

**MINUTES**  
**THE FLORIDA BAR APPELLATE PRACTICE SECTION**  
**EXECUTIVE COUNCIL MEETING**  
**THURSDAY, SEPTEMBER 6, 2007**  
**TAMPA AIRPORT MARRIOTT – TAMPA, FLORIDA**

**I. Call to Order and Introductions**

Chair Steven Brannock called the meeting to order. Chair Brannock welcomed all and introduced the Section's officers for the 2007-08 bar year.

In attendance were the following Executive Council members:

Mr. Steven L. Brannock (Chair)	Mr. John Granville Crabtree (Fmr Chair)
Ms. Siobhan Helene Shea (Chair-Elect)	Ms. Barbara Anne Eagan
Ms. Dorothy Frances Easley (Vice Chair)	Ms. Angela Carol Flowers (Fmr Chair)
Mr. Matthew John Conigliaro (Sec/Treas)	Ms. Betsy Ellwanger Gallagher
The Honorable Morris Silberman	Ms. Tracy Raffles Gunn
The Honorable Mark E. Polen	Mr. Henry Gerome Gyden
The Honorable C. Alan Lawson	Ms. Valeria Hendricks
Mr. Jack J. Aiello (Fmr Chair)	Ms. Celene Harrell Humphries
Mr. Benedict P. Kuehne (BOG liaison)	Ms. Roberta Goodman Mandel
Ms. Susan Whaley Fox (Imm. Past Chair)	Mr. Jack Roy Reiter
Ms. Caryn Lynn Bellus	Ms. Hala A. Sandridge (Fmr Chair)
Ms. Gwendolyn Powell Braswell	Mr. Jonathan Marc Streisfeld

Also in attendance were the following Section members and Bar Liaison:

Mr. Michael C. Greenberg  
Mr. Keith E. Hope  
Ms. Calianne P. Lantz  
Mr. Austin Newberry (Bar Staff Liaison)  
Mr. Michael L. Richmond

**II. Approval of Minutes from June 28, 2007 Section Meeting**

The minutes from the June 2007 Section Meeting were reviewed. Barbara Eagan pointed out a typographical error. On motion by Susan Fox, the minutes were approved.

### **III. Chair's Report**

#### **A. Today's Section Events**

Chair Steve Brannock announced that the meeting would be kept to two hours, after which a reception will be held for Section members. Chair Brannock also invited everyone to attend dinner that night at his family's home in Duette, where his wife will showcase her (considerable) culinary skills.

#### **B. Other**

Chair Brannock announced that the Section was sponsoring a breakfast at the Appellate Court Rules Committee's orientation the next morning. Celene Humphries explained that, in June 2007, the Executive Council approved funding the breakfast up to \$700, but that only half of that money would actually be used.

### **IV. Treasurer's Report**

Secretary/Treasurer Matt Conigliaro reported that, in the past year, the Section once again operated at a deficit, though at less of a deficit than the roughly \$15,000 deficit projected in the 2006-07 annual budget. Conigliaro explained that the Section's balance has steadily declined in recent years as a result of new recurring expenditures, various one-time projects, and an operating loss for the Section's CLE offerings. While The Florida Bar's CLE revenues are increasing, the Section's offerings – which consist mostly of live presentations – have not been drawing significant attendance. Conigliaro suggested that this may be a consequence of the new electronic age, where CLE seminars are offered to Bar members in telephonic and Internet formats by a wide array of for-profit companies in addition to the Bar.

Bar liaison Austin Newberry reported that the Section's balance was approximately \$68,549. Newberry explained that all Sections have just completed the first year under the Bar's new formula for assessing sections and that it remained to be seen how the new formula affects the Section's bottom line. Newberry reported that Section membership stands at approximately 1,447 members.

Chair Brannock suggested that a committee assist Conigliaro with the next budget, which is due to be presented in January. The following Section members volunteered to assist in that effort: Chair-Elect Siobhan Shea, Gwendolyn Braswell, Jack Aiello, Susan Fox, and Mike Greenberg. Anyone with ideas regarding the budget should send them to Conigliaro.

