

## **Minutes of the Meeting of the Trial Lawyers' Executive Council**

Boca Raton Resort and Club, Boca Raton, FL

Friday, June 25, 2010

The Florida Bar Trial Lawyers' Section Executive Council met on Friday, June 25, 2010 during the Florida Bar's Annual meeting at the Boca Raton Resort and Club. Chairman Bob Mansbach called the meeting to order at approximately 2:25 p.m. The minutes were taken by Secretary Craig Gibbs.

1. **Roll Call:** The following members of the Council were present: Hector More, Kim Cook, John Williams, Norm Vaughan-Birch, Bob Palmer, Robert Mansbach, Cliff Higby, Wayne Helsby, Courtney Grimm, Frank Bedell, Ted Eastmoore, Charles Bartlett, Bradley Johnson, Frank Bedell, Patricia Lowry, Tim Sullivan, Tom Edwards, Stuart Ratzan, Kim Ashby and Craig Gibbs. Also present was the Bar's liaison, Paige Graham, the Section's lobbyist, Bob Harris, and potentially new Council members, Sidney Matthew, Tom Bishop and Mindy McLaughlin. Appearing by telephone was Phillip King.  
Absent were members: Cal Warriner, Chris Knopik, Bill Partridge and Sandy Sanborn.
2. **Minutes:** The minutes of the Saturday, April 24, 2010 meeting which was held at the Inn and Spa at Loretto, Santa Fe, NM were unanimously approved, the reading of same having been waived.
  - A. **Presentation:** Heard out of order but without objection, Chair Mansbach next welcomed an invited guest who also attended the meeting, Representative Ellyn Bogdanoff, (R), Florida House of Representatives, District 91. She was presented with the Section's 2010 Legislator of the Year Award by the Chair for her untiring efforts in the legislature as Chair of the House's Finance and Tax committee for furthering the Section's stated goals of maintaining access to the courts, continuing adequate court funding and ensuring an independent judiciary. She offered remarks and departed.
3. **Financial Report:** Secretary Gibbs reported that the Section is in favorable financial condition, including a current fund balance of \$603,925.00. A review of the May, 2010 expenditures were made, and said expenses were considered routine. However, a shift of \$6,800.00 was made in the operating reserve portion of the budget in order to cover the expense of purchasing and delivery of the Section's recently updated medical malpractice publication to the State's judiciary. With that amendment, the Section's budget was unanimously approved.
4. **Committee Reports:**
  - A. **Board of Governors:** no report.
  - B. **By-Laws:** Norman Vaughan-Birch reminded the Council that the by-laws had not been changed since 1976 and contained somewhat dated verbiage such as how to establish the Council, and he further advised that certain committees are no longer viable.

He recommended that the next Chair encourage revisions that may be brought to the body for consideration pursuant to the amendment paragraph of the by-laws.

**C. Certification:** Bob Palmer reported that plans are underway to hold the typically successful Certification Review course in conjunction with the First Annual TLS Burton Summit to be held in January, 2011. He advised that while several persons attend the course as preparation for the examination; many other attendees participate in the course with the intention of merely obtaining an overview or update of current law and legislation. As such, they would be prime candidates who might enjoy attending this first summit.

**D. Civil Procedure Rules:** Chair Mansbach advised that the committee continues its efforts to support and help effectuate email service statewide, which effort is being lead by the Rules of Judicial Administration committee. There were also the usual repetitive discussions at the meeting concerning the use of “must vs. shall” in drafting legislation, which effort has gained very little traction.

**E. CLE Report:** Kim Ashby reported that a concerted effort was made to break-even or increase revenues for the Section in the CLE courses offered this year. Overall, this effort was successful for the many educational courses offered by the Section. Future endeavors include exploring the use of webinars, CD’s and other non-travel related methods of instruction, thereby reducing the costs for participants and further increasing revenues for the Section. The feasibility of offering a seminar on the spoliation of evidence, always a timely topic and a continuing concern for many practitioners may be in the offing. Finally, Chair-elect Cliff Higby recognized the outstanding work done by Bob Palmer and Tom Bishop for the exceptional Trial Advocacy Seminar held in May, 2010 in Gainesville, as evidenced by the stack of letters received commending the program from recent participants. He encouraged all Council members to participate in some way in at least a portion of the 5-day seminar next year.

