

**Criminal Law Section - Executive Council Meeting**  
**September 21, 2012**  
**Lake Buena Vista Palace - Orlando, Florida**

**Minutes**

1. The meeting was called to order at 9:20 a.m.

**Attendance** - Present were the following ("t" denotes by telephone): **Council members** Scott Fingerhut, Susan Hugentugler, David Rothman, Hon. Angelica Zayas, Martin McDonnell (t), Hon. Lisa Porter (t), David Barksdale, Hon. Stan Blake (t), Hon Richard Hersch, Les Hess, Hon. Cynthia Imperato (t), Abraham Laeser (t), Calianne Lantz, Sheryl Lowenthal, Donnie Murrell, Jr., Richard Polin (t), Hon. Donald Scaglione, Harvey Sepler (t), Joel Silvershein, James Smith III, Ken Swartz (t), Brian Tannebaum, George Tragos, Larry Turner, William Vose, Hon. Samantha Ward, Paul Zacks (t), Jennifer Zedalis. **Also present were:** Florida Bar President Gwynne Young, Board of Governors members Renee Suskauer (Board Liaison) and Greg Coleman, Eugene Sherman, TFB Staff, and Messrs. Garcia and Freeman, St. Thomas law students/members of Law Review.

Absent were: Excused - Jeffrey Harris and Carolyn Snurkowski; and Hon. Robert Dillinger

2. Judge Blake moved approval of the meeting minutes for June 22, 2012, Joel Silvershein seconded and with one accepted amendment correcting attendance, the motion passed.

3. The Chair recognized The Florida Bar President Young, who spoke about two of her main interests this year: strong support, including education for non-lawyers and lawyers alike, for merit selection/retention and funding for lawyers for the poor, including public defenders. President Young, who mentioned she started her legal career as a prosecutor, thanked us for our good work.

4. The Chair then introduced Mr. Eugene Sherman as new staff liaison and thanked Paige for her work with and for us. Mr. Sherman expressed his interest in working with our section. Following his brief remarks, it was noted Mr. Sherman possesses a sense of humor.

5. BoG Liaison Michelle Suskauer was invited to make remarks. She began by saying she is available to us. Thankfully, no one made any rude or inappropriate comments. Ms. Suskauer informed us the nonrefundable fees issue was resolved by the Board consistent with the position of the organized defense bar. She described the move to do away with nonrefundable fees "done and gone." Changing gears, Ms. Suskauer mentioned that sections can have their own Facebook page, but cannot receive comments. She reminded us of the fact The Florida Bar, with few exceptions, treats its records as public records. Ms. Suskauer also encouraged us to fight apathy on the subject of merit retention and told us The Florida Bar has voter guides to assist us. She informed us the Annual Convention will be in Boca Raton in 2013 and that she is chairing it. She mentioned that Eleventh Circuit Public Defense Carlos Martinez has discussed with her a presentation at the Annual on the 50th anniversary of Gideon. She spoke about sponsorships. In closing, Ms. Suskauer remarked that we need to "beef up" membership, that we need to include and invite all public defenders and state attorneys, and that she appreciated all we do.

6. **Treasurer's Report** - Mr. Sherman and Treasurer Zayas reported the Section is financially healthy but we must address the falling membership number issue.
  
7. **Committee Reports** (note: The Chair said he soon will be making appointments to the standing committees as well as his new special committees.) The following committee reports were made:
  - A. **Capital Cases** - Judge Ward spoke about this. She gave both sides of the argument on qualifications, that being too restrictive means only a few lawyers would be qualified and thus the pool would be too small and that being less restrictive could mean the approval of unqualified lawyers. Judge Ward said the issue is before the Criminal Rules committee, but not yet at the stage of a proposed Rule.
  
  - B. **CLE** - Our Chair reported that Thursday's program on post conviction relief was terrific. Judge Zayas said there were 32 attendees when only a few days before there were 17 registered. George Tragos reported the increase was a result of an email blast from FACDL to its members. According to Judge Zayas, and confirmed by remarks from those present, the speakers were great. Judge Zayas further reported that including advanced topics and ethics meant certification credits were obtained.
  
  - C. **Legislative** - Marty McDonnell informed us only claims bills have been filed. As this is an election year, we will know more in January. Judge Blake said bills could deal with health care and retirement benefits affecting government lawyer and judges.
  
  - D. **P/PD Program** - Paul Zacks reported the program was very successful. Written comments described it as outstanding. Paige leaving right before forced us to break in new people. We still need to calculate numbers. George Tragos said it is more efficient since a day and a half was cut out. It was noted the participants had a wide range of experience - from zero to 20 trials. Mr. Tragos opined the program probably would not help those with a lot of experience. Paul Zacks said we try to control the experience level by language in our letter to each office, but the choice of attendees is left to the individual office.
  
