

**FLORIDA BAR  
TRIAL LAWYERS SECTION  
EXECUTIVE COUNCIL MEETING  
Friday, January 11, 2002**

**MINUTES**

Florida Bar Trial Lawyers Executive Council met at the Hyatt Regency, Miami during the 2002 Midyear Meeting on Friday, January 11, 2002. Chairman Tom Scarritt presided and called the meeting to order at 9:05 a.m. The Minutes were taken by secretary, Kelly G. Hamer.

**Roll Call**

Frank Bedell  
Bob Bergin  
Mark Buell  
Dominic Caparello  
Cynthia Everett  
Scott Jay Feder  
Linnes Finney  
Rich Gilbert  
Bill Hahn  
Kelly G. Hamer  
Cliff Higby  
Woody Isom

Tom Masterson  
Manuel Morales  
Bob Palmer  
Roosevelt Randolph  
Don Russo  
Tom Scarritt  
Carolyn House Stewart  
Connie Stewart – Section  
Administrator  
Terry Vento  
John Salmon, Guest  
Tom Warner, Solicitor General

Members who were absent:

Glenn Burton  
Larry Hamilton  
Buddy Jacobs

John M. Kest  
Mary Love  
Brad Powers

**I. Minutes for the October 5, 2001 Meeting**

The minutes of the October 5, 2001 meeting of the Executive Council were read and approved.

**II. Financial Report**

The financial statement was reviewed and approved with the current fund balance of \$213,319.00. The proposed annual budget for 2002-2003 was reviewed and approved.

### III. Committee Reports

a. CLE Committee:

Brad Powers was unable to attend the meeting so Connie Stewart gave his report. She stated that the Certification Review Course was on track and filling up quickly. Trial Lawyers Section is co-sponsoring a new seminar with the Elder Law Section on April 26, 2002.

During the discussion of CLE, Bill Hahn who is a faculty member for the Certification Review indicated that most of the speakers he contacted to speak at this year's seminar wanted copies of an old exam so they could make sure they were covering topics which would be covered by the exam. Hahn reported that he contacted several sources and in each regard was told that he could not get copies of an old exam. Discussion was had among counsel members about the rationale for not supplying old exams and the understanding that faculty members of the review course would like to know that what they are teaching is in fact information that will be asked on the exam. Cynthia Everett stated that on the Labor Law Certification Review Course there is a disclaimer on that brochure that the course does not specifically address what is on the exam. It was suggested that the Trial Certification Review for Trial Lawyers put a similar disclaimer on its brochure. Don Russo suggested that someone contact his wife who is past chair of the BLSE Committee to make inquiry on how to resolve this problem.

Frank Bedell reported for Larry Hamilton on the Damages Seminar and stated it was on track.

b. Mock Trial Committee:

Terry Vento and Cynthia Everett reported that this year's Mock Trial Competition was a success. It initially started with seven schools in the competition but one team dropped out right before the competition started. The schools participating were FSU, University of Florida, Stetson, Nova, St. Thomas and Miami. One of the teams from the University of Florida was the winner. It was reported that our concerns over whether the problem was appropriate for college students did not cause any problems. Terry nor Cynthia heard any complaints. Cynthia explained that Judge Parker will no longer be able to do problems for us and that she is currently looking for a new problem. Anyone with suggestions or ideas should contact her.

c. Website Committee:

Glenn Burton was unable to attend the meeting. Tom Scarritt reported that the website was operational.

d. 2002 Discovery Handbook Committee:

Mark Buell reported that all of the updated information is in and the handbooks are at the printer and expected to be completed in approximately one month.

e. Legislative Committee:

It was reported that Buddy Jacobs could not attend the meeting because of the recent death of his sister. Flowers were sent on behalf of the Executive Counsel in her memory. Dom Caparello gave Buddy's report. According to Buddy, there is not much activity in Tallahassee right now. Apparently there is still some discussion regarding the Judicial Nominating Commissions. The bill regarding jury selection is still pending. Dom explained that there has been some move to return jury rolls to only registered voters, rather than people currently holding a driver's license. Apparently the Academy voted 53% to 47% to revert back to the voter registration pool, but did not come out publicly for that stance. Discussion was held among the Executive Council regarding the pros and cons of changing the jury pool to be more selective by reverting back to voter registration criteria. It was pointed out by Dom that if we oppose going back to the voter registration pool, Buddy Jacobs could not Lobby for us in Tallahassee because he is currently lobbying for the prosecutors who want it to revert. A motion was made by Bob Palmer to have the Council support the change to go back to voter registration as a criteria. The motion was seconded by Cliff Higby but failed by a majority vote of the Council. Scott Feder moved that we recognize the issue and suggest that it be studied further. The motion died because of lack of a second.

