

**Minutes for the Bankruptcy/UCC Committee
of the Business Law Section of the Florida Bar**
Annual Convention Meeting
Thursday, June 10, 2021, 10:00am – 12:00pm
Zoom Meeting

Jennifer Morando, Chair
James Moon, Legislative Vice-Chair
Mariane Dorris, Vice-Chair
Hon. Catherine Peek McEwen, Judicial Chair
Prof. Jeff Davis, Academic Chair

I. Welcome and Approval of Minutes from the Prior Meeting

Jennifer Morando

EXHIBIT A

Mariane Dorris made a motion to approve the minutes and James Moon seconded the motion. Motion carries, minutes approved.

II. Introductions of Special Guests and Pro Bono Reminder

Jennifer Morando

III. Business Law Section Update & Welcome

Leyza Blanco, Section Chair
Kacy Donlon, Section Chair-Elect
Doug Bates, Section Treasurer
Mark Stein, Section Secretary

Leyza Blanco: Advised the Committee that the Section has a robust Legislative agenda for 2022, so if there are any new legislative issues, please let her know as soon as possible.

Kacy Donlon: First, Zoom should be coming to end. There will be an in person labor day retreat this year. Second, the Sponsorship Committee is working on new sponsorship opportunities. And third, the Communications Committee has launched a new Section website. You can customize your profile, so look out for the “How to Update Your Profile” video.

IV. Legislation

A. Legislative Overview for 2021 Session

Manny Farach, Legislation Committee Chair
Aimee Diaz Lyon, Section Lobbyist

Manny Farach: 2020 was an unusual year with Covid, the State Capital shut down, and all meetings by Zoom. The frustrating part was that “Kearney fix” (SB 688 and HB 339) did not go through, due to the retroactive provision. RPPTL will be bringing back the “Kearney fix” in 2022. We also expect big tech will be on the plate for 2022. Data Privacy (HB 969, HB 971, SB 1734) did not pass but will be back. There were some political and legal issues which impacted the passage. The

“Son of a Glitch” Bill (SB 602, HB 339) passed, and Corporations will take this upcoming legislative session off . Next year legislature meets in January 2022. As a reminder, we have to get Board of Governors approval for any legislative activity.

Jennifer Morando: What happened with the Foreclosure Notice bill (HB 591, SB 1576)?

Manny Farach: The Florida Bankers thought they had approval for the Notice to Homeowners Foreclosure Bill, but there was no hearing in the House on the bill. We don’t think there was support in House leadership. Doug Bell- Bankers had significant concerns about the bill. Manny Farach: Rep. Koster is still determined to move it forward. Representatives are limited to 6 bills to move forward each session. Doug Bell believes representative can now move forward with 7 bills.

Jim Moon: Was this the issue of retroactivity? Manny Farach: No that was the issues with the “Kearney Fix”. Bankers were concerned about the notice provisions. We thought the arrangement to put the notice provisions in the foreclosure complaint solved issue, but apparently it did not. We suspect the bill will comeback in 2022.

B. Legislative Review Subcommittee

James Moon: There were a few different bills to look at this past year. If you are interested in getting involved, then email me or Mariane Dorris. Jodie Dubose and Andrew Layden were fantastic. They reviewed the bills quickly and responded. Thank you.

C. Reports from Legislative Study Groups

2022 Legislative Items - New

a. Judgment Lien Amendments

Prof. Jeff Davis
Jodi Dubose

Exhibit B

Triple motion to be made at EC meeting: 1. To approve amendments to Chapters 55, 56 and 319, to (i) clarify how to get a judgment lien noted on certificates of title, and (ii) establish procedures for enforcement of a judgment lien against a motor vehicle, mobile home, or vessel; and 2. Authorize the BLS legislative team to advance the proposed legislation in the 2022 legislative session.

Prof. Jeff Davis: This Committee approved the proposed legislation at the last meeting. Purpose: Certificate of Title will note judgment lien and expand the reach of the judgment lien beyond leviable property. The proposed legislation seeks to include general intangibles and accounts payable. The study group reviewed Diane Noller Wells’ concerns and has decided to move forward on first part of bill and continue to work to resolve her concerns. Our plan is to come back at the Labor Day meeting to see if we can resolve her concerns and add the expansion back in.

Jennifer Morando: This was previously approved to take to EC as previously drafted. So we need a motion to remove Section 8 of bill text.

Jodi Dubose: Motion to remove Section 8 of the bill text. Mark Wolfson seconds the motion.

