

MINUTES OF THE STATE BAR OF MICHIGAN CRIMINAL LAW SECTION ANNUAL MEETING----September 16, 2011

I. Call to Order of Annual Meeting of the Criminal Law Section by Chair Ken Malkin-9:04 a.m.

Members Present: Hon. David Hoort, Charles Marr, Mike Brady, Jr., Michael Brady, Sr, Barbara Levine, Daniel Kopka, Lisa Geherin, Terrence Shulman, Ward McDonough, M. Jon Posner, Opolla Brown, Joan Morgan, Bruce Timmons, Ralph Simpson, Lyle Marshall, Matthew Smith, Ann Marie Smith, Stephen Taratuta, Su Lantz, Hon. Paula Manderfield, Jonathan Mycek, Novia Nichols, Dawn Van Hoek, Elaine Spiliopoulos, John Shea, Patricia Streeter, Richard Cunningham, Hon. John Hammond, Tom Rombach, Hon. Lawrence Talon, Ken Malkin, Hon. William Caprathe, David Gilbert, Martin Krohner, Stephen Gobbo, Sandra Girard.

Chair Malkin reflected on his year as chair; which included a comprehensive revision of the bylaws, a move to electronic newsletters and a two-year budget solidifying our financial situation; and expressed his appreciation for the work of the section.

II. Election of Criminal Law Section Council Members.

Michael Marutiak-Chair, Charles Marr, Mike Brady, Kiana Franulic, Ward McDonough.

Committee chair Marutiak explained the procedure for the election of council members. There are five openings for three year terms. Ralph Simpson requested clarification who is able to nominate candidates. Chair Marutiak clarified any CLS member may nominate a person or him/herself. The committee submitted the following candidates: Opolla Brown, David Gilbert, Sherrie Guess.

Chair Marutiak opened nominations from the floor.

Ken Malkin nominated Hon. William Caprathe; Opolla Brown seconded. There being no further nominations from the floor, Chair Marutiak closed nominations by acclamation.

Elaine Spiliopoulos requested nominations be re-opened. Chair Marutiak moves, Stephen Gobbo second, that nominations be re-opened. Motion carried by acclamation.

Elaine Spiliopoulos nominated Martin Krohner.

Matthew Smith moves, Chair Marutiak second, nominations be closed. Motion carried by acclamation.

The chair announced the candidates and allowed each to make brief remarks: Opolla Brown, David Gilbert (A), Sherrie Guess, Hon. William Caprathe, Martin Krohner.

Matthew Smith moves, Charles Marr second, to forgo any balloting and elect all five candidates by acclamation to the CLS council. Motion carried by voice vote.

III. Proposed Revision of Bylaws

Charles Marr-Chair

Chair Marr explained proposed amendments to the bylaws and the reasons necessitating the changes.

Art II, Sec 1; increases annual dues from \$20.00 to \$25.00. CLS dues were the lowest section dues in the SBM and with the increase will still be at the low end for section dues.

Art II, Sec 2; automatically includes new members of the SBM as members of the CLS for two years.

Art III, Sec 4; as amended, would allow all Council officers full voting privileges.

Art III, Sec 6; would allow for ascension of officers to the office of Chair irrespective of term limits.

Art III, Sec 7; allows for a nominating committee of not more than five section members.

Art IV, Sec 3; allows for the ascension of officers without having to run for election.

Art VI, Sec 5; provides for the quorum.

Art VI, Sec 6; allows for voting by mail, telephone, facsimile or electronic mail.

Art VI, Sec 9; provides that the Council shall designate a seminar coordinator who shall be responsible for editing the newsletter, and other duties as assigned by the Council, and the same shall be a paid position.

Art VI, Sec 10; allows for advertising in the discretion of the Council.

Art VI, Sec 11; allows for the removal of officers for inappropriate activities.

Art VII, Sec 2; allows for amendment of the bylaws, with electronic publication.

Martin Krohner moves, Matthew Smith second, that the CLS adopt the proposed amendments to the bylaws as presented. Krohner accepts a friendly amendment by Ken Malkin that the council retains the authority to make clerical changes, if needed. Ralph Simpson requested clarification of the process for ascension of officers. Chair Marr explains ascension is automatic and the reasoning therefore. Michael Marutiak asks whether the language in Art VI, Sec 9 should be 'may' instead of 'shall' to give the council discretion. Sandra Girard move, Sherrie Guess second, to change language in Art VI, Sec 9 to 'may' instead of 'shall'. Motion passed by show of hands. Ayes-33, No-0, Abstain-1.