Linnes Finney moved to support the current legislation which draws the jury pool from people with current driver's licenses. Cynthia Everett seconded the motion but it failed by majority vote of the Council. During discussions regarding motor/voter legislation, it was pointed out that when it originally was passed, there was some funding tied to passing that legislation. No one on the Council knew if that was still a valid concern.

Because of the divided opinion of the Executive Council, it was decided that we would take no position with regard to the issue and Dom will report that finding to Buddy.

The Council took no position on a proposed bill requesting 47 new judges but wanted to maintain our position that Buddy lobby to restore the judicial pay increase earlier put in place.

It was reported that Buddy would like to start the conference calls every Friday at 3:00 p.m. with the first call to begin on January 25<sup>th</sup>. Connie will send out the toll free number for everyone to call in to the conference calls.

## V. Old Business

### a. Standard Jury Instruction Committee:

Tom Scarritt reported for Mike Tanner and Larry Hamilton who worked on this committee. He stated that Mike and Larry had discussed the issues with several people and identified many areas where standard jury instructions in commercial litigation could be beneficial. It was determined that it is probably a worthwhile endeavor but the Executive Council of the Trial Lawyers Section is not the proper body to institute it. It was suggested that if the committee on Standard Jury Instruction wants to draft jury instructions for this area, we would be willing to provide them input.

### b. Expert Witness Committee:

Scott Feder reported on this committee for John Kest who was unable to attend the meeting. Scott explained that the subcommittee was asked to address problems with expert witness fees that were identified at the October meeting. Minutes of the December 19, 2001 telephone conference call were provided to the Council for their review. Four areas were identified as areas of concern. Those areas include fees charged by experts; requirement of reports by experts; minimum charges imposed by experts and apportionment of cost of depositions taken among parties taking the deposition.

Don Russo reported that he spoke with litigation managers at several large firms in Florida and received little support from them for these problem areas. He got the impression from these lawyers that the current state of expert witness fees and number of experts in many ways helps a defendant who is more experienced and usually has more money to spend in defense. Discussion was held among the Executive Council about the advantages and disadvantages of the Federal system and reports by experts acting as their direct examination. Bill Hahn reported that he is working on these same issues for a subcommittee of ABOTA and would keep us apprised of the results of that subcommittee. Scott Feder stated that written concepts with regard to these issues would be presented to the Executive Council in advance of the next meeting. John Kest will set up an additional telephone conference call.

### c. Public Hearing of The Florida Bar Commission on MJP of Law:

Rich Gilbert, Past President of the Trial Lawyers Section and current member of the MJP Committee for The Florida Bar reported to the Council of his committee's need of our response to the ABA proposals which will be presented to the Board of Governors. Rich informed us that his commission needed our response in 20 days (January 30<sup>th</sup>) in order for his committee to report to the Board of Governors in time for them to provide the ABA Florida's position on their proposals. Rich explained the background for the MJP issues primarily

focusing on lawyers who practice law in states in which they are not licensed. The ABA proposal involves a rule that would allow temporary performance of services by lawyers in states in which they are not licensed to practice law as long as there is no reasonable risk of harm to the parties. The ABA proposal includes safe harbors which would not be considered unlicensed practice of law. Those safe harbors include:

- (1) Associating local counsel who assumes active responsibility for the file;
- (2) Any ADR services;
- (3) Transactional law for clients in home states if their business is involved in the host state;
- (4) If the services in the host state are predominantly related to services in the home state;
- (5) Uniform Pro Hoc Vice rules which do not limit application to three times or require association of local counsel; and
- (6) Admission by motion if the attorney meets the character and fitness requirements and has been practicing law for five years.

Rich explained that the areas of concern to the Florida MJJ commission and ultimately the Board of Governors are the Pro Hoc Vice rule, the admission by motion and the disciplinary practice. Rich stated that discipline is a primary concern because at this point, there is no way for one state to enforce disciplinary action by another state. It has been proposed that the disciplinary actions would be binding from state to state and any disciplinary action done to a lawyer in a host state would be binding on the home state and a lawyer would be disciplined by the home state.

Rich stated that he would like the Council to take action as a board and take a position by January 30<sup>th</sup>. It was pointed out that Linnes Finney and John Kest are already involved in this issue because of their role on another committee. The ABA will recommend a model rule to each state and The Florida Bar wants to have input into that model rule. Rich stated for more information, the Council members could go to the ABA website and look up the initial report dated November 15, 2001 on the MJJ practices.

