

Judge David Hoort, Chair
Charles Marr, Chair-elect
Stephen Gobbo, Secretary
Judge William Caprathe, Treasurer
Graham Teall, Parliamentarian
Elaine Spiliopoulos, Editor

Criminal Law Section Council Meeting Minutes

January 21, 2014 (Copper Restaurant, E. Lansing)

- 1. Call to Order by Secretary Gobbo, on behalf of Chair Hoort, at 6:30pm.**
 - a. Absence with notice: Hoort, Marr, Spiliopoulos (Editor)
 - b. Absent without notice: Scott or another designated Children's Law Section Representative
 - c. Present: Gobbo, Caprathe, Brady, Brown, Nichols, Gilbert, Guess, Farkas, Posner, Sacks, Teall, Winters, Blanchard, McDonough, Smith, Taratuta, Thompson, Malkin, Garretson, Timmons, Manderfield, Marutiak, Sherman. Non-voting: Cunningham (commissioner)

- 2. Secretary's Report/Meeting Minutes-Stephen Gobbo**
 - a. April 16, 2013: Former Secretary Marr to submit minutes for Council review at an upcoming meeting - deferred.
 - b. November 19, 2013 (and addendum for e-mail vote on \$400 conference expense) and December 17, 2013 meeting minutes – deferred.

- 3. Treasurer's Report**

Provided by Judge Caprathe. Teall raised concern about impact on budget if \$1,500 is paid for *Amicus* briefs. Discussion about the need for a two-year actual budget plan for all expenditures. Farkas mentioned that the traveling road show may generate additional revenue since fees are charged, and this may cover expenses. McDonough raised an issue about the traveling road and donations (deferred to the specific agenda item). Report received by the Council.

- 4. Committee Reports**
 - a. Shanty Creek Conference:

Taratuta reported the conference is all set. Discussion about speakers. Judge Caprathe mentioned there was problem with registration and locking in room rate. There are other difficulties with Shanty Creek that will need to be considered for future events. Speakers include Val Newman and an MCOLES representative. Sherman mentioned PAAM meets the week before and this impacts availability of prosecutors. Judge Caprathe mentioned the Criminal Jury Committee will be meeting 2/1/2014 and there will be a report on eye witness testimony.

 - b. Frankenmuth Conference: Malkin reported that the committee agenda was sent out for last meeting, but there is a revision. One speaker is being loaned for the Shanty Creek conference. Registration fee will be the same as Shanty Creek, \$25 for section members and \$30 for non-section members. If non-member attends, and pays the registration fee, he or she will be a member for the remainder of the year. Malkin pointed out that some persons want paper handouts rather than a flashdrive or other electronic version. An added fee of \$10 will be charged for photocopies if a person requests copies. Also, Malkin responded to a question about expenditures at a prior conference, and clarified the additional expenses were related to

meals costs for when 150 persons showed up, exceeding projected numbers attending. With the upcoming conference, this issue should not reoccur because of the planning.

- c. Policy Conference: No need to report at this time.
- d. CLS Journal: No report at this time.
- e. Advertising: Marutiak will work with conference committees. Nothing will be done until after the Shanty Creek conference to avoid promotion of two conferences at the same time.
- f. Annual Meeting: No need to report at this time.
- g. Nominating Committee: No need to report at this time.
- h. Young Lawyers: Farkas briefly mentioned that the Young Lawyers will have a Summit event the last weekend in May 2014, and the Young Lawyers council had a meeting last week, and is open to coordinating event programming for the summit with the criminal law section. Thoughts included a form of nuts and bolts presentation. Family Law Section reached out as well, and it is contemplated that a family law topic related to criminal issues might be included. Farkas asked if council members would be interested in assisting with development. Blanchard mentioned one topic to consider is "basics" so a young lawyer is prepared as to what to expect while practicing in Court. Gobbo reminded the council that there was prior discussion related to mentoring, and that this may afford an opportunity for this. Farkas stated the event program in Lansing included networking times (Friday night: Lugnuts game; Saturday: program; Saturday night: event at Troppo's; Sunday: more programs). Someone from the Criminal Law Section (possibly Chair Hoort) had already contacted the chair of the Young Lawyers. Farkas asked that the Council provide to her any suggestions on program content or otherwise.
- c. Briefs/ Amicus Curiae: Committee chair Nichols provided an update. Timeframe for *Shavers* has run out. There are three possible cases still remaining,

People v Cunningham, which was discussed last month. Nichols refreshed the Council about issues, including that related to "reasonable flat fee," assessment of prosecution costs, and relationship to *People v Sanders*. Discussion took place about an *Amicus* in general. A motion was made by Sherman, supported by Taratuta, that: No *Amicus* should be filed unless the Section was specifically invited by the Court to do so."

