

**The Florida Bar Criminal Law Section
Executive Council Meeting
June 26, 2009 - Orlando, Florida**

I. Call to Order

The meeting was called to order at 9:10 a.m., by the Chair, Donnie Murrell

Roll call by the Secretary:

Present - Donnie Murrell, Sheryl Lowenthal, Lisa Porter, Ann Finnell, Lewis Buzzell, Robert Dillinger, Doug Duncan, Scott Fingerhut, Jeffrey Harris, Susan Hugentugler, Cynthia Imperator, Abe Laeser, Calianne Lantz, Martin McDonnell, Richard Polin, Harvey Sepler, Joel Silvershein, Kenneth Swartz, Brian Tannebaum, George Tragos, Larry Turner, Bill Vose, Lisa Walsh, Michael Weatherby, Paul Zacks, Jennifer Zedalis, and David Rothman, Board Liaison

Guest - Ben Kuehne, Shelli Eddie, Scott Richardson, Hank Coxe, Ivy Ginsberg

Excused - Carolyn Snurkowski, Stanford Blake, Richard Hersch, and Les Hess

II. Approval of the Minutes of January 16, 2009

The minutes of January 16, 2009 were approved with one amendment, specifically adding the amount of money in the treasury \$ 236,156, whereupon the minutes were adopted as amended.

Announcements

(1) Richard Hersch's wife Patrice Talisman has passed away. David Rothman suggested that we have a moment of silence in her memory.

(2) Abe Laeser has retired, and officially has left the State Attorneys Office in Miami-Dade after more than three decades – he was congratulated. It was suggested that there should be an article written in the newsletter about Abe and his contributions to the Section and to the criminal justice system in the State of Florida.

III. Comments from Donnie Murrell

Mr. Murrell said that this has been a good year and that a lot was accomplished.

Regarding the Selig Goldin luncheon, as a result of the hard work and efforts of Paige Graham over 105 tickets were sold and we are expecting a large turnout. Thanks to Larry Turner and Paige for helping to make this year's luncheon a big success.

IV. Financial Reports

With regard to the budget and the section finances, every year we have a budget and unfortunately sometimes the budget is ignored. We have to be more vigilant and stick to the budget more carefully.

Section membership decreased significantly last year, and as a result we lost dues income. We missed one seminar last year. Actually it was scheduled for the fall of 2008 but it was presented in the spring of 2009, so we did have the seminar, we just did not have the income for the 2008 budget.

Last year for the first time in the history of the Criminal Law Section, we reluctantly adopted a deficit budget. We thought that we had ample reserves, we have to be more careful. We will be able to increase income by getting more section members and continuing to put on quality CLE programs.

Once we start spending the reserves the money will go fast, and the section has to be self-supporting. There will still be enough funds to provide refreshments at meetings. This is not a crisis. One of the reasons our treasury got so low is that we hired a lobbyist to deal with the statewide budget crisis. We received good value for our money (\$10,000.00) but this is an expense that we never incurred before.

Additionally we want to be able to continue to send our representatives to Oxford, which is a worthwhile program, and is important for good will.

Jeff Harris raised the issue of the problems created by not being able to pay section dues with credit cards. Paige responded that we cannot make that decision as a section. That is an issue that is within the control of The Florida Bar, and that because there is a \$5.00 fee per transaction, the fees are too costly and outweigh the convenience for section members.

Jeff replied that allowing payment by credit card is the trend for the future and is important if we are serious about increasing section membership. Donnie Murrell said that this is something that The Florida Bar will have to work out – it is beyond the jurisdiction and control of the Criminal Law Section Executive Council to make a decision on this issue.

Paige assured everyone that TFB is working on it. Bill Vose inquired about using PayPal, which would be convenient. Ann Finnell pointed out that the dues for this section are among the lowest of any section; for example the Family Law Section is \$55.00, and Criminal Law Section is only \$25.00. Bill Vose suggested charging an extra \$5.00 to pay by credit card (\$30.00 by credit card to cover the \$5.00 service fee) but the “powers that be” have determined that that cannot be done.

Donnie Murrell also noted that of the \$25.00 dues paid by every section member, The Florida Bar keeps \$17.50 and we, the section, collect only \$7.50.

Lisa Porter commented that it is possible to pay section dues by credit card when paying The Florida Bar dues - section dues also may be paid at that time with the credit card in the same transaction. This issue is only addressed to someone who wants to join the section during the year – and who is paying section dues separately at a time other than together with The Florida Bar dues.

