

## **Criminal Law Executive Section Council Minutes of the January 19, 2018 Meeting**

**\*amended 6/11/2018 for name spelling and roll call**

### **Doubletree by Hilton-Universal, Orlando**

**5780 Major Blvd., Orlando, Florida**

**Broward Room 9am to 12pm**

#### **I.**

##### **Call to Order**

The meeting was called to order at 9:08am by Chair Martin McDonnell. Members were welcomed.

#### **II. Roll Call**

The following attended the meeting: Chair Martin McDonnell, Chair-Elect Oliver David Barksdale, Secretary Jennifer Zedalis, Treasurer Mac Heavener III, Immediate Past Chair Joel Silvershein, Richard Greenberg, Jeffrey Harris, Hon. Richard Hersch, Susan Hugentugler, Cynthia Imperato, Lauren Jorgenson, Warren Lindsey, Board Liaison Sam Masters, Larry Donald Murrell, Jr., George Tragos, Larry Turner, Ryan Vescio, Hon. Samantha Ward;

The following members appeared by phone: Hon. William Davis, Hon James Klindt, Brian Kramer, Neal Sonnett, Kenneth Swartz, Harvey Sepler, Michael Sinacore.

Excused: Jason Blank, Antoya Johnson, Hon. Jeffrey Levenson.

Others absent: Huda Ajlani, Jose Arroyo, Hon. Denise Campbell, Hon. Robert Dillinger, Richard Polin, Whitney Untiedt, Hon. Angelica Zayas.

#### **III. Approval of Minutes**

The June 23, 2017 meeting minutes at Exhibit 2 were approved unanimously with one request from Richard Greenberg that it be noted his last name is 'Greenberg' and not 'Greenburg'.

#### **IV. Report of the Chair**

Chair Martin McDonnell encouraged all committee chairs to study the materials relating to current issues on the Council's agenda and to contact him if action from any committee is contemplated, expressing concerns over a bottleneck in council business.

Committee chairs were asked to consider outreach to other Bar groups sharing interests with the CLS, such as the Young Lawyers Division and the Juvenile Rules Committee.

Ideas for collaborating with other sections on CLE's were put forward. Potential topics included immigration, technology (now required for everyone), and death penalty practice.

Chair McDonnell raised the topic of the Constitution Revision Committee's consideration of new victim's rights provisions. The legislation committee was encouraged to give this issue priority. A question was put forward regarding the CLS and the need to take a position on this issue. Proposed revisions include a victim's right to speedy trial and to refuse interviews or depositions. Larry Turner indicated that the FACDL is also considering the proposed provisions and whether to adopt a position. It was noted that the Public Defender's Association has submitted written responses/comments to the CRC on this topic. Mr. Turner indicated that there is some consensus the system moves too slowly, and victim rights are important, but prosecutors, defense lawyers, and law enforcement probably agree the process should not be victim driven. George Tragos noted the proposed victim amendment is far broader than a speedy trial provision. Various aspects of the proposal prioritize victim restitution and give victims the right to refuse to be deposed. Chair McDonnell referred the issue to the legislation committee but also indicated this is a time sensitive issue. Joel Silvershein noted Chair McDonnell's roll as our liaison in Tallahassee. Donnie Murrell indicated a need for the CLS to take a position on this issue now. George Tragos indicated the mass membership of the section are unaware of what is going on with this issue. Some discussion followed as to ways the EC might increase awareness. Jeff Harris asked if the EC could address the issue during the meeting. Richard Greenberg indicated Tim Cerio was a driving force behind the proposed revisions. A question was raised as to the current positions of FPAA and FACDL on the issue. Mac Heavener indicated the FPAA is cogitating the new provisions. The law is referred to as Marcy's Law. David Barksdale moved to table the discussion until New Business. Larry Turner seconded the motion. The motion passed by unanimous voice vote.

Incoming Bar President Michelle Suskauer was introduced. President Suskauer indicated she is very supportive of the criminal law section and pleased to be speaking to the council. She referred to Prop 96 as a "dangerous, costly, and bad idea". She indicated she plans to speak with Bar lobbyists regarding the proposal. She went on to mention that the deadline for applying for openings on various bar committees has been extended and encouraged those interested to apply. The deadline for JNC submissions was extended to Monday (1/22). President Suskauer indicated less than 5 people applied in the 3d, 5<sup>th</sup>, 10<sup>th</sup>, 12<sup>th</sup>, 14<sup>th</sup>, 19<sup>th</sup>, and 20<sup>th</sup> circuits. She encouraged applications to the JNC. There are 3 bills pending to keep the Bar out of the judicial nominating process.

