

THE FLORIDA BAR – BUSINESS LAW SECTION – EXECUTIVE COUNCIL
 Minutes of Meeting
 November 5, 2009 – 9:00 a.m.
 Tampa, Florida

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

Bill Wiley	Mark Wolfson
Brad Saxton	Mark Stein
Brian Gart	Melanie Damian
Dave Felman	Michael Chesal
Glennys Rubin	Michael Higer
G. Alan Howard	Mindy Mora
Gary Teblum	Paul S. Singerman
Greg Yadley	Peter Valori
Gwynne Young	Philip Schwartz
Hal Litchford	Rick Gross
J.C. Ferrer	Ryan McCabe
James Schmidt	Roberta Colton
Jason B. Burnett	Scott Austin
Jason M. Murray	Stefan A. Rubin
Jeffrey Hirsch	Stephen D. Milbrath
Jon Polenberg	The Honorable Catherine Peek McEwen
Josh Doyle	The Honorable Edward LaRose
Kacy Donlon	The Honorable John K. Olson
Leora Hermann	The Honorable Mary Scriven
Lori V. Vaughan	The Honorable Michael G. Williamson
Louis Conti	The Honorable Paul Hyman
	Valerie Yarbrough

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 socializing the council members had had the opportunity to partake in during the Executive Council dinner the preceding evening.

II. Approval of the Minutes

The Chair presented the minutes from the September 7, 2009 meeting of the council prepared by the secretary/treasurer, and Kacey Donlan moved for the

minutes to be approved. The motion was seconded by Scott Austin, 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 by first calling on Alan Howard to provide a financial report on the Business Law Section's 2009 Retreat. Mr. Howard advised that the Section had obtained \$87,000 in sponsorship donations and \$67,000 in attendance fees, for a total of \$160,000. With expenses and miscellaneous costs totaling approximately \$10,000, the Section realized a profit of approximately \$10,000. The Section congratulated the Sponsorship Committee on a job well done. In addition, the Section members informally voted that they preferred having a band as opposed to a speaker on Friday night of the Retreat.

Ms. Mora reported on the financial statements prepared by The Florida Bar as of September 30, 2009 for the Section, which reflected that the Section had income exceed expenses by \$96,464 for the program year through September 2009. A significant reason for the profitable operations arose from the Retreat revenue and the investment allocation gain passed onto the Section by the Bar. This indicated that the Section had obtained better control over its expenses. The new mantra for the Section is fiscal responsibility without austerity.

A. Diversity Committee Expenditure – Jason Murray sought approval from the Section to amend the budget to allow for the Section's sponsorship of the Minority Mentoring Picnics, both in South Florida on November 14, 2009 and in Central Florida in a few months. These sponsorships of \$1500 each were previously approved by the Executive Council at a prior meeting. In addition to confirming the prior sponsorship, Mr. Murray also requested members of the Executive Council to sign up to volunteer for the Section's table at each Picnic.

IV. Reports of Committees and Task Forces

A. Chapter 608

Mr. Conti reported on the efforts of the LLC Drafting Committee, which meets monthly. The committee met on November 4, 2009, and is making real progress on its drafting efforts. In February 2010, the committee is planning a two-day drafting session, to occur on February 26 and 27, 2010, with a dinner on February 25, 2010. Mr. Conti advised that the committee's efforts are open events to which newcomers are welcome. Participants can obtain CLE credit. In particular, Mr. Conti advised that the committee needs the assistance of litigators to advise on the judicial interpretation of certain proposed sections.

B. Third Party Opinions Standards

Mr. Schwartz provided a report on behalf of the Third Party Opinions Standards Committee.

Mr. Schwartz noted that this is an important report for the Section, which has been involved in setting standards for opinions since 1990, and issuing its first report on opinions in 1991.

The Third Party Opinions Standards Report describes the custom and practice within the State, which permits the Report to be used in disputes over opinion letters to establish what the custom and practice is within the State. Indeed, a number of other state bars have issued their own reports, including New York, Maryland, Pennsylvania, North Carolina, Georgia and California. The draft of Third Party Opinions Standards Report is very similar to the reports issued by other state bar associations.

