

Minutes of the Meeting of the Trial Lawyers' Executive Council
Saturday, November 5, 2011, 9:00 a.m. – 12:00 p.m.
The Breakers – Ponce de Leon VI
Palm Beach, Florida

The Florida Bar Trial Lawyers' Section Executive Council met on Saturday, November 5, 2011 at The Breakers, Palm Beach, Florida. Chairman Craig Gibbs called the meeting to order at approximately 9:00 a.m. The minutes were taken by Secretary Ted Eastmoore.

1. **Roll Call:** Council members present: Craig Gibbs, Wayne Helsby, Ted Eastmoore, Cliff Higby, Kim A. Ashby, Charles Bartlett, Tom Bishop, Thomas Edwards, Courtney Grimm, Katherine Hunter, Joseph Kinman, Darryl Lewis, Patricia Lowry, Sidney Matthew (by phone), Mindy McLaughlin, Hector Morè, Terry O'Connor, Stuart Ratzan, and John Williams.

Council members absent: Linnes Finney, Brad Johnson, Philip King, Chris Knight, Bill Partridge.

Others present: Norman Vaughan-Birch (BOG Rep), Paige Graham (TLS Liaison), Bob Harris (Section Lobbyist)(by phone).

2. **Minutes:** The minutes of the Saturday, August 27, 2011 meeting held at the Sarasota Ritz Carlton were approved.
3. **Financial Report:** Secretary Eastmoore reported that the Section is in sound financial condition and close to budget.
4. **Committee Reports:**
 - A. **By-Laws:** Bob Palmer reported that revisions are being finalized and will be presented to the Board of Governors for approval.
 - B. **Board Certification:** Bob Palmer reported that applications for board certification are down by approximately 10%.
 - C. **Civil Procedure Rules:** Joe Kinman reported the Civil Rules Committee has recommended that rule 1.530 be amended to allow 15 days instead of 10 after verdict to request a new trial. He also reported that the Supreme Court has amended the mediation rule to include a definition of "representative with full settlement authority" and to require a certification by counsel to be filed 10 days in advance of mediation naming representatives who will attend mediation. If no certification is filed, it will be presumed that the party has not met the new certification requirement.
 - D. **CLE:** Tom Bishop reported the Advanced Trial Advocacy Seminar is on track

and the committee is looking forward to another successful event. Joe Kinman stated that bar members receiving CLE credit via webinars and DVD have now exceeded the number of members attending live seminars. The CLE committee will attempt to make available by DVD portions of the Trial Ad seminar.

- E. Vanishing Jury Trial Study Committee:** Tom Bishop reported that the committee has been active and will have a report hopefully by the Council's next meeting.
- F. Joint Activities with the Aviation Law Section:** Tom Bishop reported that the Aviation Law Section has requested that it be allowed to advertise the TLS Summit to its members and asked that the TLS reciprocate in advertising the ALS Summit on the TLS website. The Council approved this suggestion. When available, Tom will forward the ALS Summit information to the Website Committee.
- G. Discovery Handbook:** John Williams reported that the committee is still waiting on Lexis/Nexis to create the index of cases. It was discussed that the Handbook needed to be updated for the anticipated spring release. John will ask Council members to undertake chapter updates.
- H. Evidence Committee:** Joe Kinman reported that the Evidence Committee had voted to reaffirm the Frye standards for challenging expert witnesses. The committee also voted to oppose the creation of a parent/child privilege and to oppose any changes to the husband/wife privilege.
- I. Judicial Ethics Advisory:** Pat Lowry reported that this committee is very active. The committee's major current project is monitoring rule violations by candidates for judicial office and educating them on the rules of judicial ethics.
- J. Legislative:** Bob Harris reported that he is aware of the following bills/issues which the Council will probably need to address: A proposal to change the Frye standards for experts to a Daubert standard; What constitutes good and bad faith by insurance companies; Whether Fish and Wildlife Commission contractors will have sovereign immunity; Whether The Florida Bar will continue to have input in to JNC membership and selection of judges; And a permanent source of Court funding. Given redistricting and other issues coming before the Legislature, he is hopeful that further attacks on the courts will not surface this year.

MOTION: The Chair circulated the 2012 Legislative Platform as attached to these minutes. A motion to approve the platform was made, seconded, and unanimously carried.

The Chair recognized and thanked Past Chair Higby for his work in organizing the

Champions of Judicial Independence legislative reception held in Tallahassee on October 5, 2011. This reception honored those senators and representative who fought against bills which would adversely affect judicial independence. The reception was well attended and well received by the award recipients. The Section presented the recipients with plaques honoring their exceptional service.

Bob Harris was asked if he thought that there would be a proposal to take foreclosure actions from the jurisdiction of the Florida courts. He responded that this idea would not have much support, especially in light of the fee income generated by foreclosure filings and the dilemma over court funding. Kim Ashby echoed this sentiment which has come before the executive committee of the Real Property, Probate and Trust Law Section for several years.

Tom Edwards suggested that fraud in the PIP/no-fault system might become an issue which involves lawyer referral services, medical providers and members of the bar. Tom will keep the Council informed regarding this issue.

Bob Palmer reported that FLABOTA had again retained Jeff Kottkamp as its lobbyist.

