

**Minutes of the Meeting of the Trial Lawyers' Executive Council**  
Naples Grande Beach Resort  
Saturday, October 24, 2009

The Florida Bar Trial Lawyers' Section Executive Council met on Saturday, October 24, 2009 at the Naples Grande Beach Resort. Chairman Bob Mansbach called the meeting to order at approximately 9:15 a.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, Pat Lowry, Kim Ashby, John Williams, Frank Bedell, Robert Mansbach, Cliff Higby, and Craig Gibbs. Also present was the Section's lobbyist, Bob Harris, as was the Bar's liaison, Paige Graham. Present via teleconference was Bob Palmer and Chris Knopik. Absent were members: Ted Eastmoore, Wayne Helsby, Lou Prats, Norm Vaughan-Birch, Tim Sullivan, Kim Cook, Cal Warriner, Bill Partridge and Charlie Bartlet.
2. **Minutes:** The minutes of the June 26, 2009 meeting from the Orlando World Center Marriott Resort and Convention Center 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 \$658,256.00. Recent expenditures have been routine, and relatively minimal, and that continued efforts to reduce expenses will be maintained.
4. **New Business:** Taken out of order but without objection, Chair Mansbach next called for a brief presentation which was given by Rick Kolodinsky of New Smyrna Beach. Attorney Kolodinsky presented to the Council a relatively novel concept, which is fairly new --Proposal For Settlement "insurance". With the assistance of Willis, a national insurance company, the coverage will be offered primarily to plaintiffs, where premiums would be advanced by their attorneys, similar to other litigation expenses. While the final product is still being refined, and has been endorsed by the Volusia County Civil Trial Lawyers Association, and the Council similarly favorably received attorney Kolodinsky's presentation, he was admonished that the Council would not be specifically endorsing this product. His summary was included in the meeting's materials.
5. **Committee Reports:**
  - A. **Civil Procedure:** in addition to his written report included with the meeting's materials, Chair Mansbach reported that the Civil Rules Committee's hot topics include email service, the inadvertent disclosure of privileged materials, the type of communications equipment to be used in the presentation of a witness' testimony, and an on-going drafting debate as to when and how the words "must" versus "shall" should be used.

**B. Certification:** former Council Chair Bob Palmer reported that while there was a move afoot to relax the certification standards due in part to the decreasing test scores and corresponding lower passing rate on the examination, the committee was resolutely against any relaxation of the certification standards. He reported that more complex issues are being proposed on the examinations, and that perhaps the candidates are not putting forth their best efforts to succeed on them. Finally, he advised that a qualified, experienced law professor would continue to monitor the exam, to ensure its continued accuracy, and fairness.

**C. CLE:** Kim Ashby reported that the Section's CLE's are well attended and as a consequence, seem to be more profitable. However, she cautioned that with firms experiencing budget cuts, and belt-tightening, she will continue to explore the possibility of offering CLE's via Webinars. They have been successfully used by other sections of the Bar as an economical, cost-saving method of presenting hot topics, and other solution-oriented, practical aspects of the law.

**D. Discovery Handbook:** John Williams reported that solicitations have been distributed with regard to updates, and he has gotten returns on all topics except for e-discovery. Considering the relatively unsettled state of the law in this area, as well as the lack of concrete rules with regard to e-filing, e-discovery, e-service, etc., Kim Ashby offered to him a contact from her firm, who may be of some assistance with this section of the handbook. He concluded by stating that the handbook should be completed and available sometime early next year.

**E. Rules of Judicial Administration:** Secretary Gibbs in addition to his written report comprised of the notes from the RJA's most recent meeting held on September 10, 2009, advised that the RJA is like the parent or clearinghouse of other rules committees. It reviews proposals from, and attempts to resolve conflicts in other rules committees when they arise. The hot topics include electronic filing, the use of communications equipment to take testimony at trial, and the destruction of court records.

