

**INTELLECTUAL PROPERTY COMMITTEE  
BUSINESS LAW SECTION  
THE FLORIDA BAR  
MEETING AGENDA – BUSINESS LAW SECTION RETREAT  
Ritz Carlton, Naples, Florida  
September 1, 2012**

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**I. Introduction**

In the absence of the Chair Leora Hermann, IP Committee Co-Vice Chairs Ury Fischer and Dineen Pashoukos Wasylik welcomed everyone to the meeting at 10 am. In the interest of time, the committee introductions and went straight into covering the busy business agenda. The Committee recognized Bob Kain in drafting committee's contribution to the Business Law Section's Journal and approved the minutes of the June 21, 2012 meeting by voice vote.

**II. Attendees**

In attendance were Michael Bonan, Vijay Brijbasi, Kim Bursum, Doug Cherry, Philip DeLoach, Ury Fischer, Robert Kain, Ken Hartman, Jamie Hewitt, Kelly Hyman, Carly Johnson, Stephen Luther, Kevin Levy, Samuel Lewis, Stephen Luther, Doug McDonald, Robert Mino, Stephen Nagin, Genevieve Napolitano, Robert Pershes, Joel Rothman, Jeanne Sewall, Russell Slappey, Josh Saltz, Mark Stein, Robert Thornburg, and Dineen Wasylik.

**III. Legislative Update**

**A. Proposed Amendments to § 542.335, Fla. Stat., Sam Lewis, Miami**

Sam Lewis reported the consensus of the subcommittee that the changes to the non-competition statute proposed by the Hal K. Lichtford white paper dated August 30, 2011 are not warranted at this time. The subcommittee noted that while there are some issues with the statute that may warrant change, it chose to stay within the current parameters of its mission to analyze the statutory changes proposed in the August 30, 2011 proposal rather than come up with additional proposals.

Sam summarized the subcommittees' analysis on the four issues raised in the white paper. As to restrictive real estate covenants, the consensus was that appellate courts seem to apply the language in the statute appropriately so far, so there is no need to alter the statute at this time. On the issue of protection of referral sources, the subcommittee

**Florida Bar IP Committee Meeting  
September 1, 2012 Minutes**

recognized that there is a fact-intensive 5th DCA decision that many believe is wrongly decided, but noted that there is also a 3d DCA opinion that goes the other way, so at this time the subcommittee did not see the need for a statutory correction. As to the application of the statute to non-disclosure agreements, there is no current case law applying the statute to them, and the subcommittee felt it best not to raise an issue that is not yet an issue based solely upon a law review article. Finally, the subcommittee recommended that the issue of injunctive relief for return of information would be better addressed in the context of the trade secrets statute.

There was some discussion about whether this was a formal proposal from the Antitrust, Franchise and Trade Regulation Committee, or a proposal by an individual. However, the IP Committee was asked to make a recommendation to the Executive Council regarding this proposed legislation, and the subcommittee recommended against its adoption.

Michael Chesal moved to adopt the recommendation of the committee to oppose this proposed change to the statute. Doug Cherry seconded it. Motion carried by voice acclamation. Steph Nagin abstained from the vote.

The subcommittee and all other interested persons were requested to attend a meeting at 4 p.m. to further discuss the proposal with members of the Antitrust Section and other interested constituencies within the BLS.

**B. New Legislative Issues. Ury Fischer, Miami**

1. *Amendment to Public Records Statutes Ury Fisher, Miami*

Ury Fischer reported that our committee has been asked to look into a proposed amendment to the public records statutes, aimed at clarifying procedures and exemptions for disclosure of trade secrets or other confidential information provided to the State in the course of private entities contracting with the state. Ury Fischer will head a subcommittee to talk with the state attorneys advocating this change and report back to the IP Committee.

2. *Circuit Split on CFAA and Possible Legislative Solution, Bob Kain, Ft. Lauderdale*

Bob Kain submitted a white paper analyzing a circuit split of interpretation of the Federal Computer Fraud and Abuse Act (CFAA). The Computer Law Committee and Intellectual Property Committee will form a joint subcommittee to study the issue and consider what action, if any, we should propose to address the issue of "employee hacking" on the state or Federal level. Steph Nagin pointed out that we would have to get Executive Council approval to weigh in at the Federal level and for any initiatives at the state level. Bob Kain will head the subcommittee.

