

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.

From 10 a.m. to 12 p.m. we will discuss Michigan's Medical Marihuana Act. Panelists Matthew Abel, Celeste Clarkson, and Kenneth Stecker will guide us in our discussion. More detailed information on the program is found later in 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.

Statement from the Chair

I want to thank you all for allowing me the opportunity to serve as Chair of the Criminal Law Section for the 2009-2010 term. It was a busy year.

The Criminal Law Section (CLS) was twice asked to provide amicus briefs to the Michigan Supreme Court. The Section adopted the amicus brief submitted by the Michigan Civil Rights Commission and the Michigan Department of Civil Rights in **People v Charles Merriman**, which addressed the adequacy of indigent defense compensation. CLS submitted its own brief in **Duncan v State of Michigan**, which challenged the state's indigent defense system. **Duncan** was ultimately dismissed on the basis that the plaintiffs' claims were not justiciable.

The Supreme Court proposed an administrative order to extend the "91 day trial track." In ADM File No. 2010-08, the Court proposed rescinding its previous order and adopting a new order that would extend the "91 day trial track" to 154 days. The CLS has been vocal for a number of years regarding the hardship the "91 day trial track" caused for both the defense and prosecution.

During the State Bar's Annual Meeting in September 2009, CLS hosted a panel of speakers from around the state to discuss the increasing importance of specialty courts and their costs and benefits to the public and members of the bar. The panelists included: Retired 61st District Court Chief Judge Patrick Bowler; 15th District Court Chief Judge Julie Creal; 8th Circuit Court Judge David Hoort; Michigan Supreme Court Chief Justice Marilyn Kelly; Genesee County Assistant Prosecuting Attorney Richmond Riggs; and, State Appellate Defender Office Director James Neuhard.

The Annual President's Day Weekend Ski Conference was held at Shanty Creek Resort in Bellaire, Michigan. The topic was discovery issues in state and federal court. The seminar began with a lecture by Timothy Baughman of the Wayne County Prosecutor's Office and author of "Michigan Criminal Law and Procedure Desk." Mr. Baughman discussed the high impact cases of the previous year and provided a fifty-page outline listing a brief synopsis of the cases. Timothy McMorrow, Chief Appellate Attorney of the Kent County Prosecutor's Office, discussed state discovery issues. Detroit defense attorney Steven Fishman and Assistant US Attorney Graham Teall discussed federal discovery issues. Our final speaker was Patricia E. Hubbard, a licensed investigator who discussed the benefits of private investigators in criminal cases.

The 5th Annual Spring Conference was held at the Bavarian Inn Lodge in Frankenmuth, Michigan. The topics were collateral consequences of criminal convictions and new developments in sentencing. The speakers included: Mariam Aukerman from Legal Aid of Western Michigan; William Vaillencourt, Jr. from the Livingston County Prosecutor's Office, Francisco Villarruel, Defense Attorney; Rafael Villarruel from the Federal Defender's Office; and, Anne Yantus from the State Appellate Defender Office.

Please continue to contact me, or any member of the Council, with your ideas, questions or comments. Again, thank you for the opportunity to serve and I hope to see you at the SBM Annual Meeting in Grand Rapids.

Opolla Brown
Criminal Law Section Chair

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, 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**. Please be prompt – or you may miss the election. 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. The winners will be announced immediately after the election, and will also be noted in the next newsletter.

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

Following elections, the Council will install the new Chair of the Criminal Law Section. New officers will also be chosen and inducted into their positions.

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

The Michigan Medical Marihuana Act legalized 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

Detailed speaker biographies appear on the next page of this newsletter. For additional information on the program, 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. Registration, schedules, and other general information can be found at www.michbar.org/annualmeeting.cfm.

Matthew Abel is the founding partner of Cannabis Counsel, PLC, a law practice entirely devoted to cannabis cases and clients. Mr. Abel's Detroit law office provides cannabusiness representation, and criminal defense of marijuana cases throughout Michigan. Subsequent to passage of the Michigan Medical Marihuana Act in 2008, the practice has grown rapidly to include business clients and issues, as well as employment, drug testing, probation, and domestic issues surrounding cannabis consumption.

Matthew has stood for public office seven times in Michigan. He is a lifetime member of the NORML Legal Committee and the National Association of Criminal Defense Lawyers, is a member of the Criminal Defense Attorneys of Michigan, the National Lawyers Guild, Americans for Safe Access, and the ACLU of Michigan Legal Committee.

In addition to practice, Matthew has taught Michigan Medical Marihuana Law for Oaksterdam University in Michigan, and currently is a Professor of Law at MedGrow Cannabis College. He is also moderating a seminar through the Michigan Institute for Continuing Legal Education on the Michigan Medical Marihuana Law of 2008.

Celeste Clarkson is the Manager for the Compliance Section with the Health Regulatory Division, Bureau of Health Professions, Michigan Department of Community Health. The Freedom of Information Unit (FOIA), Sanction Monitoring Unit, Health Professional's Recovery Program, and the Medical Marihuana Unit all comprise the Compliance Section.

