

Minutes of the Meeting of the Trial Lawyers' Executive Council

Hilton Orlando Hotel

Friday, January 22, 2010

The Florida Bar Trial Lawyers' Section Executive Council met on Friday afternoon at the Hilton Orlando hotel in conference room Lake Highland B. Chairman Bob Mansbach called the meeting to order at approximately 1:45 p.m. The minutes were taken by Secretary/Treasurer Craig Gibbs.

1. **Roll Call:** The following members of the Council were present: Hector More, Stewart Ratzan, Tom Edwards, Courtney Grimm, Kim Ashby, John Williams, Frank Bedell, Robert Mansbach, Cliff Higby, Wayne Helsby, Kim Cook, Bob Palmer, Cal Warriner, Ted Eastmoore, Charles Bartlet, Chris Knight, Brad Johnson, Bill Partridge, Phil King, Norm Vaughan-Birch, and Craig Gibbs. Also present was the Section's lobbyist, Bob Harris, as was the Bar's liaison, Paige Graham. Absent were members: Pat Lowry, Chris Knopik, Lou Prats, and Tim Sullivan.
2. **Minutes:** The minutes of the October 24, 2009 meeting which was held at the Naples Grande Beach Resort were unanimously approved, the reading of same having been waived.
3. **Financial Report:** Treasurer Gibbs reported that the Section is in favorable financial condition, including a current fund balance of \$654,141.00. The December, 2009 expenses were reviewed and considered routine. A review of the proposed budget for 2010-11, which was formulated by immediate past Chair Burton, was made and approved. Further discussion ensued regarding funding for the Burton Summit/Retreat which is scheduled to be convened in January, 2011. A preliminary budget of \$25,000.00 was earmarked and approved for this event.
4. **New Business:** Taken out of order but without objection, Chair Mansbach next recognized a guest, Senator Dan Gelber who gave an overview of the forthcoming legislative session, and the challenges of court funding that will likely arise. He advised that revenue streams are down, that the courts may need to cut an additional \$3 billion from their budgets, and that mortgage foreclosures have flooded the state's court system. Commenting upon the bi-partisan nature of the TLEC, he implored the members to loudly articulate our concerns vis a vis court funding with our respective legislative members throughout the State.
5. **Committee Reports:**
 - A. **Board of Governors:** In Sandy Sanborn's absence, Norman Vaughn-Birch advised that there was some discussion to dissolve some of the sections and/or committees due to a lack of attendance, and of apparent lack of interest in maintaining their particular, collective niche within the Bar. A comprehensive BOG's report was included with the meeting's agenda which highlighted other Bar concerns.

B. **By-Laws:** Norman Vaughn-Birch agreed to continue his work on revision of the by-laws of the Council. Kim Ashby agreed to assist him with the effort.

C. **Certification:** Former TLEC Chair Bob Palmer advised that there are problems with the completion and return of the peer review forms, which may delay the examinations of some candidates. He related that the process is confidential and that is that there are no repercussions if someone submits an unfavorable evaluation of a candidate. He further advised that the whole process will work successfully, if people avail themselves of, and participate in it. Approximately 60 candidates will be taking the next exam scheduled for March 12, 2010.

D. **Civil Procedure Rules:** Chair Mansbach advised that the committee had recently held an extended meeting, with more than half of it concern with the topic of eservice. Other issues such as the inconsistency between Rule 2.530 on Communication Equipment and Civil Rules 1.310 and 1.330 on Depositions were discussed, as was the never ending discussion of the correct use of “must vs. shall” in proper rule-drafting.

E. **CLE Report:** Kim Ashby informed the committee that the Civil Trial Certification Review is a money-making CLE and is set for February 1-2, 2010 in Tampa and is expertly run by Ed Chefry. Former Chair Palmer advised that the publicity surrounding the Trial Advocacy Program set for May 11-15, 2010 in Gainesville will be sent in mid-February, 2010. It was suggested that as this seminar counts as a trial, that all TLEC members as well as board certified attorneys, should receive notice of the seminar via the Bar’s section’s list serve.

F. **Council of Sections:** no report.

G. **Discovery Handbook:** John Williams advised that the handbook should be completed by the end of January, 2010 and published and disseminated shortly thereafter, including on the TLEC’s website and, per typical practice, to all county and circuit court judges. Suggestions were made that a chapter on recent rulings and changes to attorney-client privilege, and on work product may be helpful to practitioners.

H. **Rules of Judicial Administration:** Secretary Gibbs advised that the committee had unanimously approved-in-concept at their recent meeting, proposed Rule 2.516 entitled “Service of Pleadings and Documents”. A committee comprised of the ten (10) different rules committees began work in August, 2009 to explore whether a change in the manner of service of pleadings by and between attorneys was worthwhile. The committee produced the above-cited rule, but envisioned during their deliberations, five (5) potential problems with eservice. They included the fact that: (a) any new rule requiring eservice must be approved quickly while other efforts to modernize Florida’s court system continue. It was noted that eservice changes have been vetted in other rules’ committees favorably. (b) state-wide uniformity of eservice must be maintained, while consistent with, and mindful of any statutory exceptions that might exist. However, the committee collectively found no significant, substantive reasons as to why there should not be a single, cohesive rule governing the electronic service of pleadings and documents in all

of Florida's courts. (c) any change should be as simple as possible, and avoid the reluctance inherent in amending a centuries-old method of service. (d) proposing a single new rule under the auspices of the RJA, even allowing for any substantive variances, would facilitate swift passage of the rule and any future amendments, rather than having various, duplicative eservice rules. (e) to the extent possible, mandate eservice for all attorneys, understanding that exceptions: (i) may have to be carved out for a particular rule-set that has a special, legally mandated form of service, and (ii) those parties who are unrepresented, who do not have routine access to a viable email account. Further observations were made and discussed about the potential savings in costs, labor and time through the enactment of an eservice rule, with the hope that the assigned RJA subcommittee after further study may be able to provide a final proposed rule at the next RJA meeting. Whenever final approval by the RJA is secured, then the rule is, of course, to forwarded it onto the Supreme Court for its consideration.