After considerable discussion, including that the *Amicus* committee should develop a policy for review, a motion to table the instant motion was made by Teall, supported by Malkin. On a voice vote, the motion passed to table. A second motion was made by Malkin, supported by Teall, to direct that the committee review and provide a report at the March Council meeting. The Taxation Section policy on *Amicus* will be reviewed and council members should further provide comments, including about the percentage of members for a position to be taken. Some members did not believe there should be a limitation to only submit a brief if specifically invited by the Court. Nichols invited any Council member who was interested to participate with the development of a policy to let him know. On a voice vote, the motion to refer to the committee passed unanimously.

People v Ryan Smith: Nichols outlined the legal issue again for the Council. Time will run by the time of the March meeting and development of an *Amicus* policy.

People v Newbold: Similar to *Smith, supra*, there will not be enough time for filing if a decision is not made until March.

Council discussed the cases, and potential avenues on the issues. Timmons indicated a statutory amendment might more quickly cure one of the issues. No motion made to take specific action different from the charge to the committee to develop a policy for review.

Further discussion is to take place at the March meeting.

5. **Representatives to the Council and other reports or discussion:** Winters reported there were no appointments to the Indigent Defense commission. Funding appears to still be an issue. A short discussion occurred about “Gideon vouchers” and the further encouragement of ideas. A suggestion was later made by Teall for the chair to follow up with the Governor’s office concerning input on appointments and whether the Section can assist. No opposition to the suggestion was expressed.

Malkin stated there was nothing to report from CDAM.

Judge Caprathe restated with Model Criminal Jury instructions, the group is now a Supreme Court committee with a meeting on 2/1/2014, 10:00am, at Cooley Law School. A recommendation is expected, which will have to follow the Court’s rule promulgation process.

Garretson stated there was no report for Criminal Justice Initiatives, except the group is fact-finding on collateral consequences for juveniles. There is information families need to know. If anyone has suggestions or materials of use, forward.

Timmons stated Criminal Jurisprudence & Practice took up the court rule on harmless error and the committee voted to oppose it.

Marutiak stated Prisons & Corrections is now planning two conferences, one on March 7th at Michigan State University Law School (subject: sentencing). An e-mail blast will go out soon. The second conference, meant for practitioners, is scheduled June 21, 2014 at the SBM (subjects: jail programming, mitigation in general, formal hearings in the MDOC).

Sherman reported that PAAM is working on the preliminary examination legislation, as introduced, and the association is also awaiting results from the Michigan Law Revision Commission project. There is a possibility that substantive recommendations could be made by the Council of State Governments (CSG) for the entire criminal justice system.

Children’s Law Section, deferred as no representative was present.

Judge Manderfield discussed her now retired status vis-à-vis the Michigan Judges Association. The Association met in January, but she is finding there are conflicts with attending that Association’s meetings, and is considering resigning as this Section’s liaison to the Association. Judge Caprathe will conduct some follow up with MJA on possible options.

6. **Traveling Road show:** Farkas provided an update concerning the Detroit event at Wayne State University on March 22, 2014, Saturday. School will waive fees for use of its facilities. Wayne has a limitation of \$200 for food; if more than that amount its vendor must be used. Discussion about offering section memberships to older Wayne alumni, expanding beyond young attorneys. Farkas proposed a budget amount not to exceed \$300 for the event (food and beverages); Smith seconded the motion. An amendment to the motion was presented and affirmed by the original makers of the motion to raise the amount up to, but not exceed \$500 (for expenses to include food and beverages). Discussion about fee charges to attend the event; Farkas believes students should be free, possibly alumni, and if the conference fee is paid, the individual would have a section membership until SBM year-end. A vote occurred on the \$500 budget amount, and the Council voted 23 in favor, zero opposed, and zero abstentions to approve the amount.

McDonough commented on the previously scheduled, but cancelled, Battle Creek event. Responses from law firms were not favorable for donations to fund the event. This was a surprise and the Section should plan accordingly for future events.