Chair Marr calls for vote on Krohner motion to adopt bylaws, as amended. Motion passed by show of hands. Ayes-33, No-0, Abstain-1.

IV. Close of Annual Meeting of Criminal Law Section-9:34 a.m.

Chair Malkin passes gavel to incoming Chair Taratuta.

I. Call to Order of Annual Meeting of CLS Council by Chair Stephen Taratuta-9:35 a.m.

Chair Taratuta recognizes the work of outgoing Chair Malkin and presents a plaque to him in honor of his service to the council. Chair Taratuta discusses prior accomplishments of the section, seminars presented, eye witness task force, medical marijuana policy statement, and commitment by the council to connect with new lawyers.

Martin Krohner moves, Chair Taratuta second, to recognize CLS member Stephen Gobbo selection as the incoming Chair of the Representative Assembly for the State Bar of Michigan.

Chair Taratuta closes Annual meeting of the council at 9:44 a.m.

I. Chair Taratuta calls to Order Executive session of the Criminal Law Section Council-9:47 a.m.

Members present: Stephen Gobbo, Charles Marr, Opolla Brown, Sherrie Guess, Ward McDonough, Barbara Levine, Stephen Taratuta, Dan Levy, Matthew Smith, Hon. Paula Manderfield, Michael Marutiak, Martin Krohner, Hon. William Caprathe, David Gilbert, Ken Malkin, Jon Posner, Hon. David Hoort.

Also present: Bruce Timmons, Thomas Rombach, Elaine Spiliopoulos, Michael Brady, Sr,

II. Election of Officers

Opolla Brown moves, Michael Marutiak second, Charles Marr be elected treasurer. Chair Taratuta moves, Matthew Smith second, that current council officers be elevated to the next higher office. Motions carried by acclamation.

III. Proposed Amendment of MCR 6.001

Chair Taratuta opens discussion of MCR 6.201 suggesting the council adopt the recommendations of Jonathan Sacks to oppose the rule as written, but instead supports a proposal that amends 6.001(A) to

provide discovery prior to preliminary exams and amends 6.001(B) to include 6.201 among rules applying to misdemeanor cases, and thereby provide discovery for misdemeanors in district court. Ken Malkin moves, Charles Marr second, that the CLS council adopt the recommendation of Jonathan Sacks. Tom Rombach advises it is his understanding that the Supreme Court request for the amendment was to expand discovery in district court. Stephen Gobbo offers, Ken Malkin accepts, the friendly amendment that the language be that the “Criminal Law Section supports the efforts of the Supreme Court to expand discovery at the district court level and suggests the following language:

1. Explicitly amends 6.001(A) to provide discovery prior to preliminary exams.
2. Explicitly amends 6.001(B) to include 6.201 among rules applying to misdemeanor cases, and thereby provide discovery for misdemeanors in district court.”

Motion passed by show of hands. Ayes-14, Nays-0, Abstain-0. The consensus being that while MCR 6.201 may not be applicable prior to a preliminary examination that the court rules should recognize a right to the discovery that is needed to properly prepare for a preliminary examination.

IV. Close of Meeting of Executive Session of CLS Council-9:58 a.m.

Dan Levy moves, Matthew Smith Second, that the Executive session of the CLS council meeting be adjourned. Motion passed by acclamation.

Post adjournment, Tom Rombach expressed concern about proposed Court Rule MCR 6.202 allowing for the use of a forensic report in lieu of an appearance by forensic expert witnesses unless an objection is filed by the defense. Discussion followed with the possible problems generated by this notice and demand alternative and what is required under the Confrontation clause.

Annual Meeting Program-Monitoring Sex Offenders: How We Do It and Does It Work
Michael Brady, Sherrie Guess, Barbara Levine-Chairs

Speakers: Attorney Miriam Aukerman-ACLU, Sgt. Chris Hawkins-MSP, Professor Jill Levenson-Lynn University; Assistant Prosecutor Lora Weingarden-Wayne County.

Discussion of Michigan’s revised sex offender registry law, standard parole conditions for sex offenders, and the costs and consequences of monitoring sex offenders. Materials will be provided on the CLS website at a future date.

Respectfully Submitted:
David Hoort, Secretary
Criminal Law Section