

**CRIMINAL LAW SECTION EXECUTIVE COUNCIL
MINUTES OF THE SEPTEMBER 25, 2015 MEETING
MIAMI**

I. CALL TO ORDER

The meeting was called to Order by Chair Zayas.

Present were the following members: Judge Angélica Zayas (Chair), Joel Silvershein (Chair-Elect), Martin McDonnell (Secretary), O. David Barksdale (Treasurer), David Rothman (Immediate Past Chair), Michelle Suskauer (Board Liaison), Jose Arrojo, Jason Blank, Judge William Davis, Robert Dillinger, Scott Fingerhut, Judge Richard Hersch, Susan Hugentugler, Judge Cynthia Imperato, Judge James Klindt, Brian Kramer, Abraham Laeser, Judge Jeffrey Levenson, Warren Lindsey, Richard Polin, Harvey Sepler, Michael Sinacore, Ken Swartz, Brian Tannebaum, George Tragos, Larry Turner, Gary Winston, Jennifer Zedalis.

Absent were Judge Lisa Campbell, Jeffrey Harris, Mac Heavener, Larry Donald Murrell, Whitney Untiedt

Also present were, Florida Bar President Ramón Abadin and Charles Early (Bar Staff).

II. APPROVAL OF MINUTES

Approval of the minutes of the January 22, 2015 meeting was moved by David Rothman, and seconded by Judge Levenson. The minutes were approved by voice vote.

III. REPORT OF THE CHAIR

Judge Zayas noted that she was happy about the way the Council has come together, and the increasing number of both new and old members becoming members of subcommittees. Richard Polin and Scott Fingerhut are working on getting articles on the website. Chair Zayas thanked those who have volunteered to be committee chairs, and asked those chairs to get actively engaged with the members of those committees, and to develop job descriptions for those subcommittees.

Marty McDonnell moved to have each chair of a subcommittee come up with a draft proposal for a description of the subcommittee within 60 days. The motion was seconded by David Rothman, and passed by voice vote.

IV. BOARD OF GOVERNORS LIAISON REPORT

Michelle Suskauer reported that there was not a lot of support for the proposal on reciprocity. At the next Board of Governors meeting, there will be discussion on the Constitutional Revision Commission, and other issues that will be affecting the profession in the upcoming year.

A question was raised by David Rothman regarding a proposed bill in the legislature regarding term limits. Jose Arrojo noted that Representative Artilles has a more expansive bill which would affect not only judges, but state attorneys, public defenders, and local officials.

V. TREASURER'S REPORT

David Barksdale reported that the expenses for the first quarter are mainly for the P/PD program. The section budgeted additional money for the QC. Also budgeted was \$1000 for sponsorship of the Kozyak Minority Mentoring Picnic. Overall, the financial position of the section was sound.

Abe Laeser raised a question about the \$10,000 line item for a legislative consultant. It was noted that we have not hired a consultant this year, however, the line item has been used as a place holder, in case there is an issue. Judge Hersch expressed his view that this line item was a wasted line item, because the section was too slow to react to issues, and would not be an effective legislative voice. David Rothman responded that there may be an issue where the Section can be a voice, and that it would be better to have a lobbyist who has inroads with the legislature, and members of the Council, instead of just members of the Council.

David Rothman also reported that the contribution to the Florida Bar Foundation was greatly appreciated. Also that the Florida Bar Foundation invited the Chair to make a formal presentation at its next meeting in Orlando.

VI. COMMITTEE REPORTS

A. CAPITAL

Abe Laeser reported that HB 157, regarding a unanimous recommendation of death for the death penalty to be imposed, had no matching bill from the Senate.

B. CLE

Judge Levenson reported that the Criminal Law Update is scheduled for December 4, 2015. Judge Hersch is running that seminar, and it will be held at the Orange County Bar Association. Judge Hersch noted that the program was ready to go. Regarding the Advanced Federal Practice seminar is set for January 15, 2016, Ken Swartz reported that he has speakers lined up, but is looking for a site, probably the Hyatt in Miami. As for the Masters of DUI program, it is tentatively set for April 1 or April 8, 2016, and Carlos Canet is the program chair.

As to future topics, a subject which was under discussion was a transition into private practice. David Rothman noted that the Bar already has a free online program. Judge Zayas noted that George Tragos did a one hour presentation on the topic of the

business of running a practice. Larry Turner also noted that this subject was on the agenda of the Membership Committee, and that the Young Lawyer's Division has a program for transition, and that there is an opportunity to have CLE programs with other sections. Scott Fingerhut remarked that it is a good idea to have such a program as a resource, but some governmental agencies might not like the idea of a program which appear to encourage people to leave. Judge Zayas asked that both the Membership and CLE committees to work together on this issue.

VII. PRESENTATION OF BAR PRESIDENT RÁMON ABADIN

Florida Bar President Ramón Abadin addressed the Executive Council regarding issues currently before the Board of Governors and generally affecting the practice of law, including reciprocity, unlicensed practice of law, and globalization of the legal practice.

VIII. CONTINUATION OF COMMITTEE REPORTS

C. LEGISLATIVE

Marty McDonnell and Bob Dillinger prepared a memo which was circulated of pending bills. Marty McDonnell reported that there are two committee weeks in October and two committee weeks in November. The committee chairs will meet with the committee members before the legislature convenes to discuss whether formal positions should be made regarding pending legislation. Issues which seemed to be getting attention concerned "stand your ground" legislation and direct filing of juveniles. Marty McDonnell did not feel that the issue of unanimous jury verdicts in capital cases was gaining any traction with the legislature.

