

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
March 18, 2014 (Copper Restaurant, E. Lansing)

1. Call to Order by Chair Hoort, at 6:30pm.

- a. Absence with notice: Nichols, Thompson, Timmons
- b. Absent without notice: Scott
- c. Present: Judge Hoort, Marr, Gobbo, Judge Caprathe, Brady, Brown, Gilbert, Guess, Farkas, Posner, Sacks, Teall, Winters, Blanchard, McDonough, Smith, Malkin, Garretson, Judge Manderfield, Marutiak, Sherman, Spiliopoulos (Editor), Cunningham (Commissioner)

2. Secretary's Report/Meeting Minutes-Stephen Gobbo / Charlie Marr

- a. April 16, 2013: Former Secretary Marr submitted minutes for Council to review. Motion to approve the 4/16/2013 minutes was made to approve, and seconded. Motion passed on a voice vote.
- b. November 19, 2013 (and addendum for e-mail vote on \$400 conference expense), December 17, 2013, and January 21, 2014 minutes – presented by Gobbo. Motion made to approve, seconded. Passed on a voice vote.

3. Treasurer's Report

Provided by Judge Caprathe. On cost compared to last year; no deviation to report. Judge Caprathe to work on presenting a two-year budget after input from past treasurers and Elaine. Motion made to receive February and March, 2014 financial reports, seconded. Motion passed on a voice vote.

4. Committee Reports

- a. Shanty Creek Conference:
Taratuta reported the conference turn-out was the best in the last five years. 49 persons registered, and 35 attended sessions. Discussion about presentations by speakers – were excellent. Malkin mentioned the Section should strive for 100+ people at conferences, and suggested Shanty Creek should be every other year, not during the Policy Conference year. This stimulated further discussion. Taratuta made a motion to approve a \$500 deposit for next year's conference, and for negotiation with Shanty Creek to occur. A second to this motion was later withdrawn after discussion. A new second to the motion was made by Winters. On a vote of 14 in favor, 6 opposed, and 1 abstention, the motion for the \$500 deposit to Shanty Creek was approved.

Chair Hoort established a committee to determine whether a winter conference should continue to be held at Shanty Creek, or a substitute location. Committee members appointed were Malkin, Brady, Farkas, Guess, and Posner.

- b. Frankenmuth Conference: Malkin reported on the status of the conference, and that the registration form was updated. He raised a concern about timing of the conference, and that perhaps if it was held the weekend before or after the SBM Leadership Conference / Upper Michigan Legal Institute, that it would avoid scheduling conflicts for some potential attendees. Discussion ensued about partnering with other groups, such as CDAM and the Prosecutors. After significant discussion, it seems that there was consensus for partnering with groups if balance can be achieved, but the identity of the conference must remain with the section.

Discussion about possible revisions to the proposed registration form ensued. This included the layout for selecting the option for printed material, the addition of a spot for P number, and ability of non-lawyers to easily complete the form as a non-attorney.

- c. Policy Conference: Marr indicated there is nothing to report at this time.
- d. CLS Journal: No report at this time.
- e. Advertising: Marutiak stated the committee will continue to work with conference committees.
- f. Annual Meeting: Gilbert mentioned possible topics to include medical marijuana update. The annual meeting will be held in conjunction with the SBM Annual Meeting. Another possible topic was a presentation on drunk driving.
- g. Nominating Committee: Gobbo indicated there was no need to report at this time.
- h. Young Lawyers: Farkas provided an update about the program for the Lansing Summit Conference beginning on Friday, May 30, 2014. Friday's events include a gathering at the Lansing Lugnuts event, and programming will take place on Saturday and Sunday. She asked for council participation and Teall indicated he is willing to participate.
- i. Briefs/ Amicus Curiae: Garretson provided an update on the proposed amicus policy that she and Farkas compiled. The policy draft was discussed, as well as sections of the by-laws. After significant discussion, a new draft incorporating Council member comments and concerns will be circulated. Discussion did include whether positions should require a two thirds vote of the Council or a majority.

Chair Hoort appointed a by-laws committee consisting of Marr, Winters, Blanchard, and Brady to conduct a review.

- 5. **Representatives to the Council and other reports or discussion:** Judge Caprathe provided an update concerning the Model Criminal Jury Instructions and revisions are being made for medical marijuana and criminal enterprise matters. He invited council members to provide comments.

Malkin reported for CDAM and stated the Association's conference in March had 240 people in attendance.

Garretson provided a report for Criminal Justice Initiatives. The report included discussion of certificates of employability legislation concerning employee tort liability. This stimulated discussion about whether the Council should weigh in. Garretson also mentioned activity concerning the Uniform Collateral Consequences Act is occurring and on May 6, a statewide re-entry conference will be held with the support of the Eastern and Western Federal districts.

Marutiak reported for the Prisons and Corrections Section that it did not agree with the position in the bills concerning Certificate of Employability. The Section is holding a symposium on June 21 at SBM offices concerning administrative hearings and county jail programs.

Sherman reported that PAAM is awaiting the results of the recommendations to the Michigan Law Revision Commission, and that the Commission's meeting will be held tomorrow. He also reported that the preliminary exam / conference bills appear to be moving, and that Tom Rombach testified for the SBM supporting the bills as amended.