Pat Lowery stated that the Palm Beach County Bar had organized community seminars on the independence of the judiciary. She suggested that the Council might consider sponsoring these type of events throughout the state.

The Chair reported that the Public Interest Law Section had requested that the TLS support the PILS's legislative position "to restore judicial authority to determine the appropriateness of whether a child should be prosecuted in adult court." After discussion, the Council decided to take no position on this issue as beyond the purview of the TLS.

MOTION: It was moved and seconded that the TLS take no legislative position on "restoring judicial authority to determine whether a child should be prosecuted in adult court." The motion carried.

- K. Membership:** Courtney Grimm reported that the committee had mailed out letters to former TLS members who had not renewed their membership. She happily reported that after response, membership was again over 6,000.

She also reported that it was not possible for members to renew TLS membership online as the Bar does not take credit cards online. The application for membership, though, has been amended to add credit card renewal by fax or mail.

Kim Ashby suggested that the "box" on the Bar dues form which allows members

to renew when paying their Bar dues is confusing because not only do you have to check the box, but you have to recalculate the total due by adding section dues to bar dues. She suggested that a letter/email be sent to TLS members reminding them to check the box *and* add section dues to their total due.

Courtney Grimm passed out new Council directories.

The committee will be looking into non-member participation in Council sponsored events. Bob Palmer suggested that affiliate memberships are available to non-lawyer participants. He will confirm this with the By-Laws Committee.

- L. Mock Trial:** Wayne Helsby reported that the mock trial problem had been disseminated to the participating law schools, a criminal law issue. Eleven law schools are participating including new law school Ave Maria.

The Council discussed the need for judges and jurors. Mr. Helsby will follow up as the need is quantified. Hector Morè reported that 20 members of his firm had volunteered.

- M. Website:** Ted Eastmoore reported that TLS members had received an email blast concerning the TLS Summit. He also asked that he be forwarded pictures of senators receiving their Champion's plaques for publication on the website.

- N. Rules of Judicial Administration:** Joe Kinman reported that RJA had discussed and clarified that non-Florida Bar member attorneys could only make 3 applications per year to appear in Florida courts; the committee approved amendments requiring that withdrawing attorneys must list client email and phone numbers in the motion to withdraw, the committee approved new regulations regarding witnesses appearing electronically; and the committee approved mandatory electronic court filings by 2013.

- O. Summit:** Bob Palmer reported the following:

Featured speakers are Steve Zach, Thursday lunch, and Fred Gray, Thursday evening.

Florida Lawyers Mutual has agreed to a \$5,000 sponsorship. He encouraged Council members to shore up other sponsorships as soon as possible.

There will be two short seminars on Saturday morning, one presented by FLMIC and one presented by Ray Reid of Pajcic & Pajcic.

Cliff Higby asked that the committee be timely updated regarding Summit

registrations.

- P. Board of Governors:** Norman Vaughan-Birch reported on the Bar's legislative positions. He indicated that Bar leadership will endeavor to keep the sections and the general bar membership better informed as the session proceeds, acknowledging that this is sometimes difficult with the speed of the session. He reminded the Council that the Bar was limited in what positions it could take.
- Q. Council of Sections:** The Chair reported that the Government Lawyers Section had requested that it be granted a permanent non-voting seat on the Board of Governors. After discussion, the Council decided to take no position.

MOTION: It was moved and seconded that the Council take no position on the Government Lawyers Section request that it be granted a permanent non-voting seat on the Board of Governors. The motion carried.

R. ADR Committee: No report.

6. Old Business: None.

7. New Business:

A. Teachers Law School: Wayne Helsby suggested that the TLS consider sponsoring a teachers law school patterned after the Texas ABOTA's model. The school would sponsor from 30 to 50 civics teachers from around the state and stressing the importance of all three branches of government with emphasis on judicial independence. The school would be funded by TLS grant and last 1-2 days.

Courtney Grimm stated that the Jacksonville Bar currently sponsors a similar program. She will obtain information on this program.

The Council discussed whether the law school should be solely a TLS project or whether it should be cosponsored with FLABOTA, perhaps holding the first school at the national ABOTA meeting to be held in St. Petersburg.

The Chair appointed the following committee to study the issue: Kim Ashby, Courtney Grimm, Bob Palmer, Terry O'Connor.

B. Trial Lawyers Section Children's Legal Services Fellow: Wayne Helsby suggested that the Council consider a grant to The Florida Bar Foundation in the amount of \$75,000 to sponsor the hiring of a children's legal services attorney. He reported that legal aide

budgets had been severely cut and that without help, many attorney positions would be eliminated. After discussion, the Council approved the grant. The legal services position will be named the Trial Lawyers Section Children's Legal Services Fellow.

MOTION: It was moved and seconded that the TLS grant \$75,000 to The Florida Bar Foundation for the sponsorship of a children's legal services attorney to be named "The Trial Lawyers Section Children's Legal Services Fellow." The funds will be drawn from TLS reserves. The motion carried unanimously.

C. Upcoming meetings: The Chair reported that contracts with the Orlando JW Marriott for the January meeting and with the Barbados Hilton for the April meeting had been finalized. He encouraged members to make reservations.

No further business appearing, the meeting upon motion was adjourned at approximately 11:30 am.