

**CRIMINAL LAW SECTION EXECUTIVE COUNCIL  
MINUTES OF THE JUNE 26, 2015 MEETING  
BOCA RATON RESORT AND COUNTRY CLUB**

**I. CALL TO ORDER**

The meeting was called to Order by Chair David Rothman at 9:07 AM.

Present were the following members: David Rothman (chair), Judge Angélica Zayas (chair-elect), Joel Silvershein (Secretary), Martin McDonnell (Treasurer), Michelle Suskauer (Board Liaison), O. David Barksdale, Jason Blank, Jeffrey Harris, Mac Heavener, Judge Richard Hersch, Les Hess, Judge Cynthia Imperato, Abraham Laeser, Judge Jeffrey Levenson, Sheryl Lowenthal, Larry Donald Murrell, Harvey Sepler, Brian Tannebaum, George Tragos, Larry Turner, Judge Samantha Ward, Jennifer Zedalis.

Present by Telephone were the following members: Robert Dillinger, H. Scott Fingerhut, Richard Polin, Judge Donald Scaglione, and Kenneth Swartz,

Absent were Susan Hugentugler (Immediate Past Chair), James Smith, William Vose, and Paul Zacks.

Also present were, Board of Governors Member Michael Higer, Robert Wesley, Ben Kuehne, Whitney Untiedt, Steven Klinger, Morgan Rood, Calianne Lantz, and Charles Early (Bar Staff).

**II. GUEST PRESENTERS**

Board of Governors member Michael Higer made a presentation to the Executive Council

**III. BOARD OF GOVERNORS LIAISON REPORT**

Michelle Suskauer reported that she will remain as liaison to the Section. Sam Masters, who is a criminal practitioner in Daytona Beach, will be a new member of the Board of Governors. Also Carlos Martinez, the Public Defender for the 11<sup>th</sup> Judicial Circuit, will be the non-voting government lawyer on the Board of Governors.

**IV. APPROVAL OF MINUTES**

Approval of the minutes of the January 22, 2015 meeting was moved by Jason Blank, and seconded by Chair-Elect Zayas. The minutes were approved by voice vote.

## **V. TREASURER'S REPORT**

Marty McDonnell presented the treasurer's report, which reflected a balance increase of approximately \$20,000 at this point in time. Although the increase was positive, the revenue line for membership dues was down slightly. CLE revenues were up. The P/PD program were budgeted at \$17,000, but were only \$11,000. Jennifer Zedalis explained the reasons for the lower expense figure, and also noted that a second Queen's Counsel will be coming to the upcoming program for free. Finally, it was noted that there was a decrease in the investment allocation received for the year. In the last year, the section received \$26,000, but the return for the current year was \$3000.

Abe Laeser suggested that more money be allocated to the P/PD program, because it is a signature program for the section. Chairman Rothman noted that we just renewed the program with the University of Florida. Additionally, Chairman Rothman remarked that the \$400,000 positive balance was one of the highest of any section of the Bar.

## **VI. OLD BUSINESS**

Marty McDonnell reported that the loan forgiveness bill failed as well as the bill requiring a unanimous jury verdict for imposition of the death penalty.

Judge Hersch reported that accreditation for the subspecialty of DUI practice from the National College of DUI Defense, was approved by the BLSE with the recommendations from the section that the applicant must first pass the Florida board certification exam.

## **VII. ELECTIONS**

Judge Zayas explained the nomination process, and noted that the Nomination Committee was trying to maintain a balance on the Executive Council looking at different areas of the practice. Also the Nomination Committee addressed and considered the diversity of the composition of the Executive Council in a number of areas.

Slate One was presented for approval by the Executive Council. On Slate One was David Barksdale, Jeffrey Harris, Susan Hugentugler, Judge James Klindt, and Larry Turner. Slate Two was presented for presentation for selection by the membership of the section. On Slate Two were Judge Lisa Campbell, Judge William Davis, Brian Kramer, Warren Lindsey, Michael Sinacore, Whitney Untiedt and Ryan Williams. On Slate Three, created to fulfill the term of retiring Executive Council Member Les Hess, was Jose Arrojo.

David Barksdale was nominated to be the treasurer of the Section, which was approved by voice vote.