David Rothman assured the Executive Council that TFB is dealing with this dilemma at the very “top levels” and that this is an issue that is problematic for all sections – not just the Criminal Law Section.

Larry Turner suggested that we should pay for government lawyers to join the section. Jennifer Zedalis asked why we do not provide discounted dues for our government lawyers (assistant public defenders and assistant state attorneys).

Ken Swartz suggested that we should have more big seminars to generate more revenue.

Donnie Murrell stated that this is a very important section and there are good reasons to join this section. In the court budget-funding crisis, we led the debate. Our membership has increased over the past six months. The activities and influence of our section impact our membership. Our members appreciate what we do. We do not have to justify why someone should join our section; we do things that matter.

David Rothman made a motion to explore the possibility of putting in place a graduated dues schedule for membership in the Criminal Law Section, increasing dues across the board for non-government lawyers. The motion was seconded by Jennifer Zedalis, and the vote was unanimous.

IV. (A) May Statement of Operations

Exhibit 2 - Lisa Porter reported that of our \$60,000.00 in Section dues, The Florida Bar kept \$46,000.00. We kept \$17,000.00. If the Section were to raise dues from \$25.00 to \$35.00 we would double our net income after that administrative fee is taken out.

We lost money in our investment earnings. We were projected to increase \$19,200.00, but actually we are \$16,000.00 short from the fund balance. We are not making money right now, so we have to be cautious with our spending.

(B) May Section CLE Report

Donnie Murrell said that Paul Zacks and Jennifer Zedalis were doing an excellent job of getting the P/PD expenses under control, but if unexpected expenses come up, we will have to pay them. George Tragos pointed out that we had \$25,000.00 budgeted but \$27,000.00 was paid out. Paige explained that the \$25,000 was budgeted for the contribution, but was spent on the expenses. A budget amendment has been prepared to move \$25,000.00 back to the endowment contribution line.

George Tragos observed that the \$25,000.00 endowment contribution is not reflected in the budget, but Paige explained that the line item name was changed to reflect the expenses and new line item for the contribution has been created, but not reflected on the current report.

Last year we had a deficit budget. This year was not as bad. Paige said that the figures would not be out until mid-August, but as of June 26, 2009, we had \$258,000.00.

Everyone thanked Hank Coxe for leading the budget summit meetings. He was instrumental in going to Tallahassee and getting The Florida Bar involved on behalf of the criminal justice system – many thanks and a big round of applause for Hank Coxe.

As of the time of the meeting the section was at \$ -54,000.00. Donnie Murrell noted that the funding formula is new from the last three years, and not as good as it has been in the past. CLE programs do well, membership is up. Paul Zacks pointed out that we lost more than \$54,000.00 and we also gave money to the P/PD. Our investment allocation is the biggest cause of the problem, and that is out of our hands – it is handled by the Big Bar.

Donnie Murrell (eternal optimist) said that the investment allocation may turn around, and until it does, we will keep better control of the purse strings. The P/PD program is our crown jewel and there is constant need to fund it.

Regarding Exhibit 3, Ken Swartz observed that we do make some money; our net was \$8,000.00 and we earned \$6,000.00 for CLE. Each CLE program costs about \$11,000.00 for the live program, and monies come in for about 18 months after the live CLE program.

(C) 2008-2009 Budget Amendments

Lisa Porter moved to pass the budget. The budget amendments in Exhibit 4 passed. It was unanimous.

There was a motion to pay Rod Smith our lobbyist \$10,000.00. The motion was made and seconded and passed. It was unanimous.

V. Oxford Scholarship Program

Donnie Murrell said that the Oxford Scholarship program is the mirror image of P/PD; we usually send 2 students. This year they requested 2 instructors and 2 students. Abe Laeser asked whether 4 barristers and a QC would be coming here? We have been sending two. If they send us a QC then we should reciprocate. They should be required to send instructors as well. The barristers paid when Abe went. Paul Zacks said that they will not pay; they want us to send instructors at OUR expense. Their students pay their own way. They want us to pay ours at our expense. Donnie said that this should be set up more formally. Paul said that maybe we cannot afford to do it this year. Lewis Buzzell asked how much it cost? Paige said that for 2 students the cost is about \$4,000.00. Paul said that we pay for their instructor. Jennifer Zedalis said that they put our instructor in a dorm that is not very nice. Abe did not care for the accommodations.

Harvey Sepler suggested that we have an article in the Bar Journal to let everybody know that we present and participate in this excellent program. It is a big investment that the section makes. Jennifer Zedalis said that there have been articles.

