

CRIMINAL LAW SECTION EXECUTIVE COUNCIL MEETING
Telephone Conference

March 11, 2014 – 1200 Noon – 1:00 pm

Meeting Minutes

1. The meeting was called to order at 12:05 p.m. Chair Susan Hugentugler began the meeting with introductory remarks and attendance was taken.

2. Attendance

Present: Susan O. Hugentugler, David B. Rothman, Hon. Angélica D. Zayas, Martin Patrick McDonnell, O. David Barksdale, H. Scott Fingerhut, Hon. Richard Hersch, Les Hess, Hon. Cynthia G. Imperato, Calianne Lantz, Hon. Jeffrey R. Levenson, Richard Polin, James Wesley Smith III, Carolyn Snurkowski, Kenneth Swartz, Larry Turner, William C. Vose, Gary S. Winston, Paul H. Zacks.

Also present: Eugene Sherman, Program Administrator, The Florida Bar.

Not Present: Hon. Robert Dillinger, Jeffrey Harris, Abraham Laeser, Sheryl Lowenthal, Brian L. Tannebaum, Joel M. Silvershein, Larry Donald Murrell, Jr., Hon. Donald Scaglione, Harvey Sepler, George Tragos, Hon. Samantha Ward, and Jennifer Zedalis.

3. Executive Committee members met telephonically and through video conferencing to discuss the Florida Board of Governors (BOG) approval of the Legal Needs of Children Committee's (LNCC) request for permission to support proposed legislation giving sole responsibility to the judiciary for decisions regarding whether children should be prosecuted as adults. Through oversight, the matter was not addressed at the January meeting of the Criminal Law Section and it was reported at the January 31, 2014, BOG meeting that the Criminal Law Section "had no opposition" to the proposed legislation.

The Executive Council considered the LNCC position statement on direct filing decisions and other materials provided by the LNCC, including a synopsis of statistics regarding numbers of direct filed children between the years of 1995- 1996, and 2000- 2001 used to support the LNCC recommendation that the judiciary be given sole responsibility for decisions regarding whether children should be prosecuted as adults. In addition to their primary position that the judiciary be given sole responsibility for decisions regarding the prosecution of children as adults, the LNCC also enumerated a series of principles they believe should apply when drafting legislation concerning direct filing.

During a spirited discussion of the matter, some Executive Council members questioned reliance on the seemingly outdated data included in the materials, particularly since the data appeared to show a decline in the number of children prosecuted as adults. Others expressed logistical

concerns with the implementation of the proposed legislative changes and further questioned what, if any, standards of review would apply. Some questioned whether the proposed changes were necessary since the current legislative framework provides for judicial oversight with the ability to impose juvenile sanctions even where a child has been prosecuted as an adult. It was also suggested that the proposed change would unconstitutionally interfere with prosecutorial discretion and the separation of powers. Several members were concerned that the threat of adult charges, coupled with the child's inability to fully engage in discovery prior to the filing of charges by the State, gave the State an unfair advantage during plea negotiations in the juvenile division and often resulted in pleas to charges that might otherwise have been challenged after full discovery.

After a full discussion of the materials provided by the LNCC, Judge Levenson moved to oppose the LNCC's proposal in its entirety. The motion was seconded by Judge Imperato. The motion failed by a vote of 9 to 8. Thereafter, Judge Zayas made the following motion, "Although the Criminal Law Section shares some of the concerns raised by the Legal Needs of Children Committee, the Criminal Law Section cannot support the position statement of the Committee at this time due to insufficient information in the proposal." The motion was seconded by David Rothman. Larry Turner proposed the following friendly amendment, "The CLS will study the matter further and make recommendations accordingly." The amendment was accepted by Judge Zayas and Mr. Rothman. The motion passed by a vote of 14 to 2 with 1 abstention. It was also agreed that the Chair of the CLS would appoint a special committee to study the matter further and that the matter would be addressed once again by the Executive Council upon receipt of a report from this special committee. The meeting adjourned at approximately 1:00pm.