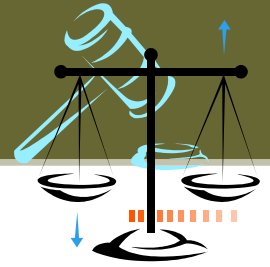




CRIMINAL LAW SECTION MONTHLY UPDATE

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THE FLORIDA BAR CRIMINAL LAW SECTION
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Message from the Chair

By: Donnie Murrell, Chair

Folks, there's a lot going on.

Budget Summit

Our Section continues to lead the fight for adequate criminal justice system funding. In October we held the third meeting in our Budget Summit series at Bar headquarters in Tallahassee. Chief Justice Peggy Quince attended, along with Rod Smith, our Section's newly hired lobbyist as well as representatives from criminal justice agencies throughout the system. Former Florida Bar President Hank Coxe led a discussion attempting to formulate a game plan for dealing with the next legislative session and long term solutions for criminal justice funding. Attendees debated the merits of dedicated funding sources, budget percentages fixed by constitutional amendment, and other potential ways to address budget issues on a more permanent basis.

Proof that our efforts are gaining steam was provided by the presence of the Trial Lawyers Section and their lobbyist. The Trial Lawyers understand that a poorly functioning criminal court system will ultimately impact the civil court system. Backlogs in criminal courts will necessarily spill over to, and cause delays in, civil courts. Personal injury cases, evictions, contract disputes, foreclosures and divorces could all grind to a halt behind criminal cases if funding is cut much further. The civil lawyers know this and want to help make sure it doesn't happen. They will be with us when we take our proposals to the Legislature.

The Florida Bar is also on-board. President Jay White has made over-all court funding a priority mission of his administration. Bar General Counsel Paul Hill attended our meeting and announced that the Bar is setting up a website to solicit anecdotal evidence of how the budget crunch has affected individuals throughout the state. This includes lawyers and clients. If you have a story to tell, check out the Bar's website. Also plans are in the works for a big presentation at the January Mid-year meeting to highlight budget concerns and attract attention to the issue. We will keep you posted on those efforts.

MARK YOUR CALENDARS!

2009 Board Certification Exams for Criminal
Appellate and Criminal Trial will be held:

May 15, 2009

Hilton Hotel – Tampa

813/877-6688

Advanced Federal Practice	January 15, 2009
Masters of DUI	January 16, 2009
Mid-year Executive Council Meeting	January 16, 2009
Criminal Law Rules of Evidence	March 5, 2009
Criminal Law Update	Date TBD
Annual Executive Council Meeting	June 26, 2009
Gerald T. Bennett PPD Program	August 1-7, 2009

The meeting was covered by Gary Blankenship of The Florida Bar News. Gary said his story on our last summit meeting is the most read article on the Bar News archives. You can read more details of our October meeting in the upcoming Bar News.

Masters of DUI Seminar

By: Jeffrey Meldon

DON'T MISS THIS GREAT SEMINAR. The Masters of DUI 2009 seminar teaches the cutting edge tactics, case law, and strategies used by recognized experts in the area of DUI defense. The program provides current and essential information for both the experienced practitioner as well as those with less experience in DUI defense.

The seminar is being held on January 16, 2009 in conjunction with the Mid-year meeting of The Florida Bar. The brochure can be found on the Criminal Law website at www.flacsl.org or on The Florida Bar website at www.floridabar.org.

Criminal Law Section participates in Amicus Brief

By: Donnie Murrell, Chair

Our Section was contacted by the Florida Association of Criminal Defense Lawyers (FACDL) and asked if we would join with them in filing an amicus brief. The issue is a fascinating one and goes hand in glove with the budget crisis – in fact arose out of budget issues.

Briefly, the Statewide Prosecutor filed two multi-defendant RICO cases in Sarasota. The defendants are alleged to be gang members. The Public Defender was assigned one defendant in each case. The Office of Regional Conflict Counsel was assigned one defendant in each case. The remaining defendants (more than five in each information) also needed court appointed counsel. You can see where this is going. There were not enough lawyers on the court appointed list to handle all the co-defendants.

Because of statutory caps, no lawyers were available to represent the incarcerated defendants. The judges in Sarasota went to extra-ordinary lengths to recruit lawyers to take these cases, including sending out letters soliciting lawyers to get involved.

The judges got no takers on that offer. That isn't surprising given that there are over three hundred witnesses listed in one case and over four hundred in the other. (Both sides agreed at a hearing that the case involved at least 500 hours of pre-trial preparation.) Finally in desperation, the judges compiled a list of criminal lawyers in the area. The Chief Judge then appointed lawyers from that list *without the consent or agreement of the lawyers*. To his credit, the Judge tried very hard to protect the lawyers from financial ruin by ordering JAC to pay them \$110/hour and to allow interim billing every forty hours.

