

Meeting Minutes

Florida Bar Criminal Law Section Executive Council Meeting

Hilton Orlando Bonnet Creek—Beekman Room

14100 Bonnet Creek Resort Lane, Orlando, Florida

June 15th 2018

I

The meeting was called to order by Chair-elect David Barksdale at 9:00am.

II

The roll was called by Secretary, Jennifer Zedalis

PRESENT: (Oliver) David Barksdale, Jennifer Zedalis, Mac Heavener III, Joel Silvershein, Jason Blank, Judge Lisa Campbell, Richard Greenberg, Jeffrey Harris, Judge Richard Hersch, Cynthia Imperato, Antonya Johnson, Judge Klindt, Warren Lindsey, Sam Masters, (Larry) Donnie Murrell Jr., Kenneth Swartz, Ryan Vescio, Judge Zayas, H. Scott Fingerhut, David Rothman, Harvey Sepler, Judge Samantha Ward.

PRESENT BY PHONE: Judge William Davis, Robert Dillinger, Lauren Jorgensen, Judge Jeffrey Levenson, Richard Polin, Michael Sinacore, Neal Sonnett, Abraham Laeser.

ABSENT: Martin McDonnell, Huda Ajlani, Jose Arrojo, Susan Hugentugler, Brian Kramer, George Tragos, Larry Turner, Whitney Untiedt.

III

Approval of minutes from January 19th meeting at Doubletree Hilton, Orlando:

The minutes were approved as amended to reflect the proper spelling of the names of Kenneth Swartz and Lauren Jorgensen and the attendance of Michael Sinacore by telephone.

V (out of order)

The Board of Governors Liaison report was presented by Sam Masters.

The BOG is concerned with mental health. The Board has expanded the definition of “health and wellness” for purposes of CLEs. There is concern that some bar members may not self-identify as having problems because they fear they will lose their guns. A special committee for mental health in the courts has generated a report.

A new trust company (TMI) has been approved by the BOG. Members who work through this trust company will be able to meet compliance rules. David Rothman indicated this was a

“tremendous step” forward for the BOG because young lawyers have trouble understanding how to adhere to the trust accounting rules.

(Sam Masters) the BOG supports allowing lawyers to charge their clients for fees associated with taking credit card payments. As of now, lawyers cannot bill their clients for these fees. This rules change will have to be approved by the Supreme Court.

IV Report of Chair

(Barksdale) The potential impact of Marsy’s Law is of great concern to the section. The section has attempted to interact with the CRC due to the importance of this issue. Executive council members have spoken at CRC meetings. Ryan Vescio and George Tragos have spoken. Chair Marty McDonnell deserves for credit for a lot of work on this issue. Jennifer Zedalis and Scott Fingerhut did a nice op-ed piece on the issue.

There is some disappointment regarding committee work in the past year.

VI. Treasurer’s Report

(Mac Heavener) The CLS “is in good shape.” The section has more money this year than it did last year. More money was made on CLEs than on dues this year. The statement can be found at Exhibit 3.

VII. Executive Council Elections

(Dave Rothman) Dave Rothman and George Tragos worked on the roster. There are two slates: the “A” slate, voted on by the executive council, and the “B” slate, voted on by the entire section. The candidates are heavier on the defense side than desired because the committee had trouble this year locating prosecutor nominees. Members need to be more proactive in locating nominees.

New candidates were discussed. Judge Charles Johnson is a circuit court judge in the 11th Circuit. Prior to becoming a county court judge in 2010, he served as a prosecutor for many years. He would bring a lot to the council. Gerald Berry is a pre-eminent defense lawyer in South Florida. Each of the new candidates have indicated an interest in working on the council.

David Rothman moved to vote on slates “A” and “B.” Ryan Vescio indicated the need to “shake the trees” for good prosecutor candidates. He proposed a write-in candidate, but then agreed to temporarily withdraw his motion to write in a candidate until after the pending slates were addressed. Barksdale indicated there would be an additional need to fill a one-year position on the council for the upcoming year. The motion to vote on the pending slates was seconded.

Slate “A” (Judge Lisa Campbell, Judge Charles Johnson, Judge James Klindt, Warren Lindsey, Michael Sinacore) was voted on and was approved unanimously. Slate “B” (Gerald Berry, Jeffrey Harris, Jason Mehta, Thomas Palermo, Whitney Untiedt) was voted on and was approved unanimously.

