

**CRIMINAL LAW SECTION EXECUTIVE COUNCIL MINUTES OF THE
JUNE 17, 2016 MEETING**

I. CALL TO ORDER

II. ROLL CALL

Present were the following members: Judge Angélica Zayas, Joel Silvershein, Martin McDonnell, O. David Barksdale, Michelle Suskauer, David Rothman, Jose Jesus Arrojo, Jason Blank, Judge William Davis, Robert Dillinger (via phone), Scott Fingerhut, Mac Heavener, III, Cynthia Imperato, Judge James Klindt, Brian Kramer, Abraham Laeser, Judge Jeffrey Levenson, Warren Lindsey, Richard Polin (via phone), Harvey Sepler, Michael Sinacore (via phone), Kenneth Swartz, Brian Tannebaum, George Tragos, Larry Turner, Jennifer Zedalis

Absent were: Judge Lisa Campbell, Jeffrey Harris, Richard Hersch, Susan Hugentugler, Donnie Murrell, Whitney Untiedt

Also present were former Chairs Les Hess and Ben Kuehne, and section members Antonya Johnson, Mark Schlakman and Judge Scott Suskauer

After roll call, Antonya Johnson was introduced by Chair-elect Joel Silvershein as an assistant state attorney in Broward County who is running for a seat on the Executive Council.

III. APPROVAL OF MINUTES

With slight revisions, the minutes from the January 22, 2016 meeting were approved.

IV. REPORT OF THE CHAIR

Chair Zayas stated that it has been a great year for the Section. She reminded the Executive Council that she challenged each member to take leadership positions and get as active as possible. Judge Zayas was happy to report that she has seen a big difference in the workload and accomplishments of the Section this year. The Section has supported the Florida Bar Foundation in its quest to assist people with or without financial abilities, has mentored and trained many young lawyers and this year, and at the guidance of George Tragos, the Section sponsored the 50th anniversary of *Miranda v. Arizona*. Scott Fingerhut and David Rothman assisted in chairing the Miranda showcase. We sponsored the Kozyak picnic which is an annual picnic for minority attorneys in the Miami Dade county area. Chair Zayas thanked the Chairmen of each committee which resulted in very productive results in the Criminal Law Section becoming more relevant than ever. The Chair thanked those who worked hard as well as formed personal friendships with her in a sometimes difficult year. Tokens of appreciation were awarded by the Chair. Judge Zayas also thanked Chase Early, our Bar Liaison for his dedicated work.

V. BOARD OF GOVERNORS LIAISON REPORT

Michelle Suskauer reported that at the last meeting of the Board of Governors, there was a proposal to change the rules to allow Certified Legal Interns in Florida to go through a level II background check reducing it from the current level I. Level I is more time consuming and is restricted to Florida residents. Nonetheless, the Board of Governors rejected that proposal and formally asked the Supreme Court to continue requiring level I background checks for all Certified Legal Interns. David Rothman stated that keeping the background checks at level I results in the loss of CLIs in public defender and state attorney's offices. Scott Fingerhut pointed to other problems if the Board keeps level I background checks in place. David Rothman stated that we should weigh-in on the issue because of the impact on many Criminal Law Section members. Larry Turner suggested that the Executive Committee review and discuss what position we can take at the next meeting. Brian Tannebaum and Jason Blank also thought it is an important issue that needs to be addressed. Brian Tannebaum moved that we formulate a formal public comment when requested. That motion was seconded and approved unanimously. According to Bob Dillinger, the Florida Public Defender Association requested a level II background check for the public defenders' Certified Legal Interns. The Chair advised she will appoint a committee to study the impact of level I and level II background checks.

Ms. Suskauer stated that the Board also addressed revisions to the Bar Rules regarding advertising. Currently only Board Certified attorneys may hold themselves out as experts in the field in which they are certified. The constitutionality was questioned and the rule was revised to allow any attorney who is indeed an expert in a particular field to advertise expertise whether or not Board Certified. The proposed rule revisions will be sent to the Florida Supreme Court in October. Finally, the Board of Governors is formulating revisions to lawyer referral service rules. Such a proposal will be controversial as it impacts online referral services from people that are not members of the Florida Bar. Ms. Suskauer advised that she is stepping down as the Board liaison to the Criminal Law Section. Michelle has served in this capacity for many years and the Executive Council thanked her for her dedicated service. Ms. Suskauer also advised that she is running for President-Elect of the Florida Bar.

