

**The Florida Bar – Criminal Law Section
Executive Council Meeting
September 12, 2008
Tampa Airport Marriott**

I. CALL TO ORDER

The meeting was called to order at 9:00 am by the Chair, Donnie Murrell.

ROLL CALL

Roll was called by Secretary Sheryl Lowenthal.

Members present: Lewis Buzzell, Robert Dillinger, Douglas Duncan, Scott Fingerhut, Jeffrey Harris, Richard Hersch, Les Hess, Susan Hugentugler, Cynthia Imperato, Calianne Lantz, Sheryl Lowenthal, Martin McDonnell, Donnie Murrell, Lisa Porter, Harvey Sepler, Joel Silvershein, Carolyn Snurkowski, Brian Tannebaum, George Tragos, Larry Turner, William Vose, Paul Zacks, Jennifer Zedalis, David Rothman, Claire Luten

Excused absences: Stanford Blake, Dedee Costello, Ann Finnell, Abe Laeser, Richard Polin, Kenneth Swartz, Lisa Walsh, Michael Weatherby

Not Present: Dennis Kainen (Board Liaison), Sean Desmond (YLD Liaison)

II. APPROVAL OF MINUTES

Vice Chair Carolyn Snurkowski moved to approve the minutes of the June meeting. The motion was seconded.

Lisa Porter suggested two grammar changes to the minutes: add the word “to,” and insert a period rather than a comma. The changes were adopted and approved unanimously, as amended.

III. TREASURER’S REPORT

Treasurer Lisa Walsh reported that the Section has \$314,641.00.

IV. REPORTS OF STANDING COMMITTEES

A. **Communications - Newsletter**

Carolyn Snurkowski discussed the newsletter. The Chair will have a statement in the newsletter. Carolyn needs articles. Please call Carolyn if you have an article for the newsletter - 850-414-3566. There are a lot of important current issues that would make good articles. Also, the Section is losing members. We need to make the newsletter

meaningful and important. Bill Vose suggested that Carolyn contact LA Wolcott who works for FDAA, to solicit articles from him.

Lisa Porter motioned to discontinue the paper-and-mailed newsletter – provide it on line - get a website company – pay them to maintain the website – sunset mailing a paper newsletter - use that money to pay a website company. Second by Cynthia Imperato.

Discussion followed: Tragos suggested we not be hasty, and further stated that the law libraries keep our newsletter with periodicals and judges get hard copies; we'll lose the good-will - we send them to people who aren't members of the section - it's good advertising – to discontinue all paper copies could be a mistake. Let's not cut out all paper copies. Paige Graham clarified to the Council that we only send the Criminal Law Journal to section members. Tragos followed by suggesting that we send the newsletter to law libraries and judges, that it's a great marketing tool and important for those without email. A suggestion was made to not discontinue the hard-copy until website is up and running – it's too soon.

A motion was brought forward again to do away with the paper newsletter. The motion was denied.

Discussion continued. The following recommendations were made:

- A subcommittee should decide whether to do away with the newsletter and pay for a web host. The subcommittee should consider that we need to plan to send newsletter to law libraries and judges. Lisa Porter stated that it won't accomplish anything to help the section.
- The website needs to be improved.
- Send email blasts to the membership – send out newsletter – case updates – we need visibility for our members – they want something for their \$25.00 – more communication with the members. Provide services to them electronically.
- Doug Duncan is appointed Website Chair for this year. Richard Hersch will be on the committee.
- There will be a newsletter – Murrell will send “Messages from the Chair” to let everyone know we're here – maybe we'll send out the minutes (these long ponderous minutes?)

A motion was brought by Carolyn to authorize \$5,000 to set-up, and \$5,000 a year to maintain the Website. The motion was seconded and passed unanimously.

B. Education/CLE

Scott Fingerhut told us that we have our four standard programs – January Advanced Federal Criminal Practice; and Masters of DUI. Scott tried to contact the Program Chair

of DUI to remind him very gently to keep his speaker expenses within the allotted amounts, and no extras. The Program Chair did not return Scott's calls.

In March 2009, Advanced Evidence co-sponsored with the Trial Lawyers Section. This year our Section will have more participation in this program than in the past.

The 2009 Criminal Law Update will be in the spring – probably in April.

Scott suggests that we plan an ethics CLE program that would be presented in cities other than Miami and Tampa, to show our members that we are doing something for them. (Chair Murrell introduced Paige Graham, our new Section Administrator.) The Ethics seminar was Paige's idea. Since we have the same seminars every year, she thought that it might be nice to try something new for a change – everybody agreed that it is a great idea – and something that our membership would enjoy and find useful.

