

## **APPROVED MINUTES**

### **THE NEW YORK STATE BAR ASSOCIATION COMMERCIAL & FEDERAL LITIGATION SECTION EXECUTIVE COMMITTEE**

Minutes of the Meeting of the Executive Committee of the Commercial & Federal Litigation Section held in accordance with the rules of the New York State Bar Association on Tuesday, December 8, 2015.

#### **MEMBERS PRESENT**

**James M. Wicks, Chair  
Mark Berman, Chair Elect  
David Miranda\*  
Sharon Porcellio  
Sheldon Smith  
David Tennant**

#### **MEMBERS PARTICIPATING BY PHONE**

**Gregory Arenson  
Teresa Bennett  
James Bergin  
Benjamin Blum  
Jeremy Corapi, Secretary  
Charles "Trip" Dorkey III  
Deborah Edelman, Treasurer  
Jonathan Fellows  
Ignatius Grande  
Claire P. Gutekunst  
Jay Himes  
Mitch Katz, Vice Chair  
Laurel Kretzing  
Frank Maas  
James Potter  
Stephen Roberts  
Courtney Rockett  
Paul Sarkozi  
Daniel Wiig**

*\*indicates guest speaker for the meeting and non-executive committee member guest*

The meeting came to order at 6:12 p.m.

### **Section Chair Jim Wicks' Welcome Remarks**

Mr. Wicks welcomed the Executive Committee Members to the meeting. He asked all Executive Committee Members attending the meeting by telephone to send Section Secretary Jeremy Corapi an email so that he could record their attendance for the meeting's minutes. Mr. Wicks thanked all Executive Committee Members attending by telephone for participating in the meeting and advised that this would be a shortened meeting due to the reception following the meeting. Mr. Wicks also noted that the CLE program that preceded the meeting was outstanding and well-attended. He thanked those who attended the CLE and those who were a part of the panel. Mr. Wicks also thanked the law firm of Nixon Peabody LLP for hosting the meeting.

### **Approval of November 2015 Executive Committee Meeting Minutes**

The Minutes for the November 2015 Executive Committee Meeting were unanimously approved by all Executive Committee Members present without any changes.

### **Annual Meeting Update (Survey Reminder)**

Section Vice Chair Mitch Katz reported on the planning status of the Annual Meeting. Mr. Katz advised that the meeting would be held during the "big bar" week in New York City, on January 27, 2016.

Mr. Katz advised that the Section's Annual Meeting program is now fully developed and all materials have been submitted. Mr. Katz indicated that an email blast about the Annual Meeting would be sent out soon from the New York State Bar Association. Mr. Katz encouraged Executive Committee Members to have their law firms purchase tables for the Annual Meeting. Mr. Katz also noted that he is looking forward to the Annual Meeting and hopes to see a well-attended program for the presentation of the Fuld Award to Judge Sheila Abdus-Salaam. Mr. Katz also informed the Executive Committee Members that a survey is going to be sent to all Section members by Cornell Law School Professor Valerie Hans in connection with the Section's first panel for the Annual Meeting, Psychology of Perception in Litigation. Mr. Katz indicated that Ms. Hans would like as many Section members as possible to complete survey. Ms. Hans will then use the survey results in her research and report on her research during the Annual Meeting. Mr. Katz noted that the survey is lengthy, but that it is important to complete the survey for the Annual Meeting and to help develop a relationship with the students and faculty of Cornell Law School. Mr. Katz encouraged all Executive Committee Members to complete the survey so that there would be a more useful and fruitful discussion during the first panel of the Section's Annual Meeting. If Executive Committee Members have not yet completed the survey, please do so by using this link – [https://cornell.qualtrics.com/SE/?SID=SV\\_bJmn2mueloJjVFr](https://cornell.qualtrics.com/SE/?SID=SV_bJmn2mueloJjVFr).

## **Treasurer's Report**

Section Treasurer Deborah Edelman provided the Executive Committee Members with a report on the Section's finances. Ms. Edelman noted that the Section's finances are in order and remain strong to date, but that the Section is always looking for sponsors for CLE programs and other Section events, and to let the Officers know if they have sponsorship ideas or contacts.

## **Reminder of 2016 Section Officer Nominations**

Section Chair Mr. Wicks reminded Executive Committee Members that Section officer nominations are due and that Section members should email their 2016 Section officer nominations to him, Beth Gould, and/or the Hon. Melanie Cyganowski as soon as possible. Mr. Wicks encouraged people to run and/or make nominations.