The Third Party Opinions Standards Report articulates the customary practice within the State, not necessarily the best practices. Generally, if lawyers follow the customary practices within the State articulated in the Report, they should be providing the standard of care to which Florida lawyers should be held in the various areas of law covered in the Report.

Mr. Schwartz reviewed the key sections of the Report, including common elements of opinions, common opinion types, specific opinion issues, and inappropriate opinion requests.

Mr. Schwartz requested the assistance of the Business Litigation Committee to review the report, especially the section dealing with remedies opinions.

C. Antitrust, Franchise & Trade Regulation

Jason Murray confirmed that the Antitrust Committee is continuing to focus on the three areas identified in the September 5, 2009 minutes. In addition, Mr. Murray requested 1.5 hours for the Committee to meet at the Mid-Year Meeting of the Section.

D. Bankruptcy/UCC

Jason Burnett delivered the report of the Bankruptcy/UCC Committee. Mr. Burnett indicated that the Committee's glitch bill on the assignments for the benefit of creditors legislation enacted two years ago would be presented at the Mid-Year Meeting. Judge McKewen requested that the content of the Committee on the Section's website be updated. Mr. Burnett agreed to do so, and requested three hours for the Committee to meet during the Mid-Year Meeting.

E. Bankruptcy Judicial Liaison

The Honorable Paul Hyman reported that the Bankruptcy Judicial Liaison Committee plans to hold its next meeting on January 20, 2010 from 4:00 to 6:00 p.m., and then adjourn for cocktails and dinner. Lori Vaughan will be collecting RSVP's for the dinner.

F. Business Litigation

Jon Polenberg provided the report on behalf of the Business Litigation Committee, which plans to have a CLE presentation at the Mid-Year Meeting,

during the Section luncheon, which it will host a panel of federal district court judges, moderated by Judge Scriven. The Committee is also exploring conducting a joint CLE program with the Federal Court Practice Committee.

Melanie Damien is involved in organizing a roundtable discussion on behalf of the Federal Bench and Bar Committee, and requested that the Section consider sponsoring the event by donating \$10,000. A conflict was noted because the roundtable is scheduled to occur from 2-4:30, which is at the same time as some Section committee meetings which may preclude Section members from attending. No final decision was made by the Council on Ms. Damien's request.

G. 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.

H. Communications

Peter Valori provided a report for the Communications Committee. Mr. Valori requested a picture of the current leadership for the Section's website, as well as an update of the Message from the Chair. In addition, the chair of each committee needs to review and populate the Section's website page for that committee by reporting on the committee's ongoing activities. Leora Hermann requested that each committee provide a journal submission for publication, which can be in the form of a narrative summary or case briefs.

Ms. Hermann also inquired as to sponsorships for the Business Law Section Journal, and was directed to work with Ms. Schiller and the Sponsorship Committee. Ms. Hermann estimated the cost would be in the range of \$15,000 to \$20,000 to print the Journal.

Finally, Mr. Valori reported that the new website for the Section would be available soon, and suggested that the Section should explore having a presence on Linked-In or Facebook.

I. Computer/Cyberlaw

Steve Teppler indicated the committee did not have any update from the report it provided at the September 5, 2010 meeting. The Committee plans to have joint meeting with the Intellectual Property Committee at the Mid-Year Meeting.

J. Corporation and Securities

J.C. Ferrer reported that the reports provided by Mr. Conti and Mr. Schwartz provided the full update on the current activities of the Committee, which plans to meet for 3 hours at the Mid-Year Meeting.

K. Diversity

Jason Murray indicated the report on the Minority Mentoring Picnic provided at the commencement of the Council meeting provided the current status of efforts by the Committee. In addition, the Committee is working on a value statement regarding membership in the Section, similar to the one prepared by Mr. Burnett with respect to membership in the Bankruptcy/UCC Committee.

L. 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 to engage, and encouraged Section members to attempt to become involved with the FICPA at the local level

M. Intellectual Property

Mark Stein indicated the Intellectual Property 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 25 and 26, 2010.

