

**CRIMINAL LAW SECTION EXECUTIVE COUNCIL  
MINUTES OF THE JANUARY 22, 2015 MEETING  
HILTON WALT DISNEY WORLD**

**I. CALL TO ORDER**

The meeting was called to Order by Chair David Rothman at 9:06 AM.

Present were the following members: David Rothman (chair), Judge Angélica Zayas (chair-elect), Joel Silvershein (Secretary), Martin McDonnell (Treasurer), Michelle Suskauer (Board Liaison), Susan Hugentugler (Immediate Past Chair), O. David Barksdale, Jeffrey Harris, Mac Heavener, Judge Richard Hersch, Les Hess, Abraham Laeser, Judge Jeffrey Levenson, Sheryl Lowenthal, Judge Donald Scaglione, Harvey Sepler, Kenneth Swartz, Brian Tannebaum, Larry Turner, Judge Samantha Ward, Jennifer Zedalis.

Present by Telephone were the following members: Robert Dillinger, H. Scott Fingerhut, Judge Cynthia Imperato, Richard Polin, Paul Zacks

Absent were Jason Blank, Larry Donald Murrell, James Smith, George Tragos, William Vose, and Gary Winston.

Also present were Florida Bar President Greg Coleman, President-Elect Designate Bill Schiffino, Board of Governors Member Lance Scriven, and Mary Ann Obos (Bar Staff).

**II. APPROVAL OF MINUTES**

Approval of the minutes of the September 12, 2014 meeting was moved by Chair Elect Zayas, and seconded by Judge Levenson. The minutes were approved by voice vote.

**III. CHAIR'S REPORT**

With the legislative session about to commence, help is needed to review bills. If members wish to help, they should contact Marty McDonnell. Matters initially move slow, then very quickly. It is difficult for the council to move quickly due to the philosophical split in the council. Need to do more things by e-mail.

Marty McDonnell noted that Bob Dillinger is doing things for the FPDA and can help inform the council. Bob Dillinger said that he will get the information so that the council can be informed. Chair Rothman noted that when we talk about a bill, it is important to e-mail any response quickly in order to share our thoughts.

Chair Rothman encouraged members to get more involved in the Bar committees. Connections with other sections make us stronger as a section.

#### **IV. BOARD OF GOVERNORS LIAISON REPORT**

Michelle Suskauer reported that the Board of Governors met twice since the last meeting, and that the next meeting would be the following week in Tallahassee. The proposal from the Public Interest Law Section regarding the death penalty was not ready for discussion at that meeting.

The program evaluation subcommittee of the Board of Governors is conducting a big review of certification areas. Matters of concern which were raised during the October meeting, including the low passage rate, were passed on to that subcommittee. The review will not be completed this year. Any comments other than those which have already been made should be communicated to Michelle.

#### **V. GUEST PRESENTERS**

Chairman Rothman and Michelle Suskauer introduced Florida Bar President Greg Coleman, and the President-Elect Designate, Bill Schifino, and Board of Governors Representative Lance Scriven. President-Elect Designate Schifino stated that he was looking forward to working with the section on criminal justice issues. President Coleman addressed the Executive Council on the First Amendment issue which was recently argued before the United States Supreme Court, and regarding advertising issues.

#### **VI. TREASURER'S REPORT**

Marty McDonnell presented the treasurers report for the six month mark. Revenues skewed higher based in large part to dues payments. The P/PD program did very well on registrations, and expenses for the program went down, consequently, reflecting a surplus. Jennifer Zedalis explained how the program was successfully budgeting, including shopping around for good hotel rates, working with vendors, and having participants staying for the full week. Paul Zacks added that the program was keeping an eye on the money, but will not skimp on the quality of the program.

Chairman Rothman commented on the positive nature of the experience to which Jennifer Zedalis noted that the reduction of the program to five days has helped with the quality of the program.

Judge Levenson asked a question as to revenue from the CLE programs, in particular from the CLE program in December [Criminal Law Update]. Marty McDonnell replied that the numbers from the December CLE have not come in, because there is money from aftermarket sales that have not been included. Mary Ann Obos noted that revenues from

the December CLE program will not be posted until the January or February statements. Marty McDonnell also added that there is anticipated revenue from future CLE programs.

Marty McDonnell continued that just as the revenues were skewed, the expenses are skewed. Still to be accounted for were the P/PD expenditure of \$25,000 and a \$10,000 budget line associated with the annual meeting. It also looks like the \$10,000 line for the legislative consultant would not be used. At this point, the budget is looking like it is on target, but it is still too early to tell.

Chairman Rothman emphasized the importance of getting new members to the section, especially in one on one and at CLE seminars.

## **VII. COMMITTEE REPORTS**

### **A. CAPITAL**

Abe Laeser stated that nothing was discussed in the last few months, with the exception of the proposed legislation regarding unanimous jury verdicts.