Thereafter, David Barksdale indicated there would be a need to fill a one-year position to cover the 30th place on the council usually covered by the immediate past chair.

David Rothman put forward John Beronet. John Beronet is a defense attorney in Pensacola. He is very active in FACDL and he would bring a lot to the council. Joseph Spataro, a statewide prosecutor, was put forward by Ryan Vescio. Joe Spataro teaches in the PPD program and would bring a lot to the council. After brief discussion, David Rothman agreed to place John Beronet's nomination on hold until next year since there is an immediate wish to have additional prosecution representation on the council. Several members expressed agreement that both Spataro and Beronet are excellent candidates for the council.

Jason Blank moved to add Joe Spataro to the council for the one-year slot by unanimous consent. This was seconded. The candidate was unanimously approved.

The nominating committee then moved to have Warren Lindsey elected as the council's incoming treasurer. The motion was seconded. Mr. Lindsey was unanimously approved as the incoming treasurer.

VIII. Committee Reports

A. Capital Cases

(Judge Ward) The Supreme Court has recently approved new jury instructions in capital cases. Although the Court declined to require specific mitigation findings on the verdict form, many judges are still including this on the verdict form. Example: Jurors might indicate mental health factors as a found mitigator.

B. CLE

(Judge Levenson) The CLEs offered by the section earned a lot of money this year, as referenced in the financials. Federal Practice CLE was cancelled this year, but it will be back next year. DUI Masters had 51 "live" attendees and was sponsored. It was held in Fort Lauderdale. It was very successful. Presenter Berman is a great speaker. (Chase Early) The section made more money on CLE's this year than on dues.

- The Committee Reports were temporarily adjourned to accommodate the visit of Board of Governors Member Jodi Foster Morales. Ms. Morales is a candidate for President-elect of the Bar. She has experience as a prosecutor, a criminal defense attorney, and a family law attorney. As a BOG member, she worked on mental health/wellness initiatives for lawyers.

C. Communications

(Richard Polin) Case law updates have fallen behind. Now that the section has a new website up and running, we should have a group to keep the updates current. The work could be reasonably be divided between members based on DCA's plus the Florida

Supreme Court, the 11th Circuit, and the Supreme Court. The federal decisions tend to lengthy and fact intensive. Federal habeas needs to be covered. (Jennifer Zedalis) This suggestion has been made before. The divided work would be manageable and someone in each district could volunteer. Zedalis would do 1st DCA. (Jason Blank) It is not necessary to do a separate update because there are already excellent updates we could post, like Amadaeus. (David Rothman) These update services cost money and why would they allow us access for free? Bob Dillinger's Office puts out a good update. Dillinger would allow the section to post the 6th circuit PD updates. (David Barksdale) We should send the PD update to our newly reconstituted communications committee. Judge Ward gets the update and she can forward it to the committee. General discussion follows regarding whether the PD updates may be tailored for defense practice and therefore not as useful for other section members (prosecutors). General consensus is the updates will address issues effectively for both sides.

D. Federal Practice

(Judge Klindt, Ken Swartz) For federal practice seminar, we need 50 attendees to break even. Would it be possible to take this CLE on the road? Phone seminars are becoming popular and successful. Phone or audio/web seminars are working. Neal Sonnett has been providing input. One topic: Supreme Court cases on warrantless search of phone records. (David Rothman) We have trouble luring in federal practitioners. How about putting together a federal practice showcase?

E. Legislative

(Dillinger, Greenberg) Refer to written materials at Exhibit 4. (Donny Murrell) Regarding the CRC Ballot, FACDL and the PD's voted to challenge the ballot due to the "mishmash" of topics. The ballot is very confusing. The section should support this litigation.

F. Long Range Planning

(David Barksdale) Larry Turner is terming off the committee. This committee should be selected in advance of the June meeting. The written committee reports should be submitted before the meeting. The council should merge media and communications committees. The new website looks very nice. We need head shots (photos) for any council member who has not already submitted one. (Lauren Jorgensen) Lauren submitted hers but it has not been posted.

G. Membership

(David Barksdale) Should the CLS offer a joint membership with the small/solo practitioners section? General discussion followed. (Ryan Vescio, David Rothman) Do we have lawyers in common? Do we have common interests? (Donny Murrell) Donny was a member of the small/solo section. They have different goals, different agenda items.

We already have a joint membership with the government lawyers section. There are criminal defense lawyers in small and solo practices.

