BJJL committee to cover its full agenda, so the committee was only able to hear reports from the various judicial districts, including a report on proposed new rules in the Tampa Division. As a result of inadequate meeting time, both Judge Hyman and Mr. Burnett requested that the traditional meeting times be restored, so that Bankruptcy/UCC has 2-1/2 to 3 hours for its meeting, and Bankruptcy Judicial Liaison has 2 hours.

D. Business Litigation

Jon Polenberg provided the report on behalf of the Business Litigation Committee, which held a joint meeting with the State/Federal Judicial Liaison Committee. The BLC is working on preparing CLE courses that can be videotaped for certification purposes. The meeting was attended by four business court judges, whose participation was productive and helpful, as the judges were able to address questions that they couldn't get to during the lunch presentation. The committee observed that historically there has been poor communication between the Section and the business court judges, and the committee has as one of its goals improved communications with all of the business courts throughout the State.

In terms of legislative issues, the committee is setting up a study group to study an issue raised by Congressman Smith related to fee recovery for certain entitlement and quantum procedures. Further, the committee is studying issues raised by the proposed redraft of the LLC statute.

Finally, the committee is looking to increase the involvement of federal court judges with the activities of the Business Litigation Committee.

E. State/Federal Judicial Liaison

The Honorable William Van Nortwick reported that the experiment of combining the committee's meeting with the meeting of the Business Litigation Committee worked well. The chairs of the two committees can determine if separate sessions are needed in the future. Collectively, they required 2-1/2 to 3 hours for the meeting.

The committee members discussed with the business court judges in attendance that the Section's website would be modified to include a section on Florida's Business Courts, with a link to each judge's opinions, as well as directions to each business court. In order for this to be a success, the business court judges will need to furnish copies of their opinions to the Section's webmaster.

The committee also discussed improving communications with the business court judges. Both Rick Gross and Judge Van Nortwick agreed to communicate the appreciation of the Section to the business court judges as well as an invitation to next year's Retreat.

F. Communications

Peter Valori and Tracy Eller provided a report on the activities of the Communications Committee. The appearance of the Section's Website has been changed, and requires pictures to be provided by current officers and past chairs for the opening page. Links are provided to pages for the substantive committees, which the chairs of each committee need to review and populate on their ongoing activities. The website also contains a calendar page with a full month display of Section activities including CLE events, as well as related events of other bar organizations, such as the ABA and the NCBJ. The committee also requested a message from the new chair.

One improvement added to the website is a job postings section, for the benefit of Section members who are either seeking to hire attorneys or seeking employment. The website can also offer a link for special projects of the Section, such as the Opinions Project and the LLC Drafting Committee.

A photo gallery section has also been added to the website, and already includes pictures of the Barcelona Executive Council Meeting, Retreat pictures, and the Business Court Roundtable.

In appreciation of the extensive efforts of Mr. Valori and Ms. Eller, the council gave them a round of applause.

Mr. Valori also requested that the chair and vice chair of each substantive law committee ensure that content is provided for the Section's Annual Journal. Steph Nagin helped raised funds to continue the publication of the Annual Journal since Lexis/Nexis is unable to support the Section's publication efforts. The Section still needs to obtain additional support from its sponsors, as well as from others, such as financial printers and CPA firms. Any legislative initiatives or casenotes should be forwarded to Leora Hermann.

The council then discussed whether it made sense to e-print the Journal in order to defray the cost, as well as provide access to the Journal online through the Section's website. Some concern was expressed that distribution in this manner might limit the effectiveness of the Journal as a marketing tool for the Section, and the council did not reach any conclusion on this issue.

G. Computer/Cyberlaw

Steve Milbrath, vice chair, provided the report for the committee. There was light attendance for the committee's meeting. Given some overlap with topics considered by the Intellectual Property Committee, the two committees may have a joint meeting at the Mid-Year Meeting.

The committee focused on forensic evidence and computer related fraud issues. The committee is planning a CLE seminar for the June 2010 Annual Meeting, similar to last year's seminar, which may be combined with the seminar planned by the Business Litigation Committee.

The committee also plans to publish an article in the Florida Bar Journal in the coming year.

H. CLE Committee

Alan Aronson provided the report as the sole attendee of the CLE Committee meeting, which may still be ongoing due to the lack of a second to his motion to adjourn the meeting.

Mr. Aronson reported that luncheon seminars were continuing on their successful streak. Any half day or full day seminars that any substantive law committee is planning should be run through the Bar.

At the November Executive Council meeting, each vice chair must plan to attend a meeting of the CLE Committee to discuss their committee's ongoing CLE efforts.

