

***Criminal Law Section Council  
State Bar of Michigan  
April 17, 2018  
County Club of Lansing, Lansing, Michigan***

**Council Members Present:**

Chairperson Stephanie Farkas, Judge Caprathe, Judge Clarke, Opolla Brown, Bruce Timmons, Bill Winters, David Gilbert, Ryan Zemke, Dianna Collins, Neil O'Brien, Mike Brady, Michael Marutiak, Brian Watkins, Goran Antovski, Steve Gobbo, Richmond Riggs, Christine Piatkowski (joined meeting at 1842 hrs.) and Coleman Potts (joined meeting at 1844 hrs.)

**Council Members Not Present with Excused Absence from Chairperson:**

Chair-Elect Josh Blanchard, Judge Anderson, Edwar Zeineh, Heather Garretson, Elaine Spiliopoulos (non-Council member, Editor of Newsletter), Sofia Nelson, Erica Savage, Christina Hines

**Council Members Not Present without Excused Absence from Chairperson:**

None.

**I. Call to Order:**

The Council meeting was called to order by Chairperson Farkas at 1830 hrs. An attendance sheet was circulated and a quorum was established by virtue of the presence of sixteen (16) voting members at that time. Two (2) additional voting members joined the group later.

**II. Secretary's Report:**

The draft minutes from the March 20, 2018 Council meeting were reviewed by the Council. Motion by Ryan Zemke, seconded by Steve Gobbo, to accept the minutes as offered. Unanimously passed by voice vote. [Note: Council minutes for 03/20/18 are now posted on the CLS website.]

**III. Treasurer's Report:**

Judge Clarke noted he received numerous comments and requests to the draft budget circulated a week earlier. The revised budget proposal will be distributed to the Council by the end of the week after incorporation of the suggestions and requests.

**IV. Committees and Reports:**

**Chairperson's Report and Committee Appointments:**

Chairperson Farkas informed the Council of a communication from the Bar inquiring as to whether there will be any increase in our Section's dues for the next fiscal year. No discussion by the Council and no motions were offered.

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Shanty Creek Conference Report:

Ryan Zemke updated the Council on the search for a new site and likely dates for the 2019 Shanty Creek Conference (presumably to be renamed). The focus is on the Detroit Metro area although other parts of the state are not excluded at this point.

Frankenmuth Conference:

Mike Marutiak gave an update on the Forensic Evidence Conference scheduled for June 15<sup>th</sup> and 16<sup>th</sup> in Frankenmuth. The finalized Program Agenda was shared with the Council.

Judge Clarke apprized the Council on the Social Committee's plan to host a Social Hour for conference attendees. The Social Hour will be held at the same hotel as the conference and begin shortly after the end of Friday's conference sessions. Food and libations will be available. The expectation is for the Social Hour to be an attraction to our members in attendance and at the same time be a boost to the conference.

Annual Meeting:

Opolla Brown reported she received several noteworthy suggestions for a theme for the Annual Meeting Program. All are under consideration by the Committee. One suggestion was to present on neurobiology and head trauma, the education of lawyers on that topic and the availability of experts to testify. Another suggestion was to focus on medical marijuana and dispensary laws. It was noted by the Council that the CLS's program normally conflicts in time with the meeting and presentation by the Marijuana Law Section. A final suggestion was to present a program on implicit bias. The Council may expect a final decision from the Committee by May or June.

Policy Conference/Mackinac Committee:

Nominating Committee:

Court Rules Committee:

Diversity/Young Lawyers Committee:

Amicus Committee:

Cuba Trip Task Force:

No reports this month.

Bar Journal Committee:

Judge Caprathe informed the Council of an urgent need for articles for the upcoming feature Bar Journal. The Section is committed to presenting four (4) articles and the Judge is in possession of only one (1) at this stage with another promised. The first draft of the articles must be submitted to the Bar by June with the final copies due by August. We are seeking a balance of viewpoints from both defense and prosecution.

Social Committee:

In addition to what Judge Clarke announced along with the Frankenmuth Program discussion, the Social Committee is considering a similar reception during the time of Bar's Annual Meeting in September, a "Council President's Reception" on Thursday night (September 27<sup>th</sup>) for Section members who attend the Bar's Annual Meeting.

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Legislative Committee:

Bruce Timmons reported on the status of HB 5377 (a bill to expedite the parole of low risk offenders) and SB 844 (a bill to extend the sunset provision of the Criminal Justice Policy Commission). No action taken and no motions made. [Other legislative items to be discussed later during the meeting under the Agenda item of Legislation and Court Rules.]

Scholarship Committee:

Opolla Brown suggested the Council adopt two (2) criteria for future scholarships: 1) where the applicant is employed, what s/he does in the course of her/his work, her/his primary practice and how the attendance at the event will benefit the practice, and; 2) the quality of the application letter. Ms. Brown will soon formalize the suggestions into a document for forwarding to Council members for review and approval as our standards.

