

STATE BAR OF MICHIGAN
PRISONS & CORRECTIONS SECTION COUNCIL MEETING MINUTES
Council Meeting
State Bar of Michigan Building
December 3rd, 2016

Jackie Ouvry called the meeting to order at 10:06 AM.

Attendance and Welcome:

Present: Jackie Ouvry, Pat Streeter, Mike Marutiak, Doug Shapiro, Monica Jahner, Kyle Kaminski, Daniel Manville, Paul Reingold, Nicole George, Sandy Girard, Gary Kasenow, Barbara Levine, Richard Stapleton, Michelle VanDusen and Ron Emery (13 regular voting members)

Excused Absences: Peter Martel, Clinton Canady, Keith Barber, and Jessica Zimbelman

Adoption of Agenda:

On motion by Richard Stapleton, seconded by Mike Marutiak, the agenda presented was adopted unanimously.

Approval of Minutes:

Pat Streeter presented the minutes from the last regular council meeting from November 5th. Corrections were offered showing that Sandy Girard had been present as well as two other minor changes. On motion by Mike Marutiak, seconded by Paul Reingold, the minutes were approved unanimously as amended.

Treasurers Report:

Dan Manville reported that the SBM had not reported financial information to the sections on time. Therefore there was no written report. He did report that the section's balance was just over \$5,000. Sandy Girard suggested that the section should complain to the SBM, but Jackie reminded everyone that this happens every fiscal year at the end of the calendar year as the SBM has to undergo an audit which delays this information. On Sandy Girard's motion to table, seconded by Richard Stapleton, and unanimously supported, further action on Dan's report was tabled.

Report from the Chair:

- a. By-laws: Jackie reported that the amendments to the by-laws were now included on the Sections website.
- b. Chair-elect: Jackie reminded everyone that she will be on leave for at least April and May and that a temporary chairperson will have to take over. Dan Manville queried whether non-voting ex-officio members could serve as temporary chair. Mike Marutiak noted that article 3 of the by-laws says no. At this time, Sandy Girard "raised her hand" and volunteered to fill in as chair during Jackie's absence. On motion by Pat Streeter, seconded by Barb Levine, the section unanimously approved Sandy's as temporary chair.
- c. Themed Bar Journal: i) Jackie reported that if all authors contribute as requested, there will be more than enough material to fill the September SB Journal. She also reported that the SBM assigned John. R. Runyan from Sachs Waldman, P.C. as editor for that edition. His law firm represents the MCO. ii) Jackie also reported that the Family Law Section will likely be giving up their July edition because of their failure to meet their deadlines, and the SBM queried whether our section wished to move forward to July rather than September. After discussing the pro and cons the council's consensus was to stick with the September edition. iii) Jackie summarized the topics and identified

the authors as follows: Kim Thomas- the current status of juvenile lifers, Laura Sager –mass incarceration “by the numbers;” Amanda Alexander- mass incarceration’s community impact, Dan Manville and Paul Reingold-conditions of confinement, an article by DOC on an as yet undetermined topic, Jackie-the history of the Prisons and Corrections Section and its function regarding legislation. Jackie also asked for volunteers to review and select photos and /or art from the PCAP prison art show to include in the September bar journal. Pat Streeter, Dan Manville, Michelle VanDusen and Nicole George volunteered. Kyle Kaminski will need to review these in advance to have DOC approve them if we want the journal addition to be allowed into the prisons. DOC will be looking to be sure gang symbols, etc are not included. Pat volunteered to receive the PCAP selections from Kyle and she will then forward those to the other three volunteers.

Committees:

- a. Law Libraries: Pat reported that the committee plans to visit the Handlon Facility in Ionia on January 13th starting at 11 am. Michelle VanDusen and Doug Shapiro asked to be placed on the list with the others of the committee for the visit. Pat needs to supply DOC with the list so it can do a LEIN check on each visitor. Kyle reported that DOC has begun a pilot “positive program” for inmates that include providing inmates with access to tablets for self-help programs. With these they earn “credits” worth access to the tablets. MP3’s will be phased out in the next ten years because DOC has a new contractor that does not use the MP3. The tablets are not connected to the Internet but to a MDOC network. Kyle suggests that this may be a way of gauging demand for higher education training in the prisons. Since it is only a pilot program so far, only about 400 tablets will be available. Higher demand would be expected at security level 5.
- b. June conference: Mike Marutiak reported that he, Richard Stapleton, Barb Levine, and Jackie met on December 2nd to discuss the conference which will address the topic of electronic monitoring (EM). Barb delivered a written report that is attached to these minutes. The report summarized the specific topics to be covered in the conference. These included how EM would work (i.e. the mechanics of the implementation; current MDOC policy regarding its use; proposed areas to expand use; and use of EM as an alternative to incarceration. A discussion followed on whether EM should be utilized in monitoring all CSC violators regardless of the age of the victim. Pat Streeter also suggested that the conference should also include information on the use of EM at the Federal level. Sandy suggested that we try to get at least one legislative aide to wear EM equipment for a week or an extended time to get a better insight into how it works and thus educate legislators on its pros and cons. Kyle noted that the best “test” would be to monitor former parolees. Kyle also asked if the topic of the conference was developed enough for him to start soliciting possible contributors from MDOC. On motion by Pat Streeter, seconded by Barb Levine, the council unanimously approved the topic. Monica Jahner volunteered to ID a potential former parolee. Richard suggested that EM be expanded to include pretrial detainees. On motion by Mike Marutiak, seconded by Sandy Girard, the council voted unanimously to authorize payment of the expenses for James Kilgore who will present at the conference and is the author of *Electronic Monitoring is not the Answer*.
- a. Criminal Law Liaison: Mike reported on that section’s last meeting. He reported that there was no action on their position on the Criminal Justice Reform legislation. Their section will have its next seminar at Shanty Creek in February. They would like to partner with the P & C Section for that seminar. The topic has not been determined yet. They will offer up to \$7,000 in scholarships to eligible attendees to that program. Mike also reported that that section plans to hold a program in June also. It would be held on Mackinac Island on a date that will not conflict with P & C’s June program.

