

**FLORIDA BAR
LABOR & EMPLOYMENT LAW SECTION
EXECUTIVE COUNCIL MEETING
MINUTES
FEBRUARY 16, 2012**

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

II. SECRETARY/TREASURER REPORT – ROBERT S. TURK

- a. Consideration of Minutes
The Reading of the Minutes of the October 20, 2011 Executive Council Meeting were approved unanimously.
- b. Financial Statement
Robert S. Turk provided the report.

Through December 2011, the current fund balance for the Section is \$217,825. Current Section membership is 2,176.

III. COMMITTEE AND SUBCOMMITTEE REPORTS

- a. Membership Outreach
Eric J. Holshouser - No report.
 - i. ABA Liaison Subcommittee
William P. Cassidy, Jr. and James M. Craig - No report.
 - ii. Law School Liaison Subcommittee
Jonathan W. Oliff and Deborah C. Brown provided a written report in advance of the meeting which is attached as Attachment “1.” It was reported that the Subcommittee is making efforts so that all student scholarships are disbursed this year. The Subcommittee is also designing a new letter for student/applicants to apply for scholarships from each school.

Ms. Brown reported that the inaugural class of the Section’s Hall of Fame is being organized. There is now an April 1, 2012 deadline for nominations to this inaugural class.

Cary R. Singletary noted that, one of the recommendations that came out of the Section’s Retreat was for the Subcommittee to send the Checkoff to law students and law professors. He noted that this had not been done yet. Ms. Brown said that she will be speaking with students at Stetson Law School and she will distribute the Checkoff at that time. There was a general

discussion about the difficulty of making contact with each law school to determine who should receive the Checkoff, especially professors. Ms. Brown said that she would like for the Subcommittee to first finish the designation of scholarships and then ask the Dean of each law school to distribute a letter to the faculty asking if any members would be interested in the Checkoff.

There was also a general discussion that the Subcommittee Chair would prepare a checklist for next year's Chair so that, on an annual basis, the Chair of the Subcommittee has a guide for items needed to be done so that all scholarships would be awarded.

Chair Hearing then discussed the need for a procedure to update an annual list of professors for the Checkoff. He noted there was time to do this because August 15, 2012 is when professors return to the schools. This would give the Subcommittee time to get organized for the next school year.

Chair Hearing then noted that Chairs and Subchairs should consider providing a checklist of items to be followed for use by the next Chair or Subchair.

iii. Judicial Outreach

Zascha Blanco Abbott reported that the Subcommittee is planning informational luncheons in Miami-Dade County, Collier County, West Palm Beach, Tallahassee and other large cities within the State.

iv. Local/Voluntary Bar Association Liaison Subcommittee

Lindsay B. Hanson and Leslie W. Langbein reported that the Subcommittee is drafting a letter to go to the heads of local and voluntary bar associations to introduce these individuals to the Subcommittee. The letter would ask the local and voluntary bar associations whether they needed assistance with CLE and/or networking events with speakers from the Labor & Employment Law Section. The Section's flyers would also be available at local and voluntary bar association events. It was also suggested that there be an opportunity for the local and voluntary bar associations to host events at the Labor & Employment Law Section meetings.

The Subcommittee Chairs asked members of the Executive Council to provide names to the Subcommittee of members in their local areas involved in local and voluntary bars. It was noted that some members, earlier this year, had already made contact with their respective bar associations.

It was also suggested that next year this Subcommittee work with the CLE Chair to coordinate contact with the local and voluntary bar associations.

v. EEOC and FEPA Liaison Subcommittee

Patrick Martin and Scott E. Atwood reported that the Subcommittee was considering local lunches with representatives of the EEOC and/or local FEP agencies. They also suggested considering webinars to discuss the handling of charges of discrimination in which someone from the EEOC would participate.

There was a motion made by Mr. Atwood to allocate \$250 to a representative of the EEOC and/or local FEP agencies to attend Executive Council meetings with the requirement that the Subcommittee would subsequently make recommendations to the Executive Council regarding who should be invited and the goals and procedures for inviting these individuals. The motion was seconded.

Chair Hearing stated that this was a positive idea and noted that this should cost approximately \$2,000 per year for two representatives to attend the meetings. After a general discussion, Chair Hearing said that he would table the motion and ask the Subcommittee Chairs to bring more detailed information to the Executive Council at its next meeting.

