

News & Views



2009-2010 OFFICERS

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Events

Annual Meeting & Program October 1, 2010 DeVos Place - Grand Rapids

The Criminal Law Section will hold a short business meeting at 9 a.m. The meeting will begin with elections to fill four positions on the Council. Chair-Elect Kenneth Malkin will also be installed in his new position. Our annual program will begin shortly after the business meeting.

Please join us from 10 a.m. to 12 p.m. to discuss Michigan's Medical Marihuana Act. Matthew Abel, Celeste Clarkson, and Kenneth Stecker will be the featured speakers. More detailed information on the program is found on the next page of this newsletter.

Council Meeting October 19, 2010 Sheraton Hotel - Lansing

The Council's first monthly meeting of the new term will be held in the Hemingway Room of Christie's Bistro, the hotel restaurant. The hotel is located at 925 South Creyts Road, immediately off I-496. Social hour begins at 6:00 p.m., with dinner and the meeting starting at 6:30 p.m.

The tentative meeting schedule for the term is:

November 16
December 21
January 18, 2011
February 15
March 15
April 19
May 17
June 21

Please check for date confirmations in future newsletters and on our website: <http://www.michbar.org/criminal/news.cfm>. Council members will also receive email notices.

Annual Meeting Details

Friday, October 1, 2010:

9 a.m. – 10 a.m.: Criminal Law Section Business Meeting

The Criminal Law Section will elect four members to the Council. The four candidates receiving the most votes will serve a three-year term on the Council. To be elected, a candidate must be a member of the Criminal Law Section. Those who wish to be nominated, or those who wish to nominate a member to stand for election to the Council, should submit the following to the Nominating Committee:

Name, P number, and address of the nominee

A brief written candidate statement (by or on behalf of the nominee)

Nominations will be allowed from the floor. Please confine the written candidate statements to no more than one page, and submit them via e-mail to: MarutiakM@michigan.gov or via surface mail to:

Michael Marutiak
Criminal Law Section
1131 Vail Court
Lansing, MI 48917-4000

The Section's annual meeting begins at **9:00 A.M.** at the **DeVos Place**. You must be present to vote. Candidates do not have to be present, but their presence is encouraged. A brief oral statement by candidates is permitted before elections. Please be prompt – or you may miss the election. The winners of the election will be announced in next month's newsletter.

If you have any questions about the elections, please call Michael Marutiak, Nominating Committee Chair, during regular business hours at 517-242-4792.

10 a.m. – 12 p.m.: Criminal Law Section Annual Program: Medical Marihuana

The Michigan Medical Marihuana Act, recently enacted by voters, legalizes the medical use and cultivation of marihuana for people suffering from debilitating medical illnesses. With this new legislation comes a myriad of complex legal issues, which we will discuss with the assistance of the following distinguished panelists:

Matthew Abel, Founding Partner, Cannabis Counsel, PLC

Celeste Clarkson, Compliance Section Manager, Michigan Department of
Community Health Bureau of Health Professionals

Kenneth Stecker, Traffic Safety Resource Prosecutor, Prosecuting Attorneys
Association of Michigan

For more information on the program, please contact Opolla Brown at obrown@co.wayne.mi.us or 313-224-5731. The program is free, but registration is requested to allow for proper facilities planning. For registration, schedules, and other general information about the State Bar of Michigan's Annual Meeting, please visit: www.michbar.org/annualmeeting.cfm.

Michigan Public Defense Update

Editor's Note: The Criminal Law Section has long advocated for reform of our system for appointing counsel to indigent defendants.

