



MINUTES

*Labor and Employment Law Section Executive Council Meeting
SEMINOLE HARD ROCK HOTEL AND CASINO
Thursday, October 20, 2011 • 5:00 p.m. - 6:40 p.m.*

I. CALL TO ORDER - GREGORY A. HEARING, CHAIR

II. SECRETARY/TREASURER REPORT –

- a. Consideration of Minutes - Robert Eschenfelder moved to approve the minutes of the September 22, 2011 meeting. Brian Lerner seconded the motion and the motion was passed unanimously.
- b. Financial Statement - Angela Froelich - The Council then took up the 2010-2011 Final Statement. Chair Hearing noted that the statement reflects a fund balance of \$231,132. In response to the Chair's question, Angela Froelich related that most dues has been received, but a few members' dues remains outstanding. Ms. Froelich noted that annual dues are currently set at \$40.

Alan Forst inquired as to when the web site bill comes due. Ms. Froelich responded that the charge for e-Link to host the site is paid monthly, at a cost of approximately \$105 per 3-month period.

The Council next took up the 2012-13 budget. Ms. Froelich noted that the budget must be approved by December 12, 2011. The Chair pointed out that deadline allows the option of approving today or by telephone vote in advance of our next meeting. Ms. Froelich pointed out that the proposed budget included three separate columns, one based on \$40 dues, one based on \$45 dues and one based on \$50 dues. Ms. Froelich noted that dues had not increased in at least five years, and also that The Florida Bar has recently increased the amount it assesses the Section from \$12.50 per member to \$17.50 per member. The increase is based on a charge The Bar prepared, which shows that our Section is using more Bar resources. Ms. Froelich indicated that most sections have been paying \$17.50, so this change brings us in line with other sections.

Cathleen Scott questioned whether the proposed budgets included projected advertising revenues. The Chair pointed out that it did, in the amount of \$1,500. Ms. Froelich suggested that the line item could be increased if the Council so requested.

Chair Hearing pointed out that: (1) we still have \$11,000 budgeted for law school scholarships even though in past years we have not awarded the full amount; and (2) the line item for retreats has been removed, because we had a long range planning retreat last year but do not plan to have one this year.

The Chair related that because of our robust fund balance, Chair-elect Sherril Colombo, Secretary/Treasurer Bob Turk (both of whom had excused absences from this meeting)

and the Chair all recommended against increasing dues. He noted that the dues would be charged next summer and fall. He also reminded the Council that the budget is the Section's budget, not that of the officers of the Section, and that he was expressing only the officers' views.

Scott Fisher moved to adopt the budget alternative with \$40 dues. David Adams seconded the motion. Mr. Adams inquired as to whether the assessment by The Bar varies depending upon the level at which we set the annual dues. Ms. Froelich indicated that it does not, and Chair Hearing concurred.

Mr. Eschenfelder stated that he supports the motion, and commented that some public sector employers are capping expenses. He commented that it appears the three alternative budgets are based on the assumption that membership will remain the same regardless of whether we increase dues. He suggested that when a proposed budget includes an increase in dues, we should assume decrease in membership. He also suggested considering dues charged by other sections. Ms. Froelich reported that many sections have increased dues, often to \$50 or \$55 per year, and that our current dues are lower than most sections. Ms. Froelich related that she had inquired of other sections about the impact on membership when dues were raised, and that none have experienced decreases in membership greater than 100-150 members.

Leslie Langbein noted that a \$5 increase in dues increases revenues by approximately \$8,000, and commented that she would prefer that a revenue increase of that magnitude come from advertising or sponsors.

Mr. Forst asked whether The Bar had explained the basis for the increased assessment. Ms. Froelich responded that The Bar has sent a memorandum to leadership listing the sections and how much each has spent in Bar resources. It showed that our Section was under \$12.50 three or four years ago, but is now up to \$13 or \$14 per member. Mr. Forst questioned whether the increase related to the Section's participation in the President's Showcase, and Ms. Froelich responded that it was tied primarily to webinars and other CLE. Eric Holshouser questioned why the assessment is \$17.50 if we are using only \$13-\$14 of Bar resources. Mr. Forst suggested that we request an accounting, and the Chair said that he would make inquiry and report back to the Section.