Mr. Robert Eschenfelder noted that there may be a legal issue or agency rules regarding prohibiting the acceptance of payments and/or gifts by public officials.

vi. NLRB Liaison Subcommittee

Stephen A. Meck noted that he would like to have PERC included as part of this Subcommittee. He noted that approximately 2.3% of the private sector in Florida is unionized where as 24% of the public sector is unionized. He further noted that PERC is very active and that important cases are coming out of PERC, including those regarding financial emergencies.

vii. Wage and Hour Administration Liaison Subcommittee

Chairs of this Subcommittee provided a report which is attached to these minutes as Attachment "2."

Mr. Gerlach reminded members that on Tuesday, March 27, 2012, there would be a conference call to discuss enforcement issues with representatives from the Department of Labor, Wage and Hour Division, Jacksonville office. He noted that this was not a

CLE program but a meeting to receive an update from the Department of Labor.

viii. Membership Outreach Subcommittee

This Subcommittee provided a report in advance of the meeting which is attached to these minutes as Attachment “3.”

b. Long Range Planning Committee

Chairs Carey Singletary and Robert Kilbride began a general discussion regarding the issue of Labor & Employment Law certification and recertification. There was a general discussion that there have been a number of complaints regarding individuals who said that they could not obtain enough trials or have a diverse enough experience to be certified in Labor & Employment Law. There was also a general discussion that there seems to be much less interest in taking the certification examination.

Tom Delegal noted that during his time on the Labor & Employment Law Certification Committee, the annual application rate has been eight to twelve applicants over the last five to six years. He noted that the Certification Committee is trying to make the certification test more relevant. The Certification Committee is using Bar consultants to design the test appropriately. He noted that he did not know how much more the Certification Committee itself could do as a Committee to change the requirements to be certified.

Sherril Colombo noted that she has been advised by three different in-house attorneys who said that they could not qualify for certification. She noted that this was a serious issue.

There was a general discussion about which Committee or Section could request review of conditions/qualifications for certification from the Florida Supreme Court.

Ms. Froelich noted that the BLSE Committee normally would make a proposal to the Supreme Court. Rick Johnson noted that the Board of Governors has the authority to propose changes to the Supreme Court. Mr. Johnson further noted that there were a number of criteria for certification and most of the complaints are that the test is too hard or an individual does not want to take the test because it is an embarrassment if he/she fails the test. Mr. Johnson also noted that many practitioners are desk-bound and/or in-house.

Chair Hearing recommended that the Chairs of the Subcommittee discuss ideas with Subcommittee members and that a suggested plan of action be implemented. Marlene Quintana advised that she sits on the BLSE Committee and in that role she can serve as a liaison to the Certification

Committee. She said that if there are any questions, members may contact her.

c. Communications Committee

Cathleen Scott advised that advertisements will now show on the Checkoff. She said that a law firm or mediation group can now begin advertising on the Checkoff. She noted that the Executive Council has not approved advertising on the website and this would be discussed later in the meeting.

i. Publication Subcommittee

Chair Hearing reported that the Checkoff is close being distributed. The date of distribution is approximately February 23, 2012. He requested additional articles by March 31, 2012 for the next Checkoff.

Subcommittee Chair Frank E. Brown reported that there will be a two-part article on the impact of social media on employment law in the Florida Bar Journal. The article will also discuss the constitutionality of regulating social media. Mr. Brown reported that he also has two more articles which would cover the Florida Bar Journal through the end of the Bar year.

ii. Website Subcommittee

Co-Chair Brian Lerner and Judge Stephanie Ray provided a written report in advance of the meeting which is attached as Attachment "4." Co-Chair Lerner discussed that there were no standards yet on advertising on websites but that the Section's website does have the infrastructure in place for advertising. There is also beta testing being done by the Subcommittee on LinkedIn, Facebook and Google+. Mr. Lerner advised that by June 2012, the Subcommittee will be able to provide the Executive Council with information that it can review regarding these Internet sites.