Mr. Hagopian is a Sarasota solo practitioner who was on the receiving end of an Order appointing him as counsel. Imagine his surprise – he doesn't take any court appointed work, he was not on any court appointment list. After reviewing the order and talking to JAC, Mr. Hagopian discovered JAC was taking the position that the Order was illegal and it would not comply. By statute, JAC cannot exceed the statutory cap and cannot make interim payments. Mr. Hagopian was caught between a court order and possible financial ruin. He clearly had a conflict of interest with his client. It is impossible to provide effective assistance of counsel while worrying that doing so will cause you economic ruin. Mr. Hagopian

SHARING THE NEWS

Terry P. Roberts, a former Assistant Attorney General (Criminal Appeals section) has opened his own appellate law firm, the Law Office of Terry P. Roberts. Mr. Roberts handles only appellate-related work (direct appeals, federal habeas, post-conviction work, writs, litigation support, etc) and pays reasonable referral fees upon request. His website, including all of this contact information, can be found at www.fairdayincourt.com.

We want to hear from you! Please email your information to wgraham@flabar.org.

moved to withdraw. That was denied. Mr. Hagopian appealed.

FACDL was involved immediately. This is a matter of economic life-or-death to defense layers. But the issues in this case are much broader. How does a Judge provide competent counsel to the indigent accused when the Legislature provides no money to do so? How long does a presumably innocent defendant remain in custody while those issues are sorted out? How can a prosecutor bring multi-defendant cases and get them to trial under these circumstances? Is it a waste of prosecutorial resources to bring such charges if the system cannot get the matter tried? Are convictions going to be overturned due to ineffective assistance of counsel? So FACDL contacted the Criminal Law Section.

Paige Graham, our new section administrator, was able to email everyone on the Executive Council a summary of the facts and issues and in just 24 hours, we were able to decide to participate. Everyone we heard from agreed the issue was important to all members of our Section. It must be pointed out, as it was in our brief, **THAT NONE OF THE JUDICIAL MEMBERS OF THE SECTION PARTICIPATED IN THIS DECISION OR IN THE BRIEFING**. Paul Hill was invaluable in getting Board of Governor's approval. For the first time in my memory, the Criminal Law Section participated in an amicus brief.

Sonya Rudenstein, an appellate lawyer from Gainesville deserves special credit for all her efforts in this matter. Sonya spearheaded the brief. She wrote the drafts, she also recruited and coordinated the other organizations who were involved. Larry Turner, a member of our Executive Council, also from Gainesville, was instrumental in the final

continued, next page...

AMICUS BRIEF*from previous page*

editing and revisions. Sonya and Larry did an excellent job getting this brief done in very short time. They deserve our thanks and recognition. Our Section should be proud of what they did on our behalf.

Through the miracle of modern technology, the [brief](#) and [appendix](#) are attached to this newsletter for anyone who wants to read them.

**THE FLORIDA BAR**

CRIMINAL LAW SECTION

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Lawyers Earn Board Certification in Criminal Trial, Criminal Appellate

By: Lisa Garcia, APR, The Florida Bar

Tallahassee, Aug. 27 – The Florida Bar recently approved board certification for 207 lawyers in 22 specialty areas of legal practice. Board certification evaluates attorneys' special knowledge, skills and proficiency in various areas of law and professionalism and ethics in practice.

Certified attorneys are the only Florida lawyers allowed to identify or advertise themselves as specialists or experts. The following lawyers earned board certification in the criminal trial and criminal appellate specialties:

Criminal Trial

Ken A. Barlow, Jr., Orlando
Anthony Michael Candela, Lutz
Simon Patrick Dray, Miami
Ian J. Goldstein, West Palm Beach
Richard Earl Hornsby, Orlando
Sheila Ann Loizos, Jacksonville
Dustin Scott Stephenson, Panama City
W. Grey Tesh, West Palm Beach
Sabrina Domini Vora-Puglisi, Miami
Todd Andrew Weischolz, West Palm Beach

Criminal Appellate

Meredith Charbula, Tallahassee
William R. Ponall, Winter Park

"Florida's board certification program is one of the leaders in the nation in maintaining the highest standards for excellence and professionalism while adding practice areas for greater public access to legal specialists," said Florida Bar President John G. "Jay" White, III. "The program is predicated on experience and integrity, the foundations that are inseparable from our work as lawyers to advance the administration of justice."

