

The Florida Bar- Criminal Law Section
Executive Council Meeting
Hotel: Hilton Orlando
Friday, January 22, 2010
9:00 a.m. - 12:00 noon, Lake Monroe Room A/B

I. Call To Order

The meeting was called to order at 9:15 am, by the Chair, Carolyn Snurkowski.

Roll call by the Secretary:

Present- Carolyn Snurkowski, Lisa Porter, Sheryl Lowenthal, Scott Fingerhut (by phone), Donnie Murrell, Stanford Blake (by phone), Robert Dillinger, Douglas Duncan (by phone), Jeffrey Harris, Richard Hersch, Les Hess, Susan Hugentugler, Cynthia Imperato, Abe Laeser, Calianne Lantz, Martin McDonnell, Richard Polin (by phone), Scott Richardson, Harvey Sepler, Joel Silvershein, Kenneth Swartz, William Vose (by phone), Samantha Ward, Paul Zacks, Angelica Zayas (by phone), Jennifer Zedalis, Brian Tannebaum, Larry Turner, George Tragos, Lewis Buzzell

Guests- Candy Sabella, Bob Krauss, Ivy Ginsberg, Aaron Clements

Absent- Michael Weatherby, Ann Finnell

II. Approval of the Minutes of the September 11, 2009 Meeting

The minutes of September 11, 2009 were approved. George Tragos moved to accept the minutes.

III. Comments from Carolyn Snurkowski

Carolyn acknowledged visitors Candy Sabella and Bob Krauss, from her appellate division.

PD-11- Report-Richard Polin

The Eleventh Circuit Public Defender's office sought relief from representation. Judge Blake granted the relief. The 3rd DCA reversed saying relief had to be on a case by case basis, not mass recusals, taking into consideration attorney's case load, etc. The trial court sided again with the PD and an appeal has been taken again and is pending in the 3rd DCA.

USSC Report- Candy Sabella and Bob Krauss-

Candy Sabella reported on the Holland case. It is a federal habeas case. If a petition is filed untimely there was an argument there should be equitable tolling. The 11th circuit said there

is no equitable tolling and no egregious conduct would warrant it. The AGO argued against equitable tolling. The USSC accepted the case whether gross negligence by counsel would allow equitable tolling.

Candy next reported on the Sullivan and Graham cases which are juvenile cases addressing the same issue. The issue in Graham is whether the 8th amendment ban against cruel and unusual punishment prohibits a life sentence for a juvenile. The AGO is awaiting a decision on this.

Bob Krauss addressed the Powell case Miranda issue. The Tampa Police Department had a specific Miranda form they used which did not indicate the right to an attorney during questioning. The Florida Supreme Court stated you need to advise of the right to an attorney during questioning. Appeal was taken to the USSC. The federal circuits are split on this issue. We are awaiting a decision from the USSC.

IV. Treasurer's Report- Scott Fingerhut

A. 2009-2010 Section Budget Approval

Scholarship funds were reduced to \$2500.

Our webmaster has disappeared, we cannot locate him. Paige has contacted a new webmaster that charges \$80 per hour. The Business Law Section uses her and she bills once a month. Her husband is a member of the Business Law Section. George Tragos moved to hire the webmaster, seconded by Sheryl Lowenthal. There was no discussion. Lisa Porter will work with Paige in enhancing our website. All members unanimously approved the new website master.

Scott Fingerhut moved to buy Paige a Blackberry and split it with the Trial lawyers section so Paige is available to us when she is on the road. George Tragos seconded the motion. No discussion. The motion passed unanimously.

Paige said we need to approve a budget amendment to move the money from the P/PD training program to the endowment contribution line. Les Hess made a motion to move the money from the training program. Paul Zacks seconded the motion. No further discussion. The motion passed unanimously.

Jennifer Zedalis proposed having a representative from the SAO and PD attend each circuit's bar meetings and let them know the benefit of P/PD in an effort to raise money.

Paul Zacks reported on the P/PD budget. Paul reported the \$17,309 actual for 09-10 cannot be accurate. We saved money but we do not have the exact figure at this time.

George Tragos moved to accept the budget as amended and Susan Hugentugler seconded. No discussion. The budget as amended was passed unanimously.

V. Old Business

No old business was discussed.

