

THE FLORIDA BAR
TRIAL LAWYERS SECTION
EXECUTIVE COUNCIL MEETING
January 16, 2004

MINUTES

The Florida Bar Trial Lawyers Executive Council met at the Hyatt Regency in Miami on Friday, January 16, 2004. Chairperson, Kelly Hamer, opened the meeting and called it to order at 9:13 a.m. The Minutes were taken by Secretary, Mark P. Buell.

ROLL CALL

Mark P. Buell
Frank M. Bedell
Glenn M. Burton
Dominic M. Caparello
Edward K. Cheffy
Linnes Finney, Jr.
William E. Hahn
Kelly G. Hamer
Jonathan P. Lynn

Robert E. Mansbach, Jr.
Thomas D. Masterson
Robert C. Palmer, III
Bradley E. Powers
Roosevelt Randolph
Eileen L. Tilghman
L. Norman Vaughan-Birch
M. Therese Vento

Members who were absent:

Mark A. Avera
Jeptha F. Barbour
James D. Clark
S. William Fuller

Clifford C. Higby
A. Woodson Isom, Jr.
Clifford W. Sanborn, III

I. Minutes from the October 11, 2003 Meeting

The minutes of the October 11, 2003 meeting of the Executive Council were read and approved with the exception that Glenn Burton's name was deleted from Section VI relating to the Website Committee of which he is not a member.

II. Financial Report

The financial report was reviewed and approved. The current balance is \$191,636. In addition, the 2004-2005 Section budget (attached) was approved without amendment.

III. CLE Committee

Brad Powers reported on behalf of the CLE Committee. He reminded contributors that time deadlines for materials are upcoming and a reminder will be sent to contributing editors who were not at the meeting. He solicited marketing ideas for upcoming seminars. The Section is trying to obtain e-mail addresses for all 7,000 members of the Trial Lawyers Section. Currently, we only have about 3,000 e-mail addresses and it is felt that having the addresses of all members will help with marketing of seminars.

A discussion ensued regarding the February 9 and 10 Recertification Seminar at the Tampa Airport. Concerns were expressed about the preparation course having all subjects covered on the trial certification exam. The lecturers would like to have information regarding topics on the exams so that they can more effectively teach their subject areas. Norman Vaughan-Birch indicated BLSE is trying to encourage Board Certification in all areas, although obtaining questions that will be on the exam prior to the examination is problematic. Apparently, less than 50% of the certification test takers sign up for the review course which is an area where additional attendees at the seminar may be obtained.

IV. Mock Trial

The Executive Council thanked Terry Vento for her hard work in putting on the Mock Trial Competition again this year for the ninth consecutive year. Thanks also to Cynthia Everett. Ms. Vento is handing over the reins of the Mock Trial Competition to Eileen Tilghman. The competition went well this year with Stetson defeating Barry in the finals. Problems in the past with obtaining assistance from circuit judges due to the circuit judges' conference meeting is an issue which will need to be addressed in the future so that there are sufficient judges available. Seven law schools competed this year with 14 teams in competition.

The Council discussed how to continue providing new problems for the Mock Trial teams in the future. It was suggested we consider recycling old problems previously used. Several of the coaches have suggested the use of old problems prepared by Judge Parker or perhaps using old NITA problems. All of the coaches and others involved seem to desire the use of old, "tested" problems. Overall, Ms. Vento was pleased with the turnout and the schools were happy with the competition.

V. 2004 Discovery Handbook

Mark Buell reported all but two chapters of the 2004 Discovery Handbook are complete and have been sent to Connie Stewart. It is anticipated the other two chapters will be complete within two weeks. Sandy Sanborn will be taking over the Discovery Practice Handbook beginning with the 2004 edition.

VI. Website Committee

Linnes Finney reported regarding traffic on the website and sources of traffic. He indicated a bulletin board would soon be set up by our webmaster. It is suggested that we utilize different categories to be accessed in the bulletin board so that they could be used by practitioners with the unique, topic-related concerns. It is also anticipated a listserv of all members of our Section with their e-mail addresses will be traded to facilitate the sending of CLE notices, the newsletter and similar information. No additional expense will be needed for these additions by our consultants.

