

**FLORIDA BAR
TRIAL LAWYERS SECTION
EXECUTIVE COUNCIL MEETING
Friday, October 5, 2001**

MINUTES

Florida Bar Trial Lawyers Executive Council met at the South Seas Resort, Captiva Island on Friday, October 5, 2001. 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

Kelly G. Hamer
Tom Scarritt
Dom Caparello
Don Russo
John M. Kest
Bill Hahn
Brad Powers
Bob Palmer
Scott Jay Feder

Mark Buell
Glenn Burton
Linnes Finney
Larry Hamilton
Buddy Jacobs
Connie Stewart – Section
Administrator
Tom Masterson (in absentia)

Members who were absent:

Terry Vento
Carolyn House Stewart
Mary Love
Roosevelt Randolph
Cliff Higby

Bob Bergin
Manuel Morales
Woody Isom
Cynthia Everett
Frank Bedell

I. Minutes for the June 22, 2001 Meeting

The minutes of the June 22, 2001 meeting of the Executive Council were read and approved.

II. Financial Report

The financial statement was reviewed and approved with the beginning fund balance of \$85,378.00 and the ending fund balance of \$224,669.00.

III. Replacement of Committee Members

Tom Scarritt brought before the Council that Carolyn House Stewart would need to be replaced on the Executive Council. He explained that the nominating committee was comprised of the officers of the Executive Council and Bob Spohrer as past chairman. Tom requested suggestions from the Executive Council to be considered by the nominating committee and Dom Caparello suggested Bill Fuller from Tallahassee. After discussion by the Council, it was moved and seconded to put Bill Fuller's name before the nominating committee as a candidate to replace Carolyn House Stewart. Dom also discussed the need to consider expanding the membership of the Executive Council to encompass more than personal injury litigators and suggested perhaps looking at business litigators and lawyers who specialize in employment law. He will make inquiry into these areas and bring it back before the Council.

IV. Committee Reports

a. CLE Committee:

Brad Powers reported that plans for the different CLE opportunities were going well. He explained that the Trial Lawyers Section was co-sponsoring two courses to be given in November, one on appellate law and one on aviation law. Attached to the minutes are copies of the brochures for each of those seminars. He stated that the CLE directors for each course have been chosen and each course is on track. He also reported that he attended the Florida Bar CLE meeting which discussed the decrease in attendance at all CLE courses due to what they believe to be an increased number of audio requests and in-house CLE being performed by larger firms. Brad suggested that we need to encourage the members of the Trial Lawyers Section to obtain their CLE hours from Trial Lawyers Section seminars rather than other seminars.

While discussing CLE, Connie Stewart inquired whether we, as a Council, wanted our Section Administrator to be at each of the seminars sponsored by our section. There was discussion among the Council regarding the need for continuity and expertise that only the Section Administrator would have. We let Connie know that it would be our preference for our Administrator to be at each CLE course sponsored or co-sponsored by the Trial Lawyers Section of The Florida Bar.

b. Mock Trial Competition:

Connie Stewart gave the report for Terry Vento who was unable to attend this meeting. Connie stated that the Mock Trial Committee decided to go with the problem that was presented at the June meeting on sexual harassment, without modifications. When the committee discussed the concerns the Executive Council had with the problem with Judge Parker, he stated that it had been used in Texas with no adverse comments or ramifications. Connie stated that there are seven schools participating in this year's competition. The problem has been provided to each of the schools and Cynthia Everett will do a conference call with

all coaches to see if there is a perceived problem once they have had a chance to review the materials. Connie reminded the Executive Council that at the mid-year meeting there is a reception Thursday night before the Friday meeting to honor the winner of the Mock Trial Competition and that each of the Council members are encouraged to attend.

c. Website Committee:

Glenn Burton reported that the website is up to date and running. He stated that all new information has been posted and is current. Connie Stewart reminded the Executive Council that any one of us can send a message to Listserve and it will go to everyone on the Council. Glenn also asked us to let him know if there is anything we want on the website so that he can make sure it gets posted. Glenn did bring up the fact that he believes the webmasters are quite expensive for what we get, and that maybe this is something we should look into in the future. Dom Caparello inquired whether the website information posted under the Trial Lawyers Section is available to everyone or just section members. It was confirmed that the information is available to everyone and there was discussion about whether we should limit some information on the website to section members only in order to entice Florida Bar members to become members of the Trial Lawyers Section. The consensus after the discussion was that we wanted to keep the website open to the general public more as a public service. Scott Feder explained that we could have a general services site and a “members only” portion of the site. We would just need to assign passwords to the “members only” site.

d. Legislation Committee:

Buddy Jacobs presented his report on legislation including proposed House Bills for 2002. He reported that the Florida state budget deficit had increased dramatically since September 11th and that he expected major budget cuts to affect much of the pending legislation. He specifically addressed the proposed legislation on voluntary trial resolution and expedited trials which the Trial Lawyers Section endorsed and supported last year. Buddy asked whether we were directing him to support these two pieces of legislation in the upcoming legislative year. The Executive Council, without objection, directed Buddy to continue support of these two pieces of legislation. Attached as part of the minutes are the drafts of these two bills. Buddy then walked the Executive Council through the proposed House Bills that may have some interest to the Trial Lawyers Section. Specifically, HB17 regarding the retired judge’s bill was discussed by the Council and following a motion and a second, it was voted that this proposed legislation involved issues that were within the province and concerns of the Trial Lawyers Section and that the Trial Lawyers Section would support legislation to better the criteria for retired judges in Florida. There was then discussion about inviting the Attorney General candidates to appear at one of our Council meetings to discuss issues pertinent to trial lawyers in the State of

Florida. There was some discussion by the Council whether this would be seen as a political move, or whether we could limit it to simply issues concerning trial lawyers. It was ultimately moved, seconded and approved to invite all Attorney General candidates to the next meeting for the limited purpose of addressing the issues pertinent to trial lawyers. There was one vote in opposition to the motion. Buddy also confirmed that he would once again be doing a legislative conference call starting in January. These calls will be held on Thursday afternoon at 3:00 p.m. of each week during the session. He will also still post by e-mail the updates on bills as they move through the legislature. Attached as part of the minutes is a composite of the proposed House Bills provided by Buddy to the Executive Council.

e. Discovery Handbook:

Mark Buell reported that the review of the information regarding the Discovery Handbook is underway although he does need some additional chapter editors. He stated that he would be sending out a letter to each lawyer who has agreed to review a chapter and that each editor should get a computer disk from Connie on which to make changes for the upcoming addition.

V. Old Business

a. Bennett Scholarship:

Kelly Hamer reported that she, Bob Palmer and Tom Bishop interviewed each of the candidates who applied for the Gerald Bennett Scholarship. Chuck Ingram from Orlando was chosen as the civil lawyer to attend the Trial Advocacy Seminar in Oxford. Kelly reported that the telephone interviews with each of the candidates was beneficial in helping to decide on the appropriate person to send to represent the Trial Lawyers Section.

b. Proposed Uniform Costs:

Linnes Finney, as chairman of the subcommittee appointed to look at the proposed changes in costs, reported that after two telephone conferences and a meeting prior to this Executive Council meeting, the subcommittee drafted some proposals to the Florida Uniform Taxation of Costs Guidelines, copy of which is attached and incorporated into these minutes. Much discussion was held both at the subcommittee level and the Executive Council level regarding whether changes to the Uniform Taxation of Costs Guidelines would in fact reduce the cost of litigation as hoped by the Florida Supreme Court. The consensus of both the subcommittee and the Executive Council was that any changes to the proposed Uniform Taxation of Cost Guidelines would probably not reduce the cost of litigation. The most significant area that the Council saw as one that needs addressing and which may in fact reduce costs of litigation is in the area of expert

witness fees. It was decided by the Council that Linnes should draft a commentary as a cover letter to the proposals submitted by the Executive Council addressing these issues. The proposal to be submitted by the Executive Council regarding the Florida Uniform Taxation of Cost Guidelines divides costs into four categories including: (a) litigation expenses which must be taxed in all civil actions; (b) litigation expenses which should be taxed in all civil actions; (c) litigation expenses that may be taxed as costs in all civil litigation; and (d) litigation expenses that should not be taxed as costs. Bill Hahn suggested striking a portion of IIIB following the parenthetical phrase and with that modification the subcommittee's proposal was moved, seconded and approved to be submitted to the Supreme Court.

Following discussion of the proposal by the Executive Council, there was discussion about appointing a subcommittee to address the expert witness fee issue. This subcommittee would survey the area of expert witness costs in other states as well as Federal courts and perhaps suggest some creative solutions to the problem. Tom Scarritt appointed John Kest as the chairman of this subcommittee with Don Russo, Scott Feder, Dom Caparello, Glenn Burton and Kelly Hamer to serve as subcommittee members.

c. Standardized Jury Instructions In Commercial Cases:

Larry Hamilton reported that he had spoken with Scott Mapar, Mike Tanner and other members of his firm to get input from commercial lawyers regarding proposed standard jury instructions for commercial cases. Larry also stated that he would e-mail the Council to get any of the members' input. He promised that by next meeting he would be prepared to talk with the Council about responses and make recommendations on how to proceed.

d. Supreme Court Jury Innovations Committee:

At the June meeting, David Bianchi made a presentation to the Council regarding the Supreme Court Jury Innovations Committee and invited the Council to review the report and make recommendations from this Council, if possible. To that end, a subcommittee was established with Bob Palmer as the chair of the subcommittee. Response to the Florida Supreme Court to provide comments with respect to the Final Report of the Jury Innovations Committee was due on October 1, 2001. An extension of time was granted until October 10, 2001 for the Trial Lawyers Section to respond based upon the fact that we had an Executive Council meeting on October 5, 2001. Oral arguments are to be heard on November 7th with Bob Palmer to attend on behalf of the Trial Lawyers Section and either Tom Scarritt or Dom Caparello to appear as backup. Bill Hahn, as a member of the subcommittee provided a copy of the FlaBota Committee report on the Jury Innovations Committee which was reviewed by the subcommittee of the Executive Council in reaching its recommendations. A copy of the FlaBota Committee report is attached to these minutes for reference. A draft letter to the

Supreme Court was provided by the subcommittee addressing each of the items believed to require comment by the Trial Lawyers Section. A copy of that draft letter is attached to these minutes and incorporated herein. Bob Palmer explained that his subcommittee chose to focus on only those areas that interested the Trial Lawyers because the subcommittee felt it would make a bigger impact than addressing each individual item. John Kest suggested, and the letter will be modified, to reflect that the Trial Lawyers Section is not endorsing those areas not addressed, but simply making no comment at this time.

Bob Palmer highlighted that the major issues the subcommittee was concerned with included preemptory challenges, the hundred mile rule, interim commenting by counsel, deposition summaries and instructions to be given before closing argument. With regard to preemptory challenges, it was agreed that the Council believes that the current use of preemptory challenges should not be disturbed and also questioned the necessity of further study regarding the desirability of preemptory challenges. Disagreeing with FlaBota with regard to the hundred mile requirement, the Council agrees with the committee's recommendation to abolish the one hundred mile rule requirement. The Council disagrees with the interim commentary by counsel and believes that such a practice would encourage juries to begin making up their mind before hearing all of the evidence. With regard to deposition summaries, the Council encourages reading portions of depositions at trial, but believes the use of summaries to be too problematic, and therefore would not support such a recommendation. The Council strongly encourages providing final instructions before closing arguments in that it appears to be more helpful to the jurors than the current system. There was discussion that with final instructions being provided before closing arguments, there should be a certain number of preliminary instructions given at the beginning of trial. Bob Palmer also presented an addition to the draft letter regarding juror notebooks, copy of which is also attached to these minutes. Basically, the Council believes that juror notebooks are beneficial and should be allowed to include certain important exhibits, photographs and other documents that may be helpful to jurors in particular cases. Following discussion, it was moved, seconded and approved to submit the October 5, 2001 letter to the Supreme Court as amended by discussion.

e. Standardized Form of Release:

Discussion regarding the Standardized Form of Release was tabled until the next meeting.

VI. New Business

a. Reception Honoring Florida Legislature:

Tom Scarritt reported that the Reception Honoring the Florida Legislature which is being co-hosted by the Trial Lawyers Section will be held on October 23rd in

Tallahassee at the Governor's Club. He encouraged all Council members who could, to attend. Connie Stewart asked that whoever plans to attend to let her know so that she can R.S.V.P. for us.

b. Membership Drive:

Connie Stewart reported that our membership in the Trial Lawyers Section of The Florida Bar was up by 1,000 members since the last meeting. Tom Scarritt provided copies of three letters he has drafted and plans to use for attorneys not members of the section who go to CLE sponsored by the section, new members of the Bar and old members of the Bar who are not members of the section. A copy of these letters is attached and incorporated into these minutes. There was some discussion that perhaps a letter should be sent to attorneys who inquire about the Discovery Handbook which also sends them an application for membership.

c. Oxford Program:

Glenn Burton reported that he attended the Oxford Program in August as a faculty member and what a great experience it was. He also stated that Tim Dutton approached him about expanding the program to make it more international to include more students and instructors from the State of Florida. Tim Dutton wanted to know if we would like to be involved in providing more instructors and students. After discussion among the Council it was agreed that we are interested in the concept. Glenn Burton is going to ask Tim to contact Kelly Hamer with regard to future information.

d. Leadership Conference:

Dom Caparello attended The Florida Bar Leadership Conference on behalf of the Trial Lawyers Section and reported to the Council that the Trial Lawyers Section is looked upon as a very powerful section of The Florida Bar and that other sections use the Trial Lawyers Section as a model for their administration and activities. Dom said that he just wanted the Council to know that the Trial Lawyers Section is an outstanding section and highly respected within the Bar.

e. Meeting the Challenges:

Tom Scarritt reported that The Florida Bar has requested the Trial Lawyers Section to respond to the strategic plan entitled "Meeting the Challenges". Mike Tanner had prepared a response in April, 2000, and it was suggested that we simply need to update that response. Kelly Hamer will update Mike Tanner's response which is due by November, 2001.

f. San Francisco Meeting:

Connie Stewart reminded the Council that deposits for the San Francisco trip are due by October 15th and that she believes the rate will go down due to changes in airfare.

VII. Adjournment

There being no further business the meeting was adjourned by Chairman Tom Scarritt at 12:45 p.m.