

**THE FLORIDA BAR  
CRIMINAL LAW SECTION  
EXECUTIVE COUNCIL MEETING  
TAMPA, FLORIDA  
SEPTEMBER 7, 2007**

1. **CALL TO ORDER**

Chair Ann Finnell called the meeting to order at 10:05 a.m.

**ROLL CALL**

Members present: Judge Stan Blake, Lewis Buzzell, Judge DeDee Costello, Doug Duncan, Scott Fingerhut, Ann Finnell, Jeff Harris, Less Hess, Susan Hugentugler, Calianne Lantz, Judge Joseph Lewis, Claire Luten, Marty McDonnell, Donnie Murrell, Richard Polin, Lisa Porter, Harvey Sepler, Kenneth Schwartz, Carolyn Snurkowski, George Tragos, Larry Turner, William Vose, Jennifer Zedalis

Also present: Connie Stewart, Melanie Hines, Kay Blanco, Sean Desmond (YLD Liason), Paul Zacks

Absent: Carol J. Breece, Judge Jay Cohen (excused), Bob Dillinger (excused), Theresa Flury, Ivy Ginsberg (excused), Hon. Phyllis Kotey, Abe Laeser (excused), Sheryl Lowenthal (excused), David Rothman (Board Liason), Lisa Walsh, Judge Michael Weatherby

**WELCOME**

The Chair welcomed three new members to the Executive Council: Richard Polin, Larry Turner, and Lewis Buzzell

2. **APPROVAL OF MINUTES**

Donnie Murrell's motion to approve the minutes of the last meeting was seconded by Less Hess, and the minutes were approved unanimously.

3. **TREASURER'S REPORT**

Connie Stewart presented the Treasurer's Report. Overall, the section did well. The income generated from CLE courses was \$41,306 actual vs. \$12,500 budget. The \$12,056 in section differential was attributable to increased revenue from non-section members. Employee travel expenses were over budget (\$1,496 actual vs. \$1,019 budget), due to a significant increase in the lodging expenses for the P/PD Seminar. Although there are some expenses still outstanding from the P/PD program, they are not expected to be significant. In October, work will begin on the new budget and the Budget Committee will present a report at the next meeting.

George Tragos' motion to approve the treasurer's report was seconded and approved, unanimously.

4. **OLD BUSINESS**

A. JAC Funding Resolution

Judge DeDee Costello and Judge Stan Blake addressed the problems in their Circuits in the aftermath of the JAC Funding Resolution and SB 1088 (creating the Regional Conflict Counsel offices)\* (\*See lengthy discussion of Conflict Counsel at section 5. H., at page 4.)

## B. NITA Training

Connie Stewart reported that the registration fee for the NITA Training Program increased from \$850 to \$1200, and the Section's [three] currently-authorized scholarships do not cover the registration fees and travel expenses.

The Chair announced the three section members, Lisa Porter, Donnie Murrell, and Joe Debelder, selected for the NITA Training scholarships. Less Hess' motion to authorize three NITA training scholarships, in the amount of \$2,500 each, was seconded and approved, unanimously.

## 5. REPORTS OF STANDING COMMITTEES

### A. Communications

Connie Stewart asked members submit newsletter articles to Ivy Ginsberg. Last year, only two issues of the newsletter were published, rather than the scheduled four.

### B. Education/CLE

Scott Fingerhut announced the three upcoming CLE seminars: DUI, Advanced Federal and Criminal Law update.

Ethics Seminar/Booklet: The Chair asked Scott Fingerhut, Doug Duncan and Richard Polin to update the Ethics booklet originally prepared by Doug Duncan on Improper Closing Arguments, for distribution to prosecutors and public defenders. The Chair suggested that law school students may be able to assist with updating the booklet, and Scott will find out if community service hours are available for their assistance. Connie Stewart reported that the printing costs are anticipated to be approximately \$5.00 per booklet.

### C. Long Range Planning

Judge Joe Lewis: No report at this time.

### D. P/PD Program

Chair Ann Finnell congratulated Paul Zacks and thanked the P/PD committee for their outstanding work at the P/PD program. Co-chair Paul Zacks also recognized and expressed thanks to Claire Luten (who organized the program and assembled the faculty), Jennifer Zedalis (who coordinated the program at UF and secured additional experts), Connie Stewart (who assisted after Colleen Flanagan retired), and to Phyllis Kotey and George Tragos, who attended and evaluated the program. The student evaluations were very positive -- they averaged 6.5 on a 7 point scale.

To reduce the expenses for the P/PD program, Paul Zacks recommended contracting with another hotel and reducing the program by one day. In response to the concern that there were a lot of private practitioners who participated in the P/PD program, but not a lot of public defenders, Paul Zacks contacted Public Defender Carey Haughwout, who agreed to speak at the program next year.

Jennifer Zedalis reported that the P/PD program's AV equipment is outdated, that new DVD equipment is needed (for 8 TV's and 8 recorders at \$100 each), and the

costs can be shared with the Trial Lawyers Association.

George Tragos' motion to authorize a \$1,000 expenditure toward the purchase of new recording equipment, for the P/PD program, was seconded by Less Hess and passed, unanimously.

The Chair announced receipt of a \$10,000 check from the FPAA and a \$5,000 check from the FACDL for the P/PD endowment fund.\* (\*See, P/PD Endowment Fundraising report, section 7. A., at page 6) Claire Luten expressed her appreciation to Paul Zacks, Donnie Murrell, and to Jennifer Zedalis, who also recognized Claire for assembling the outstanding faculty for the program.

#### E. Selig Golden Award

Harvey Sepler announced that the committee will have a report in January. Connie Stewart confirmed that the deadline for nominations is late December, and this will be announced in the Florida Bar News and on the website.