David W. Adams reported that the Subcommittee is also reviewing a laptop internet based system for approximately \$1,000 to \$2,000 to provide better telephone quality for members of the Executive Council who attend meetings telephonically.

d. Special Projects Committee

Marlene Quintana reported that the BLSE Committee has hired consultants and is making changes to the standardized scoring for passing/failing the Labor & Employment Certification Test. There is discussion at the BLSE Committee that there will be no grading on a curve, and that applicants will have a choice of essays by topic ahead of time. There is also discussion on providing the certification test every

other year. However, this is the least likely recommendation to be implemented.

Chair Hearing asked the Long Range Planning Committee and Special Project Committee to work together on a plan of action to address issues regarding Labor & Employment Certification.

IV. NEW BUSINESS

- a. Sponsorship/Checkoff Advertising/Website Advertising
Cathleen Scott made a motion (which was seconded) for the Executive Council to approve the general concept of allowing advertising on the Section's website and that the Communications Committee would, at some time in the future, provide its recommendations to the Executive Council for the requirements for limitations on advertising on the website. The motion passed unanimously.
- b. Hall of Fame Inductees
Deborah C. Brown reported that there will be a reception to honor the inaugural Hall of Fame Class of Inductees at the June 2012 Section meeting in conjunction with the Annual Convention. Ms. Brown also reported that the Section did not get selected for the Presidential Showcase Seminar at the upcoming Annual Convention.
- c. Annual Convention Reception
Ms. Quintana reported that 2012 is the 30th anniversary of the Florida Bar's Certification Program. As a result, BLSE will honor thirty-year certification inductees at the Annual Convention.
- d. Board Liaison Report
Grier S. Wells, Board Liaison, reported that there had been efforts in recent months from the two candidates campaigning for President of the Florida Bar to address the issue of the appointment of non-voting members (from the government sector) to the Board of Governors, Florida Bar. The Committee of the Board of Governors has received input from the Council of Councils on this issue.

Sherril M. Colombo, from the Labor & Employment Law Section, attended the Council of Councils meeting and spoke against approval of allowing non-voting members on the Board of Governors. The Committee of the Board of Governors voted thirteen to five to oppose this idea.

Mr. Wells also reported that the Board of Governors is considering issues regarding secretarial signing of electronic pleadings that are filed. In

addition, Mr. Wells reported new advertising rules are pending before Florida Supreme Court.

V. CHAIR'S REPORT

a. Advanced Labor Topics

Shane T. Muñoz reported that attendance was down this year for the Certification Seminar.

Ms. Froelich stated that all Florida Bar seminars appears to have lower attendance this year.

Mr. Muñoz reported that the Section's Certification Seminar has now been held for twelve years in a row and there may not be as much interest in attending this seminar. There was a general discussion that one option may be doing the seminar every other year, especially if the certification examination is going to be given every other year.

It was announced that the Advanced Labor Topics seminar will be held in Puerto Rico on April 13-14, 2012. Ms. Langbein is coordinating with the Puerto Rico Bar to encourage Labor & Employment members in Puerto Rico to attend our meeting. It was requested that members active in NELA should reach out to its members for this seminar. Mr. Muñoz said that he would reach out to AFMA members to encourage them to attend this seminar.

A Motion was made to adjourn. Motion unanimously passed.

PRESENT:

David W. Adams
Scott E. Atwood
Frank E. Brown
Sherril M. Colombo
James M. Craig
Robert M. Eschenfelder
Honorable Alan O. Forst
Angie Froelich
Alan M. Gerlach, Jr.
Lindsay B. Hanson
Gregory A. Hearing
Patrick Martin
Shane T. Muñoz
Cynthia N. Sass
Cathleen Scott
Cary R. Singletary
Robert S. Turk

TELEPHONE:

Zascha Blanco Abbott
Walter E. Aye
Deborah C. Brown
Thomas A. Delegal, III
Eric J. Holshouser
Richard E. Johnson

Robert L. Kilbride
Damon F. Kitchen
Brian Lerner
Leslie W. Langbein
Stephen A. Meck
Jonathan Oliff
RayJ. Poole, Jr.
Marlene Quintana
Jill S. Schwartz
Grier S. Wells

GUESTS:

Mark Beutler
Kevin Vance
Lindsay Wagner

EXCUSED:

Scott A. Fisher
Leslie K. Reicin Stein

ABSENT:

David E. Block
Daniel R. Levine
Marguerite Longoria
Honorable Stephanie W. Ray
John S. Trimper