3. *State Ownership of Intellectual Property, Stephen Luther, Orlando*

Stephen Luther raised the issue of state ownership of intellectual property, and whether state agencies have the authority to own IP at all. He volunteered to head a subcommittee to study what the IP committee position should be on agency ownership of intellectual property and whether such ownership should continued to be held by the Secretary of State, or if it should be allowed to be held by other state agencies. There are some statutes and an Attorney General's opinion on this issue, but we may decide to propose legislation.

**IV. Diversity Committee Liaison Report, Carly Johnson, Miami**

Carly Johnson reported that she attended the Diversity Committee meeting at the retreat and we were commended for being one of the few substantive law sections to send a liaison. The Diversity Committee asked the substantive law sections to keep in mind that the Diversity Committee plan is available on the committee website. The Diversity Committee continues to advocate its Each One, Reach One campaign to put a concerted effort to reach out to underrepresented attorneys to participate in the Business Law Section.

**V. IP Certification. Jeanne Sewall, Naples**

Jeanne Sewall reported that 10 applicants took the certification test last spring, and of those, 8 passed and were awarded IP Board Certification. There are now 135 attorneys board certified in Intellectual Property in the state of Florida, making IP certification the 13th largest certification area out of 24 specialties. This was the first year for recertification, and 78 people have applied for recertification by the deadline. Since, in the first year, 108 applied for certification and 70 or so people took the exam, it appears that most people are intending to maintain their board certified status. The committee will be working on reviewing the recertification applications over the coming months.

Jeanne Seewald also reported that there have been some changes to the certification process, as the exam going forward is going to require a higher passing score of 70% score, rather than the former score of 67%. Not going to change format of the exam, just structure for grading.

Applications for the 2013 are due to be postmarked by October 31, 2012, and the exam will be on May 9th in Tampa.

Steve Peretz inquired about the detail required for recertification, and asked whether there is any control over relaxing the application requirements for recertification.

**VI. E-Discovery Task Force, Doug Cherry, Sarasota**

Doug Cherry reported that the meeting of the E-Discovery task force had 20 people in attendance. Because e-discovery is here to stay, the task force will be exploring, within the confines of the Business Law Section By-Laws, whether it makes sense to convert the task force to a formal substantive committee. Florida's new e-discovery rule of civil procedure took effect the day of the meeting, and the next annual meeting will include a full day CLE regarding e-discovery issues. The task force is looking for people to teach/organize the full day at the annual meeting, and also looking to have people sponsor local CLEs in affiliation with the Task Force.

**VII. State Trademark Procedures Initiative**

The Committee has reached out to the Secretary of State to try to organize a meeting to determine their needs. They are receptive to the meeting, but it has not yet been scheduled. The Task Force will continue to attempt to schedule the meeting.

**VIII. Update of IP Pamphlet**

Justin Miller has volunteered to revise the Intellectual Property Pamphlet and is looking for volunteers to assist.

**IX. IP Committee Blog**

The IP Committee blog has been updated and members have been added to the e-mail list.

**X. Fourth Annual Intellectual Property Symposium, Dineen Wasylik, Tampa**

Dineen Wasylik reported that we have our Keynote speakers set for the symposium. Bill Patry, author of Patry on Copyright, will speak Thursday night in a talk entitled "How to Fix Copyright." Our Friday lunch keynote speaker will be Federal Circuit Judge the Honorable Jimmie v. Reyna. The committee continues to work to put together a great event for March 21-22, 2013 at the West Palm Beach Marriott.

**XI. CLE Presentation: Hot IP Issues in Bankruptcy**

Attendees enjoyed a 1-hour CLE presentation by Daniel Benavides, of Kozyak Tropin and Throckmorton and Carly Johnson, of Peretz Chesal & Herrmann, P.L. The Course number is 1024 3.

**XII. Adjournment**

The meeting adjourned at noon. The Committee's next meeting will be at the BLS Midyear Meeting - January 9-10, 2013 - Orlando.