Ms. Clarkson has over fifteen years experience with the State of Michigan. She has worked in the Enforcement Section for the Bureau of Commercial Services, in what is now the Department of Energy, Labor and Economic Growth, and most recently as an investigator with the Michigan Gaming Control Board in its Supplier Licensing Section. Celeste began working with the Department of Community Health in December 2008.

Previously, Ms. Clarkson was a dispatcher, corrections officer, detective, and road patrol officer with the Ingham County Sheriff's Office and the Lansing Township Police Department. She also served as an Assistant Jail Administrator with the Ingham County Sheriff's Office.

Kenneth Stecker graduated from Loyola Marymount University in 1984, and the University of Detroit School of Law in 1987. Mr. Stecker accepted a position to be a law clerk for the Honorable Lawrence C. Root in Mecosta County. Two years later he worked for the Kalamazoo County Prosecutor's Office as an Assistant Prosecuting Attorney.

In 1992, Mr. Stecker went to work as an Assistant Prosecuting Attorney for the Branch County Prosecutor's Office. In 2001, he was appointed to be the Branch County Chief Assistant Prosecuting Attorney. In both county prosecutors' offices, Mr. Stecker prosecuted every traffic offense imaginable from civil infractions to vehicular homicide. On March 31, 2008, Kenneth was selected as the Prosecuting Attorneys Association of Michigan's Traffic Safety Resource Prosecutor.

Kenneth also has extensive teaching experience as an adjunct member at Kellogg Community College for the past fifteen years. Additionally, he served on the Michigan Juvenile Justice Committee. Mr. Stecker is very active in his community, and is a member of several professional and community groups.

Recent Amendments to Court Rules

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

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 ____ (No. 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 administrative file number.

Legislative Update

The following public acts impacting criminal cases have recently gone into effect:

2010 PA 25 (SB 528). Health facilities; patients; reuse of single-use medical devices; prohibit under certain circumstances and prescribe penalties for violation. Tie-bar with HB 5825. Effective March 26, 2010. MCL 333.20153.

2010 PA 26 (HB 5825). Criminal procedure; sentencing guidelines; sentencing guidelines for crime of reusing single-use medical product; enact.. Tie-bar with SB 528. Effective March 26, 2010. MCL 777.13n.

2010 PA 58 (HB 4370). Traffic control; violations; entry of points on operator's license for operating a motor vehicle while reading, typing, or sending a text message on an electronic wireless device; prohibit. Tie-bar with SB 468 and HB 4394. Effective July 1, 2010. MCL 257.320a.

2010 PA 59 (SB 468). Traffic control; violations; receiving, reading, or sending a text message while operating a motor vehicle; prohibit under certain circumstances and provide penalties.. Tie-bar with HB 4370 and HB 4394. Effective July 1, 2010. MCL 257.732.

2010 PA 60 (HB 4394). Traffic control; violations; operating a motor vehicle while reading, typing, or sending a text message on an electronic wireless device; prohibit, and provide penalties for.. Tie-bar with HB 4370 and SB 468. Effective July 1, 2010. MCL 257.602b.

2010 PA 94 (HB 6135). Corrections; parole; dueling conviction as basis for parole eligibility; remove to reflect repeal of crime. Tie-bar with HB 6136 and HB 6137. Effective June 22, 2010. MCL 791.233b.

2010 PA 95 (HB 6136). Criminal procedure; sentencing guidelines; sentencing guidelines for crime of dueling; eliminate. Tie-bar with HB 6135 and HB 6137. Effective June 22, 2010. MCL 777.16l.

2010 PA 96 (HB 6137). Crimes; other; crime of dueling; repeal. Tie-bar with HB 6135 and HB 6136. Effective June 22, 2010. MCL 750.171.

2010 PA 97 (SB 764). Criminal procedure; sentencing guidelines; sentencing guidelines for crimes of taking a woman and compelling her to marry and taking a woman with the intent to compel her to marry; amend to reflect repeal of crime. Tie Bar with SB 763. Effective June 25, 2010. MCL 777.16a.

2010 PA 98 (SB 765). Crimes; other; crimes related to prizefighting; repeal. Tie-bar with SB 766 and SB 767. Effective June 22, 2010. MCL 750.442 - 750.447.

2010 PA 99 (SB 766). Criminal procedure; sentencing guidelines; sentencing guidelines for crimes related to prizefighting; eliminate. Tie-bar with SB 765 and SB 767. Effective June 22, 2010. MCL 777.16v.

2010 PA 100 (SB 767). Crimes; other; Michigan unarmed combat regulatory act; amend to reflect repeal of crime of prizefighting. Tie-bar with SB 765 and SB 766. Effective June 22, 2010. MCL 338.3622.

2010 PA 102 (SB 763). Crimes; kidnapping; crimes of taking a woman and compelling her to marry and taking a woman with intent to compel her to marry; repeal. Tie-bar with SB 764. Effective June 25, 2010. MCL 750.11 & MCL 750.12.

2010 PA 107 (SB 325). Crimes; other; installation or use of motor vehicle tracking device; prohibit under certain circumstances and provide for penalties and remedies. Effective August 1, 2010. MCL 750.539l.

2010 PA 129 (SB 1311). Crimes; larceny; theft of certain utility products or services; prohibit, and provide a penalty. Tie-bar with SB