

**THE FLORIDA BAR  
CRIMINAL LAW SECTION  
EXECUTIVE COUNCIL MEETING  
TAMPA, FLORIDA  
SEPTEMBER 15, 2006**

**1. CALL TO ORDER**

Chair Less Hess called the meeting to order at 9:35 AM.

**2. ROLL CALL**

**Members Present:** Less Hess, Ann Finnell, Phyllis Kotey, Stan Blake, Jody Breece, Dedee Costello, Doug Duncan, Scott Fingerhut, Susan Hugentugler, Abe Laeser, Joseph Lewis, Sheryl Lowenthal, Clare Luten, Martin McDonnell, Donnie Murrell, Lisa Porter, Harvey Sepler, Ken Swartz, George Tragos, Bill Vose, Lisa Walsh, Mike Weatherby, Jennifer Zedalis.

**Members Absent:** Bruce Lyons, Tony Musto, Bob Dillinger, Carolyn Snurkowski (excused), Ivey Ginsberg, Calianne Lantz, Jeff Harris (excused), Jay Cohen (excused)

**3. MINUTES OF THE LAST MEETING**

The minutes of the last meeting were approved.

**4. REPORT/REMARKS BY THE CHAIR**

Mr. Hess began by announcing an ABA sponsored conference on disaster preparedness that will take place in New Orleans November 2-3.2006. He encouraged us all to become aware of the many facets of disaster preparedness necessary to insure the adequate functioning of the criminal justice system after a major catastrophic event such as a hurricane.

Mr. Hess then informed us that the Criminal Law Section will be celebrating its thirtieth anniversary in the coming year. The Section was founded in 1976 and its purpose is to encourage us all to do our jobs better. He reminded us that we do our jobs better when we treat each other better.

**5. TREASURER'S REPORT**

The treasurer, Carolyn Snurkowski was absent. In her place Connie Stewart reported that the Section has approximately \$230,000.00 in the bank. Of that money the Section owes approximately \$40,000.00 to honor its funding commitments for P/PD. Ms. Stewart also suggested that we approve an increase in budget line item 84205 "Section Service Program" which is the P/PD program. Last year it was funded for \$20,000.00. She suggested an increase to \$30,000.00 for the upcoming year. That increase was approved as the final item of business for the day.

**6. RULE 4-3.8 COMMITTEE REPORT**

Jodie Breece chaired a committee to review a proposed amendment to Rule 4-3.8. The proposed change articulated standards for prosecutors to follow in issuing a grand jury subpoena to an attorney. The committee report recommended that the proposed changes (based on a modified version of the ABA Model Rule) not be adopted as part of the Florida rules. A minority report

was filed urging the adoption of the amended rule. Vigorous debate followed. After thorough debate a motion was made to request the Board of Governors NOT re-submit the proposed rule change to the Supreme Court. The vote on that motion was eleven to nine in favor of the motion. Two members abstained. George Tragos moved that the BOG be informed of the motion as well as the vote count on the motion. That motion carried.

## **7. P/PD FUNDING REPORT**

Donnie Murrell gave a report concerning funding issues for the P/PD program. This year the program costs \$52,000.00 to put on. Funding for the program has always been an issue for the Section. Through the efforts of Dedee Costello, Tony Musto and others, an endowment in honor of Gerald Bennett was established at the UF to provide a permanent source of money for the program. The Section committed to funding the endowment over a period of years along with contributions from the State Attorneys Association, the Public Defenders Association, the Government Lawyers Section, the Young Lawyers Section, and any other contributor. Those commitments have expired and the Section has not taken the necessary steps to follow up with them. Approximately \$40,000.00 showing in the Section account should be transferred to the endowment to meet the Section's obligations. Mechanisms should be in place to see that the funding commitment continues to be met in the future.

Bill Vose moved that the Section transfer \$40,000.00 from our account to the Gerald Bennett Endowment Fund. That motion passed by unanimous voice vote.

The committee was charged with further study to 1) determine how much the Section might still owe to fulfill its obligation to the Endowment; and 2) see that our financial obligations are not ignored in the future.

## **8. WEB SITE REPORT**

Ann Finnell reported that our web site contractor is ill with cancer and no longer able to maintain our web site. Ann is interviewing new web services providers. We have \$4,000.00 in the budget for the web site. A motion was made and passed to allow the Executive Committee to approve a new web contractor within the \$4,000.00 budget. Ms. Finnell requested start-up money as may be necessary. Another motion was made and passed to allow the Executive Committee to approve start-up costs within their discretion.

## **9. P/PD REPORT**

Clare Luten reported on this year's P/PD seminar. She reported that the event went well and received high marks from those in attendance. She is working on developing a new problem for next year's class due to changes in Florida's self defense law. Consideration is also being given to providing lunch to the expert witnesses who volunteer their time to the program. The program date for next year is 7/27-8/3/07. The date conflicts with the Public Defenders annual meeting but was mandated by scheduling demands at the law school.

