

CRIMINAL LAW SECTION COUNCIL MEETING
STATE BAR OF MICHIGAN
December 20, 2011

Members Present: David Gilbert, Sherrie Guess, Charles Marr, Jonathan Sacks, Stephen Taratuta, Kenneth Malkin, Hon. William Caprathe, Hon. David Hoort, Michael Marutiak, John Potbury for David Leyton, Opolla Brown, Jon Posner, Stephen Gobbo, Matthew Smith, Ward McDonough, Heather Garretson, Lynn D'Orio.

Also Present: Bruce Timmons, Thomas Rombach, Elaine Spiliopoulos

I. Call to Order by Stephen Tarauta, Chair, 6:39 p.m.

- a. Absence with notice: Barbara Levine, Martin Krohner, Kiana Franulic, Daniel Levy
- b. Absent without notice: Judge Manderfield

II. November 15, 2011 Minutes; David Hoort, Secretary.

Charles Marr moves, Jon Posner second, to approve November 15, 2011 minutes. Motion carried by acclamation.

III. Treasurer's Report; Charles Marr, Treasurer

Treasurer reports an approximate fiscal year end balance of \$2,000.00. Dues revenue is good. Last year we had approximately 2,200 members total and to-date our number is approximately 1,500. We have about 45 Kolenda books unsold.

Stephen Taratuta moves, Jon Posner second, to accept Treasurer's Report. Motion carried by acclamation.

IV. Committee Assignments / Report

- a. By-Laws Report, Charles Marr, Chair

Charles Marr reports the State Bar has approved the By-laws and Elaine will be posting the same on the CLS webpage.

- b. Shanty Creek; Opolla Brown, Chair (February 18-20, 2012)

Opolla Brown reports that the opening session on Saturday night will be Tim Baughman presenting his criminal law update. The Sunday morning session will be a panel discussion on the new criminal jury instructions with Judge Caprathe and a prosecutor and defense counsel representative. The Monday morning session will be a 'nuts and bolts' session for young or new lawyers. The committee has decided to charge a conference registration fee of \$20.00 which would include the sessions, materials and reception. Attorneys are reminded that kids stay and ski free.

- c. Frankenmuth Conference; Ken Malkin, Chair (June 8-9, 2012)

Ken Malkin reports that the conference will be at the Frankenmuth Bavarian Lodge in Frankenmuth. The theme will be expert witnesses. Possible suggestions include computer forensics, expert witness' qualifications, discovery, investigators, fees, competency referrals, false confessions, eye witness identification, State crime lab. Members are invited to contact Ken Malkin or Michael Marutiak with further suggestions.

- d. Annual Meeting (September 20-21, 2012)

Charles Marr reports that the SBM Annual Meeting will be at the Amway in Grand Rapids. The CLS session will be on Friday, September 21, 2012. Suggestions for the CLS session are welcome.

- e. Young Lawyer

No report.

V. Kolenda Books/Seminar Materials

Stephen Taratuta reports CLS has ordered 198 1G Flash Drives, at \$5.00 each, with SBM logo from the State Bar. The anticipated concern is timely receiving session materials from the presenters and then uploading the data.

Charles Marr moves, Stephen Gobbo second, to authorize payment not to exceed \$100.00 for a multi port USB device to upload materials on to the flash drives. Motion passed by acclamation.

VI. Legislation / Court Rules

a. Legislative Report—Bruce Timmons

Bruce Timmons reported on SBS 535 to 538 regarding crime victim's rights fund assessment (CVRF) and State Costs for misdemeanors. Rather than continue the distinction between serious/specified misdemeanors and 'ordinary' misdemeanors, the legislature is providing for the assessment of a CVRF of \$50.00 for all misdemeanors instead of the current \$53.00 for serious or specified misdemeanors and \$48.00 for other misdemeanors. The Bills also impose a \$75.00 CVRF assessment for all misdemeanors.

In the past the legislature has diverted crime victim funds away from crime victims, e.g. funding for the State Police, hospital trauma units, etc. The consensus of the council was that assessed and collected crime victim fund fees should go to crime victims, and generally speaking funds collected in the criminal justice system should go to needed funding in the criminal justice system.

Bruce Timmons further reported that the legislature is expected to address medical marijuana in February of 2012. Further legislative action is expected in the imposition and enforcement of financial obligations in the criminal justice system, including but not limited to the collection of restitution. The Supreme Court is also expected to look at the imposition and collection of monies in criminal matters.

