

CRIMINAL LAW SECTION EXECUTIVE COUNCIL MEETING

*Hilton Orlando Lake Buena Vista
1751 Hotel Plaza Boulevard
Lake Buena Vista, FL 32830*

January 24, 2014 – 9:00 am – 1:00 pm

Meeting Minutes

1. The meeting was called to order at 9:03 a.m. Chair Susan Hugentugler began the meeting with introductory remarks and attendance was taken.

2. Attendance

Present: Susan O. Hugentugler, Joel M. Silvershein, Hon. Angélica D. Zayas, Martin Patrick McDonnell, O. David Barksdale, Jeffrey Harris, Hon. Richard Hersch, Les Hess, Abraham Laeser, Calianne Lantz, Hon. Jeffery R. Levenson, Larry Donald Murrell, Jr., Hon. Donald Scaglione, Harvey Sepler Richard Polin, Kenneth Swartz, George Tragos, Hon. Samantha Ward, and Jennifer Zedalis. Also present: Eugene Sherman, Program Administrator, The Florida Bar.

Present Telephonically: Hon. Robert Dillinger, Hon. Cynthia Imperato, Sheryl Lowenthal, Brian L. Tannebaum and Paul H. Zacks.

Not present: H. Scott Fingerhut, James Wesley Smith III and Carolyn Snurkowski.

Excused: David B. Rothman, Larry Turner, William C. Vose, Gary S. Winston.

Guests: Florida Bar President Eugene Pettis, Ben Kuehne, Kelly Hannock, Edward Nazarro and Ilan Kairy.

3. The minutes of the October 4, 2013, meeting were approved unanimously.

4. Whitney Untiedt and Ashley Greene appeared telephonically and reported on the Florida Bar Leadership Academy. Both reported a positive experience with the program and answered questions from CLS EC members. Academy has met four times and was scheduled to meet with the Florida Supreme Court justices later in the month. Participants of the program are educated in ways to become involved and take leadership roles in Florida Bar and local Bar activities, and ways to develop programs within the bar and the legal profession. The first class is working to develop a statewide pro bono in conjunction with local Legal Aid programs and law firms to encourage lawyers to become more involved with the community. The participants have been introduced to the various sections of the Florida Bar and have discussed ways to implement programs or address issues of concern with the various sections in an efficient and effective manner. Both report that the second class is scheduled to begin soon.

5. BOG Report: Stephen Echsner was not present. Mr. Eschner forwarded a letter from Kelly Mathis, a lawyer convicted in relation to sweepstakes scheme, to the EC for discussion.

Mr. Mathis would like the CLS to do something to help him with his case. The case is still pending in the appellate courts. The CLS position is, and has always been, not to become involved in open pending criminal cases. Several EC members spoke about the reported “facts” of the case. One was concerned that the two page letter submitted by Mathis may not be complete, while another was concerned that Mathis may have been convicted as a result of legal advice provided. All agreed that no action should be taken.

6. Treasurer’s report: Joel Silvershein presented the report. The CLS is financially sound. Mr. Silvershein explained one variation in the budget and reported expenses. Initially, the CLS budgeted \$6000 for production costs associated with the St. Thomas Law Review partnership. However, because the CLS failed to specifically include this expense in the 2012-2013 budget, the cost of the Spring 2013 edition appears in the 2012-2013 budget as a miscellaneous expense. The St. Thomas Law Review is not currently in the 2013-2014 budget and will need to be added if the CLS wishes to continue its relationship with St. Thomas. This discussion led to conversation of whether the CLS should continue to budget for cooperation with St. Thomas. Representatives of the St. Thomas Law Review were given an opportunity to speak to the EC and address concerns about the content of the articles published in the Law Review. Mr. Nazarro reported a lack of contributing authors. To meet the needs of all section members, it was suggested that efforts be made to balance the content, that the articles be practical and useful to all section members, rather than purely scholarly, that the articles be timely so as to remain relevant after publication, and that St. Thomas consider providing the publication electronically or digitally. It was also suggested that the Law Review be substantial enough to stand out as a reference book and not look like a pamphlet. Mr. Laeser remind the EC that when the St. Thomas collaboration began, it was intended to be a permanent arrangement that would allow the Criminal Law edition of the St. Thomas Law Review to be offered to the CLS members as a benefit of membership. Accordingly, Mr. Laeser motioned to have \$6,000 included in the budget for the Spring 2014 edition and all subsequent editions. After some discussion of the procedural requirements of this motion, it was agreed that the CLS would continue its collaboration with St. Thomas Law Review and that the bill for the Spring 2014 book would be paid when it was presented instead of pre-authorizing any amount from the 2013-2014 budget. It was also decided that future budgets would be amended upon a vote meeting all procedural and notice requirements. It was agreed that a line item expense would be included in the 2014-2015 budget and that the matter would be discussed at the annual meeting.

Mr. Silvershein also reported that the CLS has met its PPD / Foundation obligation and there is one year left on the agreement. Mr. Tragos suggested that the CLS should not wait too long to start negotiating a new agreement with the University of Florida, the Florida Bar Foundation, and the legislature. Mr. Silvershein and Mr. Sherman will begin the negotiations. Mr. Sherman will provide the contact information. Mr. Eugene Pettis, the Florida Bar President, joined the conversation and encouraged the CLS to maintain the relationship with the University of Florida and remain visible in the legal community.

7. Committee Reports:

a. Capital Cases: Judge Samantha Ward reported that amendments to the rules governing postconviction litigation in capital cases have been proposed and published in the Florida Bar

News. Comments are due February 17. Judge Ward did not recommend any action, but simply wanted the EC to be aware of the proposals and suggested that the CLS wait to hear from the Criminal Procedure Rules Committee. Mr. Tragos encouraged the EC to get involved by commenting on the proposals or risk becoming (or remaining) irrelevant. Concern was expressed that there would not be enough time to properly address the proposals, reach a consensus and get permission from the Board of Governors to even take a public position within the deadline established by the Florida Supreme Court. Mr. Laeser reported that the Criminal Rules Procedure Committee would be meeting later in the day and that he had been asked to review the proposals for the CPRC. Mr. Laeser mentioned several areas of concern, concluded that it was unlikely that the CPRC would do much more than identify the areas of concern and encourage members to individually comment if desired. Recognizing that the CLS would not have time to rewrite the proposals, Mr. Tragos moved that the Capital Cases Committee prepare a list of concerns, that the list be sent to EC members, that the EC members agree or disagree that the identified area of concern is in fact an area of concern and that the Chair send a letter reflecting those concerns determined by the majority of the EC to be of concern to the Florida Supreme Court as a comment. Mr. Harris seconded the motion. Motion passed. The Capital Cases Committee due to report by February 7.

b. CLE: Ms. Hugentugler began the discussion by reporting that there are several seminars scheduled for the future, i.e., Advanced Federal Practice, DUI Masters, Hot Topics in Evidence with the Trial Lawyers Section and Criminal Law Update in the Fall.

Ken Swartz noted that the cost of the Advanced Federal Practice seminar had increased this year. Mr. Swartz was concerned that as the cost of the seminars increased, the enrollment, which is always an issue, was likely to decrease. Mr. Swartz also reported that because Assistant United States Attorneys had been added to the faculty, the United States Attorney had expressed interest in sending prosecutors to the seminar but was dismayed to find that there was no discounted fee for government employees. Ms. Lantz, who serves as the Criminal Law Liaison to the CLE Committee of the Florida Bar, discussed the factors considered in determining the price of the Florida Bar Seminars, including the administrative cost, the speaker's fees, etc. Mr. Sherman noted that the cost increase in this particular seminar was a direct result of the additional number of speakers. Mr. Swartz explained that the increased number of speakers was a result of the desire to provide a diverse panel of speakers.

Ms. Hugentugler reported that the CLS (George Tragos) is working with the Real Property, Probate and Trust Law Section to develop a seminar related to mortgage fraud, title fraud, etc. Ms. Hugentugler will also explore the possibility of partnering with the Health Law Section in the area of Medicare fraud and related issues.

Ms. Hugentugler finally reported that Nancy Wear had written to her, and various sections of the Florida Bar in the past, complaining that women were unrepresented in the faculty of Florida Bar seminars and that the faculty was not diverse enough. Ms. Hugentugler has written to Ms. Wear to address her concerns, by explaining that diversity takes many forms (geographic, ethnic, gender, area of practice, etc.) and that while it is impossible to balance diversity in every form, every effort is made by the CLS to achieve an appropriate balance at every seminar. Based upon

past experience, the Executive Committee of the Executive Council expects that Ms. Wear may write to the Florida Bar Journal to express her dissatisfaction.

Joel Silvershein reported that the CLE committee has several items in the planning stages. More specifically, the CLE committee is planning a seminar on the use of electronic media, including metadata, cell towers, etc. The CLE committee is also exploring a seminar on Traffic Rules in the County Courts. Finally, the CLE committee is exploring a possible proposal for a Miranda Rights presentation to commemorate the 50th anniversary of the *Miranda* decision.

Harvey Sepler also reported that he and Ms. Lantz were working with the Appellate Practice Section to develop a seminar geared towards Criminal Appellate Law Certification. Mr. Silvershein added that the CLE committee was also looking to update the “Navigating Appellate Waters” seminar.

c. Communications: Mr. Polin reported that the Communications Committee was making progress. Mr. Polin reported difficulty in recruiting authors and requested EC members to submit articles and recruit authors. Articles submitted should be practical, not necessarily scholarly or lengthy.

d. Legislative: Martin McDonnell provided the EC with copies of bills and proposals that were relevant to the CLS. Mr. McDonnell reported that the legislation requiring twelve person juries in all felony cases was still pending. Although it was unlikely to succeed, anything was possible. In short, nothing had changed since the EC last voted not to take a position on the matter. The EC agreed not to revisit the matter. Ms. Hugentugler reported that she had received a call from Representative Bracy regarding the issue. Ms. Hugentugler referred Rep. Bracy to Mr. McDonnell on this issue and any other legislative matters relevant to the CLS. Mr. McDonnell brought attention to Federal HR 3407, National Center for the Right to Counsel Act, which had been brought to the attention of the CLS by Paul Hill, General Counsel of the Florida Bar. As reported by Mr. McDonnell, the bill would provide additional federal money to public defense organizations without any reduction in money already provided. Mr. Tragos moved that the CLS support the bill. Judge Hersch seconded the motion. With one abstention, majority of EC voted to support the bill. The Chair was instructed to write a letter to Mr. Hill in support of the bill. Mr. McDonnell also discussed Florida SB 384, an act related to Juvenile Sentencing, attempting to have Florida Law comport with Graham and Miller. After some discussion, no motion was made; therefore, no action will be taken by the EC. Finally, Mr. McDonnell discussed the numerous pending proposals related to sex offenders, sexual battery cases, and civil commitment matters. Mr. McDonnell reported that the proposals, amendments etc. are passing “fast and furious.” Although there are some concerns with the proposed legislation, there appears to be no time to intervene or offer any meaningful assistance or opinion. Bob Dillinger also spoke on the matter and agreed that there was little, if anything that could be done. Mr. Laeser suggested that there was no diplomatic way of addressing the proposals, which appear to be based upon public outrage at by certain high profile cases, without appearing to be in favor of leniency for sex offenders. It was suggested that the CLS take no position at this time with the expectation that any constitutional infirmities in the final legislation will be addressed by the courts.

Judge Hersch noted that there are numerous pending proposals related to the criminal justice system and commented that the CLS was not prepared to take a position on any of the proposals for a number of reasons. Judge Hersch suggested that the CLS develop a system of informing members of the section of pending legislative proposals, without taking a position, in order to allow the members to take any action deemed appropriate. Ms. Hugentugler informed the EC that efforts were currently underway to update the web page to include the ability to update the page with legislative updates and other information. All agreed that Mr. McDonnell would provide summaries to the Chair for publication. Although the pending legislation is still posted on the web page, it was suggested that many members do not realize that it is there. Ms. Lantz suggested a media blast with a link to the web page.

e. Long Range Planning: David Rothman was not present due to an emergency hearing. It was reported that Mr. Rothman, Ms. Hugentugler, Mr. Silvershein, Judge Porter, and Judge Zayas had met to discuss long range planning and continuity. However, no report was officially presented. Mr. Rothman will present a report at the next meeting.

f. Membership: Larry Turner was not present due to an emergency hearing, but provided a written report electronically. It was reported that Brian Tannebaum volunteered to establish and maintain a Facebook page and that the committee has plans to recruit new or lapsed members. Ms. Hugentugler asked that Facebook plans be held in abeyance until further discussion to address privacy and moderation concerns. Mr. Turner has written a letter to new members of FACDL advising them of the section, etc. and has requested that all EC members do the same if they are involved in any other group. Ms. Hugentugler has announced that it is now possible to join the CLS section by visiting the Florida Bar website. It was reported that most PPD lecturers are NOT members of the CLS. Although most agreed that it would be nice if the faculty were members of the section, most agreed that the faculty should not be “forced” to join. It was suggested that an invitation to join be included in the enrollment packet. It was also suggested that faculty members encourage colleagues to join without requiring section membership. It was reported that it costs \$17.50 to cover Florida Bar administrative costs of section membership, therefore it was suggested that affiliate or student members be required to pay \$17.50 for affiliate membership. After some discussion it was decided unanimously that third year law students in accredited Florida law schools would be offered affiliate membership at no cost to the student and that the CLS will bear the \$17.50 administrative costs during the 2014-2015 fiscal year. The offer was limited to third year students in Florida Law schools to limit open-ended or uncertain financial liability and exposure. Ms. Hugentugler will write a letter to the Deans of all Florida Law Schools.

g. P/PPD (Prosecutor/Public Defender Trial Advocacy Program): Paul Zacks reported that the plans for the program have been made, i.e. the hotel is booked, the classes are scheduled, and the budget is set. The faculty has yet to be determined, but will be finalized in February. The course will be held August 3-8, 2014.

h. Selig Goldin: Harvey Sepler reported that there were three excellent nominees: Marion Moorman, Charles Edelstein, and Chuck Morton. Mr. Sepler presented all three nominees, spoke favorably about all three and asked all members to review the materials provided. Kelly

Hancock, Jeff Harris and Paul Zacks spoke on behalf Chuck Morton. By overwhelming majority, the EC voted to present Chuck Morton with the Selig Goldin Award.

8. Section Liaison Reports: Appellate Practice Section Liaison Calianne Lantz reported that several members of the Appellate Practice Section were allowed to attend the DCA Judges Conferences and found the experience to be positive. Hopefully members will be invited again in the future. Ms. Lantz also reported that the telephone CLE conferences of the Appellate Practice Section are successful and are provided at a very low cost as a service to the members. Because the cost is so low, the restrictions previously discussed with regard to CLE seminars do not apply. Ms. Lantz also reported that the Appellate Practice Section is willing to partner with the CLS on future CLE seminars.

9. Old Business:

a. Referral from the Florida Bar Disciplinary Rules Committee: Ms. Hugentugler sent a letter to the Disciplinary Procedure Committee with the report prepared by Mr. Tragos and his subcommittee as discussed at the last meeting. Ms. Hugentugler reported that Elizabeth Tarbert, the Bar liaison to the Florida Bar Professional Ethics Committee, reported that the PEC would not be issuing an ethics opinion as requested in the CLS report.

b. Ex Parte Communications: See above.

c. Proposed Fla. R. Crim. P. 3.113: Larry Turner was not present due to an emergency hearing, therefore no update was provided.

d. St. Thomas Law Review: See discussion above.

10. New Business:

a. Membership Survey: Ms. Hugentugler reported that Mr. Rothman was working on the membership survey and asked that members send him any questions relevant to the section that should be included in the survey.

b. Website Update: Ms. Hugentugler reported that the website update is in progress and that after considering many options, the CLS has decided to continue with the same service provider. Ms. Hugentugler welcomed input from all EC members.

11. Upcoming Meeting: The next meeting will be held in Orlando on June 27, 2014, at the Gaylord Palms Resort and Convention Center.

12. Adjournment: The meeting was adjourned at 11:51 a.m.