

***Criminal Law Section Council
State Bar of Michigan
May 15, 2018
County Club of Lansing, Lansing, Michigan***

Council Members Present:

Chairperson Stephanie Farkas, Judge Caprathe, Judge Anderson, Judge Clarke, Opolla Brown, Bruce Timmons, Bill Winters, Ryan Zemke, Dianna Collins, Neil O'Brien, Mike Brady, Michael Marutiak, Brian Watkins, Steve Gobbo, Edwar Zeineh, Elaine Spiliopoulos (non-Council member, Editor of Newsletter), Christina Hines, Heather Garretson. (17 voting members)

Council Members Not Present with Excused Absence from Chairperson:

Chair-Elect Josh Blanchard, Christine Piatkowski, Sofia Nelson, Erica Savage, David Gilbert, Goran Antovski, Richmond Riggs, Coleman Potts. (8 voting members)

Council Members Not Present without Excused Absence from Chairperson:

None.

I. Call to Order:

The Council meeting was called to order by Chairperson Farkas at 1833 hrs. An attendance sheet was circulated and a quorum was established by virtue of the presence of seventeen (17) voting members at that time.

II. Secretary's Report:

The draft minutes from the April 17, 2018 Council meeting were reviewed by the Council. Motion by Opolla Brown, seconded by Edwar Zeineh, to accept the minutes as offered. Unanimously passed by voice vote. [Note: Council minutes for 04/17/18 and policy positions taken at the 05/15/18 meeting are now posted on the CLS website.]

III. Treasurer's Report:

Judge Clarke reported that the Section's expenses to date are slightly below what they were at this time last year, though additional expenses are expected during the 2018 summer months. Section membership now stands at 2,370 according to the Bar reports.

Judge Clarke asked for approval of the previously submitted 2017-2018 Section budget. Motion to approve by Steve Gobbo, seconded by Edwar Zeineh. A hand count was taken and the motion prevailed by a vote of 17-0-0.

IV. Committees and Reports:

Chairperson's Report:

Nothing further at this time.

Shanty Creek Conference Report:

Ryan Zemke updated the Council on the search for a new site for the Section's 2019 Winter Conference. The leading contender at this point is the Soaring Eagle Conference Center in Mt. Pleasant. Mr. Zemke noted that the lower room rates and less travel time (compared to Shanty Creek) might also result in the ability to grant more scholarships for Section members. Mr. Zemke asked Council approval to continue pursuing Soaring Eagle as the location and noted that a reservation would need to be made soon. The Council consensus, by "straw vote", was to pursue Soaring Eagle and to discontinue with the Shanty Creek site.

Frankenmuth Conference:

Mike Marutiak gave an update on the Forensic Evidence Conference scheduled for June 15th and 16th in Frankenmuth. The finalized Program Agenda was shared with the Council. Promotion of the event is underway and the event is fully within the Committee's approved budget. Council members are encouraged to register early. [It was noted that Judge Clarke would give a report later during the meeting on the social hour and golf package aspects of the Frankenmuth Conference.]

Judge Clarke apprised the Council on the Social Committee's plan to host a Social Hour for conference attendees. The Social Hour will be held at the same hotel as the conference and begin shortly after the end of Friday's conference sessions. Food and libations will be available. The expectation is for the Social Hour to be an attraction to our members in attendance and at the same time be a boost to the conference.

Annual Meeting:

Opolla Brown reported that the Committee is moving forward with a theme topic of Child Abuse Head Trauma for the Annual Meeting presentations. The program will include three (3) presenters on recent case law, expert witnesses, and fees and funding for experts. Justice Kurtis Wilder will give the opening remarks. Opolla Brown reminded the Council of the need to formally approve a budget for the Annual Meeting. Steve Gobbo then motioned to authorize \$10,000 for the event; motion seconded by Judge Clarke. A hand count vote was taken and the motion was passed by a vote of 17-0-0.