Celene Humphries inquired about the final costs for the dessert reception at the annual meeting in June. Conigliaro responded that we ultimately collected more in sponsorships than we spent on the reception, leaving us an estimated several thousand dollars ahead.

## **V. Old Business**

### **A. Council of Sections Report**

Chair-Elect Siobhan Shea attended the June Council of Sections meeting on behalf of the Section. At that meeting, Florida Bar President Frank Angones thanked the Section for its sponsorship of the dessert reception. Shea suggested to Angones that the Bar consider taking on some of the expenses of the committees, such as the breakfast for the Appellate Court Rules Committees, now that the financial arrangements between the Bar and the sections have been restructured. Regarding the Section's finances, Shea suggested that other sections offered ideas at the Council meeting for recruiting law students, defraying some of their expenses; and suggested perhaps the Section could attempt something similar. Other sections are also coordinating CLE events with local bar associations, which the Section could participate in to be

more active with local bar associations and law schools. Shea suggested ways to improve our outreach, building membership and in particular participation of minority members. Shea suggested that joint CLE activities might help defray the costs of CLE's and that other Sections are very active in repackaging their CLE's and offering them online at the Bar's web site. Shea recommended that our Section's CLE materials be made available online and that we should increase our marketing of these products with the Section's web site.

It was announced that Vice Chair Dorothy Easley would represent the Section at Saturday's Council of Sections meeting.

**B. Florida Justice Conference**

Chair Brannock reported that the Florida Justice Conference was once again a tremendous success and thanked Celene Humphries for her hard work in organizing the event. Humphries explained that, going forward, the Conference's future is uncertain. The Conference had a budget of approximately \$17,000 for its first year and over \$20,000 for this year, both coming from sponsorships by The Florida Bar Foundation. Such sponsorship is not scheduled to continue. The Section and the Florida Conference of District Court of Appeal Judges now must plan for the event's future. The Conference is cognizant of not seeking contributions from law firms, to avoid improper appearances or conflicts with the judges. Humphries stated that she, Chair Brannock, Peggy Horvath, Judge Altenbernd, and others have drafted a letter to Judge Gersten, as Chair of the Conference of District Court of Appeal Judges, suggesting that the Conference consider various options, including making the event a full day. After both conferences, attendees wished the events were longer, and the breakout sessions were very well received. Humphries and Chair Brannock are examining how to address the Conference's needs going forward.

Angela Flowers asked why the Bar does not want to support the Conference again. Humphries explained that the Bar would allow us to hold the event again during the annual meeting period in June but the real issue involves The Florida Bar Foundation, which has made it clear we are not going to get funds from them again. Some people have approached Humphries with offers to utilize Bar contacts to attempt to restore funding for the Conference. Some have suggested that the Conference attempt to partner with Stetson University College of Law.

Judge Polen suggested that holding the Conference in conjunction with the Bar's annual meeting makes good sense but the Section might also consider holding the Conference when the appellate judges hold their annual conference. The Conference could be scheduled either just before or just after the judges' conference, which this year will be in Naples and in 2008 will be a joint conference in Jacksonville with the circuit court judges. Judge Polen suggested discussing this idea with Judge Altenbernd.

Marianne Trussell inquired about the Conference's expenses. Humphries responded that the Conference has thus far utilized a consulting service that will probably not be used again. There are also mailing and web site expenses. Humphries explained that Peggy Horvath has created a "cookbook" for how these matters have been handled, and we may be able to use that resource going forward to help with organizing the event.

Chair Brannock observed that the plan for the Conference is in place and that we simply need to find funding sources. Brannock invited anyone who wished to assist Celene Humphries to do so. Judge Polen, Dorothy Easley, Hala Sandridge, and Valeria Hendricks volunteered to assist.

## **VI. New Business**

### **A. Florida High School Appellate Competition**

Chair Brannock directed the Council's attention to Exhibit B to the Agenda, a request from the executive director of the Florida Law Related Education Association, Inc. The request seeks the Section's support for an appellate competition the organization sponsors for high school students. The competition invites students to draft briefs, which are then judged and the authors of the best briefs are invited to argue at the district courts of appeal. The best oralists are then invited to argue before the justices of the Florida Supreme Court. The program seeks funding, scholarships, and volunteers.

