

**Criminal Law Section Council  
State Bar of Michigan  
June 19, 2018  
County Club of Lansing, Lansing, Michigan**

**Council Members Present:**

Chairperson Stephanie Farkas, Chair-Elect Josh Blanchard, Judge Clarke, Opolla Brown, Bruce Timmons, Dianna Collins, Neil O'Brien, Mike Brady, Michael Marutiak, Goran Antovski, Steve Gobbo, Richmond Riggs, Sofia Nelson, Edwar Zeineh, William Winters (arrived at 1842 hrs.) and Erika Savage (arrived at 1919 hrs.).

**Council Members Not Present with Excused Absence from Chairperson:**

Judge Anderson, Judge Caprathe, Brain Watkins, Ryan Zemke, Heather Garretson, David Gilbert and Elaine Spiliopoulos (non-Council member, Editor of Newsletter).

**Council Members Not Present without Excused Absence from Chairperson:**

Christina Hines, Coleman Potts and Christine Piatkowski

**I. Call to Order:**

The Council meeting was called to order by Chairperson Farkas at 1832 hrs. An attendance sheet was circulated and a quorum was established by virtue of the presence of fourteen (14) voting members at that time. Two (2) additional voting members joined the group later.

**II. Secretary's Report:**

The draft minutes from the May 15, 2018 Council meeting were reviewed by the Council. A clerical error was noted in the spelling of a Council member's name; so corrected. Motion by Neil O'Brien, seconded by Judge Clarke, to accept the minutes with the revision. Motion unanimously passed by voice vote. [Note: Council minutes for 05/15/18 are now posted on the CLS website.]

**III. Treasurer's Report:**

Judge Clarke referenced the previously emailed report to Council members. The Judge noted that although the Section's overall membership has decreased a little, our paid membership has remained stable. The Judge reported that after the bills are paid for our June and September events the Section is still expected to come in under budget for the year. Motion by Neil O'Brien, seconded by Edwar Zeineh, to receive the previously emailed report. Motion unanimously passed by voice vote.

**IV. Committees and Reports:**

**Chairperson's Report and Committee Appointments:**

Chairperson Farkas stated there was no information for the Chair to report this month that would not be included in the other reports from committees and/or representatives to the Council.

**Shanty Creek Conference Report:**

Goran Antovski reported on behalf of Ryan Zemke. Mr. Antovski asked for Council approval to reserve and commit to the Soaring Eagle, Mt. Pleasant, for the Spring Conference (presumably to be renamed from the "Shanty Creek Conference"). In response to questions from the Council, Mr. Antovski stated that no deposit will be required, the hotel rooms would likely be cheaper (than Shanty Creek), we will be provided shuttle service, and we will received a "room block". It was noted that the reduction in costs might allow for additional scholarships from the Council in 2019. Mr. Antovski moved for Council approval to proceed with reserving Soaring Eagle; motion seconded by Mike Marutiak. Motion passed by voice vote with one (1) voice opposing (16 voting members present at the time).

Frankenmuth Conference:

Mike Marutiak offered a review of the Forensic Evidence Conference on June 15<sup>th</sup> and 16<sup>th</sup> in Frankenmuth. Approximately one-hundred and six (106) persons attended, including seven (7) Council members. Virtually all the comments received from the attendees about the program and the new site were positive. The two (2) Justices on the program (McCormack and Clement) allowed time for questions and answers. The Council will be advised about the costs vis-à-vis the approved budget at a later date when all bills are received and paid. The Social Hour (with food) on Friday night, sponsored by the Council's Social Committee, was an added attraction and is recommended for continuance.

Annual Meeting:

Opolla Brown reported on the arrangements for a program on traumatic head injuries, the expense of experts to testify, and how funds might be made available to defense attorneys. Two (2) panelists and a Justice have committed and a third panelist might be added. [Note: Annual Program on Friday, September 28<sup>th</sup>, at 1000 hrs., immediately after the Section's Business Meeting.]

Policy Conference/Mackinac Committee/Bar Journal Committee/Pre-trial Release/  
Diversity, Young Lawyers Committee:

No reports this month.