VI. TREASURER'S REPORT

Treasurer David Barksdale addressed an error in a prior report by the Bar regarding revenues earned at the Joint Evidence Seminar. The annual CLE budget was \$30,000 this year, and the CLE seminars resulted in approximately \$50,000 in revenue. Overall, the Section membership declined slightly. The balance in the account was currently down approximately \$7,000 but should balance out at year's end. David Rothman discussed whether the Section should budget annually for a contribution to the Florida Bar Foundation. After lengthy discussion, it was decided that the issue would be studied and would be discussed at the next meeting.

VII. COMMITTEE REPORTS

A. Capital Cases

Abe Laeser discussed the new statute passed during the 2016 legislative session that requires a jury recommendation of at least 10-2 for death in order for a convicted murderer to be death eligible. Mr. Laeser feels as though that statute, in light of the recent *Hurst* decision out of the United States Supreme Court, may result in lengthy litigation.

B. CLE

Judge Levenson stated the CLE committee has been working with the membership committee to arrange webinars for members of the Section. For the live CLEs, the venue is important in order to improve turnout. Local bar associations appear to be the most cost effective venue to put on the seminars, although the Advanced Federal Practice CLE seminar should remain where it is.

Ken Swartz discussed the importance of rewarding the speakers somehow, as most of them appear for little or no cost to the Criminal Law Section. George Tragos agreed that we should be rewarding the speakers as a way of thanking them. Jason Blank requested that all speakers' names and bios be sent to him to be placed on the website and social media. The Chair requested that Judge Levenson and Susan Hugentugler discuss the rewards for speakers and be prepared to have a recommendation at the next Executive Council meeting.

C. Communications

Richard Polin said the case law summaries are getting to our web page regularly but not always as quickly as he would like. We continue to make progress in that direction. Perhaps we should email all members of the Section and advise them that case summaries are on the website as a service to the membership.

D. Federal Practice

Ken Swartz discussed the annual seminar briefly and thanked co-chair George Tragos, responsible for arranging the Miranda showcase this week. Larry Turner began a discussion about how to effectively recruit federal practitioners, including Assistant US Attorneys. Ken Swartz offered some suggestions and should recognize the difference in issues addressed by practitioners who practice (primarily or exclusively) in federal court and state court practitioners.

E. Legislative Committee

Marty McDonnell referred the council to an attachment to the Meeting Agenda that outlined each law passed during the 2016 legislature that affects criminal law practitioners. Mr. McDonnell discussed the legislative history of the new statute requiring a 10-2 recommendation of death to make capital defendants eligible for imposition of the death penalty. He also discussed the changes in Florida's Contraband Forfeiture Act. (Senate Bill 1040), which is now codified in the Laws of Florida at 2016-179.

F. Long Range Planning

Joel Silvershein emphasized the importance of recruiting law students and reminded the council of the recent Kozyak picnic attended by Miami Dade county area law students. The students are eager to become involved and it would assist recruiting them as attorneys to integrate them into early membership on the council. We have recently added many younger attorneys to the various Criminal Law Section committees and should continue to recruit young attorneys for committee positions as well as perhaps Executive Council membership. The Chair discussed the fact that the University of Miami law school allows its students to emphasize certain areas of the law, including criminal law. Jennifer Zedalis and Scott Fingerhut discussed the methods other law schools are using to emphasize certain areas of the law and a discussion was had regarding whether the Executive Council should set up liaisons to the law schools to assist in assisting those students interested in criminal practice.

G. Membership

Chairman Larry Turner advised that there were written comments in the agenda that were circulated prior to the meeting. A number of issues were discussed by the membership committee on a recent conference call and addressed at the meeting. First, Mr. Turner discussed budget amendments to pay for social events to co-sponsor along with other sections, to assist in integrating the Criminal Law Section with other sections. Jason Blank stated that we currently integrate with the Young Lawyers Section and we should also co-sponsor social events with the Family Section and Immigration Law Section. Larry would like that issue to be addressed at the next meeting and asked that it be put on the agenda. Judge Davis volunteered his services to be an active participant in setting up any social events. Next, Mr. Turner discussed free student memberships as the committee is in the process of drafting letters to welcome the students and advising them that membership is free. Additionally, for those students whose membership expired, Mr. Turner recommended that we continue free membership to them until they are full members of the Florida Bar. After discussion regarding potential logistical problems, the Executive Council voted that letters should be sent to the student members whose membership has expired and advise them membership will be free until they are members of the Bar. The motion passed unanimously.