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

Judge Manderfield had no report for the Michigan Judges Association, as the Association is meeting tomorrow. There was discussion about a possible replacement to represent judges. A district court judge may have interest. A motion was made by Taratuta and seconded by Malkin to specifically add the District Court Judges Association as a group to be represented on the Council. The motion passed on a vote of 22 in favor, 0 in opposition, 0 abstention. Consideration of amending the section's bylaws to reflect this was also part of the motion. (Note: this will raise the voting members of the council to 27.)

6. **Traveling Road show:** Farkas provided an update about Wayne State event. She sought council participation at the event.
7. **Legislation:**
 - a. HB 4679-4680: Malkin stated he was a proponent for the introduction of the legislation, and the bills concern the parole process and document release issues. Bills discussed at length and the Council had a consensus that no position should be taken at this time.
 - b. SB 841-844: The bills concern certain enforcement mechanisms concerning public assistance and reduce the felony threshold amount to \$100. Blanchard made a motion to oppose the bills, seconded by Guess. The motion passed on a vote of 19 in favor, 3 opposed, and 0 abstentions.
 - c. HB 5270: Requires the recording of child testimony. After discussion, a motion was made by Sacks, seconded by Farkas, to support the bill. The motion passed on a vote of 16 in favor, 4 in opposition, and 2 abstentions.
 - d. HB 5383-5385: Marr and Sacks led discussion on these bills, and a motion to table was made, seconded, and approved by the Council members present
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. Chair Hoort appointed a taskforce concerning ethical and civility issues. Members appointed included Taratuta, Brown, Farkas, and Nichols.
 - c. Sacks discussed the Michigan Department of Corrections' intent to use COMPAS as an assessment instrument for sentencing purposes. The tool was designed for parole use and not sentencing. This intent by MDOC would impact pre-sentence investigation reports. Garretson made a motion, seconded by Teall, for the Chair to draft a letter to the MDOC outlining concerns about the instruments' use. Motion passed on a voice vote. Sacks to assist in drafting letter.
 - d. Gilbert discussed the revision of traffic tickets and language translation for non-English speaking individuals on a standardized form, which may cause issues. The Chair was authorized to send a letter concerning the issues.
- 10. Other:** Smith mentioned he noticed the cost of restaurant bills are increasing, and suggested looking at alternatives. The Chair appointed a committee comprised of Smith, Nichols, and Manderfield to review possibilities in the Lansing area.

Discussion occurred concerning the Senate bill calling for a voluntary bar. Motion made by Marr to express opposition to the bill, and support of a mandatory bar. Seconded by Garretson. The Council on an affirmative vote of 22 in favor, 0 opposed, and 0 abstentions, authorized the Chair to write a letter to the task force appointed by the Supreme Court after discussion of the motion

A unanimous motion to authorize expenditure for a plaque for Barb Levine was approved by the Council for her years of service. The presentation is to occur at the annual meeting.

- 11. Adjourn: Meeting adjourned at approximately 9:20 pm.**

Respectfully submitted,
/s/
Stephen J. Gobbo
Secretary

Approved: April 15, 2014

**CRIMINAL LAW SECTION MINUTES
ADDENDUM**

On March 25, 2014, Section Chair, Judge David Hoort submitted to the Council via e-mail the proposition that the CLS Council approve the Motion by Stephen Gobbo, supported by Judge Manderfield, that the Criminal Law Section Council authorize the payment of \$250.00 for a gold sponsorship for the Young Lawyers Section (YLS) 7th Annual Summit from May 30-31, 2014 at the Lansing Radisson Hotel.

The Section Bylaws permit the Council to vote by e-mail after the Chairperson submits a proposition to the Council by electronic mail, when an issue arises for a determination within in a limited period of time so that the calling of a formal meeting is not practical. The pertinent Bylaw section is reproduced below:

ARTICLE VI, SECTION 7. When an issue arises which must be determined within a limited period of time so that the calling of a formal council meeting is not practical, the Chairperson of the Section may . . . submit . . . by . . . electronic mail to each of the members of the Council, any proposition . . . so submitted, by communicating their vote thereon, by any of the aforementioned means to the Secretary, who shall record upon the minutes each proposition so submitted, when, how, at whose request same was submitted, and the vote of each member of the Council thereon, and keep on file such votes. If a majority of the members of the Council shall be in favor of such proposition, or if such majority shall be against such proposition, such majority vote shall constitute the binding action of the Council. With prior Council approval, a meeting may be conducted by means of conference call.

Upon a tally of the responses to the proposition, the proposition passed with seventeen (17) affirmative votes tallied as of April 1, 2014, including the vote of the following Council members: Timmons, Hoort, Garretson, Brady, Gilbert, Malkin, Posner, Farkas, Sacks, Manderfield, Sherman, Marutiak, Gobbo, Caprathe, Guess, Nichols, and Taratuta. Two members abstained: Brown and Judge Clarke.

There was no recorded vote as of April 1, 2014 for Teall, Winters, Smith, Blanchard, Marr, Thompson, McDonough, and Scott.

Respectfully submitted,

/s/
Stephen J. Gobbo
Secretary

Approved: April 15, 2014