A motion is made not to send anyone this year. Seconded by Doug Duncan. One person opposed. The motion carried.

VI. Committee Reports

(A) Communications/Newsletter – No report

(B) CLE/Education

Scott Fingerhut reported that we have presented successful programs this year. Advanced Federal Practice was well-attended. The Criminal Law Update in April in Tampa was our first webcast. We will have more. It was a success. Regarding Masters of DUI there were some problems created by the program chair, but it was very well attended as was the Topics in Evidence program that we present in conjunction with the Trial Lawyers Section.

Ann Finnell asked about the closing argument project, and Doug Duncan wondered if we could get a sponsor to help defray expenses. It should be printed and sent to all DCA judges. It can be emailed and downloaded. Donnie Murrell suggested that we have it printed privately. While on-line is easier for many lawyers there are still some who prefer a printed copy on paper. George Tragos suggested that we request a contribution in order to receive a printed copy.

Scott Fingerhut suggested that we present a Masters of Trial seminar program with a complete trial demonstration.

Jennifer Zedalis suggested a voir dire seminar. FACDL-Miami has a couple of excellent speakers on this topic – Gene Zenobi and Barry Wax. Ivy Ginsberg suggested that the appellate practice section would like to co-sponsor a CLE program with our section. Jennifer Zedalis suggested record preservation and improper closing argument.

(C) P/PD Program and Budget

Paul Zacks and Jennifer Zedalis said that the program is cutting expenses. They have eliminated one day of the program, which cuts out one night in the hotel; they have changed to another hotel which has turned out to be an upgrade, it is a nicer property for a lower rate, they work with us; we have a smaller faculty, and more local people from the Gainesville area to avoid the need for overnight stays; and we try to not have them stay all week. They also have eliminated the need for the actors to stay so long, cutting as much as possible without affecting the quality of the program, the biggest savings being less expensive hotel, and cutting out one night in the hotel for everyone – less expensive without sacrificing quality. Registration is good; prosecutors and public defenders are sending people. There is no problem getting students this year; we do not need scholarships this year.

We now charge a \$200.00 registration fee – so overall it is going to cost less this year. Many thanks and a big round of applause to Paul and Jennifer for all of their hard work, and for cutting expenses.

(D) P/PD Funding

Brian Tannebaum reports that the money is not exactly rolling in right now for P/PD, but he is working on it. He collected \$7,000 from civil lawyers, and will be making another big push for contributions. Law firms are just not making big contributions right now. It is a bad time to try to get money. The Florida Bar Foundation matches what we collect.

The P/PD Program and Budget are at Exhibit 5.

VII. Election of Officers

Slate No. 1 - voted by acclamation

Ann Finnell
Jeff Harris
Susan Hugentugler
Bill Vose
Judge Samantha Ward

It is unanimous that Scott Fingerhut is our new Treasurer.

Slate No. 2 - Doug Duncan, Scott Richardson, and Angelica Zayas also were elected to the Executive Council.

VIII. Liaison Reports

(A) Rules Committee

Scott Fingerhut said that it has been a quiet year; the Rules Committee approved Donnie Murrells' first appearance rule.

The proposal that an accused needs good faith certification to expunge his record was voted down in subcommittee.

Earlier in June, a DNA collection bill was proposed; anyone arrested for a felony will be subjected to DNA testing. The subcommittee met and included this into the new rule – this topic will be discussed at the rules committee meeting later today.

Bob Dillinger said that a new statewide probation order goes into effect next week, but it was drafted by the DOC and contains things that are not authorized by law. All public defender and state attorney fees are discretionary. That was fixed. The statute says that a person on probation may not possess a firearm unless approved by the court. The order says firearm OR weapon. We changed it, unless the probation officer approves it – they added things that are just not necessary to have in a probation order.

Donnie Murrell said that we need to get the word out to our membership about this.

B) Jury Instructions

Jury instruction committee – Judge Weatherby said that all meetings were cancelled due to the budget cuts, and thus there was nothing to report. Lewis Buzzell repeated those comments.

IX. New Business

Donnie Murrell presented a lovely gift for all members of the Executive Council for their service this past year, and thanked everyone. He said that it was a “blast” and that he greatly appreciated the honor. He gave special thanks to Paige Graham for her excellent dedication to the section. She was always organized and kept things on track. She did more than anyone expected that she would or could do including budget meetings and many other things. A big round of applause for Paige.

The next meeting will be September 11th in Tampa.

A glass plaque was presented to Donnie Murrell.

At 11:00 a.m. the meeting was adjourned.