Marianne Trussell mentioned that she used to read briefs for the program and that some of the work was better than that of some attorneys. Roberta Mandel added that her daughter participated in the program and was invited to argue at the Third District and the Florida Supreme Court. Mandel stated the program offers a phenomenal experience for young students to write briefs and argue and that if there is a way the Section can help, it should do so.

Chair Brannock suggested that the Section become involved in this program, perhaps starting by volunteering for a year or two to learn about the program, and thereafter consider whether financial contributions would be appropriate. Brannock asked Jack Aeillo (Mentoring Committee Chair) whether this project would fit within his committee's work, and Aiello agreed to take on this project as a Mentoring Committee matter. Secretary/Treasurer Conigliaro, Vice Chair Easley, Barbara Eagan, Marianne Trussell, Calianne Lantz, and Mike Greenberg also volunteered to help. Tracy Gunn suggested that the Section help the students prepare for their oral arguments.

## **B. Law Students as Section Members**

Chair Brannock raised the subject of inviting law students to be Section members, as a way of growing the Section's membership. Bar liaison Austin Newberry explained that to join a section of the Bar, a person must be a member of the Bar; however, many sections offer "affiliate" memberships. Brannock suggested that the Section consider amending its bylaws to permit such memberships. Calianne Lantz suggested that we examine how other sections arrange such memberships, and Austin Newberry offered to check other sections' bylaws for provisions addressing this subject. Chair-Elect Siobhan Shea suggested that the Outreach Committee coordinate an effort to reach out to students. Brannock suggested that the Section also utilize its contacts who are professors at the state's various law schools.

Chair Brannock also inquired as to whether other sections charge "affiliate" members a membership fee. Austin Newberry explained his belief that all sections who admit "affiliate" members charge them a discounted membership fee, and he added that who can qualify for an "affiliate" membership varies among sections – some sections allow students, some allow vendors, etc. Judge Polen mentioned that when he chaired the Family Law Section, that section allowed psychologists and others to be affiliated members and attend meetings. Austin Newberry added that the Business Law Section has members of its Executive Council appointed as liaisons with each Florida law school. Brannock requested that the Outreach Committee look at this issue and come up with proposed bylaw amendments for the Section's January 2008 meeting.

## **C. CLE Tuition for Government Lawyers/Law Clerks**

Chair Brannock announced that a judge at the First District has commented that clerks at that court enjoy the Section's monthly teleconference CLE series and asked if the Section would

consider giving law clerks discounts on the Section's CLE programs (not necessarily the teleconferences but more so the live seminars).

A member suggested that we increase the costs of the monthly teleconferences, which are priced so low the Section loses money on them. Secretary/Treasurer Conigliaro pointed out that the Section increased the costs of the monthly telephone conferences for the 2006-07 year and that revenues from those calls should increase as a result. Chair Brannock suggested that perhaps the Section could offer a discount to callers who share a phone line, since the costs to the Section are based on the number of callers.

Calianne Lantz observed that if we decreased the costs of the live seminars, we might increase attendance by criminal law attorneys. Valeria Hendricks asked if there is any way the Section can determine how many government attorneys attend the Section's CLE events. Hendricks pointed out that if government lawyers are not already attending in numbers then decreasing their costs may increase their attendance. Celene Humphries added that the Hillsborough County Bar Association reduced its CLE prices for government attorneys and thereby increased attendance and revenue. Mike Greenberg said that his office would like to have sent 10 attorneys to a recent appellate practice seminar but could not afford to do so. Roberta Mandel agreed. Bar liaison Austin Newberry pointed out that the Section lost money on CLE programs last year and that we basically charge what it costs to hold them. Newberry further explained that CLE programs are not a situation where attendees can be added at no cost – costs are largely based on attendance, and we need about 100 attendees for a seminar to break even.

Judge Polen pointed out that appellate law clerks attend a semi-annual seminar paid for by the state and otherwise must pay for CLE programs out of their own pockets. Barbara Eagan

suggested that the Section might allow government agencies free or discounted access to videos of the Section's CLE programs.