President Suskauer indicated a desire to focus on "commonality as opposed to differences" across the Bar, stating we are all stakeholders. She wants a 2-day criminal justice summit in the fall.

Joel Silvershein stated that, during oral argument in June, the Florida Supreme Court asked a lot of questions regarding the make-up of the judicial rules committee, expressing the need for more cross section of membership. He indicated there is a shortage of criminal practitioners in the at-large membership.

## **V. Board of Governors Liaison Report**

Sam Masters delivered the Board of Governor's Liaison report. He stated funding for everyone is a key issue at this time. Members are encouraged to go to the legislative update page on the Bar's website to see what the Bar is watching. Members can also sign up to get on an e-mail list for the information and access to various discounts for Bar members. The Board opposes a bill calling for an automatic referral for discipline of any lawyer filing a lawsuit deemed frivolous. He referred to Rule 4-8.4. The Board agreed that AVVO is a lawyer referral service for purposes of Rule 4-7.22. AVVO advisors give 15-minute consultations for \$39.00. Members must comply with 4-7.22 to participate. There can be no fee sharing.

Donny Murrell indicated it was nice to have a member of the small/solo practitioners section on the Board.

## **VI. Treasurer's Report**

Mac Heavener gave the Treasurer's report. Revenues for this term totaled \$116,000. Expenses totaled \$88,000. Mr. Heavener indicated we are "looking good" at this time on budget.

## **VII. Committee Reports**

### **A. Capital Cases and Death Qualification Question (from New Business)**

Judge Ward gave the Capital Cases report. She indicated there is a current question on whether 2d penalty phase proceedings (*Hurst* resentencing) count toward lead counsel qualification for capital cases. No action was requested at this time. Four groups have been asked to speak at the Fl. Supreme Court on March 7<sup>th</sup>, the PDA, FPAA, FACDL, and AJS. The Court will be hearing argument on its own proposed jury instructions dealing with specific findings on verdict forms regarding mitigators.

### **B. CLE and CLE Speaker Gifts (from New Business)**

Susan Hugentugler presented an update from the CLE Committee. The Committee is exploring ideas on how to find new speakers. The Bar CLE ("Big" CLE) voted against allowing CLE credit for pro bono service. They also voted against allowing members to carry excess hours from one cycle to the next. Upcoming CLE's include the Criminal Law Update in Orlando and the DUI Masters CLE in Fort Lauderdale. Ms. Hugentugler asked that "thank you" gifts for speakers be considered. She asked that a budget for gifts be approved. Chase Early indicated gifts for speakers during a cycle would probably run around \$2,000. to \$ 2,500. Ms. Hugentugler moved for a budget of \$3,000. David Barksdale seconded the motion. Discussion followed regarding what is done for speakers. Speaker reimbursement comes from registration fees/ the CLE course budget prior to the 80/20 split between the sponsoring section and the Bar. Speakers get CLE credit in addition to reimbursement. Larry Turner suggested that speakers should get recognition in the Florida Bar News and perhaps they should also be featured on the CLS website. George Tragos indicated we should have a webinar for the required CLE credit in technology. A webinar would be cheap

and easy. Joel Silvershein indicated that technology credits could be included in CLE's like the criminal law update. Susan Hugentugler indicated the section has done this in the past. Chase Early indicated the CLS has plans for webinars once the new website is up and running. Donny Murrell indicated the solo and small practice section does a technology CLE every year. Chase Early indicated that a 3-hour CLE produces 4 shelf products, as it is also packaged in 3 separate one-hour segments.

The motion for a \$3,000. budget for CLE speaker gifts (5 months of 2018 and all of 2019) passed unanimously.

### **C. Communications**

Communications Committee update was passed as Richard Polin was absent.

### **D. Federal Practice**

Federal Practice update was passed as Ken Schwartz was unavailable.