Abstentions: Chief Judge Caryl E. Delano, Judge Laurel M. Isicoff, Judge Mindy A. Mora, Judge Lori V. Vaughan, Judge Scott M. Grossman, Judge Paul G. Hyman

Opposed: Rick Gross

Motion Carries.

b. *Proposed Amendments to UCC 9-406 and 9-408/Fla. Stat. §§ 679.406 & 679.4081*

(Joint with Corporations)

Jeff Davis

Matt Hale

Exhibit C

Triple motion to be made at EC meeting: 1. Support legislation to amend Fla. Stat. §§ 679.406 & 679.4081 to clarify that certain “overrides” of restrictions and transferability do not apply to an ownership interest in a general partnership, limited partnership, or limited liability company; and 2. Authorize the BLS legislative team to advance the proposed legislation in the 2022 legislative session.

Matt Hale: The Committee approved the proposed amendments at the last meeting. The proposed amendments would simplify the law by clarifying that certain “overrides” do not apply to limited liability companies, partnerships, or limited partnerships. It is simply a recognition of the “pick your partner provisions”. These proposed amendments have been enacted by the Uniform Amendments Committee.

Judge Catherine Peek McEwen: Does the override pertain to single-member LLC?

Matt Hale: The override only applies if there is a restriction on transferability of membership.

c. *Chapter 48 Amendments Task Force*

(Joint with Business Litigation Committee)

Jim Murphy, Co-Chair

Adina Pollan, Bankruptcy/UCC Liaison

Exhibit D

Triple motion to be made (by Biz Lit) at EC meeting: Support changes to Chapter 48, F.S. and Chapter 15, F.S. to (i) simplify the methods of service of process on business entities to eliminate redundancies and inconsistencies; (ii) clarify the

statutory scheme to avoid confusion; (iii) better elucidate the methods for effectuating service of process in foreign countries; and (iv) modernize the methods and procedures for service of process on business entities, while ensuring compliance with fundamental notions of due process.

Adina Pollan: The materials are attached to agenda. The Chapter 607 Task Force issue regarding service of process which duplicated and in some cases conflicted with service found in Chapter 48 also conflicts with Chapter 605. Goals of committee are to: 1. Consolidate provisions on business entities, simplify and avoid duplication in Chapter 48. 2. Clarify statutory scheme, making sure applying to all business entities not just corporations. 3. Clarify service of process in foreign countries. 4. Modernize service of process by incorporating technological advances.

Jim Murphy: The Task force has proposed amendments to Chapter 48 and Chapter 15. Chapter 15 deals with the authority of the Secretary of State to Authorize acceptance of substituted service of process by electronic and personal service. The Task Force is going to go through other statutes to streamline service of process-Registered agents, etc. Cross- referencing and striking will be addressed at a later date.

d. Warehouse Lien Amendments (§713.585)

Dennis LeVine

Exhibit E

Dennis LeVine: We are clarifying and consolidating statutes. There are holes in statutes- 713. 78(storage) and 713.585 (repair). Revise in 3 ways. 1. 671.210 used by fraudster to impose liens on vehicles in storage.-make clear, storage liens on vehicle are through 713.78. 2 clarifying posting a bond before lien sale. What happens after bond posted 713.585 and put in 713.78. 3. Right to inspect vehicle. 713.585 upon 3 days written notice-did not change in storage and towing statute. Revise 713.78 to include language. Request committee to approve and move forward to EC.

Dennis LeVine motion to approve, John Hutton seconded.

Abstains: Chief Judge Caryl E. Delano, Judge Laurel M. Isicoff, Judge Scott M. Grossman, Samantha Kelly for Judge Karen K. Specie.

Motion: 35 in favor, 9 abstaining-motion carries.

Jennifer Morando: This will be for EC meeting at Labor Day retreat. This will roll over to 2023, unless opportunity to arises to push for 2022.

2021 Legislative Items – Carrying Over to 2022

e. Kearney Fix (Re: Requirements for Waivers of Exemptions)

Jennifer Morando

John Hutton

Jennifer Morando: We already had a report from Manny Farach. This was a RRPTL initiative, no update at this time. Maybe update by Retreat.

f. Foreclosure Notice Bill

April Stone

Judge Catherine Peek McEwen: We are working back channels to speak with Bankers Association. Rep. Mike Beltran has expressed some interest, and Rep. Traci Koster remains interested in being a sponsor.

