

## MINUTES

### APPELLATE PRACTICE SECTION EXECUTIVE COUNCIL MEETING

THURSDAY, SEPTEMBER 8, 2005

AIRPORT MARRIOTT - TAMPA, FLORIDA

#### I. Call to Order B Tom Hall, Chair

Present:

Tom Hall  
Susan Fox  
Austin Newberry  
Siobhan Shea  
Henry Gyden  
Marianne Trussell  
Kim Mello  
Lucinda Hoffman  
Jack Reiter  
Dorothy Easley  
Judge Mark Polen  
Betsy Gallagher  
Celine Humphries  
Tracy Gunn  
Wendy Loquasto  
Calianne Lantz  
Roberta Mandel  
Judge Suarez  
Judge Katherine Pecko  
Judge Silberman  
Matt Conigliaro  
Valeria Hendricks  
Shannon Carlyle  
Steve Brannock  
Katherine Giddings

#### II. Introductions

III. Approval of Minutes (Attachment A). A motion to approve was made by Susan Fox, seconded by Marianne Trussell, and passed unanimously.

#### IV. Chair's Report

A. Today's Events - The Chair reminded members of the Section Reception in the Collier room, followed by the Section dinner at Steve Brannock's home.

B. The Section contributed \$5,000 to annual conference of appellate clerks, which was a big success. Tom Hall attended received a certificate of appreciation from the conference to the Section.

#### V. Treasurer's Report B Dorothy Easley

At the end of the fiscal year, the total in reserve was \$83,339. The Section didn't spend money since that time. Thus, with incoming dues revenues, as of last day of July the Section's treasury had \$95,590.

#### VII. Old Business

A. Retreat - Chaired by Susan Fox and Hala Sandridge. The current dates contemplated are late April May 6, or two weeks later. The Retreat Chairs are investigating St. Augustine/Ponte Vedra and Amelia Island Plantation for the location. They are negotiating rates and dates. The contemplated schedule will include Friday dinner, a session all day Saturday, and a social event Saturday evening, with a possible Sunday breakfast as well. The agenda will include inspirational speaker (Justice Abella Canadian Supreme Court) hopefully, leadership and increased involvement on Executive Board. The Leadership Committee is exploring reducing the leadership track to Chair. The change in leadership structure potentially will eliminate positions and have several positions become feeder positions to Chair.

B. Section Funding (Attachment B). It was costing the Bar \$450,000 annually to support all sections. In June 2005 the BOG voted to change the way the dues and revenue splits were calculated. The bottom line is that pursuant to conference calls with BOG members it ended up being either a wash or we came out favorably. See Attachment B. The change will take effect July 1, 2006. BOG/Section Leaders held a retreat in St. Augustine last month and the materials and handouts from that meeting show the differences in revenues. Eg. Exhibit One (without comp membership B free first year membership for first year members). A new twenty percent reduction in G&A was the amount approved by BOG. G&A is the Section's share of the Bar's cost of running sections' operations (e.g. salaries, electric bill share). Traditionally all the sections were charged, but the amount charged will be 20% less. However, the Bar will be raising the amount of dues (currently \$25 total) that they keep. The Bar's portion will be raised from \$12.50 to \$17.50. Sections will be raising dues as a result. The plan will eliminate printing costs to the Section. Thus, \$2,158.00 will additionally be earned by Section as a result. Another change in revenues may result if the Bar doesn't need the full amount of dues and will then rebate part of it. Further, regarding CLE revenues, the Section will either get 80 percent of the profits or 80 percent of the loss. If Section doesn't make money on CLE we could lose on the CLE. Tom Hall raised the question whether the Section shouldn't consciously raise money with the CLE. Chair Hall will appoint a new Special Subcommittee Chair to examine ways to reach out and retain new members. (Approximately 225 join each year.)

#### VIII. New Business

A. Appellate Practice book, 6th ed., Chapter on Supreme Court Procedures & Practices - The Bar is looking for author for Supreme Court practice chapter. Contact Joanna Mauer.

B. Level of CLE Seminars; Joint CLE

CLER recently ranked a Section CLE intermediate, but the Section got it changed to advanced. The Section will need to monitor ranking of CLE programs and make sure they are given the correct ranking.

YLD has scheduled a Beginning Appellate Practice Seminar. Brandon Vesely is in charge of it. Matt Conigliaro will approach him about making it a Section seminar. Matt will also examine the splits and how to make CLE more lucrative.

A question remains whether the Section can split fees with other sections? Under the new system it looks like there is more incentive to not co-sponsor CLE with another section.

C. Appointment of Council of Sections Representatives - Traditionally two appointees. Have to appoint either Chair or Chair-Elect. Government lawyers appointed the same one year after year. Gives Section consistency and institutional memory. Historically has been the Chair and Chair-Elect. Other section makes a five year appointment. Cindy served on Council of Sections for at least three years and thinks it's an excellent idea, but thinks that the person who accepts appointment must understand attending the Council of Sections meetings is a Saturday morning commitment. Question whether by-law would be required to make it a continuing appointment because Chair appoints but can't bind the incoming chairs. Will refer to Leadership Committee.

