

**CRIMINAL LAW SECTION EXECUTIVE COUNCIL
MINUTES OF THE SEPTEMBER 12, 2014 MEETING
HYATT ORLANDO AIRPORT**

I. CALL TO ORDER

The meeting was called to Order by Chair David Rothman

Present were the following members: David Rothman (chair), Judge Angélica Zayas (chair-elect), Joel Silvershein (Secretary), Michelle Suskauer (Board Liaison), Susan Hugentugler (Immediate Past Chair), O. David Barksdale, Jason Blank, Robert Dillinger, Jeffrey Harris, Mace Heavener, Judge Richard Hersch, Les Hess, Judge Cynthia Impertato, Abraham Laeser, Sheryl Lowenthal, Larry Donald Murrell, Jr., Judge Donald Scaglione, Harvey Sepler, Kenneth Swartz, Brian Tannenbaum, George Tragos, Larry Turner, William Vose,

Present by Telephone were the following members: Judge Jeffrey Levenson, Richard Polin, Kenneth Swartz, Jennifer Zedalis.

Absent were Martin McDonnell (Treasurer), H. Scott Fingerhut, James Smith, Samantha Ward, Gary Winston, Paul Zacks.

Also Present was Hank Coxe.

Also Present by Telephone was Dixie Teel (Bar Staff).

II. CLS MISSION STATEMENT

The proposed mission statement issue was taken out of order. Exhibit Four of the agenda was written by David Barksdale, after looking at other section websites, and edited by Larry Turner. The concept of a three line mission statement was moved by Bob Dillinger, seconded by Judge Imperato, and approved by voice vote.

III. COMMUNICATIONS

The report regarding communications was also taken out of order. The report was a follow up from the June 2014 meeting regarding the website and e-blasts. Susan Hugentugler reported that she was hoping to send out e-blasts every few months. Additionally, there would be postings regularly on the website, but e-blasts on a less frequent basis.

IV. CHAIR'S REPORT

Chairman Rothman reported that membership expanded to 2185 members. Involvement needed to increase, and that one member from each circuit needed to contact former members to get involved. Regarding this issue, Larry Turner noted that the Young Lawyers Division sent a letter to other sections to partner with other sections.

Chairman Rothman also noted the lack of diversity within the executive council. The survey results reflect that the section is not attracting younger members. Suggestions to correct this issue included recruiting younger lawyers onto subcommittees and joint projects with local bars.

V. ATTENDANCE AND APPROVAL OF MINUTES

Attendance was taken by a roll call. New executive council members Jason Blank and Mac Heavener were introduced. The minutes of the June, 2014 meeting were amended by correcting the spelling of Judge Levenson's name. Susan Hugentugler moved the approval of the minutes as amended, which was seconded by Harvey Sepler. The minutes were approved by voice vote.

VI. BOARD OF GOVERNORS LIAISON REPORT

Michelle Suskauer reported that last meeting of the Board of Governors was held in Palm Beach, and that the next meeting would be held in Philadelphia. The PEC committee, led by David Prather, would be reviewing all areas of certification, and advised the executive council to let her know of any issues. The results of the survey were concerning, because the section is not growing, and that there is a need for new leaders. It was noted that 28% of the section had over 30 years of experience, and that 50% had over 20 years of experience.

At this time, the only recognized legislative position of the section was for a comprehensive review of the death penalty. Chairman Rothman suggested that members of the council think through some issues and to look for a unified position for the Bar.

There was discussion about the passage rate among the certification exam. Of the 58 people taking the review, only eight passed. Jeff Harris noted that usually 30% pass. Judge Hersch suggested that the test should be looked at to see if it is appropriate. Judge Zayas said there is nothing this section can do, because it is a BLSE issue, but we can communicate our concern. It was also noted that the test was vetted, and pretested by the BLSE using certified lawyers in that area, and that the multiple choice portion was tested by the University of Florida.