D. Reports from Other Ongoing Study Groups

a. Florida Exemption Review/Revisions

Kelly Roberts

Kelly Roberts: The study Group is working on reviewing Florida exemptions. The last time the exemptions were updated was 14 years ago. We have a diverse group of practitioners. We are not ready to make recommendations yet, but we are looking at other states. Focusing on firearms, military, police, and first responders off duty clothing accessories exemptions. These items are not usually administered in Chapter 7. Other necessities such as appliances, burial plots, and household goods. Looking at specifics not increasing wildcard exemption. Understand heavily debated, so if you have input, please comment, or reach out to study group.

Jennifer Morando: If you have strong opinions, please reach out so proposal will have a higher likelihood of success.

b. ABC Glitch Bill Study Group

Jodi Dubose

Patricia Redmond

Exhibit F

Patricia Redmond: Created a study group to review the ABC statute. There was overwhelming support and participation. We are reviewing assignor duties, Assignee duties, court authority and litigation with the Assignment. We are in process of drafting a report on outstanding issues. The study group consists of diverse committee members. We are contemplating having the study group meet at the Labor Day Retreat so we can create a final report. The earliest we could pursue legislative efforts would be March 2023, with a report and recommendation by early 2022.

Jodi Dubose: If you have any interest in joining the study group, please get in touch now.

c. *Article 9*

Juan Mendoza

Juan Mendoza: 946-Discharge of account debtor. Majority of courts took broader view. Looking to amend 946 to amend the term assignment. UCC editorial board, looking at amending Article 9 to include broader definition of assignment. Working on article to provide guideline for Florida lawyers on these issues.

d. *Aviation Committee Legislation*

Lynn Sherman

Lynn Sherman: Audio problems-nothing to report. Put on hold until Aviation Florida Bar committee reaches out.

Jodi Dubose: Our input was not appreciated by Aviation to fix other issues.

e. *Bankruptcy Venue Reform Act*

John Hutton

Hon. Catherine Peek McEwen

Judge Catherine Peek McEwen: Nothing to report. No one has refiled a bankruptcy reform act. A bill has been introduced to limit Section 105 with respect to release of claims held by the government. Stop Shielding Assets from Corporate Known Liability by Eliminating Non-Debtor Releases (SACKLER) Act.

The purpose of the SACKLER Act is to ensure that individuals accused of wrongdoing by government actors—like the Sacklers—can be held accountable for their actions. The bill would prevent bad actors from evading responsibility through bankruptcy proceedings by specifying that a bankruptcy court cannot release claims against non-debtors brought by states, federally recognized tribes, municipalities, or the federal government.

Joh Hutton: There is an advocacy group seeking to fundraise and reintroduce in the Bankruptcy Reform Act. The decrease in filings has impacted interest.

E. *Items to be Monitored*

Senate

a. *Financial Literacy Task Force*

Amanda Finley: Reviewing Best Curriculum, which integrated math into the financial literacy into the curriculum. Discussed Veterans Financial Literacy program to be held on 10/ 30/ 21 virtual and in person program. Intend to roll out statewide.

b. *Northern District Judgeships/Divisions*

Chief Judge Karen K. Specie

Jodi Dubose

Doug Bates

Samantha Kelley: Judge Specie is conducting hearings. No update.

Jodi Dubose: Numbers are down, so request was not granted this year. Continuing to pursue.

c. *Judicial Term Limits/Legislative Oversight of Judicial Decisions*

Doug Bates

Jodi Dubose

Jodi Dubose: Issues did not pop back up. No update-hopefully gone away.

d. *Fla. Stat. § 689.151 Revisions* (RPPTLS proposed TBE legislation)

Andy Layden: No report.

e. *Uniform Voidable Transaction Act Amendments*

John Hutton

Take a pass on it this year. We need to decide if we will push again in next session or not. Mark Wolfson-RRPTL still object to proposed changes? John

Hutton: Yes, that is my understanding.

f. *Digital/Cryptocurrency Regulation Task Force*

John Hutton Not a lot of activities. Reviewed proposed legislation. Florida has a State Task Force to study blockchain and digital currency. Office of Financial Regulation is taking a renewed interest.

