

Minutes

The Florida Bar Appellate Practice Section Mini-Retreat

Tampa, Florida, Thursday, September 10, 2009

I. Message from the Chair Dorothy Easley: Format and Goals for the Day

Section Chair Dorothy Easley welcomed everyone to the Mini-Retreat, expressed appreciation for the Judges attending as well, and noted that there will be a follow up Mini-Retreat in January 2010.

A discussion of the format for the retreat followed. Chair Easley explained that it will be informal in its presentation, hoping to invite dialogue. Chair Easley also stressed the importance of a retreat in light of economic pressures facing everyone.

Chair Easley believes that the retreat is one of the most important things we can do during times of economic stress. When resources are limited, that is the time that we need to think even more carefully about the decisions we make and the direction of the Appellate Practice Section. Is it consistent with our original focus and consistent with appellate practice as a whole.

Chair Easley then explained that three topics will be addressed during this Mini-Retreat:

Council member Susan Fox will facilitate and discuss the Section's future and leadership, and included within that, the Section bylaws. Chair-Elect Raoul Cantero will monitor time.

Council member Tom Hall will speak about the Section's fiscal independence. The overall budget was dramatically better than we expected because of significant contributions of the Section members, but with the change in Bar rules, our Section went from a large surplus to virtually no surplus and we have been working very hard to rebuild that.

Section member Hala Sandridge will facilitate a discussion regarding the Section's use of technology and e-filing.

Chair Easley noted that we are here to generate ideas. She thanked Hala Sandridge, Tom Hall and Susan Fox for tremendous work in connection with this

retreat. She also expressed thanks to new Appellate Practice Section liaison Valerie Yarbough for all of her hard work.

Tom Hall then discussed the ground rules for this Mini-Retreat. We must stay on time and on the subject. There should be no side conversations. Also, everyone should keep an open mind, free their creative selves, and have some fun.

Section member Hala Sandridge invited members to introduce themselves. The following members of the Executive Council were present:

Chair Dorothy F. Easley

Chair-Elect Raoul G. Cantero, III

Vice-Chair Matthew J. Conigliaro

Secretary/Treasurer Jack R. Reiter

The Honorable Morris Silberman (Second District Court of Appeal)

The Honorable Alan Lawson (Fifth District Court of Appeal)

The Honorable Richard Suarez (Third District Court of Appeal)

Mr. Jack J. Aiello (Former Chair)

Mr. Steve Brannock (Former Chair)

Ms. Angela C. Flowers (Former Chair)

Mr. John Crabtree (Former Chair)

Ms. Susan W. Fox (Former Chair)

Mr. Thomas D. Hall (Former Chair)

Mr. Anthony C. Musto (Former Chair)

Ms. Alina Alonso

Ms. Caryn L. Bellus

Mr. Christopher Carlyle

Ms. Betsy E. Gallagher

Mr. Bryan S. Gowdy

Ms. Tracy R. Gunn

Mr. Henry G. Gyden

Ms. Valeria Hendricks

Ms. Wendy S. Loquasto

Additionally, the following Section members attended the meeting:

The Honorable Nelly N. Khouzam (Second District Court of Appeal)

The Honorable Edward C. LaRose (Second District Court of Appeal)

The Honorable David A. Monaco (Fifth District Court of Appeal)

David F Albrecht [NEED TO CONFIRM]

Ms. Ceci C. Berman

Ms. Robin Bresky

Mr. Duane Daiker

Mr. Ari Fitzgerald

Mr. John R. Hamilton

Ms. Celine Humphries

Ms. Calianne Lantz

Ms. Hala Sandridge

Mr. Harvey Sepler

Mr. Nick Shannin

Mr. Thomas Warner

Mr. Anthony Russo [need to confirm]

Ms. Cassandra Snapp

Ms. Frances Toomey

II. Section Future and Leadership

Section member Susan Fox asked who had been at the prior retreats and discussed the purpose of a retreat. Ms. Fox read the bylaws and highlighted the importance of exchanging of information and encouraging participation.

Ms. Fox also discussed the Section's mission statement and the importance of promoting high standards of appellate practice and facilitating the exchange of information and ideas.

