

## The Criminal Law Section

December 2, 2011

### Teleconference Minutes

1. The meeting was called to order at 12:18 p.m.
2. Attendance- Present on the conference call were the following 24 council members: Hon. Lisa Porter, Scott Fingerhut, David Rothman, Susan Hugentugler, Sheryl Lowenthal, Hon. Robert Dillenger, Douglas Duncan, Ann Finnell, Jeffrey Harris, Richard Hersch, Abe Laeser, Calianne Lantz, Martin McDonnell, Richard Polin, Scott Richardson, Harvey Sepler, Joel Silvershein, Carolyn Snurkowski, Brian Tannebaum, George Tragos, William Vose, Hon. Samantha Ward, Angelica Zayas, and Jennifer Zedalis. The following members were excused: Larry Turner, Hon. Stanford Blake, Hon. Cynthia Imperato, and Paul Zacks. Absent were the following council members: Les Hess, Donnie Murrell, Kenneth Swartz, and Hon. Michael Weatherby. After taking roll, it was determined that a quorum was present.
3. Chair Lisa Porter presented the budget issue first. Treasurer David Rothman reported that there was nothing of any significance with the budget. There are some questions as to projected expenditures and revenues, however such projections may always change based upon what actually happens during the year. The Chair stated that the budget for 2012-2013 must be approved by December 9, 2011, and should have been addressed at our September meeting. We have almost 2400 members so our membership is good. **David Rothman moved to approve the budget and George Tragos seconded the motion. The 2012-2013 budget was unanimously approved.**
4. The Chair next reported that as a result of a vote taken at our September meeting, Paul Hill, general counsel to The Florida Bar, requested that our section complete a legislative position request to submit to the Board of Governors. Chair Porter stated that she told Mr. Hill, via e-mail, that the section did not discuss any legislation and did not talk about completing any legislative position request, but merely adopted a position that we supported the comprehensive review of Florida's death penalty process by all branches of government. Mr. Hill responded that the position of The Florida Bar was that the section had to complete a legislative position form to reflect the votes taken on the matter. After discussing the issue among members of the executive committee, it was decided that the issue should be brought back before the entire EC because we never discussed or contemplated the completion of a legislative position request form. David Rothman stated that the position of Paul Hill, as counsel for The Bar, is whenever something could possibly be interpreted as a political position, it has to be approved by the Board of Governors. The Chair apologized for not sending out the legislative position form she was forwarded to all members of the EC. She is concerned because it references proposed advocacy, bills, and reasons for proposed advocacy. The Chair noted that there is a pending bill in Tallahassee to abolish the death penalty, but we never discussed the issue or took a position on it, or any specific bill. Jeffrey Harris asked if we could modify the

motion to provide a statement to the effect that the EC did not imply or express any political position. The Chair responded that The Bar has already determined that it does. David Rothman pointed out that the executive committee felt it was important to let the entire EC know what the process set forth by The Bar included in case the vote changed. George Tragos asked if we had to tie our position to a bill. David Rothman responded that the position would be not applicable or N/A. George Tragos suggested that we simply put N/A on the form. Jennifer Zadalis agreed and stated that we should not be forced to politicize our vote. Calianne Lantz pointed out that the Young Lawyers and Workman's Comp sections have taken positions without referencing statutes or bills and there should be no reason why we could not do the same. David Rothman suggested that a brief cover letter by the Chair should be submitted to point out that we are not taking a position for or against the death penalty. **George Tragos moved that we reaffirm the previous position taken by the EC at the last meeting and put N/A on all portions of the legislative form that attempt to quantify or "pigeon hole" our vote. Bob Dillenger seconded the motion.** Joel Silvershein asked if our position has been used by anyone with regard to any pending legislation. The Chair noted that Mark Schlakman has been publicizing our vote by stating that in a lopsided vote, the EC of the Criminal Law Section voted for an entire overhaul of the death penalty process. Angie Zayas agreed that more has been made of our prior vote than it was meant. It does not mean that we are taking a position to abolish the death penalty or to do something in particular with it. We need to make sure that it is not interpreted that we support any legislative proposal that is pending at this time. After discussion, the Chair suggested that Marty McDonnell, as Chair of the Legislative Committee, fill out the form with the proposed wording as approved by the EC, and that the form be circulated among members of the executive committee for approval in time for the Board of Governors' December 9 meeting. The wording would simply state that the EC of the Criminal Law Section finds that it is in the best interest of the State of Florida for all branches to conduct a comprehensive review of the death penalty process, but that the section does not take a position on the death penalty or on any pending legislation. **The question was called. The vote was 20 in favor and 3 against such a disposition. The Chair thus referred the matter to Marty McDonnell for completion of the legislative position form as approved by the EC.** The Chair told Paige that the completed form will be sent to her by Monday.

5. The Chair asked all members of the EC, whether on the newsletter committee or not, to solicit articles for the newsletter. Also, the EC agreed that a holiday e-mail blast to all members of the section wishing them season's greetings and informing them of upcoming CLE would be appropriate. David Rothman agreed to draft an e-mail from the council to the membership of the section and Paige will forward same in an e-mail blast.
6. The next meeting will be on January 20, in Fort Lauderdale with videoconferencing through the Attorney General's Office in Miami and West Palm Beach. All other members may conference in by phone. The meeting was adjourned at 12:53.