Next, Mr. Turner said the committee acknowledged that the Florida Bar allows new members to become section members for three sections and perhaps the Criminal Law

Section should send letters to these new attorneys advising them of that fact and telling them of all the services and benefits that membership in our section provides. Joel Silvershein stated that the SAOs and PD offices pay basic dues but not section membership dues. Bob Dillinger advised that that is all that they are allowed to pay. Jason Blank reiterated that Criminal Law Section can be free for one year to all members who are attorneys for less than ten years and we should continue to get the word out. Ken Swartz discussed the number of members that don't renew their membership. Larry Turner said the committee has been fairly successful reaching out to them and getting them to renew their memberships. The one year scholarship to members less than 10 years was a single year provision. There was a motion to renew the one year scholarship for attorneys who have been lawyers for less than 10 years as long as they agree to join a criminal law section committee. The motion passed unanimously. Also, free membership to third year law students was moved, seconded and voted unanimously.

H. PPD Programs

Jennifer Zedalis advised that the program this year is scheduled July 31 to August 4 in Gainesville at the University of Florida law school. So far, the faculty volunteer turnout has been excellent and letters should go out soon to the volunteers to advise schedules, etc.

I. Selig Golden Award

Harvey Sepler discussed that this year's recipient is Nancy Daniels and she was selected by unanimous vote. Next year Mr. Sepler stated the committee is requesting that we start seeking nominations sooner to add more nominees for consideration. Abe Laeser asked if previous nominees had been considered and Mr. Sepler stated that last year the nominees from the previous year were considered but the committee did not look further back. There was a discussion regarding the names that had been submitted in previous years and whether they should be up for consideration each year.

J. Website

No report.

VIII. OLD BUSINESS / NEW BUSINESS

Bylaw Amendment for Past Chairs. Technical Amendments to Bylaws.

Chair Zayas and David Rothman discussed the status of the proposed bylaw amendments submitted to the Board of Governors as a result of our last meeting. Those proposed amendments included making all prior Commission Chairs ex-officio members of the Executive Council. In addition, there were technical amendments made to the bylaws that were not of any substantive nature. The Board of Governors made some recommendations for additional non-substantive revisions. Pursuant to the current

bylaws of the Criminal Law Section, any vote to amend the bylaws requires 30 days notice for Executive Council to review. George Tragos moved that we waive the 30 day requirement to continue the bylaw amendments on the path to approval by the Board of Governors. That motion was seconded by David Rothman and the motion passed. Subsequently, there was a lengthy discussion regarding whether the bylaw requirements in Article 7, Section 3C, that requires all members to attend all meetings and any member who misses consecutive meetings will lose Executive Council membership. After discussion, that motion passed. (Article 3, Section 2 of the Bylaws was amended to exclude the attendance requirements of Article 7, Section 3C that mandates attendance at every meeting. Mac Heavener raised an issue regarding a slight non-substantive revision to the bylaws and after motion, that proposed revision was also approved.

Young Lawyers Division

Larry Turner stated that the Young Lawyers issues had been discussed previously during the membership committee discussion.

Criminal Law Certification

Richard Polin stated that there is not much new. The previous proposals that had been passed out of the council have been sent to the Certification Committee and we are waiting to hear whether there are any issues or whether they will be approved.

Certification Exam

Judge Zayas stated that the Certification Committee is still considering the pending proposed amendments to criminal law certification in the bylaws.

Bobby Downie

Bobby Downie, a member of Government Lawyers Section was introduced as a guest to address the Executive Council. Recently, the Government Lawyers Section raised their membership dues by \$10 per year. They are asking that the joint membership with the Governors Lawyers Section, Criminal Law Section and Administrative Law Section be raised by \$10. Mr. Downie stated that all the sections are looking for ways to earn more money from CLEs and his budget improved last year, although for a number of years, the Government Lawyers Section had been losing money. Larry Turner discussed the fact that the Executive Council had addressed this issue previously and realized that the additional revenues for our section were negligible and we did not anticipate raising rates for the Criminal Law Section members nor those members that seek joint membership. Mr. Downie was thanked for his participation and input at the meeting.