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

**G. Discovery Handbook:** John Williams was pleased to again report that the handbook is completed and that two (2) additional chapters were added. He has secured two (2) different jurists who have volunteered to vet the effort, keeping in mind recent legislative changes and discovery opinions. As is typically the Section’s practice, it will be disseminated to all jurists throughout Florida, once published.

**H. Rules of Judicial Administration:** Secretary Gibbs reported that after over an hour’s somewhat contentious deliberation and discussion, an e-service rule, Rule 2.516 was passed by the RJA—although the final draft has not yet been written, and may ultimately be circulated electronically among the committee for consideration. As the coordinating rules committee for the ten (10) different rules committees in Florida, the final rule is envisioned as being easy to use and will require a declaration of an email address by each attorney upon the filing of a complaint, with the option of adding up to two alternate

email addresses to be used for the service of documents. If none is declared, the email address maintained by the Florida Bar may be used. (The Florida Bar is currently considering an email address declaration proposal for the Rules Regulating the Florida Bar). The committee envisioned uniformity of use of the new rule across Florida, consistent with any statutory exceptions that might exist, and mandatory use for all lawyers in all proceedings in all courts, with a court-ordered excuse provision for those who may not have access to a functioning email address on a regular basis. Finally, the RJA committee discussed the status of the e-portal system, run by the court clerk's office and perhaps built upon a technology platform similar to the federal courts' PACER system that has been successfully used by judges, practitioners, and others for years.

**I. Legislative:** Bob Harris specifically thanked Tim Sullivan, legislative committee chair for the work that he performed on behalf of the Section this year during the legislative session as well as the Section's leadership for their help in assisting him in his lobbying efforts on the Section's behalf. He further outlined the various forthcoming legislative races for the fall, and gave an overview of past legislative efforts vis a vis the Section's goals of maintaining access to courts, continuing adequate judicial funding and ensuring an independent judiciary. He highlighted various legislative directives that supported these goals by briefly discussing specific, favorable legislative mandates, and some of the legislators that initiated them, as well as some of the bills that did not garner support in the House or Senate. Finally, Tim Sullivan commended Bob Harris on the extensive work that he has performed on the Section's behalf, in his effort to demonstrate to the legislators and to others, that the Section is composed of a balanced group of practitioners.

**J. Mock Trial:** Wayne Helsby and Kim Cook were awarded plaques by Chair Mansbach for the superior work that they exemplified, which culminated in an outstanding mock trial competition held in Orlando at the Bar's mid-year meeting in January of this year. Plans are being made to convene next year's competition in conjunction with the First Annual TLS Burton Summit. An appeal was made by Wayne Helsby to everyone to assist him in securing judges willing to participate in the competition. Council member Charles Bartlett agreed to assist with this task.

**K. Membership:** Courtney Grimm reported that the Section's membership was presently at 6577 members. She further advised that the Council's facebook, a useful tool to identify Council members and their families, will be published and disseminated in paper and in electronic form for all Council members sometime after this annual meeting, once all of the Council membership is firmly established after the meeting's elections.

**L. Website:** Ted Eastmoore reported that he will work with our Section's liaison to place the identities of all Council members onto the Section's website. Presently, it was observed that only the officer's identities are listed. Further, plans were suggested to get all of the forthcoming Section activities, CLE's, seminars and Council meeting dates on the site, as well as exploring the possibility of providing a means to register for the various activities on-line.

**M. Nominating:** Chair Mansbach thanked the body for potential candidates which would be voted on later during the meeting.

**N. Judicial Relations:** no report.

**O. Med Mal Publication:** no report, however Mindy McLaughlin offered that the judges favorably received the updated edition provided to them by the Section.

**P. 1<sup>st</sup> Annual TLS Burton Summit:** Chair-elect Higby reported that the Burton Summit would convene the week of January 10, 2011 at the Omni Orlando Resort at Champions Gate, 1500 Masters Blvd., ChampionsGate, FL 33896 telephone:(407) 390-6664. Bob Palmer has been selected by the Chair-elect to chair the event along with an appointed committee of various Council members. He envisions the summit to include the Mock Trial Competition, the Certification Review course, and speakers including ABA Chair Steve Zack and Jeff Toobin of CNN, a Council meeting, and sundry social events to bolster networking opportunities. Sponsorships will be secured from attorneys, vendors and/or firms at various levels, with a goal of raising \$30,000.00 for the event. Further details of the event including marketing and advertising were discussed with the goal of making this a first-class, annual event.

