

**THE FLORIDA BAR
CRIMINAL LAW SECTION
EXECUTIVE COUNCIL MEETING
MIAMI, FLORIDA
JANUARY 18, 2008**

1. CALL TO ORDER

Chair Ann Finnell called the meeting to order at 10:06 a.m. on Friday, January 18, 2008.

ROLL CALL

Members present: Lewis Buzzell, Jay Cohen, Doug Duncan, Scott Fingerhut, Ann Finnell, Ivy Ginsberg, Jeff Harris, Les Hess, Ben Kuehne, Abe Laeser, Calianne Lantz, Joseph Lewis, Sheryl Lowenthal, Marty McDonnell, Donnie Murrell, Richard Polin, Lisa Porter, Harvey Sepler, Ken Swartz, Carolyn Snurkowski, George Tragos, Paul Zacks, Jennifer Zedalis

Also present: Kay Blanco, David Rothman, Yvonne Sherron

2. APPROVAL OF MINUTES

Lisa Porter's motion to approve the minutes of the last meeting (corrected to accurately spell the last name of Kenneth Swartz), was seconded and approved.

3. TREASURER'S REPORT

Florida Bar staff liaison, Yvonne Sherron, presented the treasurer's report and also reported that the Section's Bar staff liaison, Connie Stewart, will retire on February 29, 2008. Connie's replacement (who will serve as the staff liaison for both the Criminal Law Section and Trial Lawyers Section) has not yet been selected.

The 2008/2009 Proposed Budget has a beginning balance of \$275,981 and the projected expenses are consistent with the Section's spending history. However, the proposed budget reflects a projected *loss* of \$39,253 in funds, which was attributed, in part, to a conservative estimate in CLE revenue. The proposed budget also includes a \$25,000 contribution to the P/PD Training Program, and Chair Ann Finnell asked Yvonne Sherron to determine what happened to the P/PD's registration fees. After discussion, Ivy Ginsberg's motion to approve the treasurer's report and proposed budget was seconded and approved, by a majority vote.

4. OLD BUSINESS

A. Website Update

Chair Ann Finnell reported that the Website revisions should be completed any day now.

5. REPORTS OF STANDING COMMITTEES

A. Communications - Newsletter

Florida Bar staff liaison, Yvonne Sherron, reported that the newsletter will be out soon [February]. Chair Ann Finnell suggested an addition to the newsletter, to recognize the contributors to the P/PD fund-raising campaign. Articles are needed for the next issue and the Chair announced receipt of an article from the Tallahassee Public Defender's Office. Currently, the newsletter is issued twice a year. Ivy Ginsberg has accepted a job handling insurance appeals and she will no longer be practicing criminal law. Therefore, a new editor will be needed; and suggestions included reviewing the Bylaws to determine if they provide that the Chair-elect serve as editor.

B. Education/CLE

Ken Swartz reported on the Federal Practice Seminar and thanked Sheryl and Arlee for their assistance. Unfortunately, Atlanta attorney Don Samuel's flight was delayed several hours. Therefore, Assistant Federal Public Defender Bernardo Lopez presented both his topic and Don Samuel's program at the last minute.

Scott Fingerhut and Sheryl Lowenthal reported on the remaining seminars. The Masters of DUI seminar is always popular and well-received. The Criminal Law Update Seminar will be presented on April 4th in Tampa. The Criminal Law Section again co-sponsors the Advanced Evidence Seminar with the Trial Lawyers' Section.

Ken Swartz reported on a consistent problem with the timely publication of CLE information in the Florida Bar News. Although CLE program information has been provided to the Bar staff several months before the scheduled CLE programs, the CLE information has not been published in the Florida Bar News well in advance of the programs. Yvonne Sherron assured the Chair that this matter will be addressed and corrected.

Additional suggestions included scheduling the Criminal Law Update in the fall (after the term of court) and scheduling any forensic seminar in the spring (after the legislative session). There is no speakers' budget – the speakers are not paid for their CLE presentations and only travel expenses are covered.

C. Long Range Planning/Bylaws Revision

Judge Joe Lewis presented the sub-committee's report, which recommended only minor changes, such as correcting punctuation and making the bylaws "current", *i.e.*, to include *electronic* correspondence/notice. The recommended revisions to the Bylaws passed unanimously.

D. and E. P/PD Program and P/PD Budget

The Chair announced that Paul Zacks and Jennifer Zedalis will serve as co-chairs for the P/PD program at U.F.

Paul Zacks reported that UF's law school, on its own, used approximately \$16,300 of the P/PD's endowment funds to pay bills. Therefore, a separate "rough" budget (approximately \$73,000) has been designated exclusively for the P/PD Program. The P/PD program is "locked into" the Hilton Hotel this year. The P/PD budget/expenses will be reexamined and, hopefully, reduced in 2009.

F. Ethics Manual Update

Doug Duncan reported that updates to the Ethics manual (closing argument) should be completed by this summer.

G. P/PD Program Fundraising

Lisa Porter reported that \$31,000 is still needed in order to reach the \$100,000 goal in matching grant funds from the Florida Bar Foundation. The grant expires in April of 2009. If this remaining goal is met, then the P/PD endowment will increase by a total of \$62,000 in contributions and matching funds.