Zascha Abbott raised a question about committee expenses. She reminded the Council that during our most recent meeting we discussed expenses incurred in connection with informational luncheons for judicial outreach, including a request by Mr. Adams relating to a prior judicial luncheon, and also including future luncheons. Ms. Abbott moved to amend the motion to approve the budget to include an increase in the line item for committee expenses in the 2011-2012 budget to \$2,500, the same amount as in the current budget. Mr. Eschenfelder seconded the motion.

Chair Hearing returned to the discussion of advertising revenue. Ms. Scott moved to amend the motion to approve the budget to include an increase in the line item for advertising revenue to \$7,500. The Chair asked that this be added as an amendment to the proposed budget.

The Chair then called the motion to approve the proposed budget, with dues at \$40, as amended. The motion was unanimously approved.

The Council then heard Committee and Subcommittee reports.

III. COMMITTEE AND SUBCOMMITTEE REPORTS

a. Membership Outreach

Mr. Holshouser, for the Outreach Committee, deferred to reports of the Subcommittees of that Committee.

- i. ABA Liaison Subcommittee - No report.
- ii. Law School Liaison Subcommittee - Debbie Brown reported for the Law School Liaison Subcommittee. Ms. Brown briefly described the proposal for creating a Hall of Fame and awarding scholarships in the names of members of the Hall of Fame, and indicated that three proposals had been circulated in advance of this meeting and attached to the Agenda (the first proposal was to create the Hall of Fame, the second concerned an inaugural class of inductees, and the third was to permanently name the Stetson scholarship after Dean Gary Vause).

Judge Ray commented that the proposal was excellent, a proposition that seemed to reflect the general consensus of those present. Judge Ray inquired as to how far back Ms. Brown had gone when identifying prospective members of the inaugural Hall of Fame Class. Ms. Brown responded that our Section began as a committee in the early 1970s, and that Bill Sizemore had been instrumental in founding the committee. Ms. Brown indicated that she had relied in part on her own memory and in part on review of archives from the Checkoff, which go back only until approximately 1980.

Ms. Brown noted that she has subsequently remembered two others who she recommended should be considered for the inaugural class, John Breckenridge and Granville Alley. Ms. Brown commented that the list of those who should be considered could be supplemented. Judge Ray suggested that Gordon Rodgers should be considered. Steve Meck suggested that Herb Mintz and Joe Coldwell should also be considered.

Mr. Meck thanked Ms. Brown for her efforts in developing the Hall of Fame proposal and list of potential inductees. He suggested that this is a valuable tool for outreach to law schools and affords an opportunity to honor our legacy at the same time.

Ms. Brown suggested that we bifurcate the question of creating the Hall of Fame from the question of who should be included in the inaugural class. She suggested publicizing the Hall in the Checkoff, inviting members to send recommendations to the Council for candidates for the inaugural class, and voting on the inaugural class at the next Council meeting. Ms. Brown commented that there would be a substantial amount of work to do with respect to inductees, because we would want to honor them on our website with a bio, so that when a scholarship is awarded the recipient and other interested persons can learn about the honoree. She suggested that scholarship recipients would receive a letter indicating who the scholarship is in honor of, and briefly describing his or her contributions. Ms. Brown suggested that much outreach would be required to prepare the bios.

Mr. Meck asked for permission to take the proposal out of order and the Chair granted that request. The Chair suggested that the Subcommittee make a motion. Ms. Brown moved on behalf of the Law School Liaison Subcommittee to adopt the first of the proposals, to create the Hall of Fame in accordance with the proposal attached to the meeting Agenda.

Mr. Oliff suggested that we also consider the third proposal. The Chair asked that the proposals be presented one at a time, and noted that because Ms. Brown had moved on behalf of the Subcommittee, no second was required. The Chair called the motion, and it was passed unanimously.

Mr. Oliff then moved on behalf of the Subcommittee to approve naming the Stetson scholarship after Dean Vause due to his great service to the school. The Chair called Mr. Oliff's motion, which passed unanimously.

The Chair then tabled the motion concerning the members of the inaugural class. Mr. Fisher and Ms. Brown will coordinate publication of an appropriate piece in the Checkoff inviting nominations for members of the inaugural class, including a request that those making nominations include a descriptive paragraph for proposed inductees. Ms. Brown offered that she and Mr. Oliff would gather biographical information on nominees already on the list, with the hope that by the time of the next Council meeting they will have a package listing nominees with bios. The Chair reported that Mr. Fisher had indicated that he is in the process of finalizing the next Checkoff.