#### F. Membership

Lisa Porter reported that there were 879 non-renewals to the Section (of approximately 2300 members). Connie Stewart reported that this is not unusual. Between 600 - 900 members usually do not rejoin with their annual bar dues payment. Letters are sent to each of these attorneys, and about half of these "non-renewals" generally rejoin the Section and pay their dues directly.

Lisa Porter also contacted Sean Desmond, YLD Liason, and Sean agreed to assist with membership recruitment.

#### G. P/PD Advisory Committee

Oversight committee member George Tragos reported favorably on the P/PD program and also submitted a detailed letter to the Chair incorporating his comments and evaluation. (4-page letter of August 23, 2007, attached).

#### H. Conflict Counsel

Judge Stan Blake reported that the Regional Conflict Counsel appointees are scheduled to begin on October 1<sup>st</sup>, but most likely will not start until January. The program, which covers all criminal, dependency, guardianship, and Jimmy Ryce Act cases, appears to be drastically underfunded. Carolyn Snurkowski reported that a lawsuit may be pending in Sarasota, seeking to require the counties to provide office space, phones, etc. Jeff Harris also announced that the FACDL also has a sub-committee looking into potential legal action.

Judge DeDee Costello reported that there are only two lawyers willing to take conflict cases in her Circuit, and no one is willing to sign a contract because of the flat fee. Judge Blake reported that only one person signed up to handle Ryce cases in all of Miami-Dade County. Bill Vose suggested that the Section and Florida Bar join any lawsuit and urge the legislature to adopt a system that adequately funds the program.

The Committee members, appointed by their respective districts to address the

“Conflict Counsel” concerns and issues, are: Carolyn Snurkowski (1<sup>st</sup>), Bob Dillinger (2<sup>nd</sup>), Judge Blake (3<sup>rd</sup>), Jeff Harris (4<sup>th</sup>) and Judge Jay Cohen (5<sup>th</sup>). Judge Blake agreed to send a letter on the Committee’s behalf, as part of a joint effort to oversee the Conflict Counsel program; however, Judge Blake must abstain from any vote because this matter may come before him in litigation. Also, Carolyn Snurkowski must abstain from any vote due to the possibility of litigation.

Following a lengthy discussion, George Tragos’ motion – that the Committee examine the Conflict Counsel issue and report back to the Executive Council with a recommendation for action by the Criminal Law Section – was seconded by Jeff Harris; and, with two members abstaining, the motion passed unanimously.

#### I. Capital Cases

Lewis Buzzell reported that this new committee on Capital Cases will present a report at the next meeting. The Executive Council members who have volunteered to help with this committee are: Abe Laeser, Carolyn Snurkowski, and Scott Fingerhut.

### 6. LIASON REPORTS

#### A. Criminal Procedure Rules

Scott Fingerhut reported that the Criminal Procedure Rules Committee received an e-mail from Judge Eaton urging revision of the 1<sup>st</sup> Appearance Rule (Rule 3.130, to require that both the state attorney and the public defender or their designated assistant be present at all First Appearance hearings) and Donnie Murrell referred this matter to the Criminal Procedure Rules Committee.

Following discussion, George Tragos’ motion – to support the concept of requiring that both a prosecutor and a public defender be present at every First Appearance Hearing and to report the Section’s support of this concept to the Criminal Procedure Rules Committee – was seconded by Donnie Murrell; and, with one abstention, passed unanimously. Scott Fingerhut will report the Section’s endorsement to the Criminal Procedure Rules Committee.

Scott Fingerhut also reported that changes to Rule 3.790, based on the Anti-Murder Act, are on hold temporarily.

#### B. Criminal Jury Instructions

No report. (Judge Weatherby absent)

#### C. Appellate Rules Committee

Calianne Lantz reported on two referrals to the Appellate Rules Committee. The first, from Angie Zayas at the Miami-Dade SAO, concerned the standard of review from the summary grant of a Rule 3 post-conviction motion. This appeared to be an isolated incident and no action was recommended. The second referral, from the Florida Supreme Court, concerned the record on appeal in post-conviction cases. A sub-committee will begin working on the proposals, and this sub-committee includes David Gemmer, from CCRC-Middle, and Carol Dittmar, from the AG’s Office,

Capital Appeals Division.

7. ADDITIONAL BUSINESS

A. P/PD Program Endowment Fundraising

Lisa Porter reported that \$45,000 is still needed to reach the \$100,000 in matching grant funds from the Florida Bar Foundation. The Florida Bar Foundation will match funds in increments of \$10,000. If anyone receives a check for the P/PD program endowment, please photocopy the check and send a transmittal letter to Lisa Porter so that she may track the contributions and notify the Florida Bar Foundation for matching funds. Suggestions for adding to the P/PD endowment fund include soliciting funds from prior attendees of the P/PD program, having Section members contact other criminal law practitioners, seeking sponsorship funds from major law firms, and recognizing financial contributions to the P/PD endowment (via a brochure, booklet, newsletter, or website). The Chair referred this matter -- determining the appropriate recognition for financial contributions to P/PD endowment fund -- to the Communications/Website Committee.

B. Privacy of Court Records

Larry Turner reported that the Section may receive a request from the Committee addressing the privacy of court records and resulting changes to the court rules and rules of evidence. When this request is received, the Chair will refer this matter to the appropriate sub-committee (probably the Education/Ethics Committee chaired by Scott Fingerhut).

George Tragos reported that the Judicial Rules Committee is drafting a rule on the confidentiality of records and addressing re-evaluation every 120 days. Bill Vose also reported that the Criminal Procedure Rules Committee submitted a proposed rule to the Judicial Rules Committee.

The next meeting will be held at 10:00 a.m., January 18, 2008, in Miami.

The meeting was adjourned at 11:42 a.m.