  - E. **Selig Goldin** - Harvey Sepler said he needs members - Scott Fingerhut said the committee still is in formation. Announcement of the Award soon will be in the Bar News. An Eblast will be sent to section members. Harvey Sepler said we will need nominations by January or February. Mr. Sepler asked if we thought the description of the Award adequately allows for a "local" attorney to be a recipient. Scott Fingerhut said this committee would work with the Annual Meeting committee to come up with another award, recognizing a local prosecutor or defense lawyer.

8. **Old Business**

- A. **St. Thomas Law Review Project** - Our Chair asked for a report from one of the two members of St. Thomas Law Review present. Mr. Garcia, who is the Solicitation Editor, appropriately solicited articles. He told us this edition would be the school's 25th anniversary issue. They are working on a criminal law issue. So far, four authors and topics have been chosen, with one of the authors Judge Milt Hersch. Two more articles are needed. Hint. Hint. The articles need to be in by Christmas. Mr. Freeman, the other member of St. Thomas Law Review present, told us their researchers are poised to assist anyone who wished help in making a submission.
- B. **Florida Bar Foundation Contribution** - Sheryl Lowenthal reported on the thank you letter from Maria Henderson, president of the Foundation for the \$25,000.00 contribution from our section. It would be used to fund representation for children impacted by the criminal justice system.

9. **New Business**

- A. **CLE Fee Waivers** - Our Chair reported about the submission by the Real Property and Trust section (RPTL) essentially misstating our position and lining up against mandatory waivers for government lawyers. We have been pushing for section control. Our intent was to help government lawyers afford our seminars. Les Hess said if we make it clear we support a permissive, not mandatory waiver or reduction it should address their concern. Susan Hugentugler thinks it should be up to us and therefore we sort of agree with that portion of RPTL's position. Brian Tannebaum said we need to find out the position of The Florida Bar. Board of Governors member Greg Coleman said our position was incorrectly conveyed. He mentioned the Young Lawyers Division has a program that allows application for reduction. George Tragos said we need to seek discretion but proceed with caution. Sheryl Lowenthal said most of our attendees are private defense attorneys and The Bar said if we want to give discounts we are required to make up the difference. Joel Silvershein said many young lawyers simply cannot afford our seminars. Richard Polin thinks we need to be able to offer reduced fee seminars. Board Liaison Suskauer wants us to give her direction. Our Chair told her we will confer and get back to her.
- B. **Court-Appointed Criminal Conflict Attorneys (survey)** - Our Chair said our opinion is being solicited on the reasonableness of a fee schedule.

C. **Three proposed Rules changes** - we had discussion concerning one of the changes, which is to the hearsay rule. Members Tragos, Zedalis, Laeser and Blake weighed in. Mr. Silvershein said the "train has already left the station" followed by Mr. Polin's comments that we were discussing substantive nor procedural issues and therefore that is up to the legislative branch. Our Chair concluded with the observation Mr. Polin may be right.

10. **Report of the Chair** - Our chair told us he wants to do something that makes a real and lasting difference. He noted that the Council is the voice of the entire criminal Bar but we took no position on the Innocence Commission. He remarked the Council has had little or no voice on indigent defense. He said our section has not addressed any significant issues affecting criminal justice system. And he wants that to end. He reported he sent out his "vision" statement to the entire section and except for council members, he got 3 responses. From more than over 2000 members. Our chair said he wants a "unified section." He wants to improve communication. He wants to focus on increasing the diversity of the section and not just the number of members. He has begun 4 special committees: one charged with addressing the implementation of the Innocence Commission Final Report; another being a committee to improve the ethics, civility, professionalism and advocacy skills of young lawyers and law students, a third on the Annual Meeting and the fourth, a committee to initiate community outreach. He reported he has commitments from several public defenders and state attorneys to become involved.

Larry Turner said we are in competition with the associations for the public defenders, the prosecutors and the Florida Association of Criminal Defense Lawyers. But, he argued, we need to reach out. Brian Tannebaum said there is friction in the Council we need to eliminate. Larry Turner said we should discourage phoning in, as being in the same room together creates better communication and more camaraderie. Donnie Murrell agreed we need to tackle the tough issues. Jennifer Zedalis wants us to reach out to the law students. Our chair's action plan is to "get this going by January." His plan is to use the standing committees and the 4 special committees. George Tragos said we should use the Long Range Planning Committee and Mr. Fingerhut said he would populate that committee with the "heads of the 5 families."

11. **For the Good of the Order** - Scott Fingerhut reported that our contribution on behalf of Andrew Silvershein has been wisely utilized, and will have a long-lasting impact, at the school Andrew attended. Joel nodded in agreement and smiled.
12. **Next Meeting of the Executive Council** - It will be either in January or early February. The original plan was to have it in Ft. Lauderdale, again, or possibly in Orlando or Tampa at the airport, to make it easier for all to travel and participate in person.

13. The meeting was adjourned at 11:25 upon passage of a motion, made by George Tragos and seconded by Sheryl Lowenthal. Significantly, especially for those with advanced age or smaller bladders, there were no breaks during the meeting.

Respectfully submitted,

*David B. Rothman*

David B. Rothman, Secretary  
CLS Executive Council