

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 **April 15, 2014 (Copper Restaurant, E. Lansing)**

- 1. Call to Order by Chair Hoort, at 6:35pm.**
 - a. Absence with notice: Scott, Sacks, Gilbert, Teall, Posner, McDonough, Cunningham (Board of Commissioner liaison)
 - b. Absent without notice: None
 - c. Present: Judge Hoort, Marr, Gobbo, Judge Caprathe, Brady, Brown, Nichols, Guess, Farkas, Winters, Blanchard, Smith, Taratuta, Thompson, Malkin, Garretson, Timmons, Judge Manderfield, Judge Clarke, Marutiak, Sherman, Spiliopoulos (Editor)
 - d. Welcome to District Court Judge Hugh Clarke, to represent District Court Judges.

- 2. Secretary's Report/Meeting Minutes-Gobbo**
 - a. March 18, 2014: Draft Minutes prepared and presented sans attendance list to be added, along with the Addendum for e-mail vote approving the \$250 participation fee for Young Lawyers Section Summit, May 30th and 31st. Motion to approve the Minutes and Addendum was made by Smith, and supported. Motion passed on a voice vote.

 - b. Gobbo to confirm posting of Minutes on the SBM website is up to date.

- 3. Treasurer's Report**
 - a. Presented by Judge Caprathe. Motion made by Brown, and supported, to receive the financial report. Motion passed on a voice vote.

 - b. Spiliopoulos reported on the outstanding invoice for the Shanty Creek conference. Motion made by Judge Caprathe, and supported, to pay the Shanty Creek invoice balance (invoice amount is \$5,242.53 although this may be adjusted downward; expenses within approved conference budget of \$6,000). Motion passed 16 in favor, 0 opposed, and 0 abstained (some members not in the room at time of vote).

 - c. Judge Caprathe and Gobbo discussed the two-year budget project and potential issues. The budget is mainly influenced by major conference events and the number of events. Judge Caprathe will prepare a budget based on recent, last two years by SBM reported categories as a guidance document.

- 4. Committee Reports**
 - a. Shanty Creek Conference: Taratuta had nothing further to report since the final update was provided after the conference at the last meeting.

 - b. Frankenmuth Conference: Malkin reported on the status of the conference and, also, discussed the low cost conference concept. On-line registration through the SBM is set for Frankenmuth. Most speaker presentations have been received and will be added to a thumb-drive for handout at the conference. Printed materials will cost \$10 and individuals need to request the material in advance. Judge Clarke asked about the thumb drive and possible advance posting of web links to conference material. Malkin

explained the trend towards using electronic media and will consider suggestions for future events. Further discussion and planning needed for the “low cost” conference in the future. Mackinac Island (former Policy Conference event) was discussed, and it was reaffirmed that the Council is not planning in the immediate future to hold a conference on the Island.

- c. Policy Conference: Marr stated there was nothing to report at this time.
 - d. CLS Journal: No report at this time.
 - e. Advertising: Marutiak stated marketing for Frankenmuth is underway.
 - f. Annual Meeting: Brown reported on behalf of the committee, which has decided to have a two-hour program related to drunk driving as well as drug use. Judge Caprathe noted Model Jury Instructions should be ready by the time of the meeting. Also, an issue is whether a person must have knowledge that any amount of a controlled substance exists in his or her body; there are conflicting appellate decisions and Jury Instructions concerning a person’s knowledge. The topic will be added to the program.
 - g. Nominating Committee: Gobbo reported and suggested the chair appoint committee members to ensure SBM noticing, publication, and other election requirements can begin. Chair Hoort appointed: Gobbo, Thompson, Marutiak, Timmons, Farkas.
 - h. Young Lawyers: Farkas provided an update about the program for the Lansing Summit Conference beginning on Friday, May 30, 2014. A Criminal Law segment will be handled by Katherine Marcuz (SADO) about COMPAS. Marutiak and Gobbo volunteered to staff a table and assist with generating interest for the Section with handouts.
 - i. Briefs/ Amicus Curiae: Garretson provided an update with respect to a bylaws committee with Marr, Winters, Blanchard, and Brady. Marr stated he contacted SBM Counsel Flood about possible amendment of bylaws. These included specific addition of a district judges’ association representative and the approach with the Amicus issue vis-à-vis current bylaws and voting by majority or 2/3rds. Discussion about whether calculation should be 2/3rds present at a meeting or 2/3rds of the whole council. Judge Clarke not in favor of a super-majority for policy but only require this for amending Bylaws. Garretson reaffirmed there was consensus for 2/3rds and of those present; Garretson will provide an updated recommendation at the next meeting with input from Judge Caprathe, Marr, and others who want to weigh-in.
5. **Representatives to the Council and other reports or discussion:** Judge Caprathe indicated there was a meeting this past Saturday concerning the Model Criminal Jury Instructions. Brown was at the meeting in-person and indicated an instruction was created for strangulation and working on drunk driving instructions. Taratuta mentioned the Chief Justice has requested the development of instructions for every crime, and encouraged suggestions should be provided by e-mail. He is working on criminal enterprise. Judge Caprathe indicated the Supreme Court is paying committee members for mileage to meetings, which is new and different from prior SBM practices.