N. Legislation

Bill Wiley indicated that there were a number of triple motions that the Council needed to consider. First, Mr. Wiley introduced Josh Doyle to the Council. Mr. Wiley is subcontracting with Mr. Doyle to assist in the lobbying efforts of the Section. Mr. Wiley spoke about Mr. Doyle's background, and his firm's current efforts in representing The Florida Bar. Mr. Wiley indicated Mr. Doyle knows the legislative process and his great credibility with the legislators and the staff.

Mr. Conti indicated that the Government Accountability Council, which is a committee in the House of Representatives, has the responsibility to check on the accountability of two areas, which include the Department of State. The Government Accountability Council is trying to sunset the Division of Corporations. Mr. Wiley suggested that this effort is not well-taken, as the Division of Corporations is functioning well and should not be sunset or moved to the Department of Revenue. In light of this, Mr. Conti made a triple motion opposing moving the Division of Corporations to the Department of Revenue or

sunsetting the Division of Corporations. The triple motion was seconded by Judge Olson. The Council discussed the triple motion and concluded that a white paper should be prepared to respond to any arguments attempting to rationalize the transfer or sunset of the Division of Corporations. The Council also identified legislators who would support the Section's position and agreed to reach out to them. The Council then voted unanimously to approve the triple motion.

Mr. Wiley described Sen. Bill 332 dealing with debt consolidation services. Ms. Colton made a motion for the Section to provide technical input and assistance to the sponsors of the bill and the legislative staff. Mr. Schwartz seconded the motion. During discussion, it was noted that the bill exempts attorneys, but the exemption may not be broad enough. The Council voted unanimously in favor of the motion, with Judge Scriven abstaining.

O. Long Range Planning

Roberta Colton provided the reports of the Committee. The goals of the Committee are to, among other things, increase participation of younger people in the Section and increase diversity.

The Committee recommends sponsoring two fellows, who will participate on the Council. The sponsorship will provide a subsidy of \$2,500 per year per fellow to cover out of pocket expenses incurred by the fellow in participating in Section activities, and will be available for attorneys in practice for less than 7 years and under the age of 31. The fellows will be selected by a screening committee that will include members of the Diversity Committee. The aggregate cost of this initiative will be \$5,000 year and the Committee recommends that the program have an initial term of two years. Prospective fellows would have to apply by July 2010 so that they can be selected in time to participate in the Retreat. Each fellow will have to commit to attend three meetings per year, including the Retreat, the Mid-Year Meeting and the Annual Meeting. This program will encourage younger people who are interested in obtaining a leadership position to get involved in the Section. Ms. Colton moved for the Council to authorize and approve the fellowship program, as described above. Mr. Murray seconded the motion. During discussion, the Council agreed that each fellow would have to be a member of a substantive law committee, attend the mandatory meetings and work with two mentors, one from a substantive law committee and the other from the Diversity Committee. After discussion, the Council voted unanimously to approve the motion.

P. Membership and Law School Relations

No report was provided.

Q. Retreat/Sponsorships

Mr. Howard provided the report for this Committee at the beginning of the meeting.

V. Special Committee Reports

A. Board of Governors

Mr. Higer provided the report from the Board of Governors, including information about a new website provided by The Florida Bar, an e-filing initiative for the state courts, and a positive budget report.

VI. Miscellaneous

VII. The Meeting Schedule

- A. Mid Year Meeting January 21, 2009 in Orlando, FL
- B. Spring Retreat April 28 to May 1, 2010 in Toronto, Canada.
- C. Annual Meeting June 24, 2010 in Boca Raton, FL

VIII. Chair Report

A. Mr. Conti provided more details regarding the spring meeting of the Council. At this point, the Council will be staying at the Four Seasons Hotel, and the trip will include a reception with local Toronto law firms, functions with judges, side trip to Niagara Falls and local wineries, restaurants and museums, music clubs, a baseball game, a side trip to the Lake District, and shopping in the Bloor-Yorkville area. As a reminder, a passport is required to travel to Canada.

B. Court Funding – This issue continues to be at the forefront of the Bar's efforts.

C. New Section website – The Section's new website at www.flabizlaw.org is in beta version but will soon go live.

IX. Adjournment

The meeting was adjourned upon the motion by Mr. Conti which was seconded by Ms. Colton.