Brady added that there may be other ways to get individuals who attend to become members. Maybe a credit for what is paid at an event. Gilbert added information about lack of interest for the Battle Creek event. Others weighed in about the location of the event and some difficulties that may occur with a Saturday event in Detroit.

Discussion lead to further comments about the regional events in general. Manderfield suggested that judges might encourage attorney participation for local training events. Taratuta suggested that there may be more benefit to a volunteer speakers' bureau.

Farkas raised issue of section membership for students, mentoring, and other issues to encourage a successful event.

Gobbo suggested that the committee may be left to resolve some event issues. Further, since many issues are being brought up in general for this type of event, the council was requested to carefully articulate its concerns and solutions to present at a future meeting.

7. **Legislation:**

- a. HB 5216, HB 5217, and HB 5218: Taken up out of order due to a request by a Council member, who indicated a need for an early departure from tonight's meeting. Timmons reported that there is bipartisan interest in the Bills. HB 5217 limits employer liability for hiring someone who was incarcerated. HB 5218 addresses "good moral character" amendments. Garretson explained the scope of the Bills, which are moving quickly, but House leadership is looking for feedback. Garretson would like to expand discussion on the Bills. A motion was made by Sherman, supported by Brady, to express support in concept for what the Bills stand for, but refinement/expansion may be necessary. The motion passed with 17 in favor, 5 opposed, and 1 abstention. Comments should go to Garretson regardless of a member's position tonight.
- b. SB 675: Election offenses and knowingly making a false assertion or statement of fact about a candidate. Council passed on taking a position.

- c. HB 5190: Habitual offenders and use of prior juvenile offenses for determining status. A motion was made by Blanchard to oppose the Bill, supported by Taratuta. Sherman indicated this was not a Bill that PAAM is pushing and may not have taken a position as yet. There is distinction with the way a prosecutor may charge a juvenile with a more serious offense, i.e., as an adult. The motion to oppose passed on a vote of 21 in favor, 2 opposed, and zero abstention.
- d. HB 4593 and HB 4594: junk dealers and metal regulatory act. Timmons mentioned that a related Bill, HB 4595, already moved and HB 4594 would resolve without need for a position.

With HB 4593, the 3-day waiting period contained in the Bill is an issue. After discussion, Judge Caprathe made a motion to oppose only the portion of HB 4593 that addresses the 3-day waiting period because of the burden on poor persons having to wait for money. The motion was seconded by Blanchard. Further discussion, including by Timmons who believes the 3-day period is important. The vote was called on the motion with 10 in favor, 9 opposed, and 2 abstentions; the vote, however, did not result in a majority of those members present because of the abstentions. There was agreement of the Council that the vote failed. No further motion was made, so there will not be a report of action on the Bill.

- e. HB 4090 and HB 4091: Concerns the increase of mileage to jurors from .10 cents per mile to .22 cents. The increased amount is based on available monies in a special fund. A motion was made by Malkin to support the Bills, seconded by Judge Caprathe. The vote was 17 in favor, 2 opposed, and 3 abstentions.

8. Court Rules: Sacks stated there was no report or action needed today.

9. Projects:

- a. Judge Caprathe is developing a proposal for the Council to consider concerning community response to sexual assault. No action to take tonight.
- b. No action required concerning Gideon vouchers. Article provided for informational reasons.
- c. Taratuta discussed a possible task force to review prosecutor and public defender salaries. SADO may have an interest in the subject. Maybe it can be tied to indigent defense. Teall suggested the establishment of a committee to review the issue and make recommendations. Cunningham thought the subject may be of interest to an SBM committee. The concept should be considered for possible approaches and further discussed at a future meeting. A major issue is funding. Parity is issue, and McDonough pointed out that prosecutors have other resources beyond their office, e.g., police. No action taken tonight; Taratuta willing to further discuss possible action with chair Hoort.
- d. Pretrial detention: Taratuta raised this as another thought to pursue as a project because of the impact and individuals being locked up and then released on probation anyway.
- e. Community service: Deferred in the absence of Chair Hoort who added the agenda topic.

10. Other: Sacks suggested the topic of COMPAS risk assessment instruments at future Section events due to how fast the use of the tool has been moved up by the Michigan Department of Corrections. SADO has materials it can share.

11. Adjourn: Meeting adjourned at 9:22 pm.

Respectfully submitted,
/s/
Stephen J. Gobbo
Secretary

Approved: March 18, 2014