### **E. Legislative**

Richard Greenberg presented an update from the Legislative Committee. He indicated there are several pending bills "with legs". There is a bill addressing the inadvertent display of concealed weapons. There is a bill dealing with texting while driving. Another bill deals with verbal threats to kill or do great bodily harm. There is a bill to require people to render assistance. Another bill would allow sidestepping of minimum mandatory sentences in certain situations. Marty McDonnell indicated this bill has sponsors in both the House and Senate. There is a bill to require state attorneys to provide written reasons for a plea agreement in cases involving the death of a child. Mr. Greenberg indicated this bill has a lot of support. There is a bill to make personal-use marijuana a civil infraction. There is a "three-way fight" in Tallahassee between the House, the Senate, and the Governor. Jeffrey Harris indicated there is a pending bill providing for expungement in cases with a not-guilty verdict. Joel Silvershein indicated a need for raises for state attorneys and public defenders when they hit a 4-to-6-year mark. This is a point where they are getting ready to handle serious cases. Larry Turner indicated this should be a bill and the CLS should get behind it. There was general agreement that this issue is important for the CLS. Ryan Vescio indicated that assistant state attorneys in the 9<sup>th</sup> Circuit get \$51,000. a year handling sex crimes. 85% of assistant state attorneys in the 9<sup>th</sup> Circuit make less than \$75,000. a year. These lawyers need to have adequate time to look at their cases. Judge Ward indicated that Bar President Schiffino supported the initiative to raise SA/PD salaries and lobbied hard on this issue during his tenure to no avail. Donnie Murrell indicated that the Bar had a budget summit when he was CLS Chair and various groups within the Bar ended up competing against each other rather than having a united approach. George Tragos indicated we need to pass something on this issue. Larry Turner stated we need to get this issue before the Board of Governors and the Bar. Jeffrey Harris agreed. Chair McDonnell

stated he would call President Suskauer and get this issue on the agenda. Ryan Vescio stated he would get salary statistics for Chair McDonnell and Incoming Chair David Barksdale.

#### **F. Long Range Planning**

David Barksdale presented a long-range planning update. The idea of merging the CLS website with social media is under consideration. Monthly e-mail blasts are being considered.

#### **G. Membership**

CLS membership is down by 150 from this time last year. Joel Silvershein stated he will be attending the Koziak picnic in February and Nova will be sending students. The section is offering free membership to students. Members were encouraged to get the word out. There will be CLS SWAG at the event. Liaisons at each of Florida's law schools are needed to assist with new student memberships.

#### **H. PPD Program**

Jennifer Zedalis presented an update on the Bennett Public Defender/Prosecutor Trial Training Program. The program will be using a different hotel for 2018, the UF Hilton Conference Center. Ms. Zedalis encouraged council members to assist in recruiting faculty for the 2018 program. Program and faculty evaluations for the 2017 program were very good.

#### **New Business: FACDL Sponsorship (out of order)**

Richard Greenberg presented the idea that the CLS should be an exhibitor at the FACDL conference/annual meeting June 7-10 at the Eden Rock Resort. There is a \$1500. fee for exhibitors at the FACDL meeting. There was a motion for CLS to become an exhibitor. Judge Hirsch seconded the motion. Georg Tragos expressed an objection because prosecutors are excluded from FACDL programs. David Barksdale proposed a friendly amendment that the CLS become a 2018 FACDL exhibitor if the FACDL Board agrees to waive the \$1500. fee. The friendly amendment was accepted. The motion passed unanimously.

Discussion followed regarding FACDL's potential involvement in the board certification course. The FACDL cannot promote CLE courses outside its own due to its by-laws. Susan Hugentugler stated the CLE committee is working to get an arrangement with FACDL on a board certification course. Jeffrey harris indicated there might be some pushback from FACDL ue to pride of ownership. Chair McDonnell indicated he would like to see a "pow-wow" between CLE Committee Chair Hugentugler and the FACDL regarding this issue.

#### **I. Selig Goldin Award**

Nominees for the 2018 Selig Goldin Award were put forward and discussed. Neal Sonnett spoke via speakerphone on behalf of Nominee James Felman. Mr. Felman is a repeat nominee. Mr. Sonnett discussed some of Mr. Felman's many achievements, including his body of work on federal sentencing issues, pro bono service, and the Clemency Project 2014. 44 out of 112 clemency petitions prepared and submitted by Mr. Felman's small law firm were granted. He received the ABA Criminal Justice Section's English Award. He was instrumental in getting the disparate treatment between offenders for crack and powder cocaine addressed and changed.

The Selig Goldin Award discussion was briefly adjourned to accommodate a visit from Bar President Michael Higer. Out-going President Higer thanked the Council for its work on behalf of the criminal bar.

