

**The Florida Bar
Criminal Law Section
June 22, 2012 Meeting
Orlando, Florida**

Minutes

1. The meeting was called to order at 9:09a.m.

Attendance- Present in Orlando for the annual meeting of The Florida Bar at the Gaylord Palms Hotel were the following council members: Hon. Lisa Porter, Scott Fingerhut, Susan Hugentugler, David Rothman, Hon. Stanford Blake, Hon. Robert Dillinger, Jeffrey Harris, Les Hess, Abe Laeser, Calianne Lantz, Donnie Murrell, Harvey Sepler, Joel Silvershein, Brian Tannebaum, George Tragos, William Vose, Hon. Samantha Ward, Paul Zachs, Hon. Angelica Zayas, and Jennifer Zedalis. Participating by phone were: Hon. Cynthia Imperato, Richard Polin and Kenneth Swartz. Excused absences were Richard Hersch, Larry Turner, Carolyn Snurkowski, and Martin McDonnell. Not present were the following council members: Douglas Duncan, Ann Finnell, Scott Richardson, and Michael Weatherby. Also present during the meeting was Board of Governors member and liaison Michelle Suskauer, Board of Governors Members Ian Comisky and Greg Coleman, Damon Glisson, Ben Kuehne, Hon. Jeffrey Levenson, Hon. Donald Scaglione, David Barksdale, Tania Alavi, and James Smith.

SUMMARY

II. A motion to approve the minutes of January 20, 2012, meeting together with the minutes of the April 3, 2012, phone conference was made by Stan Blake and seconded by David Rothman. Subject to the amendment that Samantha Ward participated on the phone conference of April 3, 2012, the minutes were unanimously approved.

III. Treasurer's Report – David Rothman- We are healthy financially, but need to increase membership. The section needs to recruit active and diverse members. Paige Graham reported that live CLE seminars are expensive, but that after market sales are good. The May Criminal Law Update seminar was well attended and received good feedback from attendees.

Budget Amendments – \$10,000 had been previously budgeted by the Council for a legislative consultant, but had not been used. **Motion by George Tragos and seconded by David Rothman to move \$5,464 from the unused legislative consultant line item to pay for additional expenses incurred on the section website, phone, and for the production and mailing of the law review publication to members. The motion was unanimously approved.**

IV. Committee Reports - Abe Laeser presented our first effort at producing a law review publication, in conjunction with the St. Thomas Law School, devoted exclusively

to criminal law issues. The law review book has been mailed to all of the members of the Criminal Law Section. The articles are insightful and well written. We all need to seek writers for future issues. An article in the Bar Journal regarding the joint publication may attract professors and judges who may want to write an article for a future issue. The money spent on producing and mailing the law review book is well spent to provide membership with a benefit for their dues and to attract new members.

Capital Cases – Samantha Ward reported that there may be a proposed rule change for attorney qualification for death cases, however it does not appear to be on the Rules Committee’s agenda. The Innocence Commission, after completing its two-year term, met for the last time and will be issuing its findings and recommendations. One recommendation is for joint training for prosecutors and public defenders in the area of capital work and discovery practices. Scott Fingerhut stated that the commission’s report was going to press today.

Discussion ensued in ways to improve our website, offerings to members, and to increase membership in the section. **Motion made by George Tragos, seconded by Brian Tannebaum, to send our section e-mail blasts, in addition to all members of the section, to all circuit and county chief judges, all elected state attorneys and elected public defenders, the statewide prosecutor, the attorney general, and all regional conflict counsel with a link to the section website.** It was suggested that all such e-mails have a hyperlink to give readers the ability to join the section at any time. Ben Kuehne noted that when he was Chair of the Council of Sections, their study learned that people join sections when they are asked by someone to join a section. Therefore, the most effective recruitment is for the council members to ask people to join. The question was called. **The motion passed almost unanimously with the exception of one NO vote.** The Chair suggested introductory phone calls.

CLE Report – Scott Fingerhut reported that our CLE programs are of a very high quality, however we do not derive the amount of revenue that we should. Part of that is because we are not a unified organization. In order to increase membership and attendance at CLE, we must find common grounds. Other sections, such as the Family Law Section, have great attendance at CLEs, they get together and party, hang out, and learn while the section prospers. There is a reason why assistant state attorneys and assistant public defenders do not attend our CLEs, but the Big Bar will simply not budge on the fee reduction/waiver issue. Each council member must continue to work on membership and developing quality programming. David Rothman noted that our biggest selling point is our ability to come together for common issues. Private defense counsel should consider sponsoring an APD or ASA to increase participation, diversity, and camaraderie in the section. Judge Zayas reported on a new half-day CLE program on post conviction litigation is pending approval for a slot during the mid-year meeting in September. It will be 4.5 credits with 2 ethics credits. Calianne Lantz reported that the CLE Committee of the Bar, on motion made by Chair Porter to have fee waivers examined, has issued a report which will be sent to all section chairs. The issue will be referred to the Council of Sections.