New Business: Chair Mansbach out of order, but without objection next recognized visitors, Florida Bar President Jessie Diner and President-elect, Mayanne Downs who brought greetings on behalf of the Bar. Observing that this is the Bar's final scheduled mid-year meeting, they commented that they hoped that the Mock Trial event would continue, characterizing it as the "signature event" of the Bar's Mid-Year meetings. They were informed of the Section's plans for the Burton Summit/Retreat and offered their assistance, and that of the Bar's meeting's department, as an additional resource in the Council's efforts to plan and execute an outstanding, annual the event.

I. **Legislative:** Accompanying the meeting's agenda was the Council's 2010 Legislative Platform, and a table of the House and the Senate Leadership & Committee members. Bob Harris reported that the legislative session is scheduled to begin on March 2, 2010, and encouraged the Council's members to contact the leadership, and advise them of the Section's agenda and platform, echoing an initiative found in a letter that was earlier sent to all Section members by Chair Mansbach, Chair-elect Higby, and Legislative Affairs Chair Tim Sullivan. Bob Harris highlighted meetings and conversations that he had recently had, or was scheduled to have with key legislators, in order to promote our platform. He also mentioned that court funding issues, including an increase in judicial salaries, remain subjects for debate in the forthcoming legislative session. Finally, he commented upon some of the additional contentious bills that will be debated in session such as the issues of contingency fees, parental release, a new slip-and-fall bill, and a courts-and-clerks statewide eportal solution. Finally, the final draft of the white paper on the proposed comparative fault/products liability bill should be completed by Cal Warriner early next month for distribution to various members of the legislative.

J. **Mock Trial:** Chair Mansbach expressed his appreciation on behalf of the Council to Wayne Helsby and Kim Cook for conducting a wonderful competition which was won by the University of Florida School of Law. Kim also publicly acknowledged Orlando Legal Copies, who provided the exhibits for the competition. Various further observations were offered for next year's competition including the importance of the venue, which should be close to the courthouse, so that the judges' travel time is minimized, that the students

enjoy the competition being scheduled in January, which allows them the holiday break to prepare, and that a real courthouse for the semi-and-final rounds would be helpful. Discussion then centered upon next year's mock trial planning, for example the close proximity of the Vinoy Resort to the St. Petersburg courthouse, the fact that the largest MLK day parade in Florida is in St. Petersburg, and that the Stetson Law school in downtown Tampa may be available for some of the competitive rounds. Next year's event will be held in conjunction with the Burton Summit/Retreat.

K. Membership: Courtney Grimm reported that an invitational letter had resulted in new members to the section.

L. Website: Chair Mansbach advised that the site used to list all Council members with their respective term limits. Ted Eastmoore stated that he will update the site with the change, and will also add the dates for all upcoming seminars of the Section.

M. Nomination: Chair Mansbach reminded the Council that Chair-elect Higby and immediate past Chair Frank Bedell as the nominations committee will be looking for candidates at the next meeting in April to vet, and be voted upon at the June meeting. He advised that geography, diversity, and the maintenance of a balance of practice-area, should all be considerations in the submission of potential new members.

N. Judicial Relations: no report.

O. Med Mal Publication: no report.

P. TLS Burton Summit: Chair-elect Cliff Higby reported that with the amount of work that will be involved in the planning and execution of the summit, he welcomes the additional new members to the Council. He intends to begin teleconferences again with his planning subcommittee, and work closely with the Bar to hold the summit at the Vinoy or Don Cesar during January, 2011.

Q. YLD Liaison: no report.

6. **Old Business:** Chair Mansbach reminded the Council of the importance of the legislative teleconferences, especially when members of the legislature are on the calls and that the call schedule is included in the agenda item.

7. **New Business:**

A. Chair Mansbach reminded the Council to secure reservations for the next meeting to be held at the Inn and Spa at Loretto in Santa Fe, NM, April 22-25, 2010.

B. The Annual meeting of the Florida Bar will be June 23-26, 2010 at the Boca Raton Resort and Club, with the Council's meeting there on June 25, 2010. Past Chair Bedell

advised that the Chester Bedell Luncheon will again be held jointly with the Criminal Law Section on June 25, 2010 at 12:30pm with Stephen Bright of the Southern Center for Human Rights, Atlanta, GA as speaker.

C. Chair Mansbach received a solicitation to help sponsor the UF Trial Team, which was voted down due to all of the other solicitations that the Council envisioned may be received from other law schools.

D. Volunteers are needed to serve as judges for the 2010 Florida High School Mock Trial Competition which will be held in Orlando on March 25-27, 2010. A suggestion was made to have the program director, Erin Crowe contact the successful, annual Manatee County high school mock trial competition director for details, where it was reported that paralegals do most of the coordination of judges, lawyers and planning of the event.

E. The Council agreed to split the cost with the Criminal Law Section, of a smart phone for the Council's liaison because that Bar does not provide her with one. Her access to emails should be facilitated thereby. Total monthly cost will be \$75-100.00.

F. The 2010-11 Council Meeting Schedule was offered by Chair-elect Higby as follows:

(a) August 26-29, 2010 at Ponte Vedra or Amelia Island.

(b) November 4-7, 2010, at the Watercolor Inn and Resort, Santa Rosa Beach, FL.

(c) April-early May, 2011, Edinburgh, Scotland.