Mr. Aronson also commented that the CLE presentations at the Retreat had indicated that the Retreat Committee had to ensure that there was sufficient time for each presenter, as there were some problems that arose due to programs not starting on time, and certain speakers being short-changed on their presentation times.

Mr. Aronson also reminded the council members that if CLE programs are offered at committee meetings, CLE credit can be provided to the attendees, which is an added benefit of Section involvement.

I. Corporation and Securities

J.C. Ferrer reported that the Corporation and Securities Committee meeting was well attended. The committee is working on an update to Fla. Stat. Ch. 607, as well as changes to the federal securities laws that are necessitating changes to the Florida Statutes. The committee also had a CLE presentation by PCE.

J. Diversity

Jason Murray conducted the kick-off meeting of the Diversity Committee, which was held in combination with the Membership Committee. The meeting was well attended, and the committee members enjoyed a lively discussion about recruiting new members to the Section, including minority members. This involves the Section supporting and participating in a couple of events, namely the Minority Mentoring Picnic, which is held in South Florida on December 14, 2009, as well as a similar event at either Stetson Law School or at the FAMU campus in Orlando. The total cost for both events is \$3,000.

A motion for the Section to support the Diversity Committee in participating in both events to the extent of \$3,000 was made by Mr. Murray and seconded by Judge Olson, and was unanimously approved by the council.

Mr. Murray noted that he will need Section volunteers, as well as giveaways, such as the Journal on jumpdrives. Mr. Murray noted that the purpose is not just to attract new members, but also to entice minority members to get involved in the Section's committee work and leadership positions.

K. FICPA

Stef Rubin reported that the FICPA Committee has had a slower start this past year, due to the different organizational structure of the FICPA. Nonetheless, the committee is trying to get the Section and the FICPA closer together, and plans to do so through CLE and legislative efforts. Discussion occurred regarding how proceeds from CLE programs would be split with the FICPA, and Mr. Rubin agreed to address this issue with the FICPA.

L. Intellectual Property

Joel Rothman indicated the Intellectual Property Committee meeting was well-attended, and the committee focused on three important issues.

First, the committee discussed a request from the IP Certification Committee that could be potentially problematic. In order to fully analyze the request, the committee established a study group and agreed to discuss the request at the Mid-Year Meeting

Second, the committee planned a CLE program for the Florida IP Summit, which provides in-state CLE for existing board-certified IP practitioners, as well as those planning and preparing for the May certification examination. The seminar will take place in Tampa or Ft. Lauderdale and will start on a Thursday evening, and continue for a full day on Friday. The seminar is planned for March or April.

Third, Steve Milbrath provided an update on software copyright infringement.

M. Legislation

Brian Gart reported that with guests, there were 18 Section members in attendance at the Legislation Committee meeting. The committee asked each substantive law committee to advise what proposed legislation it would be

pursuing during the coming year, so that the Section lobbyist, Bill Wiley, can prepare a comprehensive memo for the Section on legislative initiatives for the council to approve. The legislative memo, once approved, will be posted on the Section's website.

N. Long Range Planning

The Honorable Michael Williamson indicated that the Long Range Planning Committee will not be meeting until the November Executive Council meeting in November, and will provide a report to the council at the Mid Year Meeting.

O. Membership and Law School Relations

Doug Bates provided the report of the Membership and Law School Relations Committee. As noted above, this was a joint meeting with the Diversity Committee, which resulted in very positive interaction. The Section is going to have a law school reception for FIU and UM law students at the offices of Gray/Robinson. The committee also plans to use the website to draw out membership from the law schools, as well as to increase the involvement of the general membership of the Section.

P. Retreat/Sponsorships

Lisa Schiller provided a brief report on the success of this year's Retreat. Ms. Schiller was joined in her report by Alan Howard, the budget coordinator for the Retreat.

Mr. Howard reported that sponsorship pledges of \$85,000 had been obtained, although only \$60,000 had been collected as of the Retreat. There were over 300 attendees, including 140 registrants, 100 guests and 80 children. The Section increased the cost of attendance for registrants to \$495, and for guests to \$275. The Ritz-Carlton charges are expected to be less than \$145,000, which is what the hotel charged last year. As a result, Mr. Howard expects any loss from the Retreat to be minimal. Mr. Conti noted that part of the cost of the Retreat is the sponsorship by the Section for judges and academics to attend, but observed that their contribution to the Retreat and the draw they provide to members to attend the Retreat warranted the cost.

The council then discussed the location for future retreats, as well as the cost structure for future retreats.

