

***Criminal Law Section Council  
State Bar of Michigan  
March 20, 2018  
Radisson Hotel, Lansing, Michigan***

**Council Members Present:**

Chairperson Stephanie Farkas, Chair-Elect Josh Blanchard, Judge Clarke, Judge Anderson, Opolla Brown, Bruce Timmons, Bill Winters, Edwar Zeineh, David Gilbert, Heather Garretson, Elaine Spiliopoulos (non-Council member, Editor of Newsletter), Ryan Zemke, Dianna Collins, Neil O'Brien, Mike Brady, Michael Marutiak, Coleman Potts, Brian Watkins, Goran Antovski, Steve Gobbo (joined meeting at 1837 hrs.), Sofia Nelson (joined meeting at 1840 hrs.), and Erica Savage (joined meeting at 1847 hrs.)

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

Judge Caprathe, Christina Hines

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

Richmond Riggs, Christine Piakowski

**I. Call to Order:**

The Council meeting was called to order by Chairperson Farkas at 1831 hrs. An attendance sheet was circulated and a quorum was established by virtue of the presence of eighteen (18) voting members. Three (3) additional voting members joined the group later.

**II. Secretary's Report:**

The draft minutes from the January 16, 2018 Council meeting were reviewed by the Council. Two (2) clerical corrections were made. Motion by Bruce Timmons, seconded by Josh Blanchard, to accept the minutes as revised. Unanimously passed by voice vote. [Note: Revised minutes of 01/18 forwarded to Bar for posting.]

**III. Treasurer's Report:**

Judge Clarke explained the Bar's methods of reporting our financial information for the Council's benefit. The Council reviewed the most recent reports from the Bar. The Judge presented a draft budget for the Council's 2017-2018 fiscal year with the verbal notations that the budget will be revised to reflect a \$1,000.00 donation to the Young Lawyers' group (as previously approved by the Council last October) and an estimated cost of the annual program next September. The final budget proposal will be ready for a Council vote at the April meeting.

#### **IV. Committees and Reports:**

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

Chairperson Farkas informed the Council of Tamara Phillips' resignation from the Council due to her (Phillips') other commitments. Ms. Phillips' term (ending in 2019) is now vacant and subject to being filled at this year's annual meeting unless the Council does so earlier.

The Chairperson asked for comments and thoughts on the question of whether the "Kolenda Book" should be continued. There are only three (3) remaining copies in the inventory for sale by our Section. A discussion ensued. The various options offered included the possibility of Section members updating the manual with Judge Kolenda's permission, continuing to print and sell the last version, and discontinuing the project. [Our Section reportedly sold the manual for \$25 plus shipping and tax and did derive a profit from the sales.] Ryan Zemke moved to table the issue for now; motion seconded by Coleman Potts. Motion passed by voice vote. Ryan Zemke will inquire about possibilities of having the manual updated by Section members and obtain estimates on printing or reprinting of the manual for various quantities.

The Chairperson reported she was contacted by the Bar inquiring about our Section's interest in the Modest Means Panel. The Modest Means Panel, in summary, is a Bar pilot program that targets clients who can't afford an attorney at the current market rate but who can pay a reduced rate to a "ModestMeans" participating attorney. The Bar is reportedly looking for a criminal law attorney to serve on its task force. Much discussion ensued. No action was taken.

The Chairperson reported she was contacted by the Bar inquiring about our Section's interest in the Limited Scope Representation work group. The Michigan Supreme Court recently adopted changes to the MRPC and MCR to provide clearer direction on attorney duties in representation of clients and allow attorneys to enter an appearance for a limited scope of representation in civil matters. A discussion ensued and Council members voiced some concerns and potential complications. Sofia Nelson moved to have a Council member or a Section member sit on the Bar's committee; motion seconded by Steve Gobbo. Motion passed by unanimous voice vote. Sofia Nelson volunteered for the appointment contingent on the frequency of the committee's meetings. Chairperson Farkas then appointed Sofia Nelson as our representative.

##### Shanty Creek Conference Report:

Opolla Brown gave a report on the recent 2018 Shanty Creek Conference. A question was raised as to whether the Council should plan on returning to Shanty Creek in 2019 or look for another location. The consensus was to wait until our April meeting to decide about making a deposit for 2019. Ryan Zemke offered to present the rationale for an alternative site in 2019 at our April Council meeting.