**F. Legislative:** Bob Harris reported that of the approximately 450 bills that have been filed, he is tracking about 10-15 of them. He advised that the prominent issues for the forthcoming legislative session would probably be revenue-producing, considering the state of the State's revenues—namely, offshore oil drilling and gaming. The Section, he maintained, remains resolute in its opposition to any limitation on attorney's fees in the workers compensation area, and in the imposition of graduated filing fees. Both of these issues, he reminded the Council, are consistent with the Section's platform of maintaining an independent judiciary, continued support for adequate funding of the State's court system, and maintaining access-to-courts for everyone. Other issues discussed included:

- An initiative by Senator Arthenia Joyner in S.B. 186 to enact legislation that mandates the composition of JNC's along racial and gender lines.
- A reversion to the selection of judges along pre-1999 methodology, that is, when candidates for JNC's were selected by other than the Governor.
- Parent's waiver of liability for their minor children. If a bill is re-filed, and Bob Harris

was fairly certain that one would be done, as the Section's lobbyist, as well as the lobbyist for the State's scuba diving interests, he would avoid any potential conflict, by his agreeing to not appear before any committee on the waiver issue, but he will continue to answer questions, if they are posed to him on the subject. (The Council at its March 7, 2009 Sarasota meeting had previously had extensive discussion as to whether this was an access to courts issue, and had chosen not to take a position on the bill.)

**G. Mock Trial:** Chair Mansbach reported that ten (10) of the State's eleven (11) law schools invited to participate in the annual Chester Bedell Mock Trial competition have accepted invitations. He encouraged the Council members to attend the Mock Trial awards reception scheduled for Thursday, January 21, 2010, which is held during the Bar's Mid-Year meeting to be held in Orlando.

**H. Membership:** Courtney Grimm reported that Section membership was down compared to prior years, but that a solicitation letter did generate over 100 new members to the Section. Plans are underway to try to further solicit additional new members electronically via emails secured from the Bar.

**I. Nominating:** Chair Mansbach advised that there were too few defense attorneys that comprise the twenty four (24) Council members. As such, and on behalf of the Nominating Committee, the names of Phillip King of Orlando, Christopher Knight of Miami, and Brad Johnson of Jacksonville, all defense attorneys, were placed into nomination. All candidates were further vetted, and were unanimously elected. A further discussion was held concerning the lack of diversity in the slate of candidates presented. An effort will be made to address this concern in future slates presented to the Council.

**J. Med Mal Publication:** Chris Knopik reported that all sections of the 2<sup>nd</sup> edition were written and edited by members of the Section—primarily spearheaded by former chairs, Tom Masterson, and the late, Glenn Burton. He further advised that the Section's share of the proceeds-of-sale of this edition, will be reduced by LexisNexis, the publisher, from fifty (50%) percent to thirty (30%) percent. Finally, he advised that with the recent flurry of recent decisions, he would explore with LexisNexis, the further possibility of creating a 3<sup>rd</sup> edition, a supplement, and/or a pocket part in the near future.

**K. First Annual TLS Burton Summit:** Chair-elect Cliff Higby reported that an extensive planning committee effort was underway to put into motion an idea of the Council's immediate past Chair, Glenn Burton--to convene a trial lawyer summit. Due to the fact that the Bar has not scheduled a Mid-Year meeting for January, 2011, the summit is tentatively scheduled for Friday and Saturday, January 14-15, 2011 at a location to be determined. He reported that his committee envisioned an outstanding educational, social networking, and informational meeting, which would be available to the 6000+ members of the Section. The Section's moot court trial team competition would also be held during the same weekend. Other favorable suggestions offered to the committee included: securing Florida's law school deans to serve as part of the host committee; obtaining ABOTA's input to be used as a marketing tool in order to secure

law firm sponsorships; confirming an attractive, centrally located venue to ensure a large turnout; preparing a list of, and soliciting potential vendors in order to defray the enormous expenses associated with the undertaking; securing nationally-recognized speakers in effort to make it a top-rated event. The Council will work diligently with the Bar, in order to make this an important annual event for all trial lawyers.

6. **Old Business:** Chair Mansbach reported that the Gulf Ridge Council of the Boy Scouts of America gratefully acknowledged the contributions made to that organization by Section members in the name of immediate past Chair, the late Glenn Burton.
7. **Remarks:** former Chair Frank Bedell reported on the favorable feedback that he had received concerning the Chester Bedell luncheon which was held in conjunction with the Criminal Law Section at the Bar's Annual Meeting in June, 2009 at the Orlando World Center Marriott. Plans are underway to similarly join with the Criminal Law Section again for the luncheon at the Bar's forthcoming Annual Meeting scheduled for June 23-26, 2010 at the Boca Raton Resort.

Chair Mansbach announced that the next meeting of the Council will be held during the Bar's Mid-Year meeting on January 22, 2010 at the Orange County Convention Center. The following meeting will be at the Inn and Spa at Loretto, Santé Fe, NM on April 22- 25, 2010, and the meeting was adjourned at approximately noon.