Certification is the highest level of evaluation by The Florida Bar of the competency and experience of attorneys in areas of law approved for certification by the Supreme Court of Florida. Florida currently

offers 22 specialty areas of practice for which board certification is available, the greatest number of state-approved certification areas in the nation.

A lawyer who is a member in good standing of The Florida Bar and who meets the standards prescribed by the state's Supreme Court may become board certified in one or more of the 22 certification fields. Approximately 4,200 of Florida's 80,000 lawyers are board certified. Minimum requirements for certification are listed below; each area of certification may contain higher or additional standards.

- A minimum of five years in law practice
- Substantial involvement in the field of law for which certification is sought
- A passing grade on the examination required of all applicants
- Satisfactory peer review assessment of competence in the specialty field as well as character, ethics and professionalism in the practice of law
- Satisfaction of the certification area's continuing legal education requirements

Board certification is valid for five years. The attorney during that time must continue to practice law and attend Florida Bar-approved continuing legal education courses. Recertification requirements are similar to those for initial certification. Not all qualified lawyers are certified, but those who are board certified have taken the extra steps to have their competence and experience evaluated.

For more information, please visit The Florida Bar Web site at Floridabar.org/certification or contact The Florida Bar's Legal Specialization & Education Department at 850/561-5842.

Criminal Law Section 2008-2009 Budget

31431	Section Dues	\$ 70,000
31433	Admin Fee to TFB	\$ (49,000)
31435	Admin Fee Adj	\$ 11,000
Total Dues Income - Net		\$ 32,000
32191	CLE Courses	\$ 28,500
32293	Section Differential	\$ -
38499	Investment Allocation	\$ 19,319
Other Income		\$ 47,819
Total Revenues		\$ 79,819
51101	Employee Travel	\$ 1,003
84001	Postage	\$ 1,000
84002	Printing	\$ 1,500
84003	Officers Office Expense	\$ 500
84006	Newsletter	\$ 5,000
84009	Supplies	\$ 300
84010	Photocopying	\$ 150
84051	Officers Travel Expense	\$ 500
84052	Meeting Travel Expense	\$ 400
84054	CLE Speaker Expense	\$ 1,500
84101	Committee Expense	\$ 800
84200	General Meeting	\$ 600
84201	Board or Council Meeting	\$ 1,000
84202	Annual Meeting	\$ 10,000
84204	Midyear Meeting	\$ 900
84205	Section Service Program	\$ 20,000
84208	Closing Argument Project	\$ 2,000
84209	Retreat	\$ 1,000
84210	Federal Judicial Roundtable	\$ 5,000
84212	Bennett Summit	\$ 3,000
84301	Awards	\$ 1,100
84302	Scholarships	\$ 7,500
84422	Website	\$ 6,500
84503	Legislative Travel	\$ 2,500
84701	Council of Sections	\$ 300
84921	President Funding	\$ 1,000
84998	Operating Reserve	\$ 10,617
84999	Miscellaneous	\$ 1,500
85055	Contrib Pros/Pd Trial	\$ 25,000
Total Operating Expenses		\$ 112,170
86431	Meetings Administration	\$ 256
86532	Advertising News	\$ 1,050
86543	Graphics & Art	\$ 4,106
Total TFB Support Services		\$ 5,412
Total Expenses		\$ 117,582
Net Operations		\$ (37,763)
21001	Fund Balance	\$ 275,981
Total Current Fund Balance		\$ 238,218

Revised Ethics Opinion 90-6

By: Donnie Murrell, Chair

I fully intended for this newsletter to include pro/con debate between two of our members regarding the Ethics Committee's proposed revision of Opinion 90-6, which deals with the situation of a client who uses an alias in court. In June, the committee approved a radical new opinion that requires lawyers to persuade the client to reveal the false name or refuse representation. If counsel learns of the false name during trial, the opinion requires counsel to inform the court and then move to withdraw.

Our Section has not taken a position on this issue, but it is an important one. Several concerned lawyers appealed the decision of the Ethics Committee to the Board of Governors. (In the interest of full editorial disclosure, I was one of those lawyers.) The BOG referred the matter to its Ethics review committee to report back in January. This is an important issue. Criminal practitioners should keep an eye on it.

We're on the Web!

Visit us at:

www.flacis.org

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 Bill Vose, Orlando
 Lisa Walsh, Aventura
 Michael Weatherby, Jacksonville
 Paul Zacks, West Palm Beach
 Jennifer Zedalis, Gainesville

Last month, I promised this newsletter would be shorter than that one. Missed that call, Sorry, but we've been busy and I thought you should know what's going on. Don't forget, this is your Section, this is your Bar. Get involved.

**Donnie Murrell, Chair
 Criminal Law Section**