Chair Brannock summed that the Section wants to find ways to increase attendance without losing money. The issue of CLE costs was referred to the group studying the budget with Secretary/Treasurer Conigliaro.

## **VII. Committee Reports**

**A. CLE Committee.** Committee Chair Betsy Gallagher reported that 12 persons attended the morning's CLE Committee meeting. The monthly teleconference CLE's, which are chaired by John Mills, need speakers for 2008, and the multi-day appellate advocacy seminar previously presented in conjunction with Stetson University College of Law is scheduled to be held at Florida Coastal School of Law from July 30 – August 1, 2008. The faculty for the event is tentatively similar to the faculty used at the last seminar held at Stetson College of Law. Celene Humphries is chair of the event and John Mills is its marketing chair.

The Section's biannual seminar on preservation of error is scheduled for November 16, 2007, in Orlando. The name of that seminar has been changed to "The Art of Objecting at Trial" in an effort to draw more trial attorneys to the program. Ceci Berman and Brian Gowdy are co-chairs for the event.

The Section's Appellate Practice Certification Review Course is scheduled to be held on February 1, 2008. Gwendolyn Powell Braswell is chair of the event, and Matt Conigliaro is the marketing chair.

A seminar based on practice in the Fifth District is being planned for Spring 2008. Matt Conigliaro and Chris Carlyle are co-chairs for the event. Mike Giel is also on the planning committee. A seminar based on practice in the First District is being planned for May 2008.

Bryan Gowdy is chair for this event and is working with Judge Webster. A family law appellate CLE is tentatively planned for April 3, 2008, in Ft. Lauderdale. Jonathan Streisfeld noted that local county schools may be on their Spring break that week.

**B. Public Advocacy/Legislation Committee.** Committee Chair Tom Warner explained that the committee has been looking at circuit court appeals utilizing three-judge panels – a practice used in some but not all circuits. If the goal is to obtain three-judge panels in all circuit courts, one approach would be to contact the individual circuits not utilizing three-judge panels, but Warner noted that those not utilizing three-judge panels for the most part believe that is the best way for them to handle appeals. Another approach would be a rule change requiring three-judge panels, which Warner believes is supported by some members of the state supreme court. Warner inquired of the Executive Council as to whether the Committee should go forward in some direction on this subject or refer the matter to either the Appellate Court Rules Committee or the Rules of Judicial Administration Committee.

Valeria Hendricks voiced her support for three-judge panels in circuit court appeals but explained that when this issue was raised within the Bar several years ago, a lack of resources in the smaller circuits was the chief problem. Susan Fox stated that this issue has been around in various forms for about 10 years and that the Appellate Court Rules Committee addressed it in the mid-90's. At that time, changes were made to standardize appeals from county court to circuit court, including a rules clarification that in such appeals the appellate rules take precedence over the civil procedure rules, and another change clarifying the duties of the clerks of court. Fox further stated that she recalled the Section submitting an amicus curiae brief (authored by John Crabtree) on this subject in the Second District and in the Florida Supreme Court and that, at the time some circuits had only two judges.

Fox then moved to authorize the Public Advocacy/Legislation Committee to present a proposal to the appropriate rules committee that would create a uniform procedure for utilizing three-judge panels in appeals from county court to circuit court. Hendricks seconded the motion. Chair-Elect Siobhan Shea commented that Robert Glazier wrote an article on this subject. Calianne Lantz asked if writs should be included in the proposal and commented that writs being handled by single judges is more of a problem than appeals.

Warner suggested that the Committee bring a draft proposal to the Executive Council before presenting it to the appropriate rules committee, which is probably the Rules of Judicial Administration Committee. Fox then clarified her motion to authorize the Public Advocacy/Legislation Committee to draft a proposal requiring a uniform procedure for utilizing three-judge panels in appeals from county court to circuit court and to submit that proposal to the Executive Council for approval in time for the proposal to be presented to the Rules of Judicial Administration Committee for its January 2008 meeting. As clarified, the motion passed.

