

***Criminal Law Section Council
State Bar of Michigan
December 19, 2017
Lansing Country Club, Lansing, Michigan***

Council Members Present:

Judge Caprathe, Judge Clarke, Opolla Brown, Brian Watkins, Goran Antovski, Josh Blanchard, Bruce Timmons, Erika Savage, Steve Gobbo, Bill Winters, Coleman Potts, Michael Marutiak, Edwar Zeineh, David Gilbert, Neil O'Brien, Sofia Nelson, Elaine Spiliopoulos (non-Council member, Editor of Newsletter), Richmond Riggs (joined meeting at 1832 hrs.), and Stephanie Farkas (joined meeting at 1850 hrs.).

Council Members Not Present with Excused Absence from Chairperson:

Judge Anderson, Dianna Collins, Mike Brady, Ryan Zemke, Tamara Phillips, Heather Garretson and Christina Hines.

Council Members Not Present without Excused Absence from Chairperson:

Christine Piatkowski

I. Call to Order:

The Council meeting was called to order by Josh Blanchard, Chair-Elect, pending the arrival of Chairperson Stephanie Farkas. An attendance sheet was circulated and a quorum was established by virtue of the presence of sixteen (16) voting members (two (2) additional members joined the group later).

II. Secretary's Report:

The draft minutes from the November 14, 2017 Council meeting, prepared by Josh Blanchard, were reviewed by the Council. Motion by Goran Antovski, seconded by Opolla Brown, to accept the minutes as presented. Unanimously passed by voice vote with one abstention.

III. Treasurer's Report:

Three (3) months of reports (September, October and November of 2017) were presented by Judge Clarke, Treasurer. The Judge explained that future financial reports for the Section will be sent electronically to the Council members, rather than by hard copies at meetings. The Judge requested that questions or comments about the financial reports be sent to him via email prior to the meetings. Motion by Bruce Timmons, seconded by Steve Gobbo, to receive the presented reports. Unanimously passed by voice vote.

Elaine Spiliopoulos reported the Criminal Law Section was audited by the State Bar for the most recent fiscal year. No issues or concerns were noted by the Bar regarding the Section's finances.

IV. Committees and Reports:

Chairperson's Report and Committee Appointments:

Chairperson Farkas reported the State Bar inquired about members' interest in another trip to Cuba. Anyone interested may email Chair Farkas so the Bar's email can be forwarded to them.

Chairperson Farkas verbally issued the Committee assignments for the 2017-2018 year. Those members present were informed of their respective assignments. All Committees were populated with the exception of the Frankenmuth Conference Committee, which will be handled at a later date. A full, hard copy list of all assignments is an attachment to these minutes.

Shanty Creek Conference:

Opolla Brown gave an update on the 2018 Shanty Creek Conference (February 17th-19th). The program will include Timothy Baughman presenting a review of high-impact court decisions and a session on "Evidence Jeopardy". The bulk of the program will be on Sunday, February 18th.

Frankenmuth Conference:

Elaine Spiliopoulos reported on the organization to date of the Frankenmuth Conference (to be in June at the Bavarian Inn). The program's theme will be on forensic evidence and will likely include a presentation by John Collins.

Annual Meeting:

No report

Policy/Mackinac Conference:

No report. As an informational note to the newer Council members, the Mackinac Conference and the Frankenmuth Conference alternate in years; the next Mackinac Conference will be in 2019.

Bar Journal Committee:

Judge Caprathe noted that articles are still needed for the Section's upcoming feature in the Bar Journal. Articles are encouraged from sources outside of our Section to balance viewpoints taken by our Section or viewpoints in the articles so far scheduled. The topics may relate to anything of a criminal law nature. Sophia Nelson committed to arranging for an article on juvenile lifers from the SADO perspective.

Nominating Committee:

No report.

Social Committee:

Judge Clarke reports he will be arranging for a meeting of the Social Committee members. The Committee will consider any request from Council members for events. More than one event may be arranged during the upcoming calendar year.