The first question Ms. Fox posed to the group was whether the mission statement was consistent with our goals and noted that at the retreat in 2000, the Section discussed –

- Section publications

- The Section website

- The importance of creating internal operating procedures

- Methods to foster interaction and recruit new people

At the 2003 retreat, the Section discussed:

- The importance of fostering communication

- Providing training and education

- Facilitating the exchange of information and ideas

- Enhancing communication by email blasts.

- Heightening awareness of role of appellate lawyers

- Cultivating excellence in appellate courts, and

Strengthening internal operations

Ms. Fox also questioned ways that the Section could pass information forward to the next generation.

Ms. Fox then observed that at the 2006 retreat, the Section discussed:

The creation of a public advocacy committee to address systemic issues in the court system

Financial reconstruction

Website enhancement

General discussion regarding the significance of the retreat.

Ms. Fox then indicated that the goal of this retreat was to discuss the things that the Section is not currently doing and invited comments from the participants.

Secretary/Treasurer Reiter suggested that we need to attract new members to the Section.

Judge Silberman noted that the Section does not always follow-up on certain hot topics, such as the *per curiam* affirmance issue.

Chair Easley asked whether the Section today was where it was intended to be and highlighted the importance of focusing on professionalism.

Section member A. Musto opined that appellate practice has become much more of a specialty and noted that in his opinion the level of professionalism among appellate lawyers is much higher than trial lawyers.

Section member J. Hamilton suggested that the Section become more engaged in advocacy.

Section member S. Fox agreed that the Section as an advocate could actually drive more membership and participation.

Judge Lawson questioned whether the Section could get more involved in the Judicial Nominating Commissions around the state?

Chair-Elect Cantero suggested that the members not lose sight of the fundamentals of our Section, which he sees as training and education of younger appellate lawyers. Chair-Elect Cantero believes the Section and its members need to take responsibility for promoting excellence in the practice of appellate law. The Section should improve the continuing legal education program whenever possible and offer programs to teach how to write appellate briefs.

Council member W. Loquasto suggested that one of the issues the Section could address is the use or lack of use of three-judge panels at the circuit level.

Vice-Chair Conigliaro raised the issue of by-laws and asked what could we do to update them and make them better? He questioned whether the by-laws clearly identified who was on the Executive Council. He further questioned whether it was clear how the Section accomplished different things.

Section member A. Musto believes that the Section has not had involvement from public defenders and lawyers from the Attorney General's office. He suggested that we elicit more input from those sources.

Council member V. Hendricks suggested that we should communicate more with local/voluntary bar associations.

III. Section Fiscal Independence

Section member Hall posed to the group the question of how we make ourselves more financially secure?

Chair Easley suggested that we should promote our continuing legal education programs whenever possible. She also questioned whether it would be possible to advertise on our bar website?

Chair-Elect Cantero suggested maximizing profitability of continuing legal education programs by moving more toward more web-based seminars.

Section member J. Aiello suggested that we co-sponsor with other sections whenever possible to reduce costs. He also believes that The Florida Bar would invest more proceeds into the two sections that participate in a seminar.

Section member T. Hall suggested the option of hiring a professional fund raiser to seek grants from different foundations that give money to different institutions.

Section member A. Musto suggested that we work with law schools to hold seminars there and save money.

Section member A. Flowers questioned whether, if the Section raises more money, the Section would have to give a greater percentage of income to the Florida Bar and lose the extra money raised?

Section member T. Hall agreed with the observation and noted that it is a concern that the Section must confront. He questioned whether there was a way to insulate and keep the funds with the Section?

Council member W. Loquasto questioned the Section's decision to pledge funds to different institutions and noted that there may be some confusion as to what the Section will or will not fund.

IV. E-filing and Use of Technology

Section member H. Sandridge started the discussion by asking Section members to identify the advantages of e-filing.

Section member T. Hall observed that records can be accessed 24 hours a day, 7 days a week, and individuals will have easy access to information.

Judge Silberman agreed with the observation that records will be immediately accessible and subject to word searches

Chair-Elect Cantero noted that e-filing allows access to documents on the docket sheet.