A motion was made to offer a joint membership with the small/solo practitioner section at \$45.00. Seconded by Jason Blank. The motion passed.

For membership committee report, see Exhibit 6.

H. PPD

(Zacks, Zedalis) The program will run July 29-August 2. Attendees will be staying at the Hilton UF Conference Center this year as they came down on their rates. The faculty is in place and an excellent program is anticipated this year. CSI will be presenting a forensic evidence talk again this year. It was very well received last year.

I. Selig Goldin Award

(Harvey Sepler, Judge Davis) The luncheon will begin at noon for this year's recipient, Rick Parker, former Public Defender for the 8th Judicial Circuit.

J. Website/Social Media

(Jason Blank, Lauren Jorgensen) We are "live" on the section's new website but the old website is still floating around as well due to slow/lack of cooperation from Netfiles, our old provider. Our Facebook page is being slowly updated. Send your quotes. The section's twitter feed will be up soon. Please send your photos for the new website.

Old Business:

Florida Bar Foundation contribution: (David Rothman) the proposed contribution will be earmarked for loan repayment for legal aid attorneys. Those who apply will be eligible for a \$5000. stipend to pay down their loans. The section would like to be able to offer this to SA's and PD's as well. The foundation supports the Innocence Project.

(Rothman) A motion was made to contribute \$25,000. to the Foundation. Seconded by Harvey Sepler, the motion passed unanimously.

New Business:

Renewal of student and young attorney complimentary membership offers:

(Jason Blank) A motion was made to again offer free section membership to law students and 100 young lawyers. Seconded by Judge Ward, the motion passed unanimously.

Future of Selig Goldin Luncheon:

(David Barksdale) The trial lawyers section may be pulling out as co-sponsors of the Selig Goldin Award Luncheon. How should we proceed in the event this happens? (Tonya Johnson) The CLS could have the event as a breakfast. Several members indicated this was a good option. Some expressed concern that there would be a poor turnout for an early event, especially since some lawyers travel on the day of their meetings. (Judge Zayas) One possibility would be an afternoon event, possibly Thursday afternoon. (David Rothman) How about 5-5:30 Thursday? Discussion: Thursday is a busy day for most attendees. (Judge Zayas) The CLS could present the award at the reception. We need a fall meeting.

Legislative Crimes Victim Proposal:

(David Barksdale) Marsy's Law: Do we continue to have a role in the legislative process? Proposing the CLS continues with an ad hoc committee. Do we need permission to lobby? (Donny Murrell) This is already part of our legislative position as a section. The PDA and FACDL are already litigating. Mark Herend, a Tallahassee lawyer, will move forward with the lawsuit. The fees are \$40,000. Comment: The PD is out, tabled. (Richard Greenberg) The Southern Poverty Law Center is putting \$15,000. toward the litigation and FACDL voted to approve up to \$25,000. toward the litigation. (Harvey Sepler) Harvey's firm is interested in the litigation. (David Barksdale) Does the Bar have a position on amicus briefs? As we are a mandatory bar? Some discussion followed regarding ways to challenge the proposed legislation. (Harvey Sepler) Single subject matter challenges don't apply to the CRC. Brief discussion: the anticipated challenge is based on the "packaging" of the legislation and not on the substantive provisions. As the CLS, we represent many interests. (David Barksdale) Proposed ad hoc committee might include Donnie Murrell, Ben Kuehne, Marty McDonnell, Ryan Vescio, Scott Fingerhut, and Tonya Johnson. Can we sign on to existing litigation, and can we contribute funds? The ad hoc committee will report back to the executive committee. (Warren Lindsey) First, can we file an amicus brief? Second, can we contribute money to the existing litigation? Do we need to seek permission from the Board of Governors?

A motion was made by Jason Blank to pre-approve up to \$10,000. on an emergency basis if it is found that we can properly participate in the litigation. The motion was seconded. All council members who are sitting judges abstained from this vote. (Absent those abstaining) The motion passed unanimously.

Brief discussion followed on the point that the CRC's proposal 96 is now Amendment 6. At the last meeting, the council voted to oppose Prop 96.

Jason Blank moved to adopt the opposition of Amendment 6, the current form of the legislation. (Judges abstaining) The motion passed unanimously.

Thereupon, the meeting was adjourned to allow time for presentation of a plaque for outgoing Chair Marty McDonnell with a group photograph.