### **B. COMMUNICATIONS**

Richard Polin reported that the committee has made progress after receiving information on the parameters of the social media policy. What was needed was someone who is sufficiently well versed in social media who could take the criteria and to make a proposal for a test program to be considered by the Council. Chairman Rothman noted that the Bar is well versed in social media policy, and how to implement it, and will have someone to help in this area to benefit the section.

Susan Hugentugler noted that she and Jason Blank have been working together to get a Facebook and Twitter page, and to have it done and implemented by June. Additionally, there was a presentation by Bar counsel regarding social media at the December CLE presentation, and will be discussing those issues. Part of the goal is to have a moving blog on issues that will be on a Facebook page.

Richard Polin added that they are working on a quarterly newsletter, but he is still looking for more people to participate. As to the case law update, the committee is looking for about six people to volunteer to read cases and divide the work. Updates would be put up in approximately a week to ten days, but more volunteers are needed.

Chairman Rothman suggested that law schools should be approached to help in this effort. Jennifer Zedalis remarked that the idea is workable if it is done by each DCA. Chairman Rothman stated that realistically, it would be difficult to get seven practitioners to do an update on a weekly basis, and to remain current. Larry Turner added that students do not read like practitioners, and that it would be good public relations for those who are reviewing the cases. Bob Dillinger noted that FACDL does a weekly update of all criminal update.

Les Hess noted that the last entry on the news journal portion of the website was seven years ago, and that it should be deleted.

Judge Hersch suggested that a blast be put out on a weekly basis. Chairman Rothman noted that it was important to draw people to the website, and that weekly blasts might deter people from going to the website. David Barksdale agreed with Judge Hersch on how to get updates out, and that the blasts will get people interested. Judge Zayas remarked that the issues were not mutually exclusive, and put updates both on a blast and on the website. Additionally, Judge Zayas stated that openings on committees should also be included, to encourage members to have further involvement in the community.

A motion to send out blasts with links to case law on the website was made by David Barksdale, and seconded by Larry Turner. Judge Hersch remarked that the proposal would require the immediate posting into the website instead of just forwarding the case law service suggested by Bob Dillinger. Michelle Suskauer noted that the point is to drive people to the website so that they can take advantage of other services available on the website. Judge Levenson agreed that we need to get something done to bring interest to the section.

Harvey Sepler asked if we are doing our own review, or the review done by FACDL and Bob Dillinger's Office or by the Attorney General, and who does the analysis? Chairman Rothman responded we are going to use every source possible.

Susan Hugentugler asked if the Florida Bar has a monitor for the page. Chairman Rothman said that the website committee has that responsibility and would control.

Mac Heavener said that there is a risk in determining the importance of the case. Chairman Rothman responded that every case needs to be reviewed. Richard Polin replied that somebody has to make a realistic choice. Significant opinions should be included, not one paragraph, unenlightening ones. Judge Zayas added anything that changes the practice, clarifies or changes the law, or certifies a question should be included.

The motion to send out the update on a link to the website passed on a voice vote. Chairman Rothman requested Richard Polin to take into consideration the matters which were discussed, and to come up with a proposal for the June meeting on how to designate material for the review. It is also important to include Federal matters for review, since we are trying to attract members in Federal practice.

### **C. CLE**

Brian Tannebaum reported that the Criminal Law Update in December was successful, with approximately 50-55 people present. The Orange County Bar was an excellent facility, and would recommend it for future programs. The topics were interesting and wide ranging. It was the first time that the required program under Fla.R.Crim.P. 3.113 was addressed. An issue occurred during the Fla.R.Crim.P. 3.113

presentation where an assistant statewide prosecutor walked out, and was also addressed by another prosecutor in a letter. Chairman Rothman addressed the letter with the Council, including noting lengthy conversations with the person who wrote the letter. Both Brian Tannenbaum and Judge Levenson thought that the presentation was balanced.

Joel Silvershein raised a concern regarding meeting the time requirements of the Fla.R.Crim.P. 3.113. Brian Tannebaum explained the issue, and did not feel that there would be a problem with participants getting credit. Chairman Rothman also felt that there would not be a problem with the participants getting credit.

Masters of DUI is set for presentation in Fort Lauderdale on March 27.

Ken Swartz reported on the Advanced Federal Practice Seminar, which was run by Chairman Rothman. Highlighted was the first time that a federal judge, Judge Scola, was invited to speak. An additional highlight was a presentation by Ed Shohat and Ben Kuehne with their perspective on corruption cases, based on their recent case, and a U.S. Supreme Court update by Don Samuels. Chairman Rothman also noted that the program was not heavily attended, but was hoping that there would be good aftermarket sales.

Ken Swartz noted that federal prosecutors are staying in house for training, but that inviting a judge or a prosecutor might be an attraction for federal prosecutors to attend. Judge Levenson and Mac Heavener agreed with those facts, and that having a federal judge speak would be an incentive for federal prosecutors to attend.