Judge Lawson sees e-filing as presenting huge financial savings and convenience.

Section member N. Shannin pointed out that it is easy to file from anywhere.

Chair-Elect Cantero explained that the Florida Appellate Court Technology System had funds from the legislature and was moving toward statewide uniform e-filing and document management. A company was hired to develop from the system, but

it failed to create something workable. Then when the legislature cut funds, the project was abandoned.

Section member H. Sandridge asked the group to consider what would be the models for e-filing?

Council member B. Gowdy questioned why the district court ECF system does not transfer to the state system?

Section member T. Hall explained that the federal system is not compatible with other Florida courts. Also, the system is owned by the federal government.

Section member J. Hamilton noted that currently the Circuit Court in Orange County, business division, has its own electronic filing system similar to federal district courts.

Council member W. Loquasto also observed that the First District Court of Appeal will be doing e-filing soon for worker's compensation cases.

Secretary/Treasurer Reiter suggested that certain private systems, such as the Lexis/Nexus service, work well and questioned whether it could serve as a model for electronic filing and service.

Section member Sandridge then asked participants to identify the potential obstacles to electronic filing systems.

Section member T. Hall explained that it will cost \$4,000,000 to implement an appellate e-filing system.

Judge Lawson noted that different courts cannot have different systems and that the systems need to be uniform. He explained that one of the problems that exist is that Clerks in different counties are implementing their own systems. He wondered how do we get all the dollars in one place to get something that works statewide?

Chair-Elect Cantero raised privacy and confidentiality concerns and questioned how we keep things confidential once they are e-filed?

Section member H. Sandridge asked whether any public access issues exist?

Section member T. Hall observed the risk of electronic distribution issues and highlighted the inequality of people who do not have electronic access.

Section member H. Sandridge then asked what can we do as a Section to accomplish the goal of e-filing?

Council member V. Hendricks wondered whether there is a lot of resistance to the technology. She believes that electronic filing has to be thought of as an investment to save money in the future.

Section member Berman suggested that the Section educate or lobby the legislature in a formal fashion. She asked whether the Florida Bar taken a position on the issue?

Section member T. Hall indicated that the Section can take only lobbying positions that are approved by the Florida Bar. The Section can ask the Bar to undertake such efforts, and the Bar has paid lobbyists.

Section member H. Sandridge asked whether we should reach out to other Florida Bar sections to get involved in this issue.

Section member C. Lantz advised the group that the Criminal Practice Section of the Florida Bar has hired lobbyists to try and promote this.

Council member B. Gowdy observed that the Florida Bar President has set forth a commitment to e-filing.

Council member T. Gunn questioned whether we know who needs to be targeted with these efforts?

Council member W. Loquasto expressed concern that budget issues would hamper efforts.

Section member T. Hall noted that the Florida Supreme Court issued an Order on July 1 of this year that adopted e-filing standards and set forth criteria for how it would happen.

Section member J. Hamilton noted that people can get email alerts regarding opinions issued by the First District Court of Appeal.

Section member A. Musto suggested that we have more argument by video.

Council member W. Loquasto suggested that we use technology to handle alerting lawyers of matters that are expedited.

Section member T. Hall also noted that a rule is now in place that puts the burden on lawyers to identify confidential information and hide it. He further observed that the Americans with Disabilities Act requires electronic documents to be ADA accessible and readable by a blind person. The Florida Supreme Court is considering a rule that every document that is filed be so created.

Section member J. Hamilton suggested that all of the District Courts of Appeal should archive oral arguments for viewing.

Council member H. Gyden observed that he would like to see access to the briefs electronically.

V. Adjournment

Chair Easley brought the Mini-Retreat to a close and thanked everyone for their hard work and participation. She expressed her appreciation for Section member (and Mini-Retreat Facilitator) H. Sandridge's hard work and the Mini-Retreat committee members, Tom Hall and Susan Fox. She suggested that at the next Mini-Retreat at the January 2010 meeting, we be ready to discuss ways to resolve many of the questions we had today. She advised everyone wanting to get involved to contact the facilitator. She thanked everyone for attending.

Mini-Retreat adjourned at 2:00 p.m.