Social Committee:

Judge Clarke reported that the Social Hour at the Frankenmuth Conference will be under budget by about \$4-5,000. The Judge suggested that when the next Frankenmuth Conference is planned we consider scheduling a Council meeting, in Frankenmuth, on the Thursday night before the conference. Such scheduling would bring more Council members to the conference and perhaps alleviate the need for a meeting in Lansing the following week. The Judge reported the Social Committee will soon consider hosting a "President's Reception" for Council members and perhaps all Section members on the Wednesday night of the Bar's Annual Meeting in Grand Rapids.

Nominating Committee:

Steve Gobbo reported that the elections announcement has already appeared in our newsletter and at least one (1) elbast will follow in August or September. There will five (5) positions for 3-year terms and one (1) position for an uncompleted term open this year. [Secretary's note: Since the Council's June meeting, another seat opened due to the resignation of Coleman Potts. There are now five (5) positions for 3-year terms and two (2) positions for uncompleted terms open.]

Discussion ensued on whether the Council should formally decree how the successful candidates should be designated to their respective positions (3-year terms and unexpired terms). Past practices have varied a

little. Judge Clarke moved for the Council to standardize the process with awarding the unexpired term to the candidate among the successful candidates with the fewest number of votes; Bruce Timmons seconded the motion. Motion passed by voice vote.

Legislative Committee:

Bruce Timmons reported on the status of two (2) bills: one to override the current ban on some medical paroles and amend Proposal B of 1978, and the other to set objective criteria for the parole of those considered as low risk. No action taken and no motions made. [Other legislative items to be discussed later during the meeting under the Agenda item of Legislation and Court Rules.]

Scholarship Committee:

Opolla Brown reported that only two (2) scholarships were awarded for the Frankenmuth Conference. The availability for scholarships was well publicized to our Section members but the applicants were few. Ms. Brown noted that some scholarships will be available for the Annual Program in Grand Rapids in September.

Ms. Brown then sought consent to deviate from the Agenda to offer comments of respect and gratitude for the collegiality during her years of service on the Council. Ms. Brown noted she will be term-limited after the Annual Business Meeting. The Council expressed similar sentiments to Ms. Brown.

Amicus Committee:

Sofia Nelson reported there has been discussion regarding the SORA and those on the registry. The main issues have been an ex post facto application of the law and Eighth Amendment violations. A discussion ensued as to whether any CLS amicus brief should be limited only to the ex post facto issue of the SORA. Judge Clarke moved for the Section to not file any amicus brief on the SORA issues; motion seconded by Neil O'Brien. During the course of discussion on the motion, Opolla Brown moved to table the motion. Ms. Brown's motion was seconded by Mike Brady. A hand count vote was taken. The motion to table the motion to prohibit any Section brief on the SORA issues was passed by a vote of 13-3-0.

Cuba Trip Committee:

There was no formal report from the Cuba Trip Committee. Mike Marutiak moved to abolish the Cuba Trip Committee as moot in function and allow the topic to be removed from future agendas; motion seconded by Neil O'Brien. Motion passed unanimously by voice vote.

**V. Representatives to the Council Reports/Other Discussions**

Indigent Defense Commission/CDAM/Children's Law Section/Michigan Judges Association/District Court Judges/Access to Justice

No reports this month.

Criminal Jurisprudence and Practice:

Sofia Nelson report that proposed jury instructions for some firearms charges were voted on and passed by the CJP.

Criminal Jury Instructions:

Stephanie Farkas reported on a recent Court of Appeals opinion regarding support dogs for witnesses, the statutory intent for dogs only for children or disabled adults, and current legislation concerned with notice requirements.

PAAM:

Neil O'Brien announced some detail about a PAAM conference in August of this year. The PAAM monthly newsletter will advertise this Section's future conferences and scholarships.

Prisons & Corrections:

Mike Marutiak gave a positive report on the Prisons & Corrections Section's conference several weeks ago on the topic of treatment for the mentally ill before, during and after incarceration. There are expected to be some open seats on the Council next year if any CLC members are interested.

