

***Criminal Law Section Council
State Bar of Michigan
January 16, 2018
Mediterrano Restaurant, Ann Arbor, Michigan***

Council Members Present:

Chairperson Farkas, Judge Clarke, Opolla Brown, Bruce Timmons, Erika Savage, Bill Winters, Edwar Zeineh, David Gilbert, Sofia Nelson, Elaine Spiliopoulos (non-Council member, Editor of Newsletter), Ryan Zemke, Dianna Collins, Neil O'Brien, Mike Brady, Christine Piatkowski, Michael Marutiak, Christina Hines (joined meeting at 1846 hrs.), Steve Gobbo (joined meeting at 1846 hrs.), and Richmond Riggs (joined meeting at 1849 hrs.)

Council Members Not Present with Excused Absence from Chairperson:

Judge Anderson, Judge Caprathe, Heather Garretson, Josh Blanchard, Brian Watkins, Goran Antovski and Coleman Potts.

Council Members Not Present without Excused Absence from Chairperson:

Tamara Phillips.

Guests Present:

Ann Brady, Stephen Steinhardt and Jennifer Lamp.

I. Call to Order:

The Council meeting was called to order by Chairperson Farkas at 1838 hrs. An attendance sheet was circulated and a quorum was established by virtue of the presence of fifteen (15) voting members. Three (3) additional voting members joined the group later. The guests were introduced to the Council.

II. Secretary's Report:

The draft minutes from the December 19, 2017 Council meeting were reviewed by the Council. A correction was made on Page #4 to show that Brian Watkins (not Brian Zemke) motioned in support of the Proposed Amendment of MCR 6.425(G). Motion by Opolla Brown, seconded by Bill Winters, to accept the minutes as revised. Unanimously passed by voice vote.

III. Treasurer's Report:

Judge Clarke presented what he termed a preliminary draft budget that included expenditures for meetings, the Newsletter, postage and telephone, the List Serve, and the Social Event Committee during the 2017-2018 year. Motion by Edwar Zeineh, seconded by Opolla Brown, to accept the draft presented. Unanimously accepted by voice vote.

IV. Committees and Reports:

Chairperson's Report and Committee Appointments:

Chairperson Farkas commented on the State Bar's notice of another trip to Cuba. The Chair appointed a Committee to explore the possibility of the Section's involvement and report to the Council with a recommendation for or against sponsorship of the project. Edwar Zeineh was appointed as Chairperson of the Committee and Judge Clarke and Bill Winters were appointed as members, with Chairperson Farkas assisting as ex officio.

The Chairperson announced the appointments for the Frankenmuth Committee: Dianna Collins, Elaine Spiliopoulos and Mike Marutiak (as Chair). Chairperson Farkas will serve as ex officio on the Committee.

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, a session on "Evidence Jeopardy" by Judge Farrah, a session on opening and closing statements, and a State Police representative on DRE's. Ms. Brown informed the Council that five (5) scholarships will be available.

Frankenmuth Conference:

The program's theme will be on forensic evidence. (See above notation: Committee appointed this evening.)

Annual Meeting:

No report

Bar Journal Committee:

Elaine Spiliopoulos noted the Committee is still in need of articles for consideration.

Nominating Committee:

Mike Marutiak noted that no report of substance should be expected until the April or May Council meetings.

Social Committee:

No report this month.

Legislative Committee:

Bruce Timmons reported the legislature may have reached an impasse on the issue of driver responsibility fees. Mr. Timmons also reported that the Criminal Justice Policy Committee is considering the issue of raising the age of responsibility (to age 18) and the respective costs to various stakeholders.

Court Rules Committee:

No report this month.

Scholarship Committee:

Opolla Brown confirmed that scholarships will be available for the major Section events this year in addition to Shanty Creek, those being Frankenmuth and the Annual Meeting Program. [The Council approved a budget of \$4,000 for the Scholarship Committee at the December, 2017 Council meeting.]

Pre-trial Release Committee:

No report this month. Chairperson Farkas announced Dianna Collins as the new chairperson for the Committee.

Diversity/Young Lawyers Committee:

Coleman Potts informed the Council that the Committee will meeting the following weekend and a report stemming from the meeting can be expected in March.

Amicus Committee:

No report this month.