- Bill Vose suggested that we present the ethics program free, in different parts of the state with local judges. We could introduce new lawyers to the Criminal Law Section, and have them join the Section.

- Lisa Porter suggested a computer-based Webinar – watch it right in your own office on your computer, get ethics credit – it's easier – and join the Section after watching the seminar.

- George Tragos thought that it's better to have a live program, meet people, get together, give a coupon with the seminar for next year's Section dues. Perhaps coordinate the seminar with some other local event, so there would be more people there to attend.

We could put together one program, and send it around the state – present the same ethics program in several different cities – at no cost to Section members – a thank you for our members. Free for members, a discount if you join the Section, and charge a fee for non-members. Lisa Porter suggested to present the program once, then put it on the web.

C. The PPD Program

A number of students received scholarships. As a result we had almost as many students as every other year. There were 72 students this August. The program was successful. Next year, one day will be eliminated. This will result in significant savings. The final numbers are not in yet, but there were cost-control measures used this year. The preliminary evaluations showed that the program was excellent. Rating teachers, facility, format, and topics, on a scale of 1 to 7, with 7 the highest, the scores were uniformly 6's. The student comments overall were very positive. Students made some good suggestions. The Brits suggested what we could do better.

George Tragos said that there will be changes next year. Jeff Harris said that it was his first year – was very well done, and well organized. Kudos to Paul Zacks, Jennifer Zedalis, and Claire Lutten.

Paul mentioned that you could see a big difference in the students from the beginning of the week, and at the end of the program.

D. PPD Funding

Brian Tannebaum sent a letter asking for funds for the Endowment, to civil lawyers; explained how important it is. He received money from civil lawyers – along with nice letters from lawyers who didn't know about the program, but were happy to learn of it. We're now at \$12,000.00. One civil trust and estate lawyer from Naples sent \$1,000.00.

E. PPD Advisory – No Report.

F. Selig Goldin Award

Harvey Sepler had no report yet. A letter is going out soon requesting nominations. The deadline will be November 30th. We need diversity. Also, we need more people to attend the luncheon. It is not nice for the award winner, and looks bad for the Section to have a small turnout at the annual award luncheon. Discuss ways to bring more people – have a dinner; have a keynote speaker; a joint luncheon with another section/group. The problem, of course, is that there are so many other activities going on at The Florida Bar Annual Meeting in June.

The Chair will appoint a small committee to explore possible changes in presenting the Selig Goldin Award to have a better turnout.

G. Membership

The Section lost 1,000 members last year. We lose about the same number every year. We give free memberships to new lawyers, and they don't re-join. We're down to 2,600 members – we've been up to as many as 3,800. Paige says that all sections of TFB lost from 17% to 25% of their members.

Lisa says we have to make it easier to join. The annual dues statement makes you opt in, rather than opt out – maybe TFB will change the dues statement. The ABA adds it in, and if you don't want a section you have to opt out. Also, you have to pay by check – can't just pay by credit card. We have to make it easier to pay section dues.

Carolyn Snurkowski indicated that government lawyers did that – people were angry. There was discussion by council members that people want something for their money for joining the section (seminars, newsletter) and it was suggested that we send out something to show what they get for being a member of the section. Discussions continued that losing a large number of members is a big problem and we have to educate the lawyers who we are and what we do. Donnie stated the ethics CLE would be a great outreach program for new and for existing members. We should thank people for joining and send a thank-you letter, maybe by email. Brian Tannebaum suggested that we should

let everybody in the criminal justice system know about our lobbyist – we’re trying to help everybody – they all should join the section (defenders, prosecutors, judges, everybody). Harvey Sepler suggested we offer free case law summaries a la FLW.

Tragos – Motion: To petition TFB to change its policy on the annual dues statements to require an opt-out of section dues, rather than opt-in – seconded and passed unanimously.

V. LEGISLATIVE ISSUES

A. **Budget Summit Update**

The Chair advised the Council that the Criminal Law Section invited representatives from all areas of the criminal justice system to come to Tallahassee to participate in a discussion regarding the court budget crisis – including prosecutors, public defenders, judges (circuit, district and Supreme Court), sheriffs, the Department of Corrections, the Office of the Court Administrator, the JAC and the Offices of Regional Counsel. The first meeting was in July. The turnout was impressive. They spent about three hours discussing possible solutions. There was an article in the Florida Bar News.