Pre-trial Release Committee:

Dianna Collins reported there has been little news since her last report to the Council, although the budget talks are continuing and a pre-trial component is included in the talks.

**V. Representatives to the Council Reports/Other Discussions**

Indigent Defense Commission:

Chairperson Farkas reported that the issue of budgetary funding is still ongoing and before the legislature.

CDAM:

Brian Watkins reported the CDAM Board will be meeting later in the month and one of the agenda topics will be educational opportunities for members.

Criminal Jury Instructions:

Access to Justice:

Michigan Judges Association:

District Court Judges:

No reports this month.

Prisons and Corrections:

Mike Marutiak reported that the topic for the Prisons and Correction Section's June Conference (June 2<sup>nd</sup> at the State Bar) will be "Mental Health Issues, Before, During and After Incarceration". Advertisements and eblasts will begin soon.

PAAM:

Neil O'Brien informed the Council he will be doing a webinar for PAAM on restitution issues on Monday, May 14<sup>th</sup>, from 1000 hrs. to 1200 hrs. Mr. O'Brien also reminded the Council members about the annual candle

light vigil during Crime Victims' Rights Week this year. The vigil will be held in the Capitol rotunda on Wednesday, April 25<sup>th</sup>, beginning promptly at 1800 hrs.

Children's Law Section:

Christine Piatkowski reported that most of the discussion at the Children's Law meetings has focused on juvenile lifers and adoption law.

**VI. Legislation and Court Rules:**

- a. HB 5702: Bruce Timmons outlined the provisions of the bill providing additional notice to prosecutors and courts for forfeitures under controlled substance statutes. The present bill would not require a conviction for a forfeiture. There was some discussion among Council members and no action was taken.
- b. HB 5407: Bruce Timmons outlined the provisions of the bill to amend current crime victim statutes to require the presence of defendants during presentation of victim oral impact statements, with some exceptions. Goran Antovski moved to oppose the legislation; motion seconded by Brian Watkins. A lively discussion ensued on the merits of the legislation vis-à-vis the constitutional authority for the statute, the rights of defendants and the rights of crime victims. A hand count vote was taken and the motion to oppose HB 5407 passed by a vote of 9-7-2.

Council members then expressed a desire to add commentary to the vote in opposition to HB 5407 for purposes of a complete record. The discussion was bifurcated into two (2) aspects of the legislation: the possible interpretation of the legislation that victims will have a say in having the defendant removed from the courtroom during an impact statement and the provision requiring the defendant to be present for the impact statements with exceptions.

The Council unanimously opposed the notion of empowering the victim to "evict" a defendant from the courtroom when his/her impact statement is presented. The unanimous concern of the Council was that a victim should not be able to have the defendant removed from the courtroom. The Council, by a plurality, opposed the provision requiring the defendant to be present for impact statements.

- c. SB 895 and 896: Bruce Timmons outlined the provisions of the bills regarding the statute of limitations for compensation for wrongfully convicted persons. The essence of the bills are to undo a recent Court of Claims decision applying the Court of Claims time limitations to the statute allowing for compensation to wrongfully convicted persons. Bruce Timmons moved to support both bills; Brian Watkins seconded the motion. Discussion ensued. A hand count was taken and the motion to support passed by a vote of 13-3-2.

**VII. Old Business:**

Steve Gobbo suggested the Council "reach out" to Judge Kolenda to secure permission for another to update the Kolenda Book. Chairperson Farkas asked the Council to approve the printing of 50 copies while a decision is pending about updating the book. Mike Marutiak moved to authorize up to \$1,000.00

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for reprinting of up to 50 copies; motion seconded by Mike Brady. A very quick hand count was taken coupled with an unanimous voice vote and the expenditure was approved 18-0-0.

**VIII. New Business:**

Chairperson Farkas announced that Christina Hines very recently gave birth to her second child, thus explaining her absence from the Council meeting tonight. Chairperson Farkas motioned for authorization to have flowers sent to Ms. Hines and Elaine Spiliopoulos (Elaine for other reasons) with the total cost to not exceed \$250.00; the motion was seconded by a Council member, unrecorded as to name. A quick hand count coupled with a voice vote was taken and the authorization was approved 18-0-0.

**IX. Adjournment:**

Brian Watkins moved to adjourn the meeting; motion seconded by Goran Antovski. Unanimously approved by voice vote. Chairperson Farkas then adjourned the meeting at 2102 hrs.

Respectfully submitted,

Michael J. Marutiak, Secretary of the Section, April 26, 2018

Minutes approved by the Council unanimously as written at the May 15<sup>th</sup>, 2018 Council meeting.  
Motion of approval by Opolla Brown; seconded by Edwar Zeineh.