

CRIMINAL LAW SECTION COUNCIL MEETING
STATE BAR OF MICHIGAN
April 17, 2012

Members Present: David Gilbert, Sherrie Guess, Charles Marr, Jonathan Sacks, Stephen Taratuta, Kenneth Malkin, Hon. Paula Manderfield, Hon. David Hoort, Michael Marutiak, John Potbury for David Leyton, Opolla Brown, Jon Posner, Stephen Gobbo, Matthew Smith, Ward McDonough, Heather Garretson, Barbara Levine.

Also Present: Thomas Rombach

- I. Call to Order by Stephen Taratuta, Chair, 6:40 p.m.
 - a. Absence with notice: Bruce Timmons, Judge Caprathe, Graham Teall, Marty Krohner, Elaine Spiliopoulos, Lynn D’Orio
 - b. Absent without notice: None

II. March 20, 2012 Minutes; David Hoort, Secretary.
Opolla Brown moves, Jon Posner second, to approve March 20, 2012 minutes. Motion carried by acclimation.

III. Treasurer's Report; Charles Marr, Treasurer
Treasurer Marr reports a plus \$45,000 fund balance, and requests reimbursement of \$714.60 for out-of-pocket expenditures for postage for the Kolenda books. Jon Posner moves, Matthew Smith second, to authorize reimbursement of \$714.60 to the treasurer. Motion passed by acclimation. Treasurer submits 2012-13 proposed budget, with a revenue increase relating in part to dues and a reduction in seminar costs because of expected savings using flashdrives. Michael Marutiak moves, Stephen Gobbo second, to receive the treasurer’s report. Motion carried by acclimation.

IV. Committee Assignments / Report

- a. Frankenmuth Conference; Ken Malkin, Chair (June 8-9, 2012)
Committee chair Malkin reports the Agenda for Frankenmuth is set with the Director of the Crime Lab highlighting the speakers. Total cost is expected to be under budget. He is hoping speakers will provide written materials and/or an outline for attendees. The registration deadline is June 1, 2012.

- b. Annual Meeting (September 20-21, 2012, Amway Grand, Grand Rapids, MI)
Committee chair Marr requests possible topics for the Annual Meeting. Heather Garretson suggests collateral consequences. Barb Levine suggests a presentation on juvenile issues. Opolla Brown suggests jury instructions. Chair Taratuta appoints Michael Marutiak to chair the elections committee for the Annual Meeting.

- c. Young Lawyer
Committee chair Brown reports that the young lawyer segment at Frankenmuth will be a nuts and bolts presentation by Tom Loeb. At the Annual Meeting there will be a young lawyers presentation in collaboration with the core presentation supra.

- V. Legislation / Court Rules
 - a. Legislative Report—Bruce Timmons absent
 - b. ADM File #2006-47 Update Rules to make them less ‘paper’ focused.

Tom Rombach comments that the SBM Executive Committee has considered ADM File #2006-47 and recommendations from the Business Law Section, the Civil Procedure & Courts Committee, and the Justice Policy Initiative. The Executive Committee voted to support the goal of the Amendment to update the rules to reflect the use of electronic technology in court processes but to oppose the proposal as published. The Bar also recommended that the substantive changes concerning garnishment be removed from the package of amendments, for separate consideration. The State Bar Foundation has supported financially, and the SBM is evaluating, a self-help website to assist attorneys and litigants. Judge Hoort commented on the Justice Policy Initiative concerns that any court

procedures be accessible to all users of the court, including those who may be indigent or reasonably unable to submit electronic filings. Matthew Smith reported that Ottawa County allows for paper filings which are then scanned by the clerk's office. Ward McDonough questions whether the self help website promotes non lawyers.

Matthew Smith moves, Ward McDonough second, to support ADM File #2006-47 in principle, excluding garnishments, with allowance for paper filings when appropriate. Motion passed by show of hands. Voting members-16, Ayes-15, Nays-0, Abstain-1, Did not vote-0.

Explanation of the Position, including any recommended amendments: The proposed amendments are appropriate as a cost savings and efficient use of resources. The concerns expressed by the Section were that we need to consider the needs of indigent or other persons lacking access to or skills in the use of computers. Also, that the self-help website may have an unintended consequence of encouraging non-lawyers when counsel is appropriate or the unauthorized practice of law.

VII. Old Business

a. Trip to Cuba—May 4-12, 2012

Chair Taratuta reports eleven persons are participating in the Cuba excursion, including himself and Tom Rombach. Chair requests permission to donate a case of SBM flashdrives to Cuban dignitaries. Charles Marr moves, Opolla Brown second, authorizing our CLS representatives to gift a case of flashdrives to Cuban dignitaries. Motion passed by acclamation. Chair Taratuta abstains.

b. SBM-Leadership Forum—June 8 & 9, 2012

Chair reports SBM policy directive does not provide for reimbursement of the CLS attendee mileage to the SBM Leadership Forum. The council would need to take specific action to authorize mileage reimbursement. This year's Chair-elect David Gilbert states he is not requesting mileage reimbursement. Council consensus was then not to provide for mileage reimbursement for CLS attendees at the SBM-Leadership Forum.

c. Open seat on council.