Bruce Timmons also distributed copies of HB substitute for No. 4647 concerning expert testimony by video communication equipment.

b. ADM file No. 2010-25 Proposed Amendment to Rule 7.210

Proposed 7.210 would require trial courts to become the depository for documentary, photographic, video or audio exhibits offered in evidence (whether those exhibits are admitted or not) until expiration of the time for filing a claim of appeal instead of requiring parties to submit exhibits offered in evidence within 21 days after filing of the claim of appeal.

Jonathan Sacks commented on the letter from Dawn Van Hoek to the Michigan Judges Association to address their concerns. Judge Hoort questioned limiting the proposed amendment only to appeals of right and whether good cause was additionally necessary for appellants to access exhibits. Judge Caprathe stated that any effort to further revise the proposed amendment would be opposed by MJA.

Opolla Brown moves, Ken Malkin second, to support the proposed amendment as written. Motion passed by show of hands. Voting members-21, Ayes-14, Nays-3, Abstain-0, Did not vote-4.

Explanation of the Position, including any recommended amendments: The council believed that the proposed amendment would sufficiently address existing problems experienced by appellants in reviewing and preserving the record. Because the requirement on the trial court does not include 'physical' evidence and is limited in time, the council believed the proposed amendment was appropriate.

The concerns expressed by the Section: The proposed amendment does not address equally existing concerns in appeals by leave or late appeals and unnecessarily imposes a 'good cause' requirement. The countering position would extend the requirement on the trial court to the time allowed to file a claim of appeal, leave to appeal or late appeal; and require all parties to file a motion to access all exhibits, but deleting the 'good cause' language as actually being unnecessary.

c. Proposed House Bill 5214/Senate Bill 880--YTA

Proposed HB 5214 and SB 880 would extend the allowable age for YTA to 26 years of age and impose certain requirements relating to schooling, employment, community service, electronic monitoring.

Matthew Smith suggested that instead of expanding the age requirement that HYTA instead be possible for first time felony offenders.

Charles Marr moves, David Gilbert second, to oppose the legislation as written but support the concept of expanding the upper age requirement. Motion passed by show of hands. Voting members-21, Ayes-17, Nays-0, Abstain-0, Did not vote-4

Explanation of the Position, including any recommended amendments:

Expansion of the upper age requirement seems reasonable because of the difficulties inherent in a felony conviction for first time offenders.

The concerns expressed by the Section: The legislation would minimize or eliminate judicial discretion by the mandatory requirements relating to tether, costs, community service, etc. The council expressed concerns with community service being allowed to be performed for private 501(C)(3) entities. Community service is also not appropriate for all offenses or offenders. e.g. sexual or assault related convictions.

VII. Old Business

a. Trip to Cuba—Elaine Spiliopoulos

Elaine Spiliopoulos reported that there will be available for CLS members, and other interested attendees, a 7-9 day trip to Cuba on May 4-12, 2012. A price discount is available based on the number of attendees. The expected cost is approximately \$2,800.00 per person, including airfare out of Toronto. There will be a restriction on allowing significant others to accompany CLS members.

Sherrie Guess reported on a possible alternative of 4-7 days in March out of Miami at a possibly reduced price.

Consensus was to follow up with the Cuba trip out of Toronto and Elaine will be posting additional information on the website and newsletter.

b. Mackinac Island Policy Statement—Charles Marr

Charles Marr reported that the Bar has authorized CLS to advocate its Mackinac Island medical marijuana policy statement. He will be attempting to meet with Attorney General Schuette.

c. Letter to IDAC

Stephen Taratuta sent a letter and a copy of our related Mackinac Island policy statement to the Indigent Defense task force. Ken Malkin has testified before the Campaign for Justice recommending adherence to the 11 principals advocated by the policy statement. Tom Rombach reported that there is some indication IDAC may follow the Oregon model.

VIII. New Business

Stephen Taratuta suggests the council consider holding conferences out of state.

IX. Good and Welfare

a. New Meeting Location

Elaine is looking at additional locations, and welcomes members to suggest possible meeting locations.

X. Adjourn

Opolla Brown moves, Jon Posner second, to adjourn. Motion carried by acclamation. Meeting adjourned at 8:40 p.m.

Approved: 3.20.2012

Respectfully submitted
David Hoort, Secretary
Criminal Law Section