##### Frankenmuth Conference:

Mike Marutiak gave an update on the Forensic Evidence Conference scheduled for June 15<sup>th</sup> and 16<sup>th</sup> in Frankenmuth. The location will be the Zehnder's Hotel and Conference Center. The final details of the program are still in progress but it will include presentations on computer forensics, the dark web, crypto currency, DRE's and oral fluids, suboxone and naloxone, legal standards and the role of judges and prosecutors in forensics, and more. Justice McCormick is confirmed as a speaker at the conference. The Committee expects to begin advertising in April.

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Steve Gobbo motioned to authorize \$10,000 for the Frankenmuth Conference; motion seconded by Opolla Brown. The appropriation passed by a hand count vote of 21-0-0.

Annual Meeting:

Opolla Brown reported that theme topics for the Annual Meeting Committee are encouraged. Suggestions can be emailed to her or to Mike Marutiak. The topic should be ready for Council review prior to our summer break from meetings.

Policy Conference/Mackinac:

A brief discussion ensued regarding using Mackinac as the location for future conferences or going elsewhere. The consensus of the Council was to address the question at a later meeting.

Bar Journal Committee:

No report.

Nominating Committee:

Steve Gobbo reported that six (6) seats are expected to be up for election this fall when factoring the resignation of Tamara Phillips. The election will be advertised as usual in advance of the Annual Business Meeting.

Social Committee:

Judge Clarke reported it will be quite costly to obtain a suite at a Tigers game and any package would include very little in terms of amenities; ergo, the Judge said he is not recommending a Tigers game for a Section social event. The Judge will continue to explore possibilities for the June 9/10<sup>th</sup> or June 23/24<sup>th</sup> weekends.

Legislative Committee:

Bruce Timmons reported on HB 5374 which changes the parole process for those scoring low risk on parole guidelines. Mr. Timmons gave an update on the package of legislation relating to Driver Responsibility Fees: the package passed the legislature but some qualifications were added to the removal of past fees imposed. The Criminal Justice Policy Commission has released its report on sending age-17 offenders to the juvenile system instead of the adult system. The report is now with the legislature.

Court Rules Committee:

No report this month.

Scholarship Committee:

Opolla Brown reported that 5-6 scholarships were granted for the 2018 Shanty Creek conference. Ms. Brown stated there could be up to 20 scholarships available for the upcoming Frankenmuth conference, given the lower cost of Frankenmuth for attendees. Ms. Brown will have a budget impact report at the April Council meeting.

The Council discussed the need to develop criteria and standards for the Section's scholarships for reasons of consistency. Chairperson Farkas added Brian Watkins to the Committee [see updated Committee Assignment List attached to these minutes.] The Scholarship Committee will prepare a recommendation of the criteria and standards for future scholarships and present the same to the Council in the near future.

Pre-trial Release Committee:

Dianna Collins reported she recently spoke with Justice McCormick's office to confirm that a pre-trial analyst was hired and that a survey is being developed for Court Administrators. The Judicial Data Warehouse, which pulls information from various court systems for consolidation, is now in progress. A "Pretrial Summit" will be held in early May and Heather Garretson will attend.

Diversity/Young Lawyers Committee:

Coleman Potts reported a good turnout at the Expungement Fair in February [note: the Criminal Law Section was a \$1,000 sponsor]. A "Celebrate Diversity" event in Detroit is being planned. That event will be sponsored by the Detroit Bar Association. A Young Lawyers seminar is being planned for June.

Mike Brady moved to authorized and appropriate \$500 of the Section's budget to sponsor the Young Lawyers seminar in June; motion seconded by Sofia Nelson. A hand count was taken and the motion passed by a vote of 21-0-0.

Amicus Committee:

No report this month.

Cuba Trip Task Force Report:

Edwar Zeineh gave the Council an update on suggestion that our Section involve itself with the Bar's promotion of the Cuba trip. The estimated costs, per person, would be about \$5,000, or more, plus travel to and from Miami (assuming a desire to return to Michigan). The trip is scheduled for seven (7) nights. The task force is still obtaining information and discussing whether a recommendation should be made to the Council.

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

Indigent Defense Commission:

Chairperson Farkas informed the Indigent Defense Commission has a project underway to better adjust workloads and cases for attorneys. The IDC has contracted with the Rand Corporation to help review the issue. Funding for the IDC is now before the legislature.

CDAM:

Brian Watkins reported CDAM voted to oppose SB 871, providing for an increase in the statute of limitations for certain sex offenses.

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Criminal Jurisprudence and Practice:

No report.

Criminal Jury Instructions:

It was reported that at a February meeting proposed changes were adopted to jury instructions for resisting and obstructing, allowing for the affirmative defense of excessive use of force.