Executive and Legislative Initiatives:

a. Parole and Probation package: Barb Levine reported that the Parole and Probation package of legislation's status is not clear and there are only six more days in the current term for action to be taken. Jackie queried whether under those circumstances if this is a good time to discuss as if action is taken there will be no time for the council to have input. If it is put over until next term we will have more time then as action will not be taken right away anyway. On Paul Reingold's motion, seconded by Sandy Girard, the motion to table carried unanimously.

b. SB 1067: Jackie then raised this legislation that would eliminate the statute of Limitations for CSC offenses occurring to victims 16 years of age or less. She pointed out the section 1(D) would extend elimination to "children under 18". Jackie's first question is whether this issue is appropriate for our section to take a position (i.e. is it in our "wheelhouse") Richard Stapleton initially thought it was not as it just relates to the coverage of a criminal statute with no widespread corrections impact. Barb Levine and Paul Reingold felt that the extension of 1(D) raises an age duality issue that could have broader impact. On Pat Streeter's motion, seconded by Sandy, the council voted 11-1 with 1 abstention in favor of taking a position of opposition to the legislation.

c. SB1080/1081: This legislation would make it a separate crime to throw bodily material at corrections officers and employees in corrections setting. Kyle reported that MDOC supports the legislation. The consensus of the council is that the statute is unnecessary as the proscribed conduct is already covered adequately elsewhere (MCL 750.197c). On Sandy Girard's motion seconded by Paul Reingold, the council voted 12-0 to opposes the legislation with one abstention. Jackie reiterated two goals for the upcoming year of increasing section membership, and for retiring council members to try to find replacements for their own seats. We currently have one open position on the council since the end of John Shea's term. There also was a brief discussion recognizing the council's authority to appoint new members to fill vacancies.

Old Business:

- a. Newsletter: Pat Streeter distributed a sample of the current newsletter and gave the deadlines for the next edition. She suggested that an outline of the June conference be included in the next edition to curry interest in the conference. The deadline for submitting articles is March 31st. Pat reported that typical circulation of the newsletter is around 220 copies per edition. This includes copies to legislators, their aides, and MDOC prison libraries. Kyle reminded the council that MDOC would regulate copies of the newsletter allowed in the prisons. For instance, MDOC will not allow the newsletter in if authorship is attributed to inmate Chuck Whalen. In light to that, the council consensus was that a separate issue properly attributing authorship to Whalen will be put on the Internet website.
- b. Council Vacancy: Monica Jahner reported that she had talked to Carol Seimon the new Ingham Prosecutor who expressed an interest in joining the council. She is already a member of the section. Jackie instructed Monica to ask Seimon to submit a statement of interest and invite her to the next meeting in January. Paul also questioned whether the American Friends Service Committee still had a member on the council. Jackie noted that Pete Martel is still on the council though he as been unavailable for recent meetings. Jackie expressed the aim of continuing to expand out potential pool of members by continuing to send out e-mails as well as conference topics and relevant articles to the bar and interested organizations.

New Business:

Dan reported that US District Judge Avern Cohn had issued a ruling in the "Vincent Case" finding that a MDOC policy prohibiting family members who are attorneys cannot visit inmates. Dan turned a copy of this order over to Kyle Kaminsky, MDOC's representative.

Paul Reingold also reported on two recent cases dealing with corrections type issues. In *Does v Snyder* the Sixth Circuit held that cumulative enforcement of the Sex Offender Registration Act

(SORA) with its so-called super registry violates the Ex Post Facto Clause of the constitution. The Attorney General has filed for cert in the US Supreme Court.

In *People v Temelkoski* the Michigan Supreme Court granted leave to appeal a Court of Appeals ruling that held application of SORA retroactively to a Holmes youthful trainee whose conviction dismissed after successful completion of his probation, without a new conviction does not amount to cruel and unusual punishment. The case will be argued in the Supreme Court this month.

On motion by Ron Emery, seconded by Doug Shapiro, the council voted unanimously to adjourn at 12:06 PM. The next meeting will be the 7th of January.

Ron Emery
Secretary
January 9, 2017