Jeff Harris and Judge Hersch still felt something is wrong with the test, and that there was a need to compare our passage rates to those in other states. Michelle Suskauer said to

send any concerns to her. Chairman Rothman noted that the Section needs to find out from BLSE the passage rates, and whether this past year was an aberration. George Tragos also suggested looking at the criminal appellate exam. Judge Zayas also noted that there is an evolution in when people are applying, and to look into how many years of practice at the time of the application.

Michelle Suskauer also noted one more matter, which was potentially an issue. Representative Rousan wants to change the law regarding mentally ill defendants paired with a caregiver.

Brian Tannebaum brought up the issue of loan forgiveness as an additional position to be taken by the section. Bob Dillinger noted that section dues and costs related to the certification exam could not be paid out of the budget. Harvey Sepler suggested that a letter be composed to all state attorneys and public defenders considering whether they would participate in a program if the Criminal Law Section would subsidize five people from their office to take the certification exam.

VII. TREASURER'S REPORT

The treasurer's report was presented by Dixie Teel in the absence of Martin McDonnell. A detailed accounting was presented to the executive council as to the revenues and expenditures to the 2013-2014, including those related to CLE and the St. Thomas Law Review. It was noted that there was a benefit to the section due to the investment allocation line. There was also a 33% decrease in operating expenses of the P/PD program. The annual meeting line went slightly over budget by \$138. Additionally, the overage on the budget line for the website was due to ADA compliance. The section also sponsored the Government Lawyer's Section program for former Governor Graham (\$250) and the judicial luncheon (\$1000). The Legislative Consultant line of \$10,000 was not used.

Discussion then went to the issue of the St. Thomas Law Review. Several members of the Executive Council were not pleased with the quality of the third issue. Jeff Harris also raised concerns about the billing. Susan Hugentugler noted that she tried to get the articles by the annual meeting, and that the preface had a disclaimer that the articles do not represent the view of the Criminal Law Section.

George Tragos moved that we adopt the treasurer's report, which was seconded by Sheryl Lowenthal. The motion passed by voice vote.

In further discussion, it was noted that the section reduced expenses by 25%. Abe Laeser stated that the Section should find a useful way to use the large fund balance. Chairman Rothman said there would be further discussions about the fund balance at the January meeting.

VIII. COMMITTEE REPORTS

The discussion began with Chairman Rothman noting the need to get members to get active and on subcommittees. Michelle Suskauer proposed that the first 250 lawyers who join and are active, that the Criminal Law Section would sponsor their membership. Jason Blank remarked that such a proposal should be limited to lawyers who have 10 years or less of experience. It was then suggested that Chairman Rothman write an article for the Florida Bar News that the Criminal Law Section would sponsor 100 members who have 10 years of experience or less if they were to participate in section subcommittees. Jason Blank then volunteered to write the article. Letters would also be sent to the State Attorneys, Public Defenders, FACDL, and the Young Lawyers Division. Jason Blank moved the proposal, which was seconded by Judge Imperato, and was passed by voice vote.

A. CAPITAL

The capital subcommittee initially noted a proposal by the Criminal Rules Committee which would allow for lawyers to use capital murder trials which they prosecuted to count towards the requirements for the qualifications under Fla.R.Crim.P. 3.112.

Donnie Murrell remarked that we should review the position that we take on capital cases and move forward on those issues. Abe Laeser noted that there would be difficulty in such a review, although important, due to the current imbalance on the Executive Council. Voting would be a wasted effort due to the Executive Council being mostly defense attorneys, and that prosecutors would not be able to deviate from their office positions.

Chairman Rothman noted that it was the legislature which will make any changes, but that the Section should create a forum on capital subjects. Judge Zayas stated that the Executive Council already voted on a proposal, but needed to deal with matters currently before the legislature. Michelle Suskauer agreed that action needs to be taken on issues like unanimous jury verdicts. Chairman Rothman assigned Abe Laeser to look into issues that needed to be discussed, and to use the website for such a discussion. Also an article should be put in the Florida Bar News to bring people to the website for discussion and interest.

B. P/PD

Jennifer Zedalis reported that they had a great week, and comments were being compiled, and provided to the counsel. The faculty was great, and, so far, the evaluations were high. Some minor tweaks needed to be made, including the section on how to present voir dire. Also, there was a need to update addresses for payment.