Judge Zayas noted that Paul Zacks, Judge Samantha Ward, Bill Vose, Sheryl Lowenthal, and Judge Donald Scaglione would not be seeking another term on the Executive Council. James Smith did not return any communications to the Committee regarding as to whether he was seeking another term.

George Tragos moved that Michael Sinacore be moved to Slate One, based on David Barksdale being selected as the new treasurer. The motion was seconded by David Barksdale, and was approved by voice vote.

Brian Tannenbaum moved that Slate One be adopted by the Executive Council. The motion was seconded by Jason Blank, and approved by voice vote.

It was also suggested that Jose Arrojo be moved from Slate Three to Slate Two, and have the Slate Two nominees who were not selected to the Executive Council be moved to Slate Three, to be selected by the Executive Council. After discussion, it was decided that Jose Arrojo would remain on Slate Three, and that the candidate from Slate Two who was not selected would be placed on Slate Three to be voted on by the Executive Council.

The nominees for Slate Two were then considered by the membership. Speaking on behalf of Whitney Untiedt were Joel Silvershein, Larry Turner, Brian Tannenbaum and Jennifer Zedalis. Whitney Untiedt was also present, and addressed the membership. Judge Ward and George Tragos spoke in support of Judge Campbell. Larry Turner and Jennifer Zedalis spoke on behalf of Judge Davis, and Brian Kramer. David Barksdale, Les Hess, and Chairman Rothman spoke on behalf of Warren Lindsey. David Barksdale and Les Hess also spoke on behalf of Ryan Williams.

During the discussion of new business, the results of Slate Two were revealed. The members of Section who were elected to the Executive Council were Judge Campbell, Judge Davis, Brian Kramer, Warren Lindsey, and Whitney Untiedt.

Considered for Slate Three were Ryan Williams and Jose Arrojo. Speaking on behalf of Jose Arrojo were Judge Zayas, and Abe Laeser. Les Hess once again spoke on behalf Ryan Williams. After additional discussion on other matters, it was announced that Jose Arrojo was elected to fill the term of Les Hess.

## **VIII. NEW BUSINESS**

### **A. STATE OF THE COUNCIL**

Regarding the state of the Council, Chairman Rothman noted that of the 30 members of the Executive Council, only 18 members voted on the Selig Goldin Award, which was unacceptable. Chairman Rothman also noted that it was important to have an active chairperson, an active liaison, and an active executive council to convince the Board of Governors to do anything for the Section. Even if a moderate position

cannot be reached a pro and con position so that those positions could be expressed. The state of the counsel is the same as it has been, in that the section has been losing membership, partly due to the economy, but also in part due to ennui. Members of the Executive Council need to encourage people to join, and to become members of the Committee. Only 22 took advantage of the free one year membership.

#### **B. BYLAW AMENDMENT REGARDING PAST CHAIRS**

Chairman Rothman also suggested that all former chairs of the Section be placed in a different position, where they would be ex officio permanent members of the Executive Council, and to fill the spot with new members.

George Tragos agreed with the concept, however suggested that implementation be done on a staggered basis, due to the fact that the Executive Council could have 15 open spots if done at the same time. After discussion and motion by George Tragos, more the 2/3 agreed to waive the rules and approved in concept.

George Tragos moved to have former chairs become permanent ex officio members of the Executive Council, and that former chairs who currently are members of the Executive Council serve until the expiration of their current term. The motion was seconded by Jeff Harris. The motion passed with only one member opposed.

#### **C. FLORIDA BAR FOUNDATION**

Chairman Rothman noted the need for a contribution for the Florida Bar Foundation. The contribution is the same that was made the previous year. Jeff Harris moved that the \$25,000 contribution be made, which was seconded by Judge Hersch. The motion passed on voice vote.

#### **D. BOARD CERTIFICATION PASSAGE RATE**

Jeff Harris stated that he was shocked at the low passage rate in comparison with others board certification rates. Overall, board certification rates in the Bar among all certification tests were 65% between 1987 and 2005. The rate decreased to 52% in the period between 2006 and 2014. In the criminal trial certification, the passage rate was 67% between 1990 and 2005. The rate fell to 33% in the period between 2006 and 2011, and to 30% between 2012 and 2014. The passage rate in 2014 was 17%.

Jeff Harris stated that he believed there was a problem, and that there should be a higher passage rate. He looked at the FACDL presentation for preparation, and was impressed. Jeff Harris moved that an ad hoc committee be created to analyze the procedural and substantive area of the criminal trial and criminal appellate board certification process, which was seconded by Judge Hersch.