Finally, the council acknowledged the extensive contribution of our Section Administrator, Valerie Yarbrough, to the success of the Retreat.

V. Special Committee Reports

A. Amicus Brief

Paul Singerman reported on the amicus curiae brief filed by the Section in the Doumolian case certified to the Florida Supreme Court by the Eleventh Circuit Court of Appeals, with respect to the interpretation of Fla. Stat. § 222.2574, which

was legislation sponsored by the Section. The council extended its thanks to the Berger Singerman law firm for its sponsorship of the Section and the preparation of the brief.

B. Chapter 608

Mr. Conti reported on the efforts of the LLC Drafting Committee, which meets monthly. The committee met with the RPPTL in July, and is going to meet with the Tax Section in October. In November, the committee is planning a drafting session, with a target date of 2011 to present the legislation to the Legislature for enactment.

C. Third Party Opinions Standards

Mr. Schwartz reported that a draft report has been issued by the Third Party Opinions Standards Committee which has been provided to the council members. However, due to the length of the report, Mr. Schwartz is not seeking the Section's approval, but will do so at the November Executive Council meeting so that council members have a sufficient opportunity to review the report.

Mr. Schwartz further reported that preparation of the report was time consuming and exhausting, but that creating the report will provide an immeasurable service to the members of the Section and The Florida Bar generally.

R.R. Donnelly typeset the report for free, although the Section had to pay for the cost of the paper if it wants to distribute the report in hard copy format.

The purpose of the report is to provide the custom and practice in third party legal opinions, including the proper words to use, their meaning, the reasonableness of various opinion requests, the diligence needed to render an opinion, and practice guidelines.

After the report is approved by both the RPPTL Section and the Business Law Section, the report will be published for public comment, so that there can be an open forum at the Mid Year Meeting, with the goal of having a final report approved by the spring of 2010. The report also had to be approved by The Florida Bar Board of Governors.

Once approved, the Opinions Committee plans to host a CLE program on the report during the Annual Meeting of The Florida Bar.

D. Board of Governors

Gwynne Young,, the Section's Board of Governors Liaison, expressed thanks to the FICPA Committee for its work, noting that establishing a liaison with the FICPA has been a major focus for The Florida Bar. Ms. Young also reported that the BOG appreciates the work of the Section.

The July 17 meeting of the BOG focused on court funding issues, and resulted in SB 2108 to address adequate funding for the courts. The legislation also seeks to implement electronic filing for the state courts, starting with the probate courts.

The BOG is also seeking to help lawyers generally address difficult economic conditions, and to address the legal needs of children, carrying out the recommendations from Edith Osman's administration.

The next meeting of the BOG is scheduled for September 23-26 in Hollywood, Florida.

VI. Miscellaneous

A. Future Mid Year Meetings

Judge Olson questioned whether the Section intended to continue meeting in January after The Florida Bar ceases holding the Mid Year Meeting. Discussion among council members suggested that continuing to meet in January is important to the Section and that meetings should be held at a hotel near an airport, in various locations around the state, including Jacksonville, Miami, Orlando and Tampa.

B. Coordination with Lexis/Nexis

Steph Nagin suggested continuing to work with Lexis/Nexis on collaboration tools that will make the Section site more compelling. Mr. Nagin volunteered to investigate the cost of these tools and to consult with the Communications Committee.

C. Thanks to Sponsors

Rick Gross reminded all Section members to continue to thank our sponsors by utilizing their services and stating our thanks for their support of the Section.

VII. The Meeting Schedule

A. Fall EC Meeting November 4 and 5, 2009 in Tampa, FL

B. Mid Year Meeting January 21, 2009 in Orlando, FL

C. Spring Retreat April 21-25, 2010 in Toronto, Canada (subject to change). At this point, the retreat is planned for the Park Hyatt Hotel, and will include a reception with local Toronto law firms, functions with judges, side trip to Niagra Falls and local wineries, restaurants and museums, music clubs, and shopping. As a reminder, a passport is required to travel to Canada.

D. Annual Meeting June 24, 2010 in Boca Raton, FL

VIII. Chair Report

Mr. Conti thanked all of the chairs and vice chairs for their efforts, as well as the Retreat Committee for its hard work on the 2009 Retreat. Mr. Conti also inquired on behalf of Mr. Higer the willingness of council members to incur all-day travel in connection with the 2011 spring meeting of the Executive Council.

Mr. Conti concluded his remarks by expressing his thanks to Valerie Yarbrough, Mr. Higer and Ms. Mora as part of his leadership team for the coming program year.

IX. Adjournment

The meeting was adjourned.