Legislative Committee:

Bruce Timmons reported that the legislature did not act upon the issue of driver responsibility fees before adjourning this month. A recent Federal Court injunction was issued regarding Michigan's imposition of driver responsibility fees and the ability of citizens to pay. A discussion ensued among the Council.

Court Rules Committee:

No report this month.

Scholarship Committee:

Opolla Brown responded to questions by stating that scholarships will be available for the major Section events this year: Shanty Creek, Frankenmuth and the Annual Meeting Program. Opolla moved for the Council to approve a budget of \$4,000 for the Scholarship Committee; motion seconded by Josh Blanchard. Some discussion ensued and a hand count was taken. The motion passed by a vote of 18-0-0, with one voting Council member being absent from the room at the time.

Pre-trial Release Committee:

No report this month.

Diversity/Young Lawyers Committee:

Coleman Potts reported that the Young Lawyers' Expungement Fair event will be held on January 26th, 2018.

Amicus Committee:

No report this month.

V. Representatives to the Council Reports/Other Discussions

Indigent Defense Commission:

Chairperson Farkas gave a verbal update on the compliance plans of the Commission.

CDAM:

No report.

Criminal Jurisprudence and Practice, Criminal Jury Instructions and Criminal Justice Initiatives:

No reports this month.

Prisons and Corrections:

Mike Marutiak announced that David Gilbert, a Criminal Law Council member, was recently elected to the Prisons and Corrections Council. The Prisons and Corrections Section will plan a seminar for early June in 2018; topic yet to be determined.

PAAM:

Neil O'Brien reported that PAAM has scheduled its mid-winter meeting for February. He will report to the Council on the agenda after it is finalized.

Children's Law Section, Michigan Judges' Association and District Court Judges:

No reports this month.

VI. Legislation and Court Rules:

- a. Sophia Nelson asked the Council to take a position in support of goals of the Michigan Indigent Defense Commission (MIDC); David Gilbert seconded. After discussion and some revision of a proposed position, the Council voted for the following: "The Criminal Law Section supports the goals of [sic] MIDC proposed standards 5-8 of increasing the independence, competency, and overall quality of indigent defense services in Michigan. The CLS also supports removing excessive workloads and inadequate compensation that may interfere with a criminal defendant's constitutional right to counsel. The CLS recognizes the financial concerns of certain counties of complying with these proposed standards, and therefore, supports the State fulfilling its statutory obligation of funding compliance costs that exceed the local share." Motion to adopt by Josh Blanchard; seconded by David Gilbert. The recorded hand count was: 15-yea; 2-no; 1-abstention.
- b. "Proposed Amendment of MCR 6.425(G) would reflect recent changes to the appellate counsel assignment process by extending and segmenting the timeframe for courts to respond to appointment requests, requiring judges to provide a statement of reason when appellate counsel is denied, encouraging courts to liberally grant untimely requests for appellate counsel in guilty plea cases, requiring the filing of all lower court transcripts and clarifying MAACS assumption of the trial courts service obligations." Brian Watkins moved for support of the proposal; seconded by Sophia Nelson. Discussion ensued. A hand count vote was taken and recorded: 12 yea – 4 opposed – 1 abstention. The motion was adopted.
- c. "Proposed Amendments of MCR 6.310, 6.428, 6.429, 6.431, 7.205, 7.211 and 7.212 were submitted to the Court by the State Appellate Defender Office, which argues that they would clarify practices and provide protections for criminal defendants represented by assigned appellate counsel. The proposed amendments would allow an additional 42 days to file post-judgment motions in certain

circumstances, expand MCR 6.428 to apply to both plea and trial appeals and where delay is due to the trial court, clarify in proposed amendment of MCR 7.205 that in certain circumstances, substitute appellate counsel may file a delayed application for leave to appeal within 42 days of appointment (even if later than six months after sentencing), add language to MCR 7.211 to guide parties and courts if relief is granted in the trial court, and change the procedure for seeking permission to file a brief longer than 50 pages in length.” Sophia Nelson introduced and elaborated on the proposed amendments and motioned for the Council to support all of them; seconded by Opolla Brown. A discussion ensued. A hand count vote was taken and recorded: 12 yea – 4 opposed – 1 abstention. The motion was adopted.