Policy Conference/Mackinac Committee:

A brief Council discussion ensued about the location for next year's Policy Conference. The overwhelming consensus of the Council was to inform Mission Point, Mackinac Island, that we would not be returning there and to make our dissatisfaction with that entity "clear".

Bar Journal Committee:

Judge Caprathe shared with the Council the five (5) ideas submitted to him thus far for articles which resulted from the recent re-circulation of the criteria for articles. The Judge is coordinating with the respective authors with regard to the deadlines.

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Social Committee:

Judge Clarke explained the purpose of the Social Event at the conclusion of the Friday session at the Frankenmuth Conference, the arrangements for food and drink, and that the cost of the Social will be borne by the Social Committee's budget (vis-à-vis that of the Frankenmuth Committee's). The Judge opined that such an affair – the social hour – might continue as we plan future conferences and events. The Judge then informed the Council of the details of the Golf Outing scheduled to follow the Frankenmuth presentations and the reduced costs for golfing.

Cuba Trip Task Force:

Edwar Zeineh recommended to the Council that we not pursue the "Cuba Trip" in conjunction with the State Bar due to the cost of the trip. Our Section may, at some point, wish to pursue such a trip in conjunction with another entity.

Nominating Committee:

Court Rules Committee:

Diversity/Young Lawyers Committee:

Amicus Committee:

No reports this month.

Legislative Committee:

Bruce Timmons reported on the status of HB 5377 (a bill to expedite the parole of low risk offenders) and SB 844 (a bill to extend the sunset provision of the Criminal Justice Policy Commission). 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 circulated a memo outlining the criteria for present and future scholarships for Section programs. The Committee is still accepting applications for scholarships to the Frankenmuth Conference. Ms. Brown noted fewer scholarships may be awarded for the September Annual Meeting Program as it will be only a two (2) hour program.

Pre-trial Release Committee:

Dianna Collins reported there is no pending legislation at this time pertaining to pretrial release. She stated that the necessary Judicial Data Warehouse enhancements were priced out and it was discovered to be very costly to finance all the needed enhancements. A meeting has consequently been arranged to see what can be accomplished with available funding.

Dianna Collins reported that SCAO recently did a survey of courts and pretrial release agencies to form a better picture of bond practices in different courts. A presentation will be given at the District Judges Association Conference in August on pretrial release. [Several Council members asked if the SCAO survey results were available for review. Dianna Collins reported to the Council later (by email) that SCAO stated the survey "is internal" and "will not be published".]

V. Representatives to the Council Reports/Other Discussions

Michigan Judges Association:

Judge Anderson noted for the Council's information that MJA has not as of yet taken official positions on any of the legislative items on tonight's Council Agenda.

District Court Judges:

Judge Clarke reported that the District Court Judges Association will be meeting later during the week to discuss potential changes in discovery for District Courts.

Prisons and Corrections:

Mike Marutiak reported that the topic for the Prisons and Correction Section's June Conference (June 2nd at the State Bar) will be "Mental Health Issues, Before, During and After Incarceration".

It was also reported that the Prisons & Corrections Section, by a divided vote and after three (3) months of debate, issued a major policy position on the Department of Corrections' use of GPS monitoring. The position, in summary, calls for making individualized decisions for parole GPS monitoring on the basis of risk, a process for periodic reviews by parole agents and parolees of GPS intensity, justification in writing for a denial to relax monitoring, and reduction or elimination of the charges to parolees for the GPS costs.

