

The Criminal Law Section newsletter has been delayed due to our News Editor position. The following will serve as an interim Newsletter until the position has been filled.

~ Criminal Law Section Council, December 20, 2005

29th Mid-Winter Ski Conference

President's Day Weekend; February 19 – 21, 2006

Shanty Creek Resort, Bellaire

Sentencing in Federal Court; Implications for state practice

Collateral Consequences of drinking-driver offences

MCR changes impacting criminal juries

President's Day Ski Conference, February 19-21, 2006. As is traditional, four CLE sessions will be offered. Sunday evening: A review of recent high-impact state and federal decisions by **Timothy Baughman**. Monday morning: Since the MSC issued its dicta opinion in *Claypool*, Michigan judges continue to apply sentencing guidelines that are presumed to be exempt from the principals articulated in *Blakely/Booker*. Practice has been otherwise federal courts. Now the MSC has accepted a case for review that offers another look. The federal experience will be examined and conferees will discuss the implications for state practice. Monday afternoon: Speakers and conferees will discuss the procedure and costs for restoring revoked driver's licenses; should changes be initiated? Tuesday morning: In the closing session we will examine the new Michigan Court Rule changes and their impact on criminal juries. An analysis of the changes by **Kimberly Reed Thompson** is included with this newsletter. Ms. Reed-Thompson will participate in this session. Return the enclosed pre-registration form to Shanty Creek. For program questions contact **Graham Teall**, (313) 226-9118 or **Jeffrey Gagie**, (269) 655-1118. For questions on the conference schedule/format, contact **Jim Shonkwiler**, (517) 627-2865.

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Criminal Law Section News Editor/Meeting Administrator. Chairman Ralph Simpson will interview applicants who have come forward within the next 30 days. Others who may be interested are urged to contact Mr. Simpson, ralphcts@aol.com; or telephone with questions, (313) 859-4173. Duties and compensation can be tailored to the individual. The prior news editor briefed recent cases, reviewed Section events and published a newsletter 10 times annually. The prior position also included handling administration and logistics for most Section meetings and conferences.

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**Changes to Michigan Court Rules that impact criminal juries (effective 01/06/2006)
Analysis by Kimberley Reed Thompson, Esq., 12/14/2005**

RULE 2.511 IMPANELING

Rule 2.511(D)(2) has been eliminated, such that “has been convicted of a felony” is no longer an enumerated ground for a challenge for cause.

Rule 2.511(F) is a new rule. It forbids discrimination during voir dire based on race, color, religion, national origin or sex. The largest impact of this rule comes from subsection 2.511(F)(2), which clarifies that there is no exception to this rule under which a court may “balance” a jury. This rule is an absolute restriction on discrimination and the ability of the court to restructure a jury in terms of the characteristics enumerated in 2.511(F)(1), even in the event of an otherwise imbalanced, disproportionate or non-representative jury.

Rule 2.511(G) -- formerly 2.511(F) -- as been changed. Previously, the language indicated that after the jury has been seated, and once a challenge has been exercised or sustained, a new juror must be selected and examined before further challenges are issued. The new provision eliminates the language requiring that no further challenges be issued. The new language merely indicates that after a challenge is exercised or sustained, a new juror or jurors must be selected and that the newly selected juror(s) may be challenged like previously seated juror(s).

RULE 6.107(B) GRAND JURY PROCEEDINGS has been changed. Motions are now to be addressed to the chief judge of the circuit court in the county in which the grand jury was convened.

RULE 6.414 CONDUCT OF JURY TRIAL

6.414(A) is a new letter for a rule that was formerly a part of Rule 6.413(F), indicating that before trial begins, the court should give the jury appropriate pretrial instructions.

RULE 6.414(C) OPENING STATEMENTS, formerly 6.414(B), has been changed. This rule originally read, “The court may impose reasonable limits on the opening statements.” It has been clarified to read, “The court may impose reasonable **TIME** limits on the opening statements.”

RULE 6.414(D) JUROR NOTE TAKING, formerly 6.414(C), has been changed. Juror note taking remains at the discretion of the court. However, jurors may, at the court’s discretion only, bring their notes into deliberations. If the court decides against this, it must inform jurors at the same time that the court permits note taking. Most importantly, however, the new rule requires that **the court** now take responsibility for

collecting and destroying juror notes when the trial is concluded. It is no longer enough to simply instruct jurors to destroy their notes.

RULE 6.414(E) JUROR QUESTIONS is a new provision that allows, at the court's sole discretion, for juror questioning of witnesses. If the court so allows, it must use procedures that prevent inappropriate questions and provide the parties a chance to object to the questions.

RULE 6.414(F) VIEW, formerly 6.414(D), has been changed. The changes clarify that when jurors are taken to view a site, no one other than the judge, officer in charge of the jurors or other person directed to talk to the jurors by the judge should communicate with them; the provision indicates that the permission of the trial judge is required to communicate with the jurors. **Furthermore, any such communication must be recorded in some way.**

RULE 6.414(G) CLOSING ARGUMENTS, formerly 6.414(E), has been changed in the same way that 6.414(C) was changed. "Reasonable limits" has been changed to "reasonable **TIME** limits."

RULE 6.414(H) INSTRUCTIONS TO THE JURY, formerly 6.414(F), has been changed significantly. Previously, the court required the consent of the parties in order to instruct the jury before closing arguments. The new provision allows the court, at its own discretion and on mere notice to the parties, to instruct the jury prior to closing arguments and give any appropriate further instructions after argument.

RULE 6.420(C) is a new provision for deadlocked juries. If a defendant is charged with two or more counts, and the court finds the jury is deadlocked so that a jury trial must be declared, the court may ask the jury whether it has reached a unanimous verdict on any of the counts charged, and if so, may accept the jury's verdict on that count or counts.

RULE 6.620(B) PEREMPTORY CHALLENGES has been changed. 6.620(B)(1) now says that each defendant is entitled to three peremptory challenges. The prosecutor is entitled to the same number as a defendant being tried alone, or in the case of multiple defendant's, to a number equal to the total number of peremptory challenges to which all the defendant's are entitled.

6.620(B)(2) is a new section, which gives the court discretion, on a showing by a party of good cause, to grant one or more parties additional peremptory challenges. The additional challenges need not be equal for each party.

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Revised And Updated *Potentially Dispositive Pre-Trial Motions-2005* Is Available.
The State Bar has copies of the updated edition of Judge Dennis Kolenda's popular

manual. Send your check payable to **State Bar of Michigan**, 306 Townsend Street, Lansing, 48933, attention: Finance. Each copy, priced at Criminal Law Section printing and mailing cost, is **\$17** mailed, or **\$13** picked up at the State Bar Building. To arrange pickup call Amy Pierce, 517 346-6322.

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Criminal Law Section Training Conference and Golf Outing. Ypsilanti Marriott/Eagle Crest Conference Center; June, 2006 (dates TBA). With program suggestions, contact **Steve Lockhart**, 313 965-5220.