C. COMMUNICATIONS

Richard Polin agreed to be co-chair with Bill Vose.

D. CLE

The Criminal Law Update is scheduled for December 5, 2014, and will include the hours required to comply with Fla.R.Crim.P. 3.113. The hope is to develop the Fla.R.Crim.P. 3.113 required program, and to have it presented in several locations.

The Federal Law Seminar will be presented on January 16, 2015.

Harvey Sepler suggested that an ethics seminar be presented. After discussion, it was determined that an ethics seminar should be scheduled for Fall, 2015, and possibly through an e-portal.

E. FEDERAL PRACTICE

No report. However, Mac Heavener noted that not all AUSAs or Federal Public Defenders are members of the Florida Bar.

F. LONG RANGE PLANNING

No report

G. LEGISLATIVE

One of the goals of the upcoming session is to decriminalize certain felonies. Also to consider not suspending driver's licenses for failing to pay fines and costs.

H. SELIG GOLDIN AWARD

No report. However it is time to start thinking about nominees for the award.

I. WEBSITE

Jason Blank and Susan Hugentugler agreed to be co-chairs. Michelle Suskauer remarked that other sections have expanded to a number of social media platforms.

IX. OLD BUSINESS

Abe Laeser gave a comprehensive presentation regarding the proposal of the Legal Needs of Children Section regarding direct filing of juveniles into the adult system. After review, it was determined that the premise of the proposal was not factually correct. Also the proposition that the adult court judge could reverse the decision of the State Attorney is subject to issues regarding separation of powers. It was also noted that the adult court had the ability to sentence the defendant as a juvenile after a finding of guilt.

Judge Hersch raised the concern about public defenders being forced into a commitment or else having their client direct filed. However, Abe Laeser noted that such a situation is no different than an offer at arraignment.

Additionally, Judge Hersch questioned whether there was a racial imbalance. Chairman Rothman also noted that the Public Defender in Broward raised an issue of racial imbalance in a letter, but also noted that not all problems are solvable. Jeff Harris was not satisfied that the racial component of the referral was addressed, and urged that this portion of the discussion should continue, and to determine if there was a problem. Chairman Rothman stated that the bottom line was that there was nothing we could do today, but that the subcommittee is to look at the juvenile justice system to address the issues raised by Judge Hersch and Jeff Harris.

Judge Hersch said he will attend the DJJ conference on October 21, 2014. Abe Laeser will also try to attend.

X. NEW BUSINESS

A. CADRA

A legislative position was passed along to this Section regarding the proposed Computer Abuse and Data Recovery Act (CADRA). No action was taken by the Executive Council.

B. INTERNAL RULES

Discussion was on whether to change the Rules to make those who have served as a Chair of the Section permanent members of the Executive Council. The benefit to such a rule change would open new seats up, and get new blood and diversify the composition of the Executive Council.

Donnie Murrell initially noted that limiting consecutive terms would remedy the situation. David Barksdale then made a motion to have past chairs become permanent members of the section. Abe Laeser seconded the motion. The motion was later withdrawn, and would be discussed at the January, 2015 meeting. George Tragos would provide a bylaw change at that time.

C. STRIKE FORCE

Chairman Rothman raised the issue of having the Criminal Law Section have a strike force to defend the independence of the judiciary, and for unfair comments on the judiciary and the judicial system. There was some debate as to whether a permission of the judge was needed, who makes the decision as to when the Section should act, and whether the Section had the ability to act quickly. It was emphasized by Chairman Rothman that any action would not be about defending a judge on a controversial issue, but on the independence of the judiciary. Further discussion would be addressed in the future.

D. RULES OF JUDICIAL ADMINISTRATION

It was brought to the attention of the Executive Council that the Rules of Judicial Administration was going to propose rules regarding coverage attorneys. The Section should communicate with the Rules of Judicial Administration regarding concerns about any proposed rule.

XI. ADJOURNMENT

The meeting adjourned at 12:40 PM. Next meeting is scheduled for January 23, 2015 at the midyear meeting to be held at the Hilton Lake Buena Vista.