5. **Election of New Executive Council Members:** Chair Mansbach passed the gavel to Chair-elect Higby who advised that the previous resignation of Lou Pratt will be filled by Tom Bishop of Jacksonville and that Mindy McLaughlin of Tampa will similarly complete the term of the recently resigned Chris Knopik. Sid Mathew's name, taking over Tim Sullivan's seat, would also be placed into nomination by the nominating committee. Without further discussion, all three candidates were unanimously elected by the body. Similarly, after thanking the Council for submitting the names of potentially new Council candidates, Cliff announced that the nominating committee recommended that four (4) current members be retained on the Council. Without further discussion, Kim Cook, Tom Edwards, Courtney Grimm and John Williams were unanimously retained on the Council, noting that their terms would end in 2013. He further reported that the nominating committee recommended that Terry O'Connor of Boca Raton, and Joseph Kinman of Tampa be added to the Council, which action occurred without opposition. Finally, continuing the Council's goal of encouraging membership with a view toward diversity in practice, gender, geographic location, and ethnicity, Chair-elect Higby announced that former member Linnes Finney had been contacted regarding rejoining the Council's membership, and that every effort would be made to accomplish this task at the next available opportunity.
6. **Old Business:** Chair Mansbach thanked everyone for an outstanding year as we all battled issues in the legislature, and he battled personal health issues. He again gave thanks to the Council for the gift of the Santa Fe wooden vase, and acknowledged that the Council will be in good hands as he steps down, with the succeeding leadership. After receiving a standing ovation, and the gift from Chair-elect Higby of a photograph of the Council taken at the Santa Fe meeting, he turned the Chair over to Chair-elect Higby.

7. **New Business:**

Chair Higby welcomed the new members, complimented Tim Sullivan as he leaves the Council on the great job that he performed this year as legislative chair, and thanked immediate past Chair Mansbach for an outstanding year in leading the Section, having unexpectedly taken over the helm, due to the sudden and untimely passing of former Chair, Glenn Burton.

A. **Bill of Rights for Expert Witnesses:** after a review of the materials submitted on behalf of Dr. Michael Shahnasarian of Tampa and discussion, the Council voted to take no action on the proposed bill of rights for expert witnesses.

B. **Future Council Meetings:** Chair Higby announced the forthcoming Executive Council meetings as:

- (a) August 26-28, 2010 at the Ponte Vedra Inn, Ponte Vedra, FL;
- (b) November 4-6, 2010 at the Watercolor Inn and Resort, Santa Rosa, FL;
- (c) January 14-15, 2011 First Annual TLS Burton Summit at Omni Orlando at Champions Gate, ChampionsGate, FL;
- (d) May 2-7, 2011 in Edinburgh, Scotland.

There will **not** be an Executive Council meeting in conjunction with the Bar' Mid-Year meeting held in Orlando on September 22-25, 2010 according to Chair Higby.

C. **Ervin v. Crist:** new Council member Sid Mathew gave an overview of the case and his and the other plaintiffs' attorneys' success on in securing a summary judgment in this matter. Briefly, since 2004, a portion of any civil action filing fees are being allocated by the defendants to the State's General Revenue Fund, instead of all of the filing fee being allocated to the Courts' Trust Fund. The plaintiffs contend that this diversion of funds is a practice in violation of the State's constitution and amounts to an illegal tax because the funds are being used to fund prisons and other social programs. With a State budget of some \$67 billion, and less than one (1%) percent of this budget being used to fund the State's court system, the Leon County Circuit Judge Frank Sheffield ruled that it's unconstitutional to divert any portion of the filing fees outside of the judicial system, and enjoined the transfer of funds that can be so spent. Discussion ensued as to the Section preparing an amicus brief in this case and a committee was formed to explore this option, which will report back to the Council at its next meeting as the case proceeds through the appeals process.

D. **Committee Assignments:** Chair Higby in conjunction with the nominating committee, named Wayne Helsby as the new secretary for the Council. The Council then talked about the retention of Section lobbyist Bob Harris and some of the provisions of his contract. Both persons were approved without opposition after discussion. Finally, new committee assignments and appointments were made by the Chair for the coming year.

The meeting upon motion was adjourned at approximately 5:10 p.m.