V. Continuing Legal Education, Communications, and Publications

A. Bankruptcy/UCC Committee CLE Programs

a. Previously Held CLE Programs

i. *Antiquated or Adequate? An Overview and Examination of Florida's Bankruptcy Exemptions – 5/27/2021*

Kelly Roberts: Overview of Florida Exemptions and looking at exemptions to add. Tune in if interested in study group efforts. Should be on website.

b. Future Programs

i. *6/22/2021 – Mediation Perspectives: From Business Litigation to Bankruptcy July 14.*

ii. *6/30/2021 - Nuts & Bolts of the Legislative Process (Bank/UCC and Legislative Committee joint presentation)*

Juan Mendoza: Designed to be overview of legislative efforts of the Section. Will be required viewing for Fellows. June 30, 2021, at noon.

- iii. *View from the Bench 2021* – October 28 (Tampa), October 29 (Miami)
(Note date change!)

Hon. Michael Williamson: First live program in a couple years. October 28 (Tampa) 29 (Miami). Tampa accommodates up to 200 people. Stephanie Lieb continues to work on coordinating the program in Tampa and the BBA assists in coordinating the Miami program. Need help with materials. Brad Saxton as editor needs help to review.

- iv. *CLE Planning*

Tara Trevorrow: Career clerk for Judge Mora, with Judge Paul G. Hyman previously. Private practice for 15 years. 1 Adopt a Fellow; 2 Adopt an Associate. Get Fellows and new young diverse attorneys to speak at CLE panels. Make an effort to reach out to adopt for a substantive CLE presentation. 2. Within your own firm, pick out someone to actively attend and participate in BLS meetings. We need to take an active role in diversifying the section.

Rick Gross: Agrees support is important. The Florida Supreme Court has nullified our CLE Diversity Policy. I think it was misguided because there was no economic benefit. Diversification of ideas and points of view. IMF redid the policy before EC tomorrow. ABA spring meeting-credit rejected because Bar believes SC opinion demands that. Any outside group with similar policies will not get credit-even if we co-sponsor. Comments need to be submitted to rise these issues.

Jim Moon: What Rick is addressing is a bigger issue. ABA and ABI CLE programs are not receiving credit.

Judge Laurel M. Isicoff- ABA has hired counsel and will be submitting a comment. ABI does not have a similar policy. Not mandatory.

- v. *Contact Jim Moon or Mariane Dorris if you would like to present a CLE or share ideas for future topics*

B. Communications Committee Report & Newsletter

Adina Pollan: If you have comments on the Newsletters, please share. Looking for articles for newsletter and website. Fill in your member profile. Chris Thompson taking over.

C. Out of State Division Newsletter Submissions

Hon. Catherine Peek McEwen
Don Workman

Judge Catherine Peek McEwen: We need articles. An article on *Kearney* would be a good article.

VI. Cross-Committee Partnership and Other Liaison Reports

A. Current Partnership Initiatives

Mariane Dorris: Working with other committees to put on CLE presentations.

B. Other Liaison Reports

- a. *CLE Committee* – Bob Charbonneau: June 24 CLE is a two part legal writing seminar. CLE will be in substantive meetings at the Labor Day Retreat. Florida Bar Journal articles are set through January 2022. So reach out to Andrew Layden or Chief Judge Caryl E. Delano if you would like to submit an article.

Jim Moon: Are we getting credit for CLE? Bob Charbonneau: I am not sure. Jim Moon: EC voted to withdraw the Diversity CLE Policy because of Florida Supreme Court ruling.

- b. *IMF Committee* – Mariane Dorris (skipped report due to time constraints)
- c. *Membership Committee* – Dana Robbins: There will be networking events at Cooley, FAMU, and Florida Coastal.
- d. *Pro Bono* – Amanda Finley (Veterans Project)
- e. *E-Discovery Committee*- Zachary Hyman: There are proposed revisions to the Florida Rules of Civil Procedure. Looking at a comprehensive overhaul on issues of discovery to make consistent with Federal Rules of Civil Procedure. Will be presented as a triple motion before EC tomorrow. <https://flabizlaw.org/wp-content/uploads/2021/06/EDDE-Task-Force-Composite-draft-v8-6-9-2021.pdf>

VII. Old Business

A. Creating an App for FRBP/Code

Mark Healy If you want to give feedback, please reach out to Mark on the materials added this morning.

VIII. New Business

**Reach out to Jim Moon and Mariane Dorris for new business.
Jim Moon thank you Jennifer for all your hard work.**

IX. Future Meeting Dates

September 3-6, 2021: BLS Retreat; Ritz-Carton, Naples

X. Adjourn

Adjourned-motion by Jennifer Morando, seconded by Jim Moon.