Indigent defense commission status discussed by Winters. No known appointments, although state budget placeholders exist for four positions. Guess is aware that contact

was made with some individuals who may be candidates for appointment to the commission. Vetting of candidates may be taking longer than expected.

Garretson stated there was no report for Criminal Justice Initiatives.

No report by Malkin for CDAM.

Timmons reported that the last Criminal Jurisprudence and Practice Committee meeting was cancelled due to the lack of an agenda.

Marutiak reported for the Prisons and Corrections Section and its conference was published in the newsletter; scheduled for June 21th at SBM offices.

Sherman stated there was nothing to report for PAAM.

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

Judge Manderfield had no report for the Michigan Judges Association. Judge Caprathe had nothing to add.

Judge Clarke had no report for the District Judges Association at this time.

6. **Traveling Road show:** Farkas provided an update about Wayne State event on the 29th. There were 32 persons registered; only 20 participated. Only one law student attended. Article was in the newsletter. Awaiting for final invoice that should be between \$200-350. Some coordination difficulties in working with Wayne State; building and parking access issues. Council members who were present thought the program went well. Alternative venues discussed and the possibility of using a survey to collect information about what members would want to see at events. Chair Hoort would like to see events in the Northern region and use the talent of the council.

7. **Legislation:**

- a. HB 5383-5385: Timmons reported on the legislation, and revisions are pending. HB 5384 likely will be eliminated. Conditions on pre-trial release discussed along with the sensitivity and accuracy of testing method. Nichols presented some of the issues with the testing and technology is not proven. After considerable further discussion, including about a St. Clair County incident that may have motivated the introduction of the Bills, a motion was made by Brown, supported by Malkin, to oppose HB 5383 because of the untested reliability and pending pilot projects. The motion passed on a vote of 15 in favor, 5 opposed, 1 abstained.

The Council authorized the chair to write a letter to appropriate legislators, board of commissioners, and other associations with input from Nichols, Marr, and others. The motion for authorization was made by Nichols, supported by Marr. The letter is to address the concern with testing discretion, reliability, and impact of HB 5383. Authorization granted on a vote of 19 in favor, 2 opposed, 0 abstained.

- b. SB 866-867: The Bills adds offense classes and increase felony penalties related to senior vulnerability. Judge Caprathe indicated MJA supported the SB 866. After discussion, a motion to support the Bills was made by Judge Caprathe, supported by Smith. Motion failed on a vote of 2 in favor, 17 opposed, 2 abstained. The vote was

based on a concern that enhancements of penalty from a misdemeanor to a felony may not be consistent, and there are already scoring variables that would already be considered for sentencing decisions.

- c. Timmons provided an update concerning the Michigan Law Revision Commission project for the criminal justice system. There may be possible recommendations with reclassifying offenses, e.g., from felonies to misdemeanors, misdemeanors to civil violations. Garretson indicated the issue of resolving some issues with collateral consequences may gain traction. A Criminal Penalty workgroup was authorized and members appointed: Farkas (defense), Smith (prosecutor), Judge Caprathe (judge representative). Advise one of the committee members if you want to participate.
 - d. Chair Hoort provided an update about a conversation with former SBM President Nancy Diehl and Valerie Newman about standards of conduct and their interest in assisting to bring something on the subject forward. Also, discussion took place with Carl Reynolds about sentencing guidelines and a future meeting is being planned with Timmons, Sherman, and Sacks. Letter was sent out on COMPAS. Letter sent to the task force chair concerning recommendations to the Court about the SBM.
- 8. Court Rules:** No report.
- 9. Projects:** Covered above or reports deferred.
- 10. Other:** Motion made by Malkin, supported by Marr, to authorize an expense up to \$300 for council meeting event hosted by Mike Brady on June 15th or 22nd. Motion passed on a vote of 21 in favor, 0 opposed, 0 abstained. Final date to be determined after further review.

Smith mentioned he did some scouting of another location for meetings, based on his concerns raised about meeting costs last meeting, and further discussion can occur at the next meeting.

Motion made by Smith, supported by Sherman, to support a project for collateral consequences and sanctions (restorative research by Garretson). Authorization for \$1,500 expenditure passed with 19 in favor, 1 opposed, and 0 abstained (one person out of the room).

Motion by Nichols, supported by Marr, to provide for an additional matched expense amount of up to \$1,500 for the above project, based on funds raised by Garretson from other sources. Motion passed on a vote of 15 in favor, 3 opposed, 0 abstained (3 members left the room).

- 11. Adjourn: Meeting adjourned at approximately 9:00 pm.**

Respectfully submitted,
/s/
Stephen J. Gobbo
Secretary

Approved: May 20, 2014