Access to Justice Committee:

Heather Garretson reported on recent activities and modifications to the civil rules.

Prisons and Corrections:

The Prisons and Corrections Council was unable to meet in March but is still planning its annual program for Saturday, June 2<sup>nd</sup>, at the State Bar building. Topic yet to be announced. Prisons and Corrections will be cosponsoring our Frankenmuth conference in June.

PAAM:

Neil O'Brien reported on the recent PAAM conference on "Shaping Criminal Justice Reform". The presentations were noted and the conference was described as "spirited". Neil presented on the Freedom of Information Act.

Section and Council members are encouraged to attend the annual candle light vigil during Crime Victims' Rights Week this year. The vigil is held in the Capitol rotunda. This year's event will be on Wednesday, April 25<sup>th</sup>, beginning promptly at 1800 hrs.

Children's Law Section:

No report this month.

Michigan Judges Association:

Judge Anderson related recent discussions about proposed changes in the statute of limitations for criminal sexual conduct and the wording of some of the proposed changes, and the timely processing of rape kits and related evidence.

District Court Judges:

Judge Clarke reported the District Court Judges Association inquired about our Section's position, if any, on amending the rules to make discovery applicable to criminal in misdemeanor cases. Chairperson Farkas asked for Council discussion when we reach the "Court Rules" item on tonight's agenda.

**VI. Legislation and Court Rules:**

- a. SB 871: a bill to modify the statute of limitations for certain criminal sexual conduct violations. Reportedly, the Bar's Board of Commissioners elected to not take a position. After discussion by the Council, Josh Blanchard moved to oppose the legislation; Mike Brady seconded the motion. A hand count was taken and the motion to oppose SB 871 passed by a vote of 12-6-1 (two Council members having departed from the meeting prior to the vote).
- b. SB 878: a bill to provide for an increased penalty for the crime of aggravated possession of child sexually abusive material. After discussion by the Council, Steve Gobbo moved to support the legislation; Dianna Collins seconded the motion. A hand count was taken and the motion to support failed by a vote of 8-10-1.
- c. SB: 874: a bill to provide for increased penalties for child abuse, child neglect or failure to report suspected child abuse or neglect. After discussion by the Council, with much discussion on how the penalties would apply to volunteers who fail to report, Steve Gobbo moved to *support* the legislation; Dianna Collins seconded the motion. A hand count was taken and the motion to support failed by a vote of 3-14-2. Josh Blanchard then moved to *oppose* the legislation; motion seconded by Mike Brady. Another hand count was taken and the motion to oppose passed by a vote of 12-5-2.
- d. SB 875: a bill regarding the Court of Claims, notice of intention and certain procedures in cases involving minor claimants. By consensus the Council agree to forgo any discussion and to not take action.
- e. MCR 6.001(B): Judge Clarke reported that the District Judges Association inquired about our Section's position on making discovery applicable to criminal misdemeanor cases and a potential amendment to the court rules. After discussion by the Council, Bruce Timmons moved to support in principle the application of discovery rules to misdemeanor cases; motion seconded by Mike Brady. Chairperson Farkas noted that an additional member of the Council had left the meeting. Steve Gobbo then moved to table Mr. Timmons' motion; Gobbo's motion seconded by David Gilbert. The motion to table failed by a vote of 6-12-0. Mr. Timmons' motion was again before the Council. A hand count was taken and the motion to support in principle the application of discovery rules to misdemeanor cases was adopted by a vote of 15-3-0.

Josh Blanchard then moved to table the balance of the Agenda of the meeting; motion seconded by Mike Brady. The motion carried by voice vote.

**VII. Adjournment:**

Chairperson Farkas then adjourned the meeting at 2205 hrs.

Respectfully submitted,

Michael J. Marutiak, Secretary of the Section, April 2, 2018

Minutes approved by the Council as written by a unanimous voice vote of 16-0-0 at the April 17<sup>th</sup>, 2018 Council meeting. Motion of approval by Ryan Zemke; seconded by Steve Gobbo.

**Note:** Updated list of Committee Assignments attached.

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

- (revised in April 2018)

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

Annual Meeting Program Committee: Brown and Marutiak

Bar Journal Committee: Judge Caprathe (Chairperson), Garretson, 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, Hines

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

Diversity Committee: Coleman (Chairperson) and Savage

Amicus Committee: Nelson (Chairperson), Gilbert and Farkas

Frankenmuth Conference Committee: Marutiak (Chairperson), Farkas, Collins and Spiliopoulos