Joel Silvershein stated that the Navigating Appellate Practice seminar, which was to be done with the Appellate Practice Section, would not be able to be presented this year, but would be planned for next year. Also, the “road show” concept was being discussed to have presentation in underserved areas, and to keep in contact with membership. Brian Tannebaum also added that a business development could be the subject of a mini-seminar.

#### **D. FEDERAL PRACTICE**

No report.

#### **E. LEGISLATIVE**

Bills regarding student loan forgiveness (exhibits four and five to the agenda) were discussed. A motion to support the bill was made by Judge Levenson, including a concern that the bill should include non-contract regional counsel. The proposal was seconded by Marty McDonnell, and passed by voice vote.

House Bill 139, requiring the advisory recommendation on a death sentence to be unanimous was discussed by Executive Council. A discussion was held as to the

possibilities of making a recommendation to the Bar regarding this proposed legislation. Abe Laeser noted that any vote on this issue would be truly divided based on the current imbalance on the Executive Council. A debate then occurred as to whether the judges on the Executive Council had the ability to vote on this issue. The straw vote was eventually postponed.

## **F. LONG RANGE PLANNING**

Judge Zayas re-emphasized the goals of relevance, diversity, and membership.

A long term goal is to have a showcase presentation for the 50<sup>th</sup> anniversary of the *Miranda* decision for the June, 2016 conference, similar to that of the *Gideon* showcase. Information is forthcoming, and the project is starting to get off the ground.

Discussion was held regarding being present at the Kozyak Minority Mentoring Picnic. Chairman Rothman suggested that the Council should make a \$1000 contribution and participate at the Kozyak Picnic. Abe Laeser made the motion, which was seconded by Judge Scaglione. The motion passed on voice vote.

Also noted by Judge Zayas was the importance on getting involved in other Bar committees and Bar sections. Networking with other parts of the Bar increases our relevance.

Finally, it was emphasized by Judge Zayas that it is important for Executive Council members to get section member involved in working on Criminal Law Section committees. Chairman Rothman mentioned that right before Bar dues that a communication should be made not only to members, but to state attorneys, public defenders and FACDL to encourage signing up for the section and participating on committees.

## **G. MEMBERSHIP**

David Barksdale noted that a list of members was compiled, and 1604 members did not renew over a two year period. It was also discussed as to having former chairs of the section automatically becoming permanent members of the Executive Council. Chairman Rothman added that such an action would open up seats on the Executive Council to younger members of the Section.

Jennifer Zedalis noted that in reviewing some members not renewing from the Gainesville area did so, because they retired.

Larry Turner suggested that the blast regarding membership be more broad, to encourage membership in the committee, but not to emphasize that one needed to be a member of the Criminal Law Section to be on a committee.

## **H. P/PD**

A motion was made by Larry Turner to approve the P/PD contract with the University of Florida. The motion was seconded by Susan Hugentugler, and passed by voice vote.

Jennifer Zedalis said to get in contact with her if you wanted to be a faculty member.

## **I. SELIG GOLDIN AWARD**

Harvey Sepler reported that the nomination process was on track. An article on the award would be published starting in the February 1, 2015 Florida Bar News. Letters were sent out to the FPAA,FPDA and FACDL regarding nomination, which need to be in by March 27.

## **J. WEBSITE**

Susan Hugentugler reported that the website was being revised to meet Bar requirements. Also, everyone on the Executive Council needs to provide a picture and biography for the webpage.

## **VIII. OLD BUSINESS**

None

## **IX. NEW BUSINESS**

Chairman Rothman opened a discussion on Exhibit eight of the agenda, which concerned an application by the National DUI College to have attorneys who passed their test and meet their qualifications to be able to be recognized as certified DUI lawyers in the State of Florida. BLSE requested the Section to comment on whether there should be a recognized subcategory of DUI certification, and, if so whether to have it certified by a national organization. If the answer to both questions is in the affirmative, then whether this organization is the one to do the approval.

Judge Scaglione reported that no practitioner or judge who he contacted supported this proposition. Judge Hersch commented on the proposal, the general issues regarding the proposal, and the flaws in the proposal.

Chairman Rothman noted that there are lawyers who do many DUI trials, but cannot be certified in Criminal Trial Law due to the lack of felony trials.

Ken Swartz commented that it was a good idea to have a sub specialty. Jeff Harris remarked that having a sub specialty dilutes the meaning of board certification.

Judge Hersch moved that the Chair inform BLSE that the form by the National College of DUI College is deficient. Unless the person takes a Florida exam, and otherwise

qualifies under Florida rules for certification, the application is deficient, and should be opposed. The motion was seconded by Harvey Sepler, and passed on voice vote. Chairman Rothman will write a letter to BLSE on this topic, explaining the reasons on why the application should be rejected.

**X. ADJOURNMENT**

Judge Levenson moved to adjourn, seconded by Judge Zayas. The motion passed on voice vote, and the meeting adjourned at 12:18 PM.