V. Representatives to the Council Reports/Other Discussions

Indigent Defense Commission:

Chairperson Farkas informed the Council that a new Director was hired for the Indigent Defense Commission, Loren Khogali.

CDAM:

No report.

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

No reports this month.

Prisons and Corrections:

The Prisons and Corrections Section is currently planning its annual program for Saturday, June 2nd, at the State Bar building. Topic yet to be determined. The Section's Council has been debating a series of recommendations for the Department of Corrections on GPS monitoring. Votes on the recommendations are expected at the March PCC meeting.

PAAM:

Neil O'Brien informed the Council of the program agenda for PAAM's February conference in Traverse City. The agenda will include the topic of implicit bias and a session on "Shaping Effective Criminal Justice Reform". Mr. O'Brien himself will present on the Freedom of Information Act.

Children's Law Section:

Christine Piatkowski reported on the upcoming training sponsored by the Department of Health and Human Services.

District Court Judges:

Judge Clarke reported the District Court Judges have not yet taken official positions on the proposed Court Rules for consideration at tonight's Council meeting.

VI. Legislation and Court Rules:

- a. With regard to the Alternative Proposed Amendments of MRPC 1.16 (alternatives A and B), Chairperson Farkas read an email to the Council from Chairperson-Elect Josh Blanchard suggesting that both alternatives be rejected and that the Council instead adapt the current American Bar Association Model Rule eliminating the "imprudence" standard for withdrawal of representation. Discussion ensued. David Gilbert moved to support adopting the AMA Model Rule; motion seconded by Sophia Nelson. More discussion ensued. A hand count was taken and the Council adopted the motion by a vote of 15-0-3.
- b. The Proposed Amendments of MCR 6.310, 6.429 and 6.431 would provide a "prison-mailbox" rule for post-sentencing motions to withdraw pleas, motions to correct an invalid sentence and motions for new trials, filed by in pro per defendants in the custody of the Department of Corrections. Following a brief discussion by the Council, Mike Brady moved to support the proposed amendments; David Gilbert seconded the motion. A hand count was taken and the Council adopted the motion by a vote of 16-0-2.
- c. The Proposed Amendment of MCR 6.610 would eliminate an arguable conflict between MCR 6.610(E)(4) and MCR 6.610.(E)(7) pertaining to guilty pleas. Discussion ensued. Sophia Nelson moved to support the proposed amendment; seconded by David Gilbert. A hand count was taken and the Council adopted the motion by a vote of 14-0-4.

VII. Old Business:

None brought forth.

VIII. New Business:

Judge Clarke moved for specific authorization of \$7500.00 for this year's Social Committee; motion seconded by Edwar Zeineh. A hand count was taken and the Council approved the motion by a vote of 16-0-1 (with one Council member absent from the room at the time). Judge Clarke then moved for specific authorization of \$10,000.00 for payment of meals at Council meetings this year; motion seconded by Edwar Zeineh. A hand count was taken and the Council approved the motion by a vote of 18-0-0. Judge Clarke then moved to approve reimbursement to Elaine Spiliopoulos for the invoice of tonight's meeting/dinner as the lack of a tax exempt letter from the Bar will delay the process; Edwar Zeineh seconded the motion. A hand count was taken and the Council approved the motion by a vote of 18-0-0.

Chairperson Farkas announced there will not be a Council meeting during the Shanty Creek conference. The March meeting will be held at the Lansing County Club [note: subsequent to the Council's January meeting, the location for the March meeting was changed to the Radisson Hotel in downtown Lansing].

IX. Adjournment:

Judge Clarke moved to adjourn the meeting; motion seconded by Erica Savage. The motion passed unanimously by voice vote. Chairperson Farkas adjourned the meeting at 2001:15 hrs.

Respectfully submitted,

Michael J. Marutiak

Michael J. Marutiak, Secretary of the Section, January 25, 2018

Minutes approved, as revised, by the Council by a unanimous voice vote at the March 20th, 2018 Council meeting with 19 voting Council members present at the time. Motion of approval by Bruce Timmons; seconded by Josh Blanchard.

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 (revised on 01/16/18: Chairperson: Collins)

Diversity Committee: Coleman (Chairperson) and Savage

Amicus Committee: Nelson (Chairperson), Gilbert and Farkas

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