David Gilbert recommends Kellie Podolsky. Although requested, no other 'young lawyer' candidates were submitted for consideration for the open CLS seat on the council. Ward McDonough/Jon Posner/Heather Garretson recommend Ms. Podolsky. David Gilbert moves, Ward McDonough second, to nominate Kellie Podolsky for the open seat on the CLS council. Motion passed by acclamation. Jon Posner abstains.

VIII. New Business

a. Collateral Consequences of Plea's Practice Guide/Court Form

Heather Garretson reports on the Uniform Collateral Consequences of Conviction Act (UCCCA) and the possibility of legislation that would address collateral consequences of criminal convictions in Michigan. Adoption of a UCCCA would address existing collateral consequences of a criminal conviction through the notice of possible consequences and the providing of relief from Collateral Consequences. The Act creates two different forms of relief, one to be available as early as sentencing to facilitate reentry (Order of Limited Relief) and the other after a period of law-abiding conduct (Certificate of Restoration of Rights). Ward McDonough reports on concerns from information available via Ichat. Barb Levine reports on efforts to 'ban the box'. Consensus that relief from collateral consequence is appropriate. The concern is the corresponding burden on prosecutor, defense counsel and the courts. Jon Posner moves, Judge Hoort second, to table consideration of a Uniform Collateral Consequences of Conviction Act until there is further action. Motion passed by acclamation.

b. Dues for student members

In response to SBM inquiry relating to dues, Chair Taratuta reports that our recently passed bylaws make an exception for new lawyers; student dues are still \$25.00. Chair and Charles Marr recommend leaving student dues unchanged. Consensus of the council is to agree and take no action.

c. Definition of the Practice of Law

Stephen Gobbo reports that Michigan statutes outlaw the unauthorized practice of law, but do not make it a crime. The only remedy is an injunction. The Bar is considering, in conjunction with existing authority, a more uniform definition of the practice of law which may enhance compliance and assist with enforcement. The Special Committee on Defining the Practice of Law has proposed an initiative, Definition of the Practice of Law, with delineated exceptions and exclusions. The underlining core continuing to be protection of the public. Tom Rombach comments on the need for collective support of any action and the difficulty with a uniform consensus because of the interested stake holders. Further comments concern the self help website, available remedies, enforcement, fairness, waiver, applicability to advice given to prison inmates, uncompensated (family, friends) advice.

Charles Marr moves, Ken Malkin second, to support the Special Committee on Defining the Practice of Law initiative in principle. Motion passed by show of hands. Voting members-16, Ayes-8, Nays-6, Abstain-2, Did not vote-0.

Further discussion whether the council should support the initiative as written or in principle. Matthew Smith moves, Michael Marutiak second, to reconsider the vote to support the initiative in principle. Further discussion. Matthew Smith withdraws motion. David Gilbert moves, Heather Garretson second, to support the initiative as written. Motion failed by show of hands. Voting members-16, Ayes-7, Nays-7, Abstain-2. Further discussion. Ward McDonough moves, Ken Malkin second, to reconsider the vote to support the initiative in principle. Motion passed by show of hands. Voting members-16, Ayes-13, Nays-2, Abstain-1. Further discussion. Upon reconsideration, motion to support the Special Committee on Defining the Practice of Law initiative in principle passed by show of hands. Voting members-16, Ayes-13, Nays-2, Abstain-1. One nay vote believed the initiative to be overbroad and was concerned that family/friends/etc offering legitimate consult or advice could be punished for the unauthorized practice of law. The other nay vote would have preferred to support the initiative as written.

d. Bar-b-que—June 12, 2012

The BBQ is scheduled for Mike Brady's house on June 12, 2012 at 6:30 p.m.

IX. New Business

a. Campaign for Justice

Ward McDonough discussed his concerns with Campaign for Justice Recommendations that the appointed/retained attorney be required to appear at every court proceeding involving a defendant, continuation of local control, and failure to address funding. Tom Rombach reported that the funding aspect is expected to be addressed in a further committee report. Ken Malkin commented on the need for vertical instead horizontal representation, that the progress via the committee is a step forward, and the committee did essentially adopt the 10 principles recommended by the CLS. Vertical representation is the best practice; excessive caseload is too often the negative controlling factor.

b. Prisons and Corrections Section training

Michael Marutiak reported that the P&C section is offering training on the Presentence Investigation Reports and Risk Assessment Tools in the Michigan System on June 2, 2012 at the SBM building from 9 a.m. to 1 p.m. Chair authorizes CLS to send out an E-blast to section members.

X. Good and Welfare

XI. Adjourn

Matthew Smith moves, Charles Marr second, to adjourn. Motion carried by acclamation. Meeting adjourned at 8:55 p.m.

Approved: 05.15.2012

Respectfully submitted
David Hoort, Secretary
Criminal Law Section