

**The Florida Bar
Criminal Law Section
September 2010 Meeting
Orlando, Florida**

Minutes

1. The meeting was called to order at 9:12 a.m.
2. Attendance:
 - Present in Orlando (see attached sign-in sheet)
 - Present via phone: Mr. Swartz, Mr. Polin, and Mr. Rothman; joined during meeting by Mr. Laeser
3. Previous meeting's minutes were approved (upon motion by Ms. Snurkowski, as seconded by Judge Blake)
4. Treasurer's Report (by Ms. Hugentugler)
 - Section balance presently at \$306,411.00
 - Final budget is due this December
 - A preliminary budget will be distributed for vote via email mid-October
 - The section discussed the \$10,000.00 disbursement for a lobbyist; Mr. Hess suggested we continue this expenditure; Mr. Tragos commented that Jim Smith had given the Section a "real deal," and that, probably, \$10,000.00 will not buy as much in the future; further discussion by Judge Blake and Mr. Buzzell, along with Mr. Rothman, who supports further retention
 - Mr. Silvershein raised the issue of retirement and government employees
 - PPD reported in at this time (by Ms. Zedalis); discussion regarding an additional \$500.00 honorarium for the QC; discussion by Mr. Murell, Mr. Tragos, Mr. Sepler, and the Chair, Ms. Lowenthal; currently the QC received \$2,300.00 for expenses; per Ms. Graham, the Trial Lawyers Section pays \$2,100.00, without complaint; per Ms. Graham, our Section pays \$3,200.00 (in that we also pay tax overseas); per Ms. Graham, the QC was reimbursed separately for food; the Chair advised we will get more information and then e-vote
5. Committee and Liaison Assignments – the Chair advised that anyone with a question or comment should contact her
6. Committee Reports
 - Budget: No further report

- Capital Cases: No report
- Long-Range Planning (by Mr. Tragos): The following issues were raised, to narrow the focus for future discussions/planning:
 - Membership: To include: What to offer, a newsletter, our web site (with the possibility of the Section Chair-Elect serving as editor), and an effective email tree/email blasts
 - Annual Meeting: To include: The luncheon (its format; and whether to offer a joint venture) and how awards are given
 - PPD: Determined this was to be left to the PPD Committee
 - Discussion was had by Ms. Snurkoswki (whether to have an annual retreat, to “really” discuss issues), Ms. Lantz (suggesting a mini-retreat, at Bar meetings, with Mr. Sandridge of the Appellate Section as a possible contact), and Mr. Sepler (agreeing that mini-retreats work very well, that we can serve lunch, and that no facilitator is necessarily needed)
- CLE (by Mr. Fingerhut and co.)
 - Showcase at Annual Meeting (issue raised by Ms. Lantz; the committee is to work on a proposal by the December deadline)
 - Appellate Seminar (co-sponsored with the Appellate Section) to be planned for Spring 2011 (by Ms. Lantz)
 - Mental Health Seminar (by Ms. Zedalis)
 - Advanced Federal Practice is to be held in January 2011 (by Mr. Swartz)
 - Highlighted our Constitution Project Panel Discussion the day before (by Mr. Fingerhut)
 - More projects are “in the works” with the Committee (including one related to the work being performed by the newly-formed Innocence Commission, as well as “traveling CLEs” – distinct from the ethics and professionalism “roadshow” – to, among other purposes, ask of membership concerns; specific targeting of CLEs to government lawyers, wherever welcome)
 - Mr. Fingerhut asked for advice and input and assistance from all Section members
- Communications/Web Site (by Mr. Polin)
 - Attempting to revive our quarterly journal
 - Called for contributions to the journal
 - Regarding our Constitution Project Panel Discussion, the Chair stated we would submit the same for inclusion in the journal and *The Bar News* (per Mr. Tragos)
 - Discussion was had regarding whether to give free memberships to SAs and PDs (by Ms. Snurkowski)

- By Ms. Graham: Our Section web site is hosted by Applied Solution, at \$80/hour
- Discussion was had as to whether to add conflict counsel information to our web site and newsletter (by Judge Blake and Mr. Buzzell, who will meet to further discuss this issue and prepare any information for the Section)
- As for email blasts, Ms. Graham represented that we need permission/approval from The Bar, and that process takes approximately one week; there may also be federal regulations to comply with (with comments by Mr. Harris, Mr. Vose, Mr. Tragos, and Judge Porter)
- Mr. Sepler discussed our newsletter and whether to orchestrate it to appeal to SAs, PDs, and Ags

- Legislative: No report
- Selig Golden (by Mr. Sepler)
 - Brief discussion was had regarding by when voting will need to be conducted
- Conflict Counsel (by Judge Blake)
 - Brief discussion was had

7. Liaison Reports

- Appellate (by Ms. Lantz): No report
- Criminal Procedure Rules (by Mr. Duncan): No report
- Rules of Evidence (by Mr. Silvershein): No report other than to state that committee is to meet this afternoon; further mention made of the Bar Dues "issue," with Mr. Rothman representing he supports the Section and that he would bring the matter up at the next BOG meeting approximately a week from today
- Juvenile Rules (by Mr. Silvershein): No report other than to state that this committee met yesterday
- Rules of Judicial Administration (by Mr. Tragos)
 - Brief discussion was had regarding the relationship between the Florida Supreme Court and this committee
 - Discussion was also had regarding the RJA's prospective ban of the use of electronic devices (PDAs, *etc.*) in the courtroom, subject to individual judges' exemptions; that the "ingress/egress"

issue was defeated 16-10 in the RJA Committee; with further comments made by Mr. Hess (stressing the importance of the use of email from the courtroom in order to coordinate witness appearances), Ms. Zayas (encouraging the Section to speak up, and noting that her unit gives legal advice to prosecutors in court via laptop), and Mr. Vose (commenting that he believed the Florida Supreme Court was encouraging that we go wireless and paperless)