Legislative Report – Judge Blake reported that it was a relatively quiet year in the Legislature. Changes are attached to the agenda. Of the five legislative positions taken

by the section as noted in the appendix, all are moot with the exception of the recommendation regarding the comprehensive review of the death penalty. **Therefore, they should all, with the exception of the death penalty position, be sunsetted.**

P/PD Program – Paul Zacks reported that the program is solidly on track to begin on August 5. Letters have been sent out to faculty though additional instructors are needed particularly for the second half of the program. The program will include a brief insanity problem as well as psychiatric expert examination.

Selig Goldin Award – Harvey Sepler reported that the committee received very good nominations. Today's luncheon is a sell-out. We have a good program and a very worthy honoree, Robert Josefsberg. To unify the section, David Rothman suggested we look into having a separate award to honor a top trial lawyer, whether a criminal defense attorney or a prosecutor, perhaps at our future Thursday evening receptions. Jennifer Zedalis agreed that there are great prosecutors and public defenders all over the state and honoring local attorneys would draw more into the section. This will unify the section. The Selig Goldin Committee will explore this suggestion.

(Break 10:30-10:40)

V. - The Florida Bar Foundation Contribution – David Rothman reported on the dire need of the Foundation, which has no relationship to the Bar, for funds. Their budget has been reduced from \$70 million dollars to \$6.5 million dollars. Of necessity, they are cutting back on funding programs and staff. He noted that other sections have been giving the Foundation funds and so should the Criminal Law Section. **A motion was made by Judge Stan Blake, seconded by Abe Laeser, to give \$25,000 to the Florida Bar Foundation for use in an unrestricted manner.** After much discussion, including the Foundation's role in funding the section's P/PD endowment, a vote was taken. Donnie Murrell noted his reluctance to give money when the section may not have met its own obligation to fund the P/PD endowment. David Rothman abstained from the vote. **With the exception of one NO vote, the motion to give the Florida Bar Foundation \$25,000 was approved.** The Chair noted that the inquiry of the Foundation's role in funding the P/PD endowment is a legitimate question that needs to be answered. The status of the Foundation's grant to fund the program needs to be explored. David Rothman agreed to make inquiries about the status of the endowment. **The lone NO vote was rescinded.**

VI. ABA Resolution of Fetal Alcohol Syndrome – If we want to support this, we need to contact the Board of Governors. No further discussion.

VII. Limited Registry, Senate Bill 1960 – Abe Laeser is not sure how this bill snuck by the section and is surprised that we have not done anything. Our number one priority for next year's legislative plan should be to get the Legislature to look again at this very bad law. There will be a big increase in post conviction claims of ineffective assistance of counsel. Donnie Murrell suggested the section draft a resolution to the Board of Governors informing them of our concerns with the new law. Paul Zacks did not disagree, but suggested that the timing may be a bit premature since the law has not gone into effect, yet. He recommended waiting until the effects of the new law are seen. After considerable discussion, **a motion was made by Donnie Murrell, seconded by Scott**

Fingerhut, to draft a resolution to present to the Board of Governors asking for their support to lobby for the repeal of Senate Bill 1960. The motion passed unanimously.

VIII. Fees and Costs for Legal Services, Florida Bar Rule 4-1.5 - Scott Fingerhut reported that an amendment the rules of the Florida Bar to prohibit non-refundable fees in criminal practice has been proposed. The Bar staff appear to be in support of this. He and David Rothman have been looking into this. They will have a report by the next meeting in September.

IX. Nominations for Executive Council – The nominations of very qualified individuals were received by the Council. The following five Council members were re-elected on Slate #1: Judge Lisa Porter, Susan Hugentugler, Sheryl Lowenthal, Paul Zacks, and Jeff Harris. Slate #2 nominees included: Judge Samantha Ward, Bill Vose, Judge Don Scaglione, David Barksdale, Tania Alavi, James Smith, and Judge Jeffrey Levenson. Following a vote by all section members in attendance, the following were elected to the Executive Council: Judge Samantha Ward, Bill Vose, Judge Don Scaglione, David Barksdale, and James Smith.

Following the announcement of the new members, the meeting adjourned.