## IX. Committee Reports

A. Continuing Legal Education B Matt Conigliaro

The CLE Committee met on Thursday, September 8, 2005, in Tampa, Florida. The following members attended: Matthew J. Conigliaro, Chair; Celene Humphries; Marianne Trussell; The Honorable Kathryn Senecal Pecko; Ceci Berman; Cathy Mac Ivor; V. Hendricks; Calianne Lantz; and Elizabeth Rodriguez.

### 1. OLD BUSINESS

#### a. Past Seminars

i. Inside the Eleventh Circuit. Our plans to host this seminar in October 2005 have been abandoned due to logistical difficulties in planning, though we would like to host this seminar in Atlanta in October 2006. Ceci Berman and Celene Humphries have agreed to assist Sonya Hoener in organizing this seminar.

ii. Preservation of Error Seminar. This seminar was held in August 2005 at the Renaissance Hotel in Tampa. John Mills and Jack Reiter co-chaired the event, which was well attended and received.

iii. Lunchtime Telephone Conference Seminars. These monthly seminars continue. They are held the third Tuesday of every month, except June and December, at 12:10 p.m. Attendance has been strong, varying from about 10 to over 40.

iv. Hot Topics. The committee will plan a Hot Topic seminar for Fall 2006. Cathy Mac Ivor has agreed to chair this seminar. A location

and date will be determined.

b. Pending Seminars

i. Appellate Certification Review Course. This seminar is scheduled for February 3, 2006, at the Tampa Airport Marriott. V. Hendricks and Marianne Trussell have agreed to co-chair the event, and Ceci Berman will assist them.

ii. Criminal Seminar - Let My People Go. This seminar is being considered and tentatively planned for April 2006. Calianne Lantz will follow up with Steve Witsotski regarding potential plans. Wendy Loquasto and Rebecca Creed have also agreed to assist in planning. If this seminar is to go forward, it must be planned by January. So, planning will have to take place between now and our next meeting in January. Matt will follow up with Calianne.

iii. Administrative Appeals Seminar. This seminar is scheduled for April 7, 2006 in Tallahassee. A location has not yet been determined. Judge Pecko, Marianne Trussell and Nancy Wear are helping to plan.

iv. Workers' Compensation Appeals Seminar. We will hold this seminar in 2007. Austin will select a date and save it in the master CLE calendar.

v. TPR Appeals Seminar. A training seminar for those interested in the termination of parental rights appeals was considered on a statewide basis. After further investigation, Celene Humphries advised that this effort shall be coordinated on a local level, not statewide through the section.

2. NEW BUSINESS

a. CLE Section e-mails. Some committee members are not receiving the Section's e-mail blasts about CLE events. To ensure you receive these e-mails, be sure the Bar has you registered as a section member and has your correct e-mail address.

b. Practice Before the Florida Supreme Court. Tom is in contact with the Government Lawyers Section about whatever role the Appellate Section can play in presenting this annual seminar.

c. Bankruptcy Seminar. Ceci Berman offered to lead an effort to establish a bankruptcy seminar. No date or location is planned yet.

B. Legislative B Deborah Marks not present. There is currently another bill pending to strip the Supreme Court of rule making authority, and this concept is gaining more momentum. There is a committee looking into when to create new DCA.

Tom, Judge Pecko and Matt Conigliaro circulating change to rules judicial administration. The question remains whether some change in jurisdiction lines needed.

DCA performance and accountability Committee has had a few submissions to Court of appointment of new judges and staff.

A new bill has been introduced by Negron for certification of new judges in the circuit courts and DCAs. It needs to be submitted before the budget committee. Judge Warner sees the bill as favoring new judges. The funding would be obtained for the additional judges in 2006, pursuant to

Negron's filed legislation. Approximately 50 judgeships were previously asked for but not funded. A real question remains whether the new judges will then be appointed or elected.

C. Programs B Celine Humphries met with herself (the committee has three new members but none attended). She's meeting with June about dessert reception and also with YLD to possibly share. The Programs Committee has three more members and June will stay on.

D. Publications B Steve Brannock - The Section Publication Committee met in the morning.

1. Florida Bar Journal Articles - Tracy Gunn is in charge of submissions. Wendy Loquasto is editing. There is a rule against publication of issues currently on appeal. authors should wait until a decision issued. General topics such as preservation are always welcomed. Because of Section size we can run one article every issue.

a. Articles in the Works:

Kathy Maus, Preservation and Jury Selection (? two articles?)