Frank Brown proposed an additional motion, to delegate to the Subcommittee the authority to determine a nomination deadline for the inaugural class, with the hope of presenting the entire class of nominations to the Council by the February 2012 Council meeting. The motion was seconded by Mr. Holshouser, called by the Chair, and passed unanimously.

Shane Muñoz suggested that the Subcommittee reach out to other Council members to help ensure that all scholarships are awarded each year. Mr. Oliff and Ms. Brown agreed. Ms. Brown commented that Thomas M. Cooley Law School will become Florida's twelfth accredited law school during 2012.

- iii. Judicial Outreach Subcommittee - Ms. Abbott reported for the Judicial Outreach Subcommittee. She moved to approve \$1,500 in expenses for last year's judicial reception in Tampa (paid for by Dave Adams). Mr. Eschenfelder seconded the motion. The motion was called and passed unanimously. It was proposed that in the future any reimbursement for judicial receptions in excess of \$250 should be made only with advance approval.

Chair Hearing suggested that if any committees or subcommittees have dates of note, they should contact Scott Fischer and the Website Committee for publication.

- iv. Local/Voluntary Bar Association Liaison Subcommittee - Ms. Langbein reported for the Local Voluntary Bar Association Liaison Subcommittee. In response to the suggestion at the most recent Council meeting that Subcommittee members report back regarding success in contacting voluntary bars, two have responded. Mark Trank appeared before the Executive Council of the Lee County Bar and

Pedro Herrera has approached Coral Gables to suggest working together, and particularly the possibility that we might provide speakers for their events. In addition, Subcommittee Co-chair Lindsay Hanson attended a meeting of the Palm Beach County Bar and offered to help with identifying speakers for their events.

Ms. Langbein inquired as to the Council's expectations for the Subcommittee. Chair Hearing suggested that the Subcommittee act as a resource to local bars on behalf of the Section, including joint sponsorship of events and providing speakers. Alan Forst suggested that the Subcommittee communicate with local bars when we host CLEs, either for joint sponsorship or to invite their members to our events. As an example, he suggested that for tomorrow's seminar, we could have invited Broward County bar members to attend the luncheon, paying only our actual cost. Ms. Scott suggested that local bars might be interested in advertising in Section publications.

Chair Hearing suggested that, at a minimum, when we host a CLE, we should have both the Judicial Liaison Subcommittee and the Voluntary Bar Association Liaison Subcommittee reach out to increase interest and obtain sponsorships, and as resources for speakers and program chairs, and also that we remind them that these subcommittees are resources available to them.

Mr. Lerner inquired as to whether we have a point of contact at each local of the local bars, and suggested that this Subcommittee committee assign one member to each local bar, or at least to each large local bar organization. Ms. Langbein indicated that this has been done. Chair Hearing mentioned that, when he chaired the Voluntary Bar Association Liaison Subcommittee, they compiled a list of local bar presidents and labor and employment chairs, but that those positions typically turn over each year, so the list becomes stale unless maintained.

Ms. Abbott mentioned that she is Vice Chair of the Labor and Employment Committee for the Dade County Bar, and offered to coordinate with this Subcommittee.

v. EEOC and FEPA Liaison Subcommittee - No report.

vi. NLRB Liaison Subcommittee - No report.

Mr. Meck suggested that this Subcommittee's name should be changed to include PERC. The Chair agreed, and asked Ms. Froelich to make that change.

vii. Wage and Hour Administration Liaison Subcommittee - Mr. Gerlach gave the report for the Wage and Hour Administration Liaison Subcommittee. He reported that he has spoken with the District Director for the Jacksonville office of the Department of Labor's Wage and Hour Division. Mr. Young participated in a conference call with our members last year, and has agreed that he or his designee will do so again this year.

Mr. Gerlach noted that this Subcommittee now has 45 members. In the past, with many fewer, it was convenient for the Subcommittee to meet by conference call. Now, it is difficult to convene all members on a call. Mr. Gerlach asked

whether other large committees are finding it practical to have conference calls. The Chair suggested the possibility of holding committee or subcommittee meetings immediately prior to Council meetings, using the resources available for Council meetings. The Chair explained that committees are large because he appointed anyone who expressed an interest. Mr. Gerlach commented that there had been a big spike in volunteers in recent years.

