

The Florida Bar- Criminal Law Section
Executive Council Meeting
Boca Raton, Florida
Friday, June 25, 2010
9:00 a.m. - 12:00 noon

I. Call To Order

The meeting was called to order at 9:23 am, by the Chair, Carolyn Snurkowski

Roll call by the Secretary:

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

Guests- Ben Kuehne; Louis Delgado, David Rothman, Guy Robinson

Excused- Scott Richardson; Ann Finnell; Robert Dillinger; Martin McDonnell

Absent- Michael Weatherby; Richard Hersch

II. Approval of the Minutes of the January 22, 2010 Meeting

Doug Duncan moved to approve the minutes, which was seconded by Cynthia Imperato. The minutes of January 22, 2010 were approved unanimously

III. Comments from Carolyn Snurkowski

Comments by Carolyn Snurkowski were deferred.

IV. Financial Reports

A. Statement of Operations

Paige reported P/PD has saved us some money. If we choose to contribute \$25,000 to the endowment fund it will change the bottom line of our budget. We need to vote on this for accounting purpose. Les Hess moved we contribute \$25,000, seconded by George Tragos. The motion to make the \$25,000 contribution passed unanimously.

B. Section CLE Report

As attached to agenda in Exhibit 3.

V. Oxford Scholarship Program

No report.

VI. Committee Reports

A. Communications/Newsletter- Carolyn Snurkowski

No report was made.

B. Budget-Scott Fingerhut

See report in IV. Financial Reports, Statement of Operations.

C. Capital Cases- Lewis Buzzell

Lewis reported on two Supreme Court cases. The Graham case was the juvenile case from Jacksonville. The USSC struck down mandatory life sentences for juveniles. The legislature will need to institute parole review. Carolyn reported there may be a need for prospective legislation regarding this issue. Susan Hugentugler discussed sentences of 67 years which could also be interpreted as a life sentence and she questioned whether this sentence would also come under review.

Lewis also reported on the Holland case. It was a 7-2 decision and the USSC ruled the time limit for filing a habeas appeal could be tolled by equitable tolling because the attorney did not file a habeas on time despite the defendant's request. On remand it will be interesting to see what will happen.

Lewis suggested placing on the next meeting's agenda the quality of representation for capital defendants on a statewide basis in the conflict office.

Abe Laeser reported it is almost impossible for prosecutors to make sure the courts appoint competent counsel and investigators in capital cases. Funding will have to be provided by the State to insure the cases work their way properly through the system.

Brian Tannebaum reported the legislature is the proper audience for this and not the defense bar. The legislature tows a fine line between adequacy for funding and justice.

D. CLE/Education- Scott Fingerhut

1. Ethics Seminars

There was no report on the Ethics Seminars. Scott reported he has been working on a master calendar and enlisting people for a program chair for CLE programs so we do not worry about good speakers. We have a decent plan on paper. We have great committee members serving under Sheryl. January, 2011 is Advanced Federal Practice headed by Ken Swartz- it will be in Miami. Master of DUI was not held this year. In March we have the Evidence seminar we share. April is Criminal Law Update in Tampa. We would like to put on the master calendar an appellate series- substantive appellate issues, both state and federal, hot topics, and Termination of Parental Rights appeals. We are looking in April for the substantive appellate seminar. We also need mental health and substance abuse, forensics, eyewitness identification, ethical pitfalls for prosecution and defense, and criminal masters. January or March will be the best time for DUI Masters. Carolyn suggested partnering with the Florida Supreme Court program sponsored in Tallahassee. The issue of state budget cuts was discussed and the impact it has on the CLE we promote. Webinars may be a solution to this problem.

2. The Constitution Project (Mason Clutter- 10:00 am Conference Call)

Mason Clutter reported she is part of the Constitution Project in Washington, D.C., which is an independent think tank. They focus on policy reform and public education. She wants to work with us to sponsor an event to the right to counsel to be held at the mid-year meeting in Orlando. She would like to discuss some of the recommendations in their report in an hour to hour and a half long program. She would like to invite Carlos Martinez-PD in Miami, Former Chief Justice Gerald Kogan, a moderator from our council and a fourth person, perhaps a prosecutor or practitioner. They have 22 recommendations in their report. They also have money they have been granted to promote their report and they can pay for the travel and costs of the report.

E. Conflict Counsel- Stanford Blake

The offices were created to save money. The estimate is in the neighborhood of \$60-100 million dollars. The conflict offices are having their own budget woes as well. In the 3rd DCA the office has contracted with outside counsel on the capital cases they have. There is a question whether those counsel have caseloads that are larger than their ability to handle. Conflict counsel looks like they are here to stay.

F. Federal Practice- Ken Swartz

Ken reported we had a successful program. The program was held in January, 2010. There are some new Brady rules which we can create a dialog about.

G. Legislative- Martin McDonnell

No report.

H. Membership- Lisa Porter

Lisa Porter reported membership as of June 1, 2010 was 2702. Membership the same time last year was 2800. Membership is down 98 members. Lisa discussed amending the membership dues statement to assist us in reducing attrition. Sheryl Lowenthal will bring this up tomorrow at the section chair meeting.