Laura Whittmore, Gross Abuse of Discretion (edited and sent in)

Tracy Carlin, Pass Through Jurisdiction

Roberta Mandel, Trial Support (Preservation)

Finn Presely - Reply Briefs (due 10/1)

Jack Reiter - Original Proceedings (due 9/29)

V Hendricks and Ariadne Fitzgerald, Circuit Court Appellate Jurisdiction

Statutory Construction, Restatement on Same by Henry Gyden

b. Upcoming Articles:

Henry Gyden, to be determined (September)

Siobhan Shea Criminal Appellate Update (January)

Cory Eichhorn, Attorneys' Fees (February)

Chrissy Davis, to be determined (Spring)

Changes in the Rulemaking Process, Rules of Judicial Administration  
Changes Tom Hall

2. The Record - Betsy Gallagher, Editor

a. Summer Issue Deadline June 30<sup>th</sup> - in production will arrive soon

Discussion with the Supreme Court, Elena Alonso

Dessert Reception, June Hoffman

TPR Appeals, Katherine Yanes

Stetson Merger with Second DCA, Judge Altenbernd on Artwork

Board Certification Award, Tom Elligett, Amy Farrior and Susan Fox

Reminder to email info to the Bar

Board Certification

b. Fall Deadline September 15<sup>th</sup>

Message from the Chair

Henry Gyden, to be determined

Schiavo Case, Matt Conigliaro

Stetson Workshop, Nick Shannon

Article on Judge Thomas by Wendy Loquasto

Boca Burger case  
Motions to Dismiss for Lack of Prosecution, Henry Gyden and V. Hendricks

c. Winter Deadline November 15<sup>th</sup>  
Caselaw updates  
Criminal Law Update, Roberta Mandel  
How to Get Certified, Angela Flowers  
Federal Law Update by Steve Brannock  
Judge Stevenson by Dorothy Easley (winter)

d. Spring 2006 February 15th  
Blakely and Booker Criminal Law by John Mills  
Rule Making Jack Reiter or Kathleen O'Connor  
Judge Cope by Roberta Mandel  
Voir Dire Alina Suarez  
Judicial Notice on Appeal Mike Finch

e. Judicial Profiles  
Judge Suarez by Cory Eichhorn  
Judge Rothenberg by Kathleen O'Connor  
Judge Cortinas by Roberta Mandel  
Judge LaRose by Tom Elligett  
Judge Lawson by Shannon or Chris  
Susan Wright new Clerk of Fifth DCA

f. Book Reviews Scott Makar  
Standard of Review  
Recent Rules Changes

3. The Guide - Caryn Bellus, Editor

Online Proposals  
Fourth DCA Update by Siobhan Shea is out

4. Pro Se Handbook - Dorothy Easley. See attachment. Harvey Sepler working to get funding from Bar Foundation for handbook. Hall questions whether may have to become standing committee to continually update the handbook and whether the Section wants to undertake this project long term. This will be an item for the June agenda.

5. Website B Dorothy Easley - see attachment. Matt Conigliaro reported that many people are not getting the monthly blasts of telephonic CLE's. Bar records of email addresses are used. Thus there needs to be a reminder in the Record to members to update email addresses with the Bar. The Bar is addressing spam issues. The Section may need to send a non-graphic version to evade spam filters. The updates can also be posted on the website.

F. Leadership Committee B Angela Flowers was not present. The Leadership Committee is working on changing leadership track and will have formal report in January.

G. Mentor Committee B Jack Shaw was not present due to a family illness.

H. Outreach Committee B Shannon Carlyle. Sample brochures were distributed at the meeting. They will have blank part on each brochure instead of the author's name so that they can be resold to members. Austin reworked the brochures and samples are available and look great! The Committee is still looking for contributions for subject matters. The Committee obtained banners and they will be ready to be displayed at different programs. A booth at the Bar meeting costs \$2,500. The Committee spoke with Family Law Section. A booth at a Family Law Section meeting will cost \$200-\$500. The Committee is seeking to have a Section booth at next seminar at Grand Floridian. They can do this within the current Outreach budget. (Thus no vote was taken.) The Committee will have a telephone conference in September. A question was raised as to how the Section will measure success or response to Outreach? The Committee will order a number of brochures and will attempt to obtain actual feedback. The Family Law Section event is a two day program which will occur January 26 or 27 in Orlando and will be a first run for the Outreach Committee.

I. Pro Bono B Tony Musto had no report. However, referrals have been made through the DCAs and the Supreme Court (seven or eight, of which two or three have had oral argument). At the Practice before the Supreme Court seminar Justice Pariente recognized Harvey Sepler for involvement in an unemployment appeal. It was suggested there should be an article in Record about Section members taking pro bono referrals.

J. Sponsor / Advertising B Chris Carlyle is exploring mail merge to take out advertising in the Record and generate money, which would not be subject to Bar charges and will help build a reserve in the Section treasury.

K. Government Lawyers B Harvey Sepler is heading a special committee formed by Tom Hall to get government lawyers to join and become active in Section, as well to serve their needs. Over sixty percent of appeals in Florida are currently handled by government lawyers. Former or current government lawyers are asked to please serve on the committee. In January and on the retreat this will be on the agenda.

X. Good and welfare: Lucinda Hoffman reported the ABA Council of Appellate Lawyers will meet in San Francisco September 29-October 1. The speakers will include Ken Starr and topics include how to edit associates' briefs. CAL will also have social events with the chief judges. 24 hours of CLE credit and reduced rates for government lawyers are available.

XI. An Award Committee will be appointed to create a form for nominating, criteria for Section awards, and to review the applications of awards nominees.

XII. Next Meeting will be January 19, 2006 at the Miami Hyatt Regency Downtown.

XIII. Adjournment