Robert Wesley, the Public Defender of the Ninth Circuit, spoke on the proposal in relation to his office. He explained that there is a \$65,000 salary cap for those who are not certified, and that certification is an external measure to evaluate the attorneys in the office. Certification is a requirement to advance in his office. Of the people with his office who took the last board certification exam, only six passed. In looking at the last exam, the model answer did not match the question. The fact that only six people from his office did not pass the question leads him to believe that there is a problem.

Judge Zayas responded that one needs to look at who is taking the test and their experience. Also Judge Zayas explained the process on how the test is created and assessed. Finally, Judge Zayas noted that the statistics do not address the variables that could be affecting the passage rate, such as the number of years the person has been practicing.

Jennifer Zedalis noted that the exam needs to reflect the knowledge of the practitioner.

Mac Heavener asked if it was common for pay raises to be based on becoming board certified. Robert Wesley responded that there were only two elected public defenders that were certified. As for his office, it was an external measure that he could rely upon.

Chairman Rothman pointed out that there needed to be a separation between criminal trial and criminal appellate certifications. However, it needed to be determined whether there was an aberration, and, if so, what is the basis of the lower percentage.

Judge Hersch agreed that there needed to be a review based on the results.

George Tragos stated that a study or survey needed to be done on who is taking the test. Funds might need to be expended to complete such a study.

Jason Blank asked if the Board Certification Committee was concerned about the results. Judge Zayas responded that BLSE is looking at the results of all the sections, not just criminal.

Chairman Rothman appointed Jeffrey Harris to chair the ad hoc subcommittee, and also appointed Bob Wesley, Judge Ward, Judge Hersch and Richard Polin to be members of this subcommittee. Judge Zayas will also be involved with this subcommittee.

Richard Polin suggested that there be a separate certification for state criminal practice.

## **E. CLE EVALUATION SUMMARIES**

No comments.

## **IX. COMMITTEE REPORTS**

### **A. CAPITAL**

Abe Laeser had nothing to report.

### **B. COMMUNICATIONS**

Richard Polin reported that there is a separate subcommittee on the Facebook. Chairman Rothman stated that the website was getting better, but there needed to be more activity from the members of the section to contribute.

Jason Blank reported that there were significant changes on the layout of the website. Also there were updates on the complete membership list of the section. Also being worked on was a link to the new Facebook page.

### **C. CLE**

No report. Chairman Rothman noted that CLE subcommittee has been busy, and connected up with the Evidence Committee in presenting a seminar.

### **D. FEDERAL PRACTICE**

Ken Swartz reported that the seminar was successful, and is planning for the seminar for next year.

### **E. LEGISLATIVE**

Marty McDonnell reported that he and Bob Dillinger prepared a memo to be circulated.

### **F. LONG RANGE PLANNING**

Judge Zayas is preparing for the Kozyak Minority Mentoring Picnic, and is looking for volunteers. The picnic is set for October 31. The Executive Council already approved \$1000 to sponsor.

### **G. MEMBERSHIP**

David Barksdale reported that membership is currently at 2461 member, which is the lowest since 2001. The peak number of members was 2900 in 2008. Improvement was needed to get assistant state attorneys and assistant public defenders to join and

become more involved in the section. There were still 78 free memberships still available to young lawyers. It was also suggested that the section team up with FACDL regarding the certification exam.

Harvey Sepler suggested that the Section should put on programs at state attorney and public defender offices. Chairman Rothman said that Brian Tannenbaum and Gary Winston were working on that idea, but speakers were needed.

#### **H. P/PD**

Jennifer Zedalis noted that a forensic anthropologist would be making a presentation. Also there would be full faculty and full attorney teams.

#### **I. SELIG GOLDIN AWARD**

Harvey Sepler noted that the subcommittee did not get the number of nominations that the award deserved.

Jennifer Zedalis suggested that the subcommittee should start the process now on the Selig Goldin Award for next year.

#### **X. PRESENTATION**

Judge Zayas presented a plaque to Chairman Rothman on behalf of the Section for his dedicated service as Chair of the Criminal Law Section. Chairman Rothman then made his closing remarks.

#### **XI. ADJOURNMENT**

The meeting adjourned at 12:03 PM.