The plan is to get all of the “players” to work together to determine just how much money is needed to run the criminal justice system. Chair Murrell has been in touch with the ABA, and Bob Spangenberg (sp?) from MA, an expert in Criminal Justice Studies, to help turn the numbers into an articulable plan. The ABA will assist with this project to allow us to go to The Florida Bar and the Florida legislature with suggestions. The next meeting will be held at The Florida Bar headquarters in Tallahassee.

We hope to get The Florida Bar on board with lobbying. This will work best if it is a joint effort with every part of the system represented and working together.

B. **Lobbyist Contract**

George Tragos reported that the *ad hoc* committee (or Blue Ribbon Committee) on the selection of a lobbyist for the Criminal Law Section has submitted a report, and recommended a lobbyist: **Rod Smith** is the most likely candidate due to his background. He is well-qualified, well-connected, interested in representing the Section, he would be a great person to be our lobbyist, and he will accept a reasonable fee that the Section can afford. His lobbying on behalf of the Criminal Law Section would be limited to one issue only - **criminal justice funding** – no other issues.

Tragos moved to approve Rod Smith to be the Criminal Law Section lobbyist, for a fee of \$10,000. The motion was seconded by Larry Turner. There was an inquiry about Smith’s other clients – his only other client is Shands Childrens Hospital – no conflict there. Motion amended to add that lobbying will be limited to criminal justice funding. The Council voted unanimously.

This was a precedent-setting vote – the first time the Criminal Law Section has hired a lobbyist. Our lobbyist will support The Florida Bar Board of Governors’ lobbyist and will enhance our presence in Tallahassee. Of course, the Board of Governors will have to give its approval, but David Rothman said that the BOG can do it by Executive Committee – possibly today. Rothman explained that this is bipartisan – both sides, prosecution and defense approve, which improves our chances of being heard and getting good results. It is important for this Executive Council of the Criminal Law Section to go to Tallahassee and make our voices heard.

Chair Murrell also suggested that we also need to broaden our request for help in this crisis by educating civil trial lawyers. We have to explain to them that this budget crisis will have a detrimental effect on their system. They won’t be able to get cases to trial either.

VI. LIAISON REPORTS

A. **Criminal Procedures Rules**

There’s a meeting at 2:00 today - Criminal Procedure Rules – issues to be discussed include (1) privacy on the dockets and (2) funding.

B. **Criminal Jury Instructions**

In Judge Weatherby’s absence, Carolyn Snurkowski reported the committee is working hard. If anyone has a concern regarding jury instructions, contact the committee, and it will be addressed. Doug Duncan suggests that the self defense instruction needs work.

Bob Dillinger stated the Supreme Court has put current jury instructions on line and we should put a link on our website.

C. **YLD – No Report.**

VII. OLD BUSINESS

A. **Revised Proposal on Attorney-Client Privilege - No action was taken.**

OTHER ISSUES

1. Doug Duncan is in the process of editing the Closing Argument Manual. It was discussed whether we should send by print/paper and mail, by e-mail, or both? Perhaps we should announce it in the newsletter – or put it into the newsletter. It was suggested that it should be mailed to the members of the judiciary.
2. Donnie Murrell received an email from a Boca attorney suggesting that we set up a White Collar Crime Committee. He received no response from the Council. No action was taken.

3. Donnie was contacted by Miami-Dade Association of Retarded Citizens asking for the Section to sponsor an event honoring Bennett Brummer. The Executive Council decided not to sponsor the event.
4. Lexis Nexis wants to sponsor a seminar on cross-examination. Perhaps we should ask if they'd like to sponsor our ethics CLE? Tragos suggested that we contact Lexis-Nexis or Westlaw to co-sponsor the PPD program; that would be the answer to our biggest problem.
5. Bob Dillinger discussed the Ethics opinion 90-06 regarding use of alias by a defendant. It is set for oral argument before the BOG in September. Murrell filed objections to the proposed revision and attended the meeting in Boca. Committee members were frustrated because they weren't expecting opposition. After the Cox decision from Tampa, they voted 1-8 to revise the rule. Murrell filed a notice of appeal and written objections and others joined - Dillinger, Russell Smith, and Harris filed on behalf of FACDL.

The meeting was adjourned at 11:15 a.m.

Sheryl J. Lowenthal

Secretary

Minutes Prepared on September 13, 2008