Lisa Porter also suggested that each Executive Council member solicit funds directly, by calling five other people and also sending them a copy of the Florida Bar News article on the P/PD Program. To date, only direct solicitation calls have produced any contributions.

Additional suggestions included: (1) naming the P/PD program to honor the memory of Lou Frost, the highly-respected Public Defender in Duval/Clay/Nassau Counties for 30+ years, (2) soliciting funds directly from former employees and colleagues of Lou Frost, from established practitioners who attended the P/PD program, and from major law firms, and (3) "regionalizing" solicitations geographically.

Lisa Porter also presented a report on the P/PD endowment summary (from Lisa Grim at UF). The previous balance was \$116,946.06. In January of 2008, with the addition of the solicited contributions and matching grants, the current balance is \$210,469.01 in funds.

H. Selig Golden Award

Harvey Sepler announced the four nominees for the Selig Golden Award: (1) Barry Krischer, State Attorney, 15th Circuit, (2) Bob Butterworth, DCF Secretary and former Attorney General, (3) the late Ray Marky, former assistant attorney general and assistant state attorney (Tallahassee), and (3) Seymour Gelber, former Mayor of Miami Beach and retired Circuit Judge, Dade County.

After a lengthy discussion of the esteemed nominees and a run-off election, this year's recipient of the Selig Golden Award, by a 2/3 majority vote, is *Senior Judge Seymour Gelber*. His son, Representative Dan Gelber, the House Minority Leader, will be asked to introduce Judge Gelber at the presentation of the Selig Golden Award.

6. REPLACEMENT OF CLAIRE LUTEN'S POSITION ON THE COUNCIL

The Chair proposed that Paul Zacks replace Claire Luten on the Executive Counsel. The Chair's proposal was adopted without objection. Welcome back, Paul!

7. OFFICE OF CRIMINAL CONFLICT AND CIVIL REGIONAL COUNSEL

Lewis Buzzell reported on the status of the OCCCRC litigation. The Circuit Court (Leon County) granted FACDL's petition and declared the OCCCRC legislation unconstitutional. On Thursday, January 17, 2008, the Florida Supreme Court reinstated the automatic stay of the Circuit Court's order. The appeal is on a fast track and oral argument is set for February 27, 2008.

After a lengthy discussion, George Tragos' motion -- to organize and present a Symposium on the issues of regional conflict counsel and adequate funding for conflict counsel and the criminal justice system -- passed unanimously. Carolyn Snurkowski reported that Attorney General McCollum is interested in this topic and is willing to attend the Symposium. The sub-committee members charged with organizing the Symposium are: Donnie Murrell (Chair), Marty McDonnell, Judge Joe Lewis, Jeff Harris, and Abe Laeser. The Chair also asked the sub-committee to address suggestions that the Section (1) take an immediate position regarding increased and adequate funding for the entire criminal justice system in Florida and (2) take a position on (a) the realistic feasibility of the OCCCRC after it has been in place and studied for a year and (b) the best model for conflict counsel.

In response to suggestions that the Executive Council consider both the idea and cost of hiring a lobbyist, Ben Kuehne reported that any lobbying position would have to be approved by the Board of Governors. Board liaison, David Rothman, also reported that the Florida Bar already has a full-time, issue-oriented lobbyist; and the Florida Bar, as a group, would be the voice most likely to be heard by the legislature.

8. LIAISON REPORTS

A. Criminal Procedure Rules

Scott Fingerhut reported that Justice Wells will address the Criminal Procedure Rules Committee on substantive vs. procedural matters. The Committee also will consider proposed revisions to Rule 3.130, to require the attendance of a prosecutor and assistant public defender at First Appearance hearings.

B. Criminal Jury Instructions

No report.

C. Young Lawyers

No report.

D. Appellate Rules Committee

Calianne Lantz submitted a detailed written report and discussed two referrals to the Appellate Rules Committee, which addressed: (1) implementing a “claim of appeal” form, similar to one used in Michigan [no action recommended] and (2) the record in post-conviction death penalty cases [recommending an amendment to Fla. R. App. P. 9.142(a)(1) and a Committee Note to clarify the proposed amendment].

Chair Ann Finnell thanked the Executive Council members for their hard work on these committees.

9. **NEW BUSINESS**

George Tragos reported that the Rules of Judicial Administration Committee, which originates proposed new rules and re-evaluates existing rules of procedure, is looking to propose new rules of general application; and he urged the Section to be vigilant in checking rule changes proposed by the R.J.A. Committee. Also, the Florida Supreme Court established another committee regarding e-filing.

Carolyn Snurkowski reported that Judge Eaton is Chair of the Florida Supreme Court’s “Criminal Court Steering Committee,” and several members of the Executive Council are also on this steering committee.

Chair Ann Finnell welcomed any suggestions to get more “youngsters” to participate in the Section.

The Annual Convention will be held in Boca Raton in June.

The meeting was adjourned at 12:08 p.m.