

CRIMINAL LAW SECTION COUNCIL MEETING
STATE BAR OF MICHIGAN
May 15, 2012

Members Present: David Gilbert, Charles Marr, Stephen Taratuta, Kenneth Malkin, Hon. Paula Manderfield, Hon. David Hoort, Martin Krohner, Michael Marutiak, John Potbury for David Leyton, Opolla Brown, Jon Posner, Stephen Gobbo, Matthew Smith, Heather Garretson, Kellie Podolsky, Graham Teall, Hon. William Caprathe, Barbara Levine.

Also Present: Thomas Rombach, Bruce Timmons

- I. Call to Order by Stephen Tarauta, Chair, _____ p.m.
 - a. Absence with notice: Jonathan Sacks, Sherrie Guess, Ward McDonough, Elaine Spiliopoulos
 - b. Absent without notice: Lynn D'Orio
- II. April 17, 2012 Minutes; David Hoort, Secretary.

Charles Marr moves, Graham Teall second, to approve the April 17, 2012 minutes. Motion carried by acclimation.

III. Treasurer's Report; Charles Marr, Treasurer

Treasurer reports a fund balance, up slightly from last year, of \$45,784.66 for the period ending April 30, 2012. Shanty Creek under budget, but the bill still needs to be approved and paid.

Jon Posner moves, Martin Krohner second, to authorize payment of \$5,046.15 for Shanty Creek. Motion carried by acclimation.

Opolla Brown moves, Heather Garretson second, to receive the Treasurer's Report. Motion carried by acclimation.

IV. Committee Assignments / Report

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

Committee Chair Malkin reports 37 registered as of today. Council members are encouraged to attend. The deadline for the SBM room rate is this week and must be through the motel; the conference registration deadline is June 1, 2012 with registration available online through the bar website.

Committee Chair Malkin, at the request of John Collins, Director, MSP Forensic Science division, requests CLS to send out an Eblast inviting section members to an Educational Event on the CSI effect at the Lansing MSP laboratory on June 14, 2012 at 10 a.m. Judge Donald Shelton will present on the CSI effect and the use of jury instructions relating to forensic evidence.

Marty Krohner moves, Charles Marr second, for the section to send out an Eblast to section members promoting the Education event on the CSI effect on June 14, 2012. Motion carried by acclimation.

- b. Annual Meeting (September 20-21, 2012, Amway Grand, Grand Rapids, MI)

Committee Chair Marr asks if Council agreeable to a juvenile related presentation for the Annual meeting. Heather Garretson reports Michigan has one of the highest rates for juveniles sentenced to life imprisonment. Graham Teall suggests CLS consider partnering with the Children's Law Section; Michael Marutiak likewise suggests partnering with Prisons and Corrections Section.

Jon Posner moves, Barb Levine second, that the presentation for the CLS Annual meeting be on issues related to juvenile delinquency, including sentencing, collateral consequences, and the lifer law. Motion passed. Voting members-17, Ayes-15, Nays-1, Abstain-1, Did not vote-0. Committee Chair to contact the Children's Law and Prisons and Corrections Sections for possible collaboration.

- c. Young Lawyer

No report.

V. Legislation / Court Rules

a. MCR 6.419

Alternative A would revise MCR 6.519 to be similar to the federal corollary (FR Crim P 29[b]). Under this language, the trial court would be entitled to reserve judgment on a motion for directed verdict. Alternative B would allow a trial court to reconsider its decision to grant a directed verdict and allow for appellate review. Graham Teall argues appellate review should be available in principal for any judicial determinations and asserts it is unconstitutional for prosecutors not to be able to appeal a directed verdict. Further concerns expressed as to the effect on the trial process by motions for reconsideration and appellate review. Charles Marr moves, Jon Posner second to table consideration of the proposed amendment to MCR 6.419 to the June Meeting. Motion passed. Voting members-17, Ayes-16, Nays-1, Abstain-0, Did not vote-0.