Mr. Finney also suggested that we consider a membership directory on our website. It was pointed out our site does not have seminars posted which will be corrected shortly. A motion was made, seconded and passed unanimously that we would add the listserv, CLE notices, bulletin board and membership directory to our website.

VII. Expert Witness Cost Committee

Glenn Burton reported regarding the Expert Witness Cost Committee and its new proposed Rule 1.400 which has been sent out to various legal organizations for comment. The only response received is from Webb Brennan and his partner, Bill Wagner, regarding the Academy of Florida Trial Lawyers' viewpoint. There is some concern regarding the ability to attract experts. Mr. Wagner had various procedural concerns related in his correspondence to Mr. Burton. Mr. Wagner also felt the proposed legislation may be more appropriate for the Legislative Branch rather than as a lower procedure. The new proposed rule shifts the burden regarding the amount of fees requiring proof that a fee is unreasonable. This language was approved at the October, 2003 meeting of the Executive Council. It was moved, seconded, and approved that the proposed rule be sent to the Supreme Court with Mr. Wagner's comments attached.

VIII. Legislative Committee

Buddy Jacobs reported regarding legislative developments. He passed around Constitutional Amendment Petition forms being circulated by the AFTL which is gathering signatures in support of three Constitutional Amendments relating to repeated medical malpractice, patient's right to know about adverse medical incidents, and requiring physicians to charge the same fee for the same health care service to every patient. He indicated the FMA is moving forward on its signature gathering in support of an Amendment limiting attorneys fees, but is questionable whether the FMA will be able to obtain sufficient signatures to get on the ballot. If the FMA obtains 10% of the required signatures, then the Supreme Court will consider providing an advisory opinion on the FMA Amendment. We will need to determine between now and the next meeting whether to file a brief in the Supreme Court on this issue on behalf of the Trial Lawyers Section. It was moved, seconded, and unanimously determined that we would appear in the Supreme Court and prepare a brief to oppose the FMA Amendment on the basis it is misleading for various reasons. Mr. Jacobs will prepare the brief and appear on our behalf after circulating drafts of the proposed brief.

Mr. Jacobs is continuing to track Bills and the tracking service will be available daily if we have questions regarding particular Bills which have been filed. He will e-mail the status of various Bills of interest to the Trial Lawyers Section on a weekly basis and a website will be available so that we can track legislation in which we are interested. Conference calls will take place during the legislative session at 11:00 a.m. each Friday morning.

The proposed budget was released January 15, 2004 and Mr. Jacobs had not had an opportunity to review it. The circuit judges have remained active in Tallahassee, but a battle is expected over proper funding of the court system. Mr. Jacobs felt it was unlikely that new judgeships would be funded.

IX. Proposed Changes to Rules of Professional Conduct

No further work has been done in connection with the proposed changes. We will resubmit the earlier letter prepared by Mark Buell and his Committee on this issue.

X. Old Business

Ms. Hamer spoke to Professor Earhardt whose committee is analyzing the proposed act on computer generated demonstrative evidence. The biggest issue appears to relate to pretrial disclosure. Professor Earhardt will provide a copy of any rule which is submitted for our review and discussion.

Bob Palmer reported regarding the President's Special Program on the Legal Needs of Children. After checking with the CLE Committee on this issue, it was determined there was little we could contribute from the standpoint of CLE. Accordingly, Mr. Palmer suggested that we contribute \$1,000 to the President's Special Project on the Legal Needs of Children which after motion and a second passed unanimously.

XI. New Business

Efforts to continue Board Certification of trial lawyers. Norman Vaughan-Birch reported that minor changes have been made regarding the qualifications for certification and recertification. In the future, a full day evidentiary hearing (such as an injunction hearing) will qualify as a "trial", and it will be necessary that one's practice include at least 50% trial practice. For recertification, the necessary number of trials has been reduced from 3 to 2.

XII. Spring Meeting

Our next meeting will be Saturday, March 27, 2004 at the Mills House Hotel in Charleston, South Carolina.

XIII. Adjournment

There being no further business, the meeting was adjourned by Chairperson, Kelly Hamer, at 12:00 p.m.