The Michigan Supreme Court reversed its earlier order and dismissed the case of **Duncan v Michigan**, which challenged the state's indigent defense system (Nos. 139345-7; July 16, 2010). The plaintiffs alleged that the state failed to fulfill its constitutional obligation to provide adequate legal assistance to criminal defendants who could not afford their own attorney. The state unsuccessfully sought summary dismissal in circuit court, a result that was affirmed by a divided Court of Appeals. The Michigan Supreme Court, in its original order, unanimously agreed that the class-action lawsuit could go forward (Nos. 139345-7; April 30, 2010). In a surprising reversal, the motion for reconsideration was granted and the previous order vacated. The Michigan Supreme Court, reversing the judgment of the Court of Appeals, ruled that the defendants were entitled to summary disposition because the plaintiffs' claims were not justiciable. Accordingly, the cause was remanded for entry of summary disposition in favor of the defendants. Justice Markman filed a concurrence joined by Justices Corrigan and Young. Chief Justice Kelly dissented, joined by Justices Cavanagh and Hathaway.

Recent Amendments to Court Rules

The following amendments were recently adopted by the Michigan Supreme Court:

Rules 6.425 and 6.610:

The Michigan Supreme Court previously adopted various amendments of the rules that required prosecutors and defendants to have access to the pre-sentence investigation report at least two days before sentencing and allow adjournment if the parties did not receive the report in that time, to ensure the confidentiality of the report, and to limit the victim or witness information that may be included in a report. Following entry of the order and shortly after its effective date, the Michigan Supreme Court considered the matter further, specifically with regard to mandatory confidentiality provisions. The provisions not only represented a significant change in current practice, but also underscored a fundamental tension between the explicit provisions of MCL 791.229, which describe who may have a copy of the report and for what purposes, and subsequent caselaw, which expanded access of pre-sentence investigation reports in certain circumstances. The Court invited interested associations that oppose the language as adopted to approach the legislature to resolve the conflict. However, if legislation on this subject is not enacted and effective by the end of this calendar year, an amendment to allow prosecutors, defense counsel, and defendants to retain a copy of the pre-sentence investigation report will automatically go into effect on January 1, 2011. Effective July 1, 2010.

Rule 6.433:

The amendment inserts a "good cause" provision to require a defendant in post-conviction proceedings to show good cause to obtain a second set of court documents. It also mirrors the good-cause provision in the court rules for appeals by leave under MCR 6.433(B)(2). Effective September 1, 2010.

Rules 7.211, 7.313 and 8.119:

The amendments clarify that materials filed with a trial court, the Court of Appeals, or the Supreme Court that relate to a motion to seal a record are nonpublic until the court disposes of the motion. Effective September 1, 2010.

Proposed Amendments to Court Rules

Comments on the following proposed amendments are due by October 1, 2010:

Rule 6.302 (Pleas of Guilty and Nolo Contendere) and **6.610** (Criminal Procedure Generally): The proposed amendments were generated following the recent decision by the United States Supreme Court in **Padilla v Kentucky**, 559 US ____ (08-651; March 31, 2010), which held that defense counsel is required to inform a defendant about the risk of deportation as a potential consequence of a guilty plea. Proposal A would require a judge to ask a noncitizen defendant and the defendant's lawyer if they discussed the possible risk of deportation as a consequence of a guilty plea. The focus of this inquiry is whether the defendant is a noncitizen and what the defense counsel has told the defendant. Proposal B would require a judge to give general advice to any defendant, regardless of whether the defendant is represented by counsel, that a guilty plea by a noncitizen may carry immigration consequences. This alternative would obviate the need to determine the defendant's citizenship status, which the defendant may not know or be willing to divulge. (ADM File No. 2010-16; June 30, 2010).

Comments on the following proposed amendment are due by November 1, 2010:

Rule 7.212 (Briefs) and **7.215** (Opinions, Orders, Judgments, and Final Process from Court of Appeals): The proposed amendments, submitted by the State Bar of Michigan Appellate Practice Section, would eliminate the requirement to provide a copy of an unpublished decision of the Court of Appeals if that decision was issued after July 1, 1996, and a case number is provided. (ADM File No. 2009-22; July 27, 2010).

Send your comment electronically to: MSC_Clerk@courts.mi.gov. Send your comment via surface mail to:

Michigan Supreme Court, Clerk's Office, P.O. Box 30052, Lansing, MI 48909

When submitting a comment, please reference the relevant ADM File Number.