Harvey Sepler spoke via speakerphone on behalf of Nominee Judge Stanford Blake. Mr. Sepler noted the many awards Judge Blake has received during his 22-year tenure as a judge in the 11<sup>th</sup> Circuit, including the Justice Gerald Kogan Judicial Distinction Award, The League of Prosecutors 2010 Justice Award, and the Judge William Hoeveler Lifetime Achievement Award, among others. Judge Blake is known for fairness, integrity, and professionalism.

Larry Turner spoke on behalf of Nominee C. Richard Parker. Mr. Parker served as the Public Defender for the 8<sup>th</sup> Circuit for 26 years. Mr. Turner noted that Mr. Parker's nomination was supported by a group including Senior Judge Stan R Morris, Former 15<sup>th</sup> Circuit Public Defender Bennett Brummer, Former 8<sup>th</sup> Circuit State Attorney Rod Smith, 8<sup>th</sup> Circuit Public Defender Stacy Scott, and 8<sup>th</sup> Circuit State Attorney William Cervone, among others. Mr. Turner indicated that diversity was always important to Rick Parker. After retiring as Public Defender, Mr. Parker spent over 5 years in Afghanistan in the Afghanistan Justice Sector Support Program, ultimately serving as Chief of Team for that organization. During his time in Afghanistan, Mr. Parker often had to travel in armored vehicles. Much of his time was restricted to a compound, surrounded by armed guards. He is very passionate about justice and justice teaching.

Jennifer Zedalis indicated that each of the three nominees put forward by the Council were exceptional candidates, and each of them should receive the award at some point. Mr. Felman is legendary for his work on sentencing issues. Judge Blake has set a high bar for judicial excellence and has been a mentor to countless young lawyers. She stated that, as a legal intern for Rick Parker in the early 1980's and an assistant public defender in his office for 14 years, she saw his dedication to providing outstanding defense for poor people first hand. He was devoted to his clients and the idea that they deserved excellent legal defense. He was also an outstanding advocacy teacher at the College of Law for many years.

A vote by written ballot was taken.

## **J. Website/Social Media**

Jason Blank and Lauren Jorgenson presented the website/social media committee report. Social media is very important in recruiting young members. Council members who have not yet submitted a bio and a head shot for the website were encouraged to do so.

### **New Business Out of Order: Florida Bar Foundation Contribution**

A section contribution of \$25,000. for the Florida Bar Foundation was put forward during New Business. A motion to make the contribution for 2018 was made and seconded. The motion passed unanimously.

### **VIII. Old Business**

Larry Turner indicated the CLS needs to have liaisons at each law school in Florida. Scott Fingerhut (FIU) and Jennifer Zedalis (UF Levin) were identified as liaisons. Chair McDonnell indicated he would assist in determining a good liaison at FSU. Joel Silvershein will assist at Nova. Jennifer Zedalis will reach out to the remaining Florida law schools for liaisons.

### **IX. New Business**

#### **Juvenile Law Certification Proposed Rule Amendments**

Joel Silvershein discussed proposed rule amendments from the Juvenile Law Certification Committee. The JLCC is asking for comments from the sections. Within Rule 6-29, the Committee is seeking comments on the creation of separate areas of certification in juvenile dependency and juvenile delinquency. Currently, lawyers sitting for board certification in juvenile law may elect exam portions in either delinquency or dependency. Judge Ward questioned whether this amendment would result in lawyers having to take two separate tests. Some discussion followed regarding specialization in juvenile law and the number of practitioners who do exclusively dependency or exclusively delinquency. Jeffrey Harris indicated it would be helpful to know how many lawyers sat for the exam in the last cycle, and, of those, how many were private counsel. No position was taken on the issue.

It was announced that Rick Parker will be the recipient of the 2018 Selig Goldin Award.

The Council revisited proposal 96 (victim rights) before the Constitution Revision Committee. David Barksdale moved that the Chair obtain a position vote from the Council by e-mail. George Tragos indicated a 2/3 vote is needed. Mr. Tragos also asked that the entire section be made aware of the issue. Donny Murrell proposed a friendly amendment that the vote take place in two weeks. Mac Heavener asked if two separate e-mails would be sent out, one for the council (voting), and one for the entire section. George Tragos indicated that there is an easy voting system available by e-mail. The motion with the friendly amendment passed unanimously.

The meeting was adjourned at 11:41am.