- d. “The proposed amendments of MCR 3.977(J) and MCR 6.435(G) were submitted by the Court of Appeals. The proposed amendments would require the production of the complete transcripts in criminal appeals and appeals from termination of parental rights proceedings when counsel is appointed by the court. The proposed amendments would codify existing practice in many courts, and the Court of Appeals believes they would promote proper consideration of appeal issues and eliminate unnecessary delays to the appellate process.” Brian Watkins moved for the Council to support the proposed amendments; motion seconded by Edwar Zeineh. Discussion ensued. A hand count vote was taken and recorded: 13 yea – 3 opposed – 1 abstention. The motion was adopted.
- e. Alternative Proposed Amendments of MRPC 1.16 (“Alternative A” and “Alternative B”) regard a criminal defense attorney’s duty to inform clients of the counsel’s inability to withdraw without the court’s permission in certain situations. Brian Watkins moved to table the issue to allow Josh Blanchard time to explain the proposed changes and revisions in writing; motion seconded by Bill Winters. The motion to table the issued was passed by voice vote.

VII. Old Business:

The schedule and site for the January meeting was considered under Old Business. The meeting will be on Tuesday, January 16th, 2018, with the social hour beginning at 1800 hrs., in the Ann Arbor area. Precise directions will be forwarded to the Council in advance. The location will be at a restaurant near the I-94 and State Street exit.

VIII. New Business:

Judge Clarke moved to appropriate payment of \$1000 per Section seminar this year, not to exceed \$3000, to Elaine Spiliopoulos for seminar planning, and to appropriate payment of \$1000 per Section newsletter this year to Elaine, up to a total of \$12,000 for the whole year. Motion seconded by Coleman Potts and Steve Gobbo. A hand count of votes was taken and recorded. The motion passed by a vote of 17-0-0, with some members having departed the meeting but with a quorum still present.

IX. Adjournment:

Coleman Potts moved to adjourn the meeting; motion seconded by Steve Gobbo. The motion passed unanimously by voice vote. Chairperson Farkas adjourned the meeting at 2040 hrs.

Page Six
Criminal Law Council
December 19, 2017

Respectfully submitted,

Michael J. Marutiak, Secretary of the Section, December 30, 2017

Minutes approved by the Council, as revised, by a unanimous voice vote, with 16 voting members present at the time, at the January 16th, 2018 Council meeting.

Attachment: List of 2017-2018 Committee Assignments

Criminal Law Council: 2017-2018 Committee Assignments from the Chairperson on 12/19/17:

Shanty Creek Conference Committee: Brown (Chairperson), Brady and Zemke

Annual Meeting Program Committee: Brown and Marutiak

Bar Journal Committee: Judge Caprathe (Chairperson), Garretson, Phillips, Blanchard and Farkas

Nominating Committee: Gobbo and Marutiak

Social Committee: Judge Clarke (Chairperson), Savage, Zemke, Gobbo and Zeineh

Legislative Committee: Timmons (Chairperson), Judge Anderson, Savage, Gobbo, Watkins and Zeineh

Court Rules Committee: Judge Anderson, Nelson, Hines and Farkas

Scholarship Committee: Brown (Chairperson), Antonski and Hines

Pre-Trial Release Committee: Judge Clarke (Chairperson), Garretson, Judge Anderson, Collins and Farkas

Diversity Committee: Coleman (Chairperson) and Savage

Amicus Committee: Nelson (Chairperson), Gilbert and Farkas

Frankenmuth Conference Committee: To be announced at a later date.