Abe Laeser commented on the lack of qualified faculty at this year's event. Ms. Luten felt that was partly due to a large number of last minute cancellations by experienced teachers. Instructor quality is an issue that will be watched in the future.

## **10. SELIG GOLDEN AWARD**

Scott Fingerhutt presented the proposed rule changes for the Selig Golden Award. His committee recommended a deadline for nominations of November 30th. Mr. Fingerhutt also suggested that no nominations be accepted from the floor and clarified the procedure for voting. George Tragos moved the adoption of the new procedures and that, if adopted, the new rules be attached to the minutes of this meeting. The motion passed. The new voting rules for the Selig Golden Award are attached as Item A to these minutes.

## **11. PROPOSED RULE OF DISCIPLINE 3-5.4**

Circuit Court Judge Peter Blanc (and Florida Bar President Hank Coxe) were present to discuss proposed rule 3-5.4 promulgated by the Supreme Court Commission on Professionalism. Judge Blanc informed the Section that the rule was intended to provide judges a mechanism to use to enforce professionalism standards that is short of the draconian measure of contempt. The proposed rule allows a judge to summarily fine a lawyer for a violation without the due process requirements of formal contempt proceedings. The fine does not, however, constitute a disciplinary action for Bar purposes—but can be considered in any future Bar action against the offending lawyer.

Abe Laeser and George Tragos joined together in a touching duet of bipartisanship to question both the need for, and the wisdom of, the proposed rule. After further debate a motion was made to oppose the proposed rule. That motion passed by a vote of 14 to 3. Doug Duncan abstained because he is a member of the Professionalism Committee.

At the request of President Coxe, a motion was made to have Chair Hess send a letter to the BOG explaining why our Section opposed the measure. That motion passed and Chairman Hess delegated drafting the letter to George Tragos. The letter needs to be to the BOG by the first week of October.

## **12. AMENDMENTS TO BOARD CERTIFICATION**

The Section was asked to consider amendments to Rule 6-8.1 governing certification for criminal trial lawyers. No member of the Board of Legal Specialization was present to explain/defend the proposed changes. The need for the changes seems to be aimed at lawyers who have previously been certified and then have difficulty obtaining the required number of jury trials before they must be re-certified. The changes appeared to loosen up the definitions of “trial” so as to allow easier compliance.

Abe Laeser moved that the “looser” definitions of trial contained in 6-8.2(d) should apply only to lawyers who are being re-certified and should not be used for initial certification. He maintained that for initial certification a trial should be defined as a trial to verdict. The motion passed 12 to 4. A motion was made to approve the remainder of Rule 6-8.1. That motion passed on voice vote.

## **13. THIRTY YEAR CELEBRATION**

Chairman Hess reminded us that the section will be celebrating its thirtieth birthday this year. In honor of the occasion he sought approval of \$5,000.00 for a party at the January meeting. A friendly amendment by Bill Vose to increase the amount to \$15,000.00 was defeated. The

measure passed by voice vote, \$5,000.00 was approved for the party, to be held the night of January 18, 2007 in Miami.

There being no further business the meeting was adjourned at 12:05 PM

Respectfully Submitted,

Donnie Murrell  
Secretary

## ITEM A

### Selig I. Goldin Memorial Award Selection Procedures

#### *Criteria for Selection*

At the Mid-year Meeting of the Executive Council of the Criminal Law Section of The Florida Bar, a candidate who has made outstanding contribution (s) to the criminal justice system of the State of Florida shall be selected to receive the Selig I. Goldin Memorial Award ("Award"). The Award shall be presented during the Criminal Law Section's luncheon at the Annual Meeting of The Florida Bar.

#### *Non-eligibility*

Current members of the Executive Council of the Criminal Law Section of The Florida Bar are ineligible to be selected for the Award.

#### *Administrator of the Selig I. Goldin Memorial Award*

A current member of the Executive Council of the Criminal Law Section of The Florida Bar shall be selected by the Executive Council to administer the solicitation and nomination process.

#### *Solicitation for Nominations*

Appropriate notice of the Award and solicitation for nominations shall begin in September each year. Notice shall include posting in The Florida Bar News and The Criminal Law Section Newsletter.

#### *Deadline*

The deadline for receipt of all nominations for the Award shall be November 30th of each year. No nominations are to be entertained after that date. Nominations from the floor at meetings of the Executive Council shall not be entertained.

#### *Notice to the Executive Council*

In December of each year, the Administrator shall transmit to the Executive Council of the Criminal Law Section of The Florida Bar -- usually along with the agenda for the Mid-year Meeting -- a list of all eligible candidates nominated for the Award, together with any biographical and supporting materials available.

#### *Voting Procedure*

All current members of the Executive Council of the Criminal Law Section of The Florida Bar