-- Judge Blake then moved that the Section's Executive Committee write a letter to the RJA Committee, stating that we oppose the proposed rule, and asking that local judges be provided an option to "opt out" of the rule if passed; seconded by Ms. Hugentugler – the motion then passed unanimously, with Mr. Tragos' further comment that we should make the letter detailed, that perhaps a prosecutor should write it, and that we should include therein that the Section vote was unanimous; it was then determined that Ms. Zayas and the Chair would write the letter; Mr. Hersch commented that perhaps the issue with the RJA Committee is how electronic devices may interfere with courtroom recording

-- Young Lawyers: No report

8. The E-Filing Rule (by Mr. Duncan)

-- Discussion was had regarding the meeting of the RJA Committee and its proposed rule; the exemption requested by the Traffic and Criminal Procedure Rules Committees; the concern over whether the Florida Supreme Court will indeed agree with blanket exemptions; that letters in support are "on the way" from the FPAA, FPDA, and law enforcement (with FACDL already chiming in); in sum, this Section needs the Court to continue the exemption that has been proposed

-- Upon request by Mr. Duncan, motion was made (by Mr. Hess) for our Section to "chime in" as well; the motion was seconded (by Mr. Harris); Mr. Tragos stated that we should write a letter now, and file a pleading later in the Court – a friendly amendment which was accepted by Mr. Hess, and seconded by Mr. Buzzell: The motion, as amended, carried unanimously

9. Membership

-- We have lost 941 members

-- This parallels the loss of membership in the Trial Lawyers Section

-- Presently we have approximately 2,000 members

-- Discussion was then had on how to retain/recruit members (by Ms. Zedalis, Ms. Lantz, Judge Porter, Ms. Zayas, Ms. Hugentugler, Mr. Silvershein, Ms. Snurkowski, and Mr. Buzzell)

-- Discussion was also had regarding the effectiveness of the "dropped

- members" letter that was sent out
- Ms. Zedalis impressed that "what we do" – which cannot be "for private lawyers" only – must be incorporated with the Long Range Planning Committee's work
- Discussion was had about the importance of high-ranking prosecutorial presence in the Section (by Ms. Lantz); about how people confuse "The Bar" with the Section, and what the Section does (by Ms. Hugentugler); that we are either going to be part of the problem or part of the solution, and that the Section needs to be, as best as it is able, "the voice" of Section members (by Mr. Silvershein); about how we need to reach out to government lawyers in ways other than CLE, and that our Executive Council members who serve in various government offices must push for things on the Section's behalf (by Ms. Snurkowski); that our marketing of ourselves must improve (by Mr. Buzzell); and that we should imply ask the membership what it wants us to do for them (by Ms. Zayas)
- The Chair commented that of the \$25.00 in Section dues, the Section receives but \$7.50 thereof
- The specter of this being an "integrated Bar issue" was discussed (*i.e.*, "who do you want overseeing you?")
- An email a month would improve membership (by Mr. Murrell)
- The matter of Mr. Murrell's glance at Ms. Zedalis was tabled

10. Legislative Issues (by Mr. Murrell)

- Reminiscences were had regarding the budget meetings two years ago, that The Bar's attention was had, and that, it helped; that last year, the Section hired Rod Smith, and that helped too
- Of late, though, we have been falling off
- And the problem is money
- Mr. Murrell stated that we need to "get back into the fight" and "regain momentum" – by thinking long-range
- Mr. Murrell discussed forming a committee to look at court system funding, long-range – not to reinvent the wheel, but to "get folks together who've fought on their own and coordinate the effort"
- Section members are to let Mr. Murrell know if they want to serve

11. Old Business: No matters presented

12. New Business

- Discussion was had whether to host a reception at the Annual Meeting in June (and whether to use the same as a membership drive as well)
- Comments were made by Ms. Zedalis (stressing the importance of the Section's needing to "share a professional identity") and Mr. Fingerhut (and the perception problem with "the divide")

- Mr. Tragos then moved that the Executive Committee have the authority to spend additional funds if necessary vis-a-vis the Annual Meeting; the motion was seconded by Ms. Lantz – with the resulting vote of 12 Y and 10 N
 - Mr. Vose suggested that we “bus in” SAs and PDs
 - Innocence Commission (by Ms. Snurkowski)
 - Report was made regarding testimony taken recently in Tallahassee, that the Commission is a two-year project, with organized meetings every 60-90 days, that cases are reviewed for four categories (misidentification, jailhouse confessions, false confessions, and scientific evidence deficiency), and that 12 cases have been identified thus far
 - Emphasis was also made that the perception of The Bar should not be that prosecutors purposefully convict innocent people
13. With no further business to be had, the meeting was adjourned at 11:33 a.m.

Respectfully submitted,

H. SCOTT FINGERHUT
Secretary