VI. Legislation and Court Rules:

- a. HB 5922: Chairperson Farkas explained the provisions of the bill to add language for consultation of judges and prosecuting attorneys with victims in order for violent offenders to receive mental health treatment. Discussion ensued. Motion by Ryan Zemke to support the legislation; motion seconded by Brian Watkins. A hand count vote was taken and the motion passed by a vote of 15-0-1. [Note: So reported to Bar.]
- b. HB 5645: Bruce Timmons outlined the provisions of the bill to modify current victim rights statutes and allow for "support dogs" when the crime victim is testifying (the law presently allows for a "support person"). Mr. Timmons added that the Criminal Jurisprudence and Practice Committee has already voiced support of the legislation. Discussion ensued. Motion by Neil O'Brien to support the legislation; motion seconded by Christina Hines. A hand count vote was taken and the motion passed by a vote of 12-4-1. [Note: so reported to Bar.]
- c. HB 5658: Bruce Timmons outlined the provisions of the bill to allow the admissibility of prior acts of sexual crimes under certain circumstances (the law presently allows for the admission of prior sexual violence acts). Mr. Timmons added that the Criminal Jurisprudence and Practice committee has already voiced opposition to the legislation. Discussion ensued. Motion by Brian Watkins to oppose the legislation; motion seconded by Edwar Zeineh. A hand count vote was taken and the motion to oppose passed by a vote of 11-2-4. [Note: so reported to Bar.]

- d. HB 5779: The legislation was explained as a bill to require a criminal conviction before proceedings on the forfeiture or selling of property in nuisance cases could begin. Motion by Ryan Zemke to support the legislation; motion seconded by Brian Watkins. Discussion ensued. A hand count vote was taken and the motion was defeated by a vote of 8-5-4, the motion failing to obtain a majority of the votes cast.
- e. HB 5806 and HB 5807 and HB 5808: The three (3) bills were considered together by the Council. Bruce Timmons and Neil O'Brien outlined the provisions of the bills for the Council regarding the establishment of juvenile mental health courts. Motion by Brian Watkins to support all three (3) bills; motion seconded by Heather Garretson. A hand count vote was taken and the motion passed by a vote of 15-0-2. The Council then agreed by consensus that its statement of support would include a comment on the need for MSC funding. [Note: So reported to the Bar.]
- f. HB 5820: The bill was explained as an amendment to the Mental Health Code to modify the procedures for involuntary mental health treatment and judicial admissions. Motion by Mike Brady to support the bill; motion seconded by Neil O'Brien. Discussion ensued. A hand count vote was taken and the motion passed by a vote of 12-0-3. [Note: So reported to Bar.]
- g. SB 0951 and SB 0952: The two (2) bills were considered together by the Council. The bills relate to the jurisdiction and venue for prosecution for delivery of a controlled substance causing death. Ryan Zemke moved to support both bills; motion seconded by Dianna Collins. Discussion ensued. A hand count vote was taken and the motion to support passed by a vote of 11-4-1. [Note: So reported to Bar.]
- h. Proposed Amendments to MCJI 7.16a, MCJI 11.37 and 11.37b, and MCJI 11.43 and 11.43a, and MCJI 11.44 and 11.44a: Brian Watkins moved to table all of the aforementioned agenda items; motion seconded by Mike Brady. The motion to table was passed by a hand count vote of 13-2-0.

VII. Old Business:

Elaine Spiliopoulos informed the Council that Judge Kolenda (ret.) granted permission for the Council to make arrangements to update the "Kolenda Book". Elaine Spiliopoulos reported that the cost of 100 copies of the present book would be \$1,072.66 [the Council approved an expenditure of \$1,000 at the April meeting]. Mike Brady moved to appropriate up to \$1,072.66 to print more copies of the book; motion seconded by Ryan Zemke. A modicum of discussion followed. A hand count vote was taken and the motion passed by a vote of 13-2-0.

VIII. New Business:

Chairperson Farkas moved to appropriate up to \$125 to have flowers sent to Council member Erika Savage; motion seconded by Mike Marutiak. A hand count vote was taken and the motion passed by a vote of 15-0-0.

It was announced the Council will meet in June. The meeting will be scheduled for Tuesday, June 19th, at the County Club of Lansing, social time at 1800 hrs. and the meeting to commence at 1830 hrs.

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IX. Adjournment:

Chairperson Farkas then adjourned sans motion or vote at 2053 hrs.

Respectfully submitted,

Michael J. Marutiak, Secretary of the Section, May 26, 2018

Minutes approved by the Council as revised at the June 19th, 2018 Council meeting. Motion of approval by Neil O'Brien; seconded by Judge Clarke. Passed unanimously by voice vote.