- viii. Membership Outreach Subcommittee - Leslie Stein, absent with excuse, provided an email report to the Chair on behalf of the Membership Outreach Subcommittee. Ms. Stein had provided an example of the type of form that we might post on the website, designed to familiarize new practitioners with basic information about employment laws. The Chair noted that in the past the Council has expressed concerns about keeping such forms current, and about the possibility that readers will assume that the Council or Section has placed a stamp of approval on the forms. The Chair requested that the Subcommittee provide any additional proposed forms in advance of the next Council meeting.

b. Long Range Planning Committee - Bob Kilbride provided the report for the Long Range Planning Committee. Mr. Kilbride commented that the Committee had looked to the action items listed by the Facilitation Doctor. Concerning recruitment, Mr. Kilbride and Co-chair of the Committee Cary Singletary have discussed the possibility of developing a program similar to The Bar's S.C.O.P.E. program. Mr. Kilbride described a "clearinghouse" where more experienced labor and employment law attorneys offer to be available for consultation with newer attorneys who may benefit from interaction with those with broader knowledge and experience.

In addition, Mr. Singletary has been approached by Stetson concerning the possibility of Section involvement in law school presentations. The Committee is considering creating a speakers bureau to address law school students about labor and employment topics.

Mr. Kilbride suggested that the Committee might continue to promote a greater understanding of the federal court system, including local rules, preferences of individual judges, and areas where those inexperienced in federal court practice may misstep. He suggested that this might be an appropriate topic for future CLE programs.

Mr. Kilbride offered his Committee's assistance in working on the Hall of Fame, or where they may be of use to other committees.

Mr. Kilbride also asked for input from the Council about what should be their focus.

The Chair commented that it is clear from the Facilitation Doctor's report that we need to reignite interest in certification, which may be a task for special projects or long range planning. We have had certification for eleven years, and see fewer and fewer applicants, even though labor and employment law has grown during that time. The Chair commented that, even with financial incentives offered to associates, firms are not seeing associates with interest in attaining certification. He noted that certification raises the level of our practice, and we should be concerned as a Section about increasing interest in certification. The Chair asked that special projects or long range planning examine the issue, and share their results with the CLE committee.

Mr. Muñoz suggested a survey of membership to find out why they are not pursuing certification. The Chair agreed; Mr. Gerlach pointed out that our most recent membership survey included questions addressing this issue.

Mr. Brown suggested that a change in requirements might increase interest. He commented that attorneys with a “desk practice” have commented that the requirements appear more like a trial certification than a substantive certification.

The Chair commented that there had been discussion at the long range planning retreat about adding a second tier of certification, and that we would need a committee to work with the labor and employment certification committee to determine whether that is a viable option.

Mr. Meck agreed with Mr. Brown, and commented that qualified people, including some who were grandfathered into the initial class of certified attorneys, cannot meet the requirements for recertification.

The Chair commented that with fewer trials and because defending depositions does not count toward the litigation requirement, it can be difficult for defense attorneys to qualify.

The Chair pointed out that changes to the certification requirements would have to be approved by the Florida Supreme Court. Mr. Adams, Ms. Brown and Mr. Meck confirmed that requirement. Ms. Brown commented that employment attorneys working for corporations often do not have the opportunity to get the trial work needed for certification. She mentioned that the Education Law Section’s certification program provides a model of a program that is more substantive, with four alternatives for meeting the requirements.

The Chair asked Mr. Adams to work with the Long Range Planning Committee to further investigate these issues, and noted that Marlene Quintana, Special Projects Committee Co-chair, is a member of the BLSE.

c. Communications Committee – The Communications Committee deferred its report to the discussion of new business.

- i. Publications Subcommittee - Frank Brown and Scott Fisher reported for the Publications Subcommittee. Mr. Brown said that his report for The Florida Bar Journal was unchanged from the last meeting. He has sufficient articles through January. He still needs someone to volunteer to write an article on *Dukes v. Wal-Mart*. He suggested this could be a lead article, and asked that Mr. Fisher include a call for an author in the next Checkoff.