DOJ Letter – Larry Turner

Larry Turner discussed the possibility of expanding on the Department of Justice letter dated March 14, 2016 to assist in educating and familiarizing the felony judges with the Department of Justice's concerns regarding judges using costs and fees as punitive measures. Mr. Turner suggested we send the DOJ letter with a cover letter to the judges in criminal law divisions. Judge Levenson started a discussion as to whether we should go through the Conference Of Judges and allow the Conference to distribute the letter. The committee would still like to send every criminal judge in the state that DOJ letter with a cover letter on our letterhead. Scott Fingerhut discussed the potential sensitivity to chief judges if they are not notified and asked if we should notify each judge individually. Jason Blank recommended sending the letter to all members of the Criminal Law Section of the Bar. Larry Turner moved to send the letter with a cover letter to the administrative criminal law judge in every circuit, Judge Levenson and Harvey Sepler seconded and a friendly amendment was added to the motion to include all Florida appellate judges. The motion passed unanimously. Larry Turner also suggested that the Executive Council or a new committee seek out valuable information like that contained in the DOJ letter so that it can be circulated among the membership and possibly the judiciary.

Death Penalty Review

Mark Schlakman advised that the Florida State University Center for Advancement of Human Rights is seeking a \$10,000 donation from the Criminal Law Section to advance and lobby to support our request for a comprehensive review of Florida's death penalty. After a brief presentation by Mr. Schlakman, a question was raised by Abe Laeser to the Chair whether the Executive Council had the authority to make a \$10,000 donation to a position that has been approved without first seeking approval for that payment to the Board of Governors. Discussion was had and members of the Council felt uneasy moving forward without knowing that we were compliant with Board of Governors rules and regulations. Mark Schlakman gave the history of our position which was taken in 2011 and asked that we donate the money subject to the Board of Governors approval. Chair-elect Joel Silvershein felt that the council should take the matter under advisement because of the issues. Mark Schlakman detailed again the plans on how the money would be spent were we to donate it to the Center. The Chair felt that the issue should be referred to the Capital Case Committee of the Criminal Law Section to make a determination and recommendation to the Executive Council as to whether the donation should be made and whether the donation complied with Board of Governors rules and regulations. David Barksdale requested that we put the issue on September agenda which was done and Mr. Schlakman was asked to discuss the various issues with Abe Laeser, Chair of the Capital Case Committee.

Florida Public Interest Law Section legislative position (PILS)

Mark Schlakman, a member of the Public Interest Law Section as well as the Criminal Law Section stated that PILS has formalized their legislative position regarding restoration of rights for convicted felons. When the issue was last before the Executive Council, PILS had not yet formalized their legislative position and we tabled the matter to await that decision. Although Mr. Schlakman advised that PILS has formalized their legislative position, that formal legislative position was not presented to the Executive Council prior to the Executive Council meeting. Therefore, the Chair felt it appropriate to place this issue on the agenda for the September Executive Council meeting so that it may get the attention it deserves.

Leadership Academy Scholarship Request

The Florida Bar is asking each section for a contribution of \$3500 per student to attend the Leadership Academy. Abe Laeser spoke in support and explained the value of the program to the Criminal Law Section and to the Academy graduates that are members of our section. Jason Blank moved to pay for two scholarships for 2016-2017. Brian Kramer seconded the motion and it passed unanimously.

IX. EXECUTIVE COUNCIL ELECTIONS

George Tragos, Chair of the nominating committee explained the annual process for elections and advised that this year there are ten names that have been nominated for membership on the Executive Council In addition to current members up for re-election, Antonya Johnson, an Assistant State Attorney in Broward County was also nominated to join the Executive Council. By unanimous vote, all ten nominees were elected. Mr. Tragos then, on behalf of the nominating committee, nominated Jennifer Zedalis as Treasurer of the Executive Council and by unanimous vote, Ms Zedalis was elected Treasurer of the Executive Council commencing today.

CLOSING

The Chair thanked the entire Executive Council for meeting the challenge of the hard work that resulted in the Section being more relevant and productive. There were tokens of appreciation to all members of the Council from the Chair. Finally, Chair-elect Joel Silvershein presented Chair Zayas with a plaque in recognition of her hard work through a difficult year and thanked her for the many successes that the Criminal Law Section accomplished this year.

The meeting adjourned at 11:57AM