Warner also reported that he recently served as vice-chair of the state supreme court's committee on judicial evaluation, which ultimately recommended that no changes be made regarding judicial evaluations. Warner explained that he and six others voted against the majority position, and while his position was not adopted, the issue remains alive and he has been tasked with examining what sort of information the public would like to know when voting on a judge. Warner asked those with insights or suggestions to contact him. Chair Brannock invited Warner to send an email to the entire Executive Council soliciting such input.

**C. Publications Committee.** Committee Chair Caryn Bellus reported that 10 people attended the Committee's morning meeting, including three new members. Rebecca Creed has agreed to take over the Guide. The Committees has updates underway for the Second and Fourth

District and the Eleventh Circuit. Mike Greenberg volunteered to update the Third District. Additional updates are needed but Bellus questioned how updates should be completed given the uncertainty surrounding the Guide's future – namely, will the Guide continue as a printed publication or should the project shift to being Internet-based?

Chair Brannock asked Creed and the Committee to take a hard look at the Guide's future. John Crabtree commented that the Section previously looked at whether it could distribute Guide updates by e-mail, but the Section determined that not everyone used e-mail. Jonathan Streisfeld suggested that updating the Guide could be done through e-mail blasts just as the color version of The Record is now distributed. Brannock asked that anyone interested in assisting Creed contact her. Chair-Elect Siobhan Shea, Jonathan Streisfeld, and John Crabtree volunteered.

For the Section's regular piece in the Florida Bar Journal, Bellus related Tracy Gunn's report that the Section has articles submitted through December 2007. Jack Reiter is writing an article on nonfinal appeals for January 2008. Bellus noted that the Section has volunteers willing to write articles but topic ideas are necessary. Hala Sandridge suggested that we remind potential authors of their ability to receive CLE credit for time spent writing such articles.

Jack Reiter, editor of The Record, reported that the publication's latest issue was distributed yesterday. Articles for the next issue are nearly all already submitted. Vice Chair Dorothy Easley commented that the latest issue of The Record was the nicest looking issue ever published in terms of both content and presentation. Reiter thanked Roberta Mandel and Alina Alonso for their assistance in putting the issue together.

**D. Pro Se Handbook Committee.** Committee Chair Dorothy Easley reported that the Section's Pro Se Handbook is now complete. Easley thanked Chair-Elect Siobhan Shea for making additional revisions and Caryn Bellus for putting together a notice for distribution. All

chapters are being updated, many by the earlier authors. The Committee is currently operating on a three-month deadline to complete the updates. The Committee is adding a section on standards of review, making the Handbook compliant with the Americans with Disabilities Act, and adding hyperlinks to defined terms. The Section Chair is expected to draft a letter to be sent with the Handbook to all courts.

**E. Hospitality Committee.** Committee Chair John Crabtree reported that the Section remained very hospitable.

**F. Outreach Committee.** Committee Chair Shannon Carlyle was unable to attend this meeting to provide a report.

**G. Programs Committee.** Committee Chair Ceci Berman was unable to attend this meeting to provide a report.

**H. Web Site Committee.** Committee Chair Henry Gyden explained that the Web Site Committee is working hard to update the leadership page. The Pro Se Handbook is expected to be available soon on the Section's site. Chair-Elect Siobhan Shea asked that the recipients of the Section's awards be updated, and Chair Brannock asked if the Committee needs additional resources. Jonathan Streisfeld suggested that, if the Guide is going to become an Internet-based publication, then the Committee is going to require assistance with keeping links and content updated.

**I. Pro Bono Committee.** Mike Richmond observed that the effort to offer pro bono briefing assistance in the district courts of appeal has not taken hold.

## **VIII. Announcements**

Jack Aiello noted that a seminar on practice in the Fourth District Court of Appeal will be held on December 6, 2007 at the Boca Raton Marriott. Jonathan Streisfeld mentioned that the event continues to seek sponsors.

Celene Humphries observed that the Second District Court of Appeal Historical Society will be holding a dinner on October 25, 2007 to commemorate that court's Fiftieth Anniversary.

#### **IX. Next Meeting and Adjournment**

Chair Steve Brannock announced that the Section will hold its next meeting on January 17, 2008, at the Hyatt Regency Miami in downtown Miami. The meeting was then adjourned.