Mr. Fisher reported that he will be completing the next edition of the Checkoff shortly. He is in desperate need of authors for the following edition.

Mr. Meck commented that he had articles he could submit, and Ms. Langbein commented that she has offered to draft a Checkoff article. The Chair suggested that those at large firms send internal requests for authors.

- ii. Website Subcommittee - Mr. Lerner gave the report for the Website Subcommittee. He reported that the Subcommittee has completed two of the goals identified at the long range planning meeting, compiling an archive of CLE materials from previous years, and adding a blog capability. As to the former, Mr. Lerner requested comments on the best method for listing the materials.

Concerning the blog, it affords a variety of opportunities, including highlighting new Section members, promoting CLE programs and addressing recent developments. Mr. Lerner suggested that most entries should be no more than a

paragraph in length. The blog has an option of opening a post for discussion, and a feature that allows us to review comments before they are posted.

The Committee has also added the ability to monitor the site to see what pages people view and for how long. This will allow us to accumulate data that can be used to improve the site.

The Committee is now considering whether to add FaceBook and LinkedIn pages as options. The Committee can add these features without e-Link's assistance. These features can also be linked to the blog.

f. Special Projects Committee – The Special Projects Committee had no report except that Mr. Adams noted that the Committee appreciates the Chair's comments today about opportunities for the Committee.

IV. NEW BUSINESS

Ms. Scott presented a proposal for sponsorships and advertisements, by reference to Attachment D to the meeting Agenda. The proposal includes a simple form for publication in the Checkoff, explaining options to potential advertisers. Ms. Scott polled local bar associations to learn what they charge for advertising, and commented that the Checkoff's circulation is somewhat greater than that of a typical local bar association. Based on her analysis of prices charged by local bars, Ms. Scott suggested that initially we charge \$1,000 for a full page ad, \$300 for a half page, \$250 for ¼ page, and \$150 for a business card size. Ms. Scott recommended against offering a discount for running ads in multiple editions, at least initially. She commented that the proposal incorporates The Florida Bar's advertising guidelines. Ms. Scott also recommended against discounts for Section members, noting that large firms would have the opportunity to use a discount even if many of their attorneys are not members.

The Chair praised Ms. Scott's work, and asked what was needed from the Council to proceed.

Ms. Scott, on behalf of the Communications Committee, moved to adopt the proposal, with the rates mentioned above.

The Chair inquired as to who would review and approve the ads. Ms. Scott volunteered for that task, at the outset, and suggested that a committee could be designated in the future as the volume of ads increases.

The Chair commented that no second was needed.

Mr. Brown suggested that we should require that all ads be appropriate and inquired as to whether the proposal gives the Section full discretion to determine whether a class of type of ad is appropriate. If so, then he is in favor of the proposal. Ms. Scott responded that the general policy is that an ad is intended to be a legal advertisement, and therefore covered by The Bar's advertising rules. Mr. Brown commented that this seemed to afford as much control as any of the other organizations that permit similar ads. The Chair commented that rules regulating attorneys, judges and neutrals would apply, depending upon the nature of the ad.

Mr. Fisher commented that the concept of insertion of ads into a publication might be inconsistent with the current practice of publishing the Checkoff electronically. Ms. Scott suggested that issue could be addressed in the future.

Mr. Meck commented that the proposed pricing structure would encourage ½-page ads and discourage full page ads. The Chair proposed raising the price for a ½ page ad to \$600, and for ¼-page ad to \$350.

Mr. Muñoz noted that under current Bar rules, an attorney may publish an ad contemporaneous with submitting it to The Bar for review. Therefore, we need the option of rejecting an ad during the time when it is pending for review by The Bar. Mr. Brown agreed with this concern, while Mr. Forst disagreed. Mr. Fisher commented that, even if The Bar approved of an ad, we might determine that it was not suitable for a Section publication. The Chair pointed out that the language of the current proposal may afford sufficient discretion to address the issue raised by Mr. Muñoz.

Ms. Langbein suggested that we reserve the right to refuse to run any ad, in our sole discretion. Mr. Meck agreed. The Chair pointed out that this approach might raise First Amendment issues.

The Chair then called the question, as modified with regard to pricing of ads, specifically, that the Council adopt the proposal attached to the Agenda as Attachment D, with rates of \$1,000 for a full page, \$600 for a half page, \$350 for ¼ page, and \$150 for a business card. The motion was passed unanimously.