I. P/PD Program and Budget- Paul Zacks/Jennifer Zedalis

Jennifer Zedalis reported we saved money this past year, \$12-13,000 was saved. The program will be excellent this year. Some wonderful faculty will be coming in. The new courtroom facility is open. Paul reported attendance will be good, there is actually a wait list. All faculty has committed to attend the program. We will come in on budget, still \$12-13,000 less than before. The University will charge us \$100 per day to keep the parking lot open so we will incur a \$500 expense we did not have before. The program is well received.

J. P/PD Funding- Brian Tannebaum

No report was made.

VII. The Innocence Commission Project

Lewis Buzzell reported the Supreme Court did not feel it was appropriate to proceed by rule. The legislature pushed through funding for an innocence commission and it was passed and Governor Crist signed the legislation. \$200,000 was appropriated and a director is being recruited. In several other states legislation has been passed addressing innocence issues.

VIII. Election of Officers and Members

Slate 1 proposed is George Tragos, Larry Turner, Richard Polin, Calianne Lantz, and Donnie Murrell. Slate 2 is Angelica Zayas, Marty McDonnell, Ken Swartz, Lewis Buzzell, and Jennifer Zedalis.

A motion to approve Slate 1 was made by Stan Blake and seconded by Joel Silvershein. Slate 1 passed unanimously.

Slate 2 was proposed. There are no other vacancies. No floor nominations were made. Stan Blake moved we adopt Slate 2, seconded by Cynthia Imperato. Slate 2 passed unanimously.

The officer slate proposed is Sheryl Lowenthal as Chair, Lisa Porter as Chair Elect, Scott Fingerhut as Secretary and Susan Hugentugler as Treasurer. Nominations closed and the officer slate passed unanimously.

IX. Liaison Reports

A. Appellate Rules- Calianne Lantz

Calianne Lantz made the following report. The proposal to amend rule 9.110(b) passed (in order to reference rule 9.140(c)(3) to make clear that the State has 15 days to file a notice of appeal). And in a surprise move, the full committee reconsidered a motion that failed in the subcommittee. The subcommittee considered amending rule 9.141(b)(2)(C) to allow 30 days (instead of 15) to file a brief from the date of the notice of appeal in a 3.850 summary denial case. The motion failed in the subcommittee, but someone asked for a revote by the full committee and the motion just passed the full committee.

B. Criminal Rules- Cynthia Imperato

George Tragos reported that recommendations of the rules committees to the Supreme Court are automatically being referred to RJA for review. This practice is going to make the rules committees moot. RJA has become more responsive and this is why this is occurring.

C. Criminal Jury Instruction- Samantha Ward

No report was made.

D. Decriminalization of Misdemeanor- Bob Dillinger

No report was made.

E. Evidence- Aaron Clements

No report was made.

F. Government- Joel Silvershein

No report was made.

G. Juvenile Rules- Joel Silvershein

Joel Silvershein reported they are discussing e-filing.

H. Young Lawyers Division- Beth Wetzel

No report was made.

X. New Business

A. Amicus Brief re: pending FSCT case (State of Florida v. PD 11th Judicial Circuit)

Harvey Sepler discussed this case. Should PD11 be entitled to decline representation on a case? Harvey believes ultimately we all will be affected by this issue. Harvey questions whether we should become involved in this issue by filing an amicus brief- it would be due July 19th. Guy Robinson reported there are 2 issues affecting all lawyers- first- who is the body which promulgates the rules governing lawyers- the legislature or the Florida Supreme Court? Second, whose responsibility is it as the head of a law firm to decide whether a lawyer in the firm can make a decision as to what cases they accept. George Tragos made a motion we do an amicus brief supporting the fact the Florida Supreme Court is the governing body for lawyers and not the legislature. Jennifer Zedalis seconded the motion. Discussion was held. The motion passed by 20 votes. There were 5 abstentions- Stan Blake, Carolyn Snurkowski, Richard Polin, Angelica Zayas, and Samantha Ward.

Jeff Harris made a motion the Executive Council adopt a position in an amicus brief that the elected public defenders be required to make a motion for his/her assistants to be relieved of representation when they feel it is ethically required. Jennifer Zedalis seconded the motion. Judge Blake asked for clarification- why should the elected State Attorneys not be required to do the same when caseloads demand and they cannot adequately prosecute on behalf of victims. Abe Laeser questioned the top heaviness of the 11th PD's office and how they are contributing to the problem. He feels this is a political battle we should not get into. Lewis Buzzell echoed these sentiments. Samantha Ward feels the same way. Harvey Sepler made a friendly amendment accepted by Jeff Harris. The new motion is do the Rules of Professional and Ethical Conduct apply equally to government and private attorneys. There was no second to the friendly amendment. The motion failed- 11 opposed, 8 in favor and 4 abstentions- Stan Blake, Richard Polin, Carolyn Snurkowski, and Calianne Lantz.

Les Hess pointed out our bylaws dictate the Board of Governors have to approve our filing of an amicus brief.

B. Executive Council Meeting- September 24, 2010

Our next meeting will be held September 24, 2010 in Orlando, Florida.

A motion to adjourn the meeting was made at 11:52 pm. The meeting adjourned.