b. HB 5575

HB 5575 would eliminate the ability of a successor judge to object to the granting of parole. Barb Levine explains the purpose for the proposed amendment to the statute. Judge Manderfield reports that MJA has voted to oppose the legislation, and is against removing authority from the successor judge to exercise the statutorily allowed veto. Bruce Timmons suggest use of a time limit for the exercise of any veto authority. Barb Levine explains this could then be the indirect timeline for then the consideration of parole. Judge Hoort suggest removing the veto power but allowing successor judges to object to the granting of parole. Barb Levine explains this would already be available to the successor judge even with the proposed legislation. David Gilbert believes that the successor judge as the representative of the affected court should have the authority to veto the possibility of parole. Barb Levine explains that this too often can be contrary to the expected length of sentence by the original sentencing judge. The Council has previously indicated its support for a due process analysis which would allow for appellate review, with any objection by the original or successor judge requiring substantial and compelling reasons based on objective and verifiable information, and the prisoner being then also given an opportunity to respond to the judge's objection. The consensus was that no further action is needed at this time, but that Ms. Levine should take the information from this meeting and the opposition by MJA back to the sponsor of the legislation and see if the proposed legislation can or should be re-worked. Judge Hoort moves, Jon Posner second, to table consideration of the proposed legislation. Motion passed. Voting members-17, Ayes-16, Nays-1, Abstain-0, Did not vote-0.

c. SB 632

Bruce Timmons reports that SB 630-633 was originally at the requests of the Drug Court to close records at the beginning of the deferral process but Senate changes would have made nonpublic records more accessible. This last week additional changes were made to close the record at the point the case is placed on deferral status, but would allow entities (police, prosecutor, DHS, MDOC) access for criminal justice purposes as allowed by CJIS in the performance of their duties. The proposal that would have eliminated MSP as the central registry as been removed, but there is still a question of retroactivity. Further changes may be eminent. Matthew Smith moves, Marty Krohner second, to table consideration of the proposed legislation. Motion passed by acclamation.

d. Delayed application rule

The Appellate Practice Section, Family Law Section and State Appellate Defender Office are looking for support to approach the Supreme Court with a suggestion that there be an amendment to MCR 7.205 for delayed applications from 6 months to 12 months. Data from Jonathan Sacks indicates that at SADO, since September 1, out of 192 plea appeals, 25 were ready for filing after the six month date because of the date of assignment, substitution of counsel or time to produce the transcript. Barbara Levine moves, Jon Posner second, to support the proposed amendment to the courtrule as written. Motion passed by show of hands. Voting members-17, Ayes-15, Nays-1, Abstain-1, Did not vote-0.

Explanation of the Position, including any recommended amendments: The council believed that the proposed amendment is appropriate to allow defendants to fully exercise their constitutional right to appeal. In those cases with arguable appellate issues, the six month time period is too limiting in scope to allow for meaningful and effective review by appellate counsel.

VII. Old Business

a. SBM-Leadership Forum—June 8 & 9, 2012

Chair Elect reports no action needed.

VIII. New Business

a. Law and Media Seminar at SBM Annual Meeting

Tom Rombach reports the State Bar Law and the Media Committee would like to partner with the CLS in a presentation on Dealing with the Media at the Annual Meeting this year. The presentation can be tailored to the needs of criminal lawyers, rules of professional conduct. Discussion whether the same is doable in conjunction with our presentation at the Annual meeting relating to juvenile delinquency, a separate CLS event, or in conjunction with our Young Lawyers committee. Chair directs Committee Chair Marr to explore the possibilities with the State Bar Law and the Media Committee.

b. Annual meeting budget

Ken Malkin moves, Marty Krohner second, to approve a \$6,000.00 budget for the Annual meeting. Motion passed by acclimation.

c. Voting/proxy/bylaws

Charles Marr reports that with regards to voting rights by entity representatives, the bylaws provide that the entity, not the designated representative or person appearing in behalf of said representative, has the authority to control, delegate and/or designate the related voting rights at CLS Council meetings.

Charles Marr moves, Stephen Gobbo second, to establish a policy that the Chair each year ask entities with membership on the Criminal Law Section Council to designate their assigned representative and alternate and/or provide verification, as needed, of any attendees' authority to vote in behalf of the entity at council meetings. Motion passed by show of hands. Voting members-17, Ayes-14, Nays-2, Abstain-1, Did not vote-0.

IX. Good and Welfare

a. Next meeting/June picnic meeting---June 12, 2012 at 6:30 p.m. (Mike Brady's house)

X. Adjourn

Matthew Smith moves, Marty Krohner second, to adjourn. Motion carried by acclimation. Meeting adjourned at 8:38 p.m.

Approved: September 21, 2012

Respectfully submitted
David Hoort, Secretary
Criminal Law Section