CLE Report/Upcoming Seminars

Mr. Muñoz then reported concerning continuing legal education. He reported that the Advanced Labor Topics seminar will be held in San Juan Puerto Rico on April 13-15, 2012. Mr. Muñoz encouraged members to attend, pointing out that the cost and convenience are more favorable for most than Key West and other locations where this seminar has been held in the past.

The Chair pointed out that the location, the El San Juan Hotel, is on a beach.

The Chair commented that the Section is looking into the possibility of reviving the trial skills seminar, which in the past has been held at Stetson's Gulfport location. This is a long range project, which likely will not come to fruition until next Bar year at the earliest.

Mr. Muñoz raised a suggestion by Damon Kitchen that the Section use some of its accumulated fund balance to bring nationally recognized speakers to the Advanced Labor Topics seminar or other seminars. Mr. Kitchen described past Section seminars where national figures spoke and predicted that this would increase attendance. Mr. Meck agreed. Mr. Kitchen suggested that for this year, we should leave it to Co-chairs for the Advanced Labor Topics seminar, Tony Cabassa and Jim Craig, to select speakers.

Mr. Forst commented that we had a slate of national speakers for recent seminars in Washington, D.C. and also in Naples.

The Chair commented that Mr. Kitchen's point was well taken. Not only could we expect increased attendance with nationally-known speakers, but one of the reasons people pay dues to the Section is for high quality CLE programs.

Mr. Meck commented that this is partly an issue of prestige, and that Mr. Kitchen is correct in his view that this is a proper purpose for spending Section funds.

The Chair asked that members provide suggestions to Mr. Cabassa and Mr. Craig for possible speakers.

Ms. Froelich noted that we have budgeted only \$2,500 for speaker allowance, and may need an amendment, perhaps for both this year and next year. Mr. Kitchen moved to increase the budget line item to \$10,000. Mr. Forst asked whether the motion was to include honoraria in the budget. Mr. Kitchen responded that any nationally-known speaker would require an honorarium and that Robert Bork demanded \$7,500. Mr. Forst commented that the Section has lost money in the past on seminars where honoraria were paid.

Mr. Fisher seconded the motion.

Mr. Forst commented that he was wholeheartedly opposed to honoraria, and that the St. Augustine seminar had very low attendance.

Mr. Muñoz opined that while we would hope that increased attendance would more than offset the amount of any honoraria, that it is acceptable to occasionally lose money to provide quality CLE programs to our members.

Mr. Kitchen agreed, and commented that we can stop paying honoraria in the future if we decide not to continue.

Ms. Scott commented that \$10,000 is entirely too much, but that she would support \$3,000-\$3,500.

The Chair noted that we typically pay hotel and transportation for speakers, and that those amounts are included in the line item.

The Chair called the motion.

Mr. Brown commented that he can name the top 10 speakers from approximately 60 CLE programs he's attended, and 8 or 9 are nationally-known speakers. Mr. Brown commented that the quality speakers are worth the cost, and that we should give the co-chairs an amount that gives them the opportunity to attract the best speakers.

The motion carried, with Ms. Scott, Mr. Forst and Mr. Gerlach opposed.

V. Other Business

The Chair asked Ms. Froelich to investigate the possibility of investing in our own Polycons and other equipment to improve the ability of those who attend meetings by telephone to hear the proceedings.

Numerous Council members moved and seconded a motion to adjourn, which carried unanimously.

Present:

**Greg Hearing
Shane Muñoz
Zascha Abbott
David Adams
Robert Eschenfelder
Scott Fisher
Alan Forst
Alan Gerlach
John Hoffman
Eric Holshouser
Bob Kilbride
Brian Lerner
Cathleen Scott
Angela Froelich**

By Phone:

**David Block
Deborah Brown
Frank Brown
Lindsay Hanson
Rick Johnson
Damon Kitchen
Leslie Langbein
Marguerite Longoria
Steve Meck
Jonathan Oliff
Ray Poole
Hon. Stephanie Ray
Cary Singletary**

Excused Absence:

**Sherril Colombo
Bob Turk
Leslie Stein**

Guests:

**Sasha Dyson
Martin Soll**