## **Social Media Committee Report: Social Media Jury Instruction Report (Vote Held)**

Section Chair Elect Mark Berman presented the Social Media Committee's Social Media Jury Instruction Report. He thanked the Social Media Committee for its hard work and dedication in putting this Report together. Mr. Berman noted that the Report is the first of its type in any bar association section. Mr. Berman indicated that the Report analyzes pattern jury instructions and breaks them down so as to provide a guide to litigators and judges on social media issues to be aware of during trial and when formulating jury instructions for trial. Mr. Berman noted that the Social Media Committee looked at individual rules of judges in New York and around the country in drafting the Report. Mr. Berman stated that Exhibit "A" to the Report is what the Social Media Committee believes are samples of useful social media jury instructions. Mr. Berman noted that the Section is not adopting or opining on the propriety of certain jury instructions, but rather that this Report showcases different jury instructions that can be used in various situations involving social media. Mr. Berman also stated that the Social Media Committee drafted this Report to make suggestions to improve social media jury instructions in New York State. Mr. Berman stated that he would like to see the Section pass the Report as it could become precedent setting. Mr. Berman reiterated that the Report is careful not to adopt or promote certain jury instructions, but aims to highlight what issues should be raised by judges and attorneys during charging conferences and related trial proceedings. Mr. Berman stated that the goal of the Report is ultimately to provide attorneys with a helpful tool that they can use in practice to help form appropriate jury instructions for a given case.

Mr. Berman then asked the Executive Committee Members if they had any comments or suggestions on the Report.

Executive Committee Member Courtney Rockett noted that the Report was thorough and well done. Ms. Rockett also proposed revisions to the Report. She noted that in the portion of the report discussing jury communication tools, the Report should include SnapChat and YouTube. Additionally, the portion of the report discussing jury research tools should include SnapChat and YouTube. Ms. Rockett noted that on page 8 of the Report, the third paragraph, third line

from right should read “judicial views on investigations OF jurors (not BY jurors). Ms. Rockett also suggested that last paragraph on page 13 of the Report should be moved. Ms. Rockett also suggested that the reference to cell phones on the top of page 33 should not be removed. Ms. Rockett also indicated that the reference to Google Maps and Google Earth on page 32 of the Report needed to be clarified because many people think that the images on those sites are present day images, but they are often old. Ms. Rockett suggested language should be added to the Report to account for this, such as “today or at any other point in time.”

The Hon. Frank Maas also noted that the Report was well drafted and comprehensive. He suggested a minor correction to page 13 of the Report, as he thought the website referenced on page 13 should be Vine.co, not Vine.com. He also suggested that the word “Please” be removed from the sample jury instructions in the Report because it makes the judge’s instruction sound optional and not mandatory. He also proposed taking the sticker reference out of the Report.

It was also noted that at page 36 of the Report, the paragraph beginning “As I mentioned . . .” goes on to say that “nobody involved in this case may not communicate with you . . .” It was suggested that this phrase should be re-written without the word “not.” Additionally, the next paragraph on page 36 of the Report (beginning “If you are notified electronically . . .”), goes on to say in the fourth line with “any anyone.” It was suggested that the word “any” should be removed.

Subject to the changes identified by the Executive Committee Members, all Executive Committee Members present voted in favor of adopting the Report. Executive Committee Member Deborah Edelman abstained.

**January 2016 Executive Committee Meeting Reminder – (Cocktail Reception – Section Committee Chairs Should Plan to Attend) and Guest Appearance by NYSBA President David Miranda**

Section Chair Mr. Wicks Reminded the Executive Committee Members that the next Executive Committee Meeting will be held in New York City at the office of Kramer Levin Naftalis & Frankel LLP on January 13, 2016. Mr. Wicks noted that there will be a cocktail reception following that Executive Committee Meeting and that the Section’s officers would like all Section Committee Co-Chairs to be in attendance.

New York State Bar Association President David Miranda made a guest appearance at the end of the meeting. Mr. Miranda thanked the Section for all of its excellent work and noted that he was happy to be in attendance for the meeting. Mr. Miranda indicated that he was particularly proud of and thankful for the work the Section is doing in the area of social media. He noted that the Section’s Social Media Guidelines that that New York State Bar Association approved have been incredibly well received both in New York and nationally. Mr. Miranda indicated that he also thinks the Section’s Social Media Jury Instruction Report will be well-received and highly influential. Mr. Wicks thanked Mr. Miranda for his kind words about the Section and for speaking to the Section’s Executive Committee Members.

The meeting adjourned for a reception at 6:37 p.m.