**VI. Legislation and Court Rules:**

- a. MCJI 7.16a: Bruce Timmons outlined the proposed amendment for rebuttal presumptions regarding self-defenses found in MCL 780.951. Discussion ensued. Judge Clarke moved to support the proposed amendment; seconded by Neil O'Brien. A voice vote was conducted, and the motion passed by the Chairperson's count of 10-3-3. [Note: The policy position taken by the Council was later reported to the Bar.]
- b. MCJI 11.37a and 11.37b: Bruce Timmons outlined the provisions of the proposed amendments regarding the discharge of a firearm in a building. Mr. Timmons added some technical corrections to the summary in the meeting Agenda. Richmond Riggs moved to support the proposed amendments; seconded by Neil O'Brien. Discussion ensued. A hand count vote was taken, and the motion passed 16-0-0. [Note: The policy position taken by the Council was later reported to the Bar.]
- c. MCJI 11.43 and 11.43a: Bruce Timmons outlined the proposed new instructions where violations of MCL 750.10 and 750.209a are charged involving the carrying or possession of explosive or combustible substances or compounds with intent to frighten, injure or kill, or the carrying of explosives in a public place. Judge Clarke moved to support the proposed instructions; seconded by Steve Gobbo. Discussion ensued. A hand count vote was taken, and the motion passed 13-2-1. [Note: The policy position taken by the Council was later reported to the Bar.]
- d. MCJI 11.44 and 11.44a: Bruce Timmons outlined the proposed new instructions where violations of MCL 750.211a are charged involving the crimes of making, selling, buying or possessing Molotov cocktails or incendiary explosive devices with intent to frighten, injure or kill, or the carrying of the same in public places. Steve Gobbo moved to support the proposed instructions; seconded by Neil O'Brien. Discussion ensued. A hand count vote was taken and the motion passed 14-2-0. [Note: The policy position taken by the Council was later reported to the Bar.]

- e. 2013-05/2014-46: Proposed Amendments of MCR 6.502 and MRPC 3.8 regarding post judgment relief. In summary, the new language would insert an “actual innocence” waiver provision, clarify that shifts in science are included in the definition of “new evidence”, and require certain actions by a prosecutor who knows of new, credible and material evidence creating a reasonable likelihood that the defendant did not commit the offense of which s/he was convicted, or who knows of clear and convincing evidence that shows the defendant did not commit the offense. A motion to support the proposed amendments was made and seconded [unrecorded as to who made and who seconded the motion]. A hand count vote was taken and the motion passed by a vote of 14-2-0. [Note: The policy position taken by the Council was later reported to the Bar.]

Bruce Timmons moved to reconsider the matter; motion to reconsider seconded by Richmond Riggs. Some discussion ensued. A hand count vote was taken on the motion to reconsider and the motion failed by a vote of 7-8-1.

- f. 2017-16: Proposed Amendment of MCR 6.302 to require a trial judge to advise a defendant that if a plea is accepted the defendant will give up the right to appeal issues that might otherwise be available after the conclusion of a trial. Discussion ensued on whether it is required by trial judges now and/or required by defense counsel, whether it is common practice now, and whether the language of the proposed amendment addresses whatever issue may exist. Josh Blanchard moved to support the proposed amendment; motion seconded by Bruce Timmons. A hand count vote was taken on the motion and the motion passed by a vote of 14-2-0. [Note: The policy position taken by the Council was later reported to the Bar.]

**VII. Old Business:**

Steve Gobbo asked for an update on the “Kolenda Book”. Chairperson Farkas reported that Judge Farah of Genesee County will do the update with consent from Judge Kolenda. Update versions should be ready next year.

**VIII. New Business:**

Chairperson Farkas reminded Council members of the Annual Business Meeting, planned program and Council seat elections in September (Friday, September 28<sup>th</sup>).

**IX. Adjournment:**

Chairperson Farkas then adjourned the meeting at 2059 hrs. sans a motion.

Respectfully submitted,

Michael J. Marutiak, Secretary of the Section, August 20, 2018

Minutes approved by the Council *as written/revised*, at the \_\_\_\_\_, 2018 Council meeting by a vote of \_\_\_\_\_. Motion of approval by \_\_\_\_\_ seconded by \_\_\_\_\_.