D. COMMUNICATIONS

Richard Polin reported that he has been posting case law updates on the website from from all the state appellate courts, Florida Supreme Court, 11th Circuit Court of Appeal, and U.S. Supreme Court since June on a regular basis. Also, Richard Polin reported that he wanted to get the quarterly journal/newsletter back on schedule, and was going to work with the members of this committee towards that goal. The question as to the status of the St. Thomas Law Review was raised, but no one had a response.

E. LONG RANGE PLANNING

Joel Silvershein reported that the committee has not met at this point in time. However, the Section is attempting to get the showcase presentation for the June, 2016 Bar Conference on the 50th anniversary of the *Miranda* decision. As a result of the Council of Sections meeting, and a request of Young Lawyers Division, Jason Blank was named the liaison with the Young Lawyers Division. Jason Blank reported

that YLD was excited about having a liaison, and was looking forward to working with the section.

F. MEMBERSHIP

Larry Turner reported that he contacted the other members of the Membership Committee, and that it would meet at the conclusion of the Executive Council meeting. Working with the Young Lawyer's Division and other divisions to increase membership will be among the topics. Also, there were 812 non-renewals, which is greater above the average of 500.

G. P/PD

Jennifer Zedalis reported that the P/PD program was successful this year. A synopsis of the reviews will be available, but the reviews were good. Also, the program came in under budget.

H. SELIG GOLDIN AWARD

Harvey Sepler reported that the committee was early in the process, but was writing to FPAA and FPDA regarding nominations for the award. Harvey Sepler emphasized that members of the Executive Council e-mail him and to copy Chase regarding suggestions for people who should be nominated for the award. Judge Zayas asked if the announcement could be sent out earlier in an e-mail blast. Harvey Sepler replied that such a suggestion would not hurt the process.

Jennifer Zedalis noted that it was important that information about the candidate be sent out along with the nomination, since the accomplishments of the candidate would not be known by all members throughout the State. Harvey Sepler replied that if a resume was available it would be attached, but if a resume was unavailable, the person nominating would send a biographical sketch and a statement as to why the person is deserving of the award. Larry Turner agreed that there should be a checklist of materials that needed to be distributed to inform the Executive Council about the nominee.

I. WEBSITE/SOCIAL MEDIA

Jason Blank reported that the website is moving along, and reminded those on the Executive Council who have not submitted their profiles to do so. As to the social media, the Facebook page is growing and getting a lot of "likes." The hashtag for the site is #CLS. The website will be updating the closing argument manual within the next year.

IX. OLD BUSINESS

Judge Zayas noted that David Rothman will be cleaning up the language on the bylaw amendment concerning former chairs remaining on the Executive Council.

Jeff Harris sent an e-mail regarding the certification exam, which indicated that there are still a list of outstanding questions to be answered by BLSE and certification committee. Also the passage rate for the criminal trial exam was 55%, but neither of the two people taking the criminal appellate exam passed. The 55% was greater than that in past years.

X. NEW BUSINESS

A. CRIMINAL LAW CERTIFICATION AMENDMENTS

The Criminal Law Certification Committee proposed amendments to their rules, and requested comments from the Criminal Law Section. Significantly, the definition of trial has been expanded. Judge Hersch raised questions about the issue of “good cause” which would allow a waiver of the 25 trial requirement, and the recertification provision. After significant and extensive discussion, Judge Hersch moved that the proposed amendments be rejected, which was seconded by Scott Fingerhut.

Richard Polin voiced his concern in the appellate action portion of the amendments regarding the inclusion of jurisdictional briefs, since they are not on a par with initial or answer briefs. Also, raised was the exclusion of briefs in “Jimmy Ryce” cases, when such cases were included in the amendments for the expanded definition of trials.

David Barksdale agreed with Judge Hersch that the certification requirement should not be diminished, but the language regarding recertification needed to be revised to have someone who has been certified for a long period of time, and whose skills have not diminished, but has not met the five trial requirement. Examples that were previously raised by Judge Hersch were someone becoming a judge or a law school professor. Marty McDonnell also recounted his experience in 2000, that despite his experience as a general counsel to Governor Bush, and his cases which related to the criminal practice, he did not meet the trial requirement, and could not be recertified.

Judge Hersch withdrew his motion in favor of a motion by Richard Polin to appoint a committee to review the amendments, and make individual recommendations by the January meeting. The motion was seconded by Joel Silvershein. Judge Hersch suggested that the committee currently reviewing the board certification exam be appointed to consider these amendment, but it was rejected by the Chair. The motion passed with one negative vote.

Judge Zayas appointed as the committee Richard Polin with Abe Laeser, David Barksdale, and Judge Hersch.

B. SECTION LOGO

Jason Blank presented four logos to be considered by the Executive Council its consideration. Larry Turner moved that the logo with burgundy and a gray center be selected as the logo, which was seconded by George Tragos. The motion passed with five negative votes.

C. SHOWCASE PRESENTATION

George Tragos reported that he is working with David Rothman in putting together a showcase presentation on the 50th anniversary of the *Miranda* decision at the June meeting of the Florida Bar.

D. CRIMINAL RULES COMMITTEE

Scott Fingerhut reported that the Criminal Rules Committee is working on a proposed rule regarding video depositions, and the problems that may arise. The Chair of that committee is asking for feedback.

XI. ADJOURNMENT

The meeting adjourned at 12:15 PM.