

Minutes
Criminal Law Council
November 13, 2018

Call to order at 6:36 p.m.

Members present: Edwar Zeineh, Josh Blanchard, Michael Marutiak, Michael Brady, Stephanie Farkas, Judge Martha Anderson, Bruce Timmons, Anthony Greene, Neil O'Brien, Stephen Gobbo, Goran Antovski, Ryan Zemke, David Gilbert, Richmond Riggs, Sofia Nelson, Chris Piatkowski, and Judge Hugh B. Clarke Jr.

Members excused: Amanda Tringl, Heather Garretson, Matt Smith, Erica Savage, Christina Hines, Brian Watkins and Dianna Collins.

Others Present: Elaine Spiliopoulos, David Champine.

Consent Agenda a. Approval of Minutes from October 16, 2018 Meeting. – Accept minutes as presented. Motion by Zeineh and seconded by Zemke passed unanimously.

b. Presentation of Financial Statements / Approval of Financial Statements. Motion by Zeineh and seconded by Timmons to remove this item from the consent agenda was passed unanimously. No reports have been received from the State Bar for October 2018.

Committees and Reports:

Secretary's report—no report, minutes from October 2018 meeting accepted under consent agenda.

Treasurer's Report- No Report.

Chairs report. Discussion on Secured Leave Court Rule. Idea here is to adopt a court rule that allows an attorney to file a 'vacation letter' with the court so as to block off vacation time with advance notice to the trial court. See link for full text of proposed court rule:

https://paper.dropbox.com/doc/Michigan-Secured-Leave--APW1_t1nJp94Zf54YyohrEWSAQ-ovi49v6gcgcl4Bm1FID1r.

Motion by Zemke seconded by Greene to support this proposed court rule. Motion to support PASSED 14-1 with 2 abstentions and 1 member not voting.

Committee Assignments:

Mid-Winter Conference (formerly referred to as "Shanty Creek") members appointed: Zemke, Antovski and Marutiak.

Other committee appointments to be completed by the December 2018 meeting.

Mid-Winter Conference-contracts signed to hold the conference at the Soaring Eagle Resort.

Frankenmuth Conference-No report

Annual Meeting-no report

Policy/Mackinac Conference-no report

Bar Journal Committee-Three Articles have been submitted and accepted for the January 2019 Special Edition of the State Bar Journal. One article is still being waited on and should be submitted on Friday, November 16. The edition goes to print on Monday, November 19

Nominating Committee-no report

Social-no report

Legislative-no report

Court Rules-no report

Scholarship-no report

Pre-Trial Release-no report

Diversity/Young Lawyers-no report

Amicus-no report

Cuba Trip-no report

(These committees are still in formation and have not met).

Representatives to the Council Reports/Other Discussion-

Indigent Defense Commission-No Report

B. CDAM-General discussion and report of their meeting.

C. Criminal Jurisprudence and Practice-No report

D. Criminal Jury Instructions-no report

E. Access to Justice (formerly Criminal Justice Initiatives)-written report submitted and attached.

F. Prisons and Corrections-Their annual conference has been scheduled for the first Saturday in June 2019 (June 1st). More details to follow. No policy positions taken.

G. PAAM-Mid Winter Conference scheduled for February 6-8, 2019 at the Grand Traverse Resort. No other report given.

H. Children's Law Section-no report.

I. MJA-At their meeting the requirement to raise the age of defendants was discussed at their meeting but no position was taken.

J. District Court Judges-*Vacancy exists* Secretary will notify the MDJA President of the vacancy.

Legislation and Court Rules

M Crim JI 3.29, 3.30, and 3.31 The Committee proposes amending M Crim JI 3.29, 3.30, and 3.31, the jury verdict forms used for multiple counts with and without insanity defenses and lesser offenses, because the current forms fail to provide a general "not guilty" option for each charged count. See *People v Wade*, 283 Mich App 462 (2009). Deletions are in strike-through, and new language is underlined. **Motion by Nelson and seconded by Brady to support. Passed 17-0-0.**

M Crim JI 14.2a The Committee proposes a new instruction, M Crim JI 14.2a, where perjury is charged under MCL 750.423(2) – false declarations made under penalty of perjury (including in electronic

media). The instruction is entirely new. **Motion by Timmons and seconded by Gobbo to support. Passed 15-2-0.**

M Crim JI 20.38c The Committee proposes amending M Crim JI 20.38c, the instruction for possessing or accessing child sexually abusive activity, to clarify that it applies when the defendant possesses or accesses child sexually abusive material for viewing it himself or herself. Deletions are in strike-through, and new language is underlined. **Motion by Nelson and seconded by Brady to oppose. Passed 14-3-0.**

M Crim JI 27.1 and 27.5 The Committee proposes amending M Crim JI 27.1, the jury instruction for embezzlement charged under MCL 750.174, and M Crim JI 27.5, the jury instruction for embezzlement charged under MCL 750.177 or 750.178 to accommodate statutory changes and clarify the instructions. Deletions are in strike-through, and new language is underlined. **No position taken.**

M Crim JI 33.1, 33.1a, 33.1b, 33.1c, 33.1d, 33.1e, 33.1f, and 33.1g, The Committee proposes new instructions for crimes charged under MCL 750.49, pertaining to using animals for fighting or targets (or providing facilities for doing so or breeding such animals, etc.): M Crim JI 33.1, 33.1a, 33.1b, 33.1c, 33.1d, 33.1e, 33.1f, and 33.1g. These instructions are entirely new. **No position taken.**

2017-27: Proposed Amendment of MCR 6.425 The proposed amendment of MCR 6.425 would make the rule consistent that requests for counsel must be filed within 42 days, as opposed to simply “made” or “completed and returned.” It would also remove the requirement for a sentencing judge to articulate substantial and compelling reasons to deviate from the guidelines range, pursuant to People v Lockridge, 498 Mich 358; 870 NW2d 502 (2015). **Motion to Table by Timmons seconded by Clarke. Motion to Table passed 17-0.**

HB 6110 Occupations; individual licensing and regulation; use of criminal record to determine eligibility for occupational licensing; restrict. Amends title & secs. 1, 2, 3, 4, 5, 6 & 7 of 1974 PA 381 (MCL 338.41 et seq.). Motion by Nelson seconded by Brady to support. **Motion passed 12-4 with 1 abstention.**

SB 1092 (Jones) Courts; juries; postponement of jury service; allow for farmers during certain months. Amends sec. 1335 of 1961 PA 236 (MCL 600.1335). **Motion to oppose by Marutiak seconded by Timmons. Motion to oppose passed 15-1-0.**

HB 6026 (Barrett) Law enforcement; other; forensic science commission; create and regulate forensic laboratories and certain providers. Creates new act. **Motion to support by Nelson seconded by Farkas. Motion to support failed 5-8-3 (abstentions).**

Old Business-None

New Business: Motion by Marutiak and seconded by Zeineh to allocate up to \$150.00 for flowers to Judge Caprathe. **Motion passed 16-0.**

New Business: Discussion on various topics for Mid-Winter Conference, marihuana law updates, criminal law update, changes to juvenile and mental health can competency issues, abusive head trauma.

Meeting adjourned at 8:08 p.m.

Judge Hugh B. Clarke Jr
Secretary