Tom Scarritt appointed a committee to include Dom Caparello, Linnes Finney, John Kest, Roosevelt Washington and Carolyn Stewart to look at the issues and get together next week and come up with rough comments. He then asked that those comments be circulated among the Council and request written responses with a telephone conference call to follow.

d. Legislative Reception:

Kelly Hamer reported that the Legislative Reception was a success. Many of the new legislators were in attendance and were very receptive to comments from

lawyers on issues which were pertinent. There was more than a little discussion on the changes to the Judicial Nominating Commission, and the problems which it has brought about.

## **VI. New Business**

### a. Proposed Changes to the Rules of Evidence:

Cliff Higby presented to the Council two proposed changes to the Rules of Evidence. One involving authentication of records which would allow records to be self-authenticating. After discussion by the Council, it was decided that the change was probably a good one.

The second proposed change involved expert witnesses. The change would not allow experts to disclose to the jury facts or data which were otherwise inadmissible. There was discussion among the Council about the pros and cons of this rule change and it was decided that the Council would take no position on that rule change. Tom Scarritt will respond on behalf of the Executive Council.

### b. Boards of Legal Specialization & Education:

Tom Scarritt reported that the Board of Legal Specialization & Education has asked for our comments relating to recurring problems the BLSE is having in connection with re-certification of trial lawyers. The general idea is that it is becoming more difficult for lawyers to be re-certified because of the decrease in number of trials. After much heated discussion among the Council, the gist of which involved the fact that board certified trial lawyers should be in trial a certain number of times in order to call themselves trial lawyers, it was decided that the Council would support a rule change which would clarify “trial units”, rather than simply trials. This would enable those lawyers who are participating in lengthy trials to satisfy requirements and bring them on par with lawyers who have more trials, but which last a shorter period of time so long as they still met the jury trial requirement. The Council did not agree to letting participation either as a student or faculty member in the Advanced Trial Advocacy Program to count in lieu of a jury trial. The Council was also not in favor of the language “substantially involved” as a criteria for certification. Likewise, the Council did not agree that a “supervising lead counsel” should be sufficient for re-certification, absent better definition of what was meant by “supervising lead counsel.” The Council felt that there should be some active participation. With regard to whether a judge, arbitrator or advocacy instructor should count as involvement for re-certification, the Council felt that it needed more clarification for criteria as to the judge. It did not agree that acting as an arbitrator or advocacy instructor would count as jury trial credit. Tom Scarritt agreed to respond on behalf of the Executive Council.

c. Eavesdropping on Lawyer-Client Conversations is Unconstitutional:

Tom Scarritt provided regulations from the Bush administration regarding this issue and his response which had been published in the Florida Bar News. This information was provided to the Council simply for informational purposes. A copy of the article from the Florida Bar News is incorporated by reference to these minutes.

d. Travel Survey:

Dom Caparello handed out a travel survey to the Executive Council members to inquire what our preference is in future meetings, both in state, out of state and out of country. Tom Scarritt encouraged everyone to sign up for the San Francisco trip. The accommodations have been moved from Hyatt to the Fairmont and the rates are expected to go down, although Elsa has not given us those new rates. The dates of the San Francisco trip are March 21-24.

e. Jury Innovations Committee:

Tom reported that as a result of our discussions and work in the October meeting, the response we sent to the Supreme Court was the only response sent by any group. Other groups filed motions to be heard out of turn and motions for extension of time. The Supreme Court granted the motions and oral argument on the issue has been postponed until February 4<sup>th</sup>.

f. Meeting the Challenges:

Tom Scarritt reported that The Florida Bar asked for an update on the Meeting the Challenges response that Mike Tanner had provided several years ago. This update was to catalog what this Council has done over the past several years. Kelly Hamer updated the Meeting the Challenges brochure and it was provided to The Florida Bar. Tom Scarritt offered copies of the update to any Executive Council member.

g. Standard Language for Release Preparation:

Tom Masterson asked that the Florida Defense Lawyers Association be asked to look at the proposed standard language for release preparation. He has received input from the Academy and would like to finalize the work product. It was also suggested that we circulate it to Flabota for their input.

Solicitor General Tom Warner was present for a portion of the Executive Council meeting. He was acknowledged by the chair and wanted to thank the Executive Council for its

hard work on issues involving trial lawyers. Rich Gilbert pointed out that Tom Warner had been very helpful to lawyers and lawyer issues as a legislator.

## **VII. Adjournment**

There being no further business the meeting was adjourned by Chairman Tom Scarritt at 12:55 p.m.