VI. Reports of Committees

Section Committee Assignments and Committee Reports

The following **Committee Reports** were made:

(A) Communications/Newsletter

No report was made.

(B) CLE/Education

Scott Fingerhut said the Evidence and Criminal Law Update seminars are both set. Revenue from CLE is down. The bar meetings are now going down to 2 a year which affects our CLE programs. DUI Masters needs to find a new time slot in the year since the January meeting will be discontinued. DUI Masters needs to be held in June so we do not miss an opportunity to hold it. George Tragos feels it is too late to have Masters in June this year. The CLE/Education committee as formed is sufficient. Sheryl Lowenthal said they need a committee meeting soon because if we do not have DUI Masters it will create a budget shortfall. George Tragos said we need to pick a different date than the bar meeting because if we do not hold it this year, things die. We need to avoid conflicting with Blood, Breath and Tears.

(C) Conflict Counsel

Judge Blake said they regularly have hearings with JAC when CC (Conflict Counsel) is moving for costs. There are problems in the 11th Circuit with Jimmy Ryce cases and delays because there are only a few experts available to testify in these cases. No other circuits reported this problem. In Miami CC have hired individual attorneys on a contract basis and they are handling capital cases because they could not find people qualified to hire as members of their office. Judge Imperato reported the same thing is happening in Broward. Bob Dillinger reported JAC hit their emergency contingency funds in December and will be out of money in February.

Brian Tannebaum questioned what we will do as a section regarding this issue of representation in not only capital and non-capital cases. Abe Laeser brought up the funding issue being worsened by the proposal that State employees pay for their own health insurance and the impact that will have on ASAs, PDs, and AGs. Brian Tannebaum suggested sending a letter to the Speaker, Governor or Sen. Victor Crist regarding our position. Judge Blake volunteered to work on this with Brian Tannebaum. Donnie Murrell said TFB has some clout and will get behind these issues and we should go the Board of Governors with our position. TFB has their own lobbyist.

George Tragos said he wants us to pass a legislative position today. George made a motion that we propose to the legislature there be no salary or benefit reduction for criminal justice employees and for adequate funding for attorney fees and costs (regional counsel and registry lawyers). Judge Ward seconded. Paul Zacks proposed we add to the motion a request there be adequate funding for the entire criminal justice system. George Tragos indicated he does not object adding a third part addressing this. It was noted that regional counsel comes under the first part of the motion and the registry lawyers come under the second part. Les Hess said Abe's example of the impact of paying for insurance by prosecutors and public defenders should be included in our letter. Jennifer Zedalis said we should be asking specifically that salaries of the criminal justice lawyers not be cut because that is who we represent, the lawyers. Les Hess moved to amend "employees" to "attorneys" in the first part of the motion which was seconded by Lewis Buzzell. Joel Silvershein questioned what about the support staff for these attorneys. It was noted the support staff have their own lobbyists. The question was called. The motion passed unanimously. The motion as passed states there be no salary or benefit reduction for criminal justice attorneys, adequate funding for attorney fees and costs for registry attorneys and adequate funding for the entire criminal justice system. A friendly amendment was proposed that the position state there be adequate funding for all fees and costs for the JAC and eliminating the third part. The question was called. The motion as amended passed unanimously. The final result of the council's resolution was as follows: that there be no salary or benefit reduction for criminal justice attorneys and adequate funding for all fees and costs for the JAC. Donnie and Carolyn will draft this and send it to the Board of Governors.

The president of TFB, Jesse Diner, joined our meeting and was briefed on our request regarding the budget crisis and impact on criminal justice attorneys. The President wants a position statement and stated he will address this. He understands it is a critical issue. The entire justice system has been cut beyond the bone. Mr. Diner indicated this is not an issue that requires us to appear before the Board, they are aware of this issue. He stated he feels it is too late to get this on the agenda to be

voted on as a Bar position at next week's Board of Governors meeting. Abe Laeser briefed Mr. Diner on the proposed cut of insurance benefits for government employees and Mr. Diner said it is unconscionable.

(D) Legislative

No report was made.

(E) P/PD Funding

Brian Tannebaum had no report and asked to be relieved of this duty as he has other fund raising responsibilities. Lewis Buzzell indicated he would be willing to assist. Bob Dillinger is still willing to assist on this committee. Richard Polin and Abe Laeser are still on this committee. Jennifer Zedalis is also willing to help although not on the committee. Brian Tannebaum will turn over the file to the new chair.

(F) P/PD Program and Budget

Paul Zacks report is covered in Section IV- Treasurer's report.

(G) Capital Cases

Lewis Buzzell reported it has been fairly quiet on the capital cases front. He did report that Sandy D'Alemberte has petitioned the Supreme Court to re-open some old capital cases. Florida leads the nation on capital cases where there have been exonerations.

(H) Federal Practice

No report was made.

(I) Membership

Lisa Porter provided a written report. Membership improved after a reminder letter was mailed. We have lost 107 members since the same time last year. Our current membership is 2585.

(J) Selig Goldin Nominations & Award

Carolyn Snurkowski brought up whether members of the Executive Council should be considered for this award. Harvey Sepler said our by-laws do not address this. Paul Zacks said we have discussed this before and we have decided not to make this a self-congratulatory award. Two of our three nominees for the award this year are on the Council. George Tragos said this has come up before over the past 20 years and

we have always backed off of having someone on the Council in the mix for the award. Abe Laeser stated he is in favor of the exclusion policy. George Tragos proposed opening the nomination period again. Judge Ward made a motion we open the nominations. There was no second. Paul Zacks moved we adopt a rule that current members of the Council be ineligible for the Selig Goldin award. Jennifer Zedalis seconded. The question was called. Opposed to the motion were Brian Tannebaum, Richard Hersch, Larry Turner and Jeff Harris, all the rest voted in favor. The motion passed.

George Tragos moved we re-open nominations for 15 days, have the committee select three and the Council vote by e-mail with the entire process completed in 60 days. Judge Ward seconded. Abe Laeser questioned how do we accomplish this in 15 days. The question was called. Those voting in favor were 6 and those opposed 19. The motion failed to pass. Next there was discussion whether we should consider the other two nominees who were rejected. Lisa Porter moved we nominate Barry Krischer for the award. Paul Zacks seconded. The question was called. Fourteen voted in favor, eleven were opposed. The motion passed. Barry Krischer will receive the Selig Goldin Award this June, 2010 at our annual meeting.

VII. Liaison Reports

A. Appellate Rules

Calianne Lantz delivered the report. It was reported that clerks are preparing and serving the record in 50 days and are sending the record missing transcripts. There is a proposal that the Clerk send a notice stating they are missing these transcripts and a notice then goes to the court reporter and there is a tolling of time. The committee is discussing a rule amendment on this today.

B. Criminal Rules

No report was made.

C. Criminal Jury Instructions

No report was made.

D. Decriminalization of Misdemeanors

No report was made.

E. Evidence

No report was made.

F. Government

No report was made.

G. Juvenile and Juvenile Rules

Joel Silvershein reported that ASAs and PDs must appear at first appearance and they cannot appear electronically.

H. Young Lawyers

No report was made.

VIII. NewBusiness

Abe Laeser made a motion we have a line item in our budget for a lobbyist each year. There was no second. Carolyn Snurkowski suggested we discuss this in the June meeting.

George Tragos moved we fund \$10,000 for a lobbyist this year if Rod Smith is willing to do it. Les Hess seconded it. Marty McDonnell stated Rod Smith knows Victor Crist and that is where we need to go and Rod Smith is in a better position to do this. Donnie Murrell clarified the issue is specific to this budget. The question was called. Richard Hersch opposed the motion, all the rest of the Council voted in favor. The motion passed. Rod Smith was hired for \$10,000 to lobby this year on the budget issue only. This will be addressed in our newsletter so our membership knows we are doing something proactively on this issue. Carolyn will include this in the newsletter. Donnie will call Rod Smith and notify him.

George Tragos said the JAC has proposed a rule that all certificates of service be provided by e-mail and it is on its way to the Supreme Court. The proposed amendment passed unanimously.

Donnie Murrell made a motion we support Sandy D'Alemberte's Innocence Project. The motion was seconded by George Tragos. Paul Zacks moved to table the issue, and Jennifer Zedalis seconded. The motion to table passed 14 in favor, 11 opposed. This issue will be included in June's agenda.

Judge Samantha Ward was appointed as the new Liaison for Criminal Jury Instructions as Scott Richardson has cycled off of the committee.

Larry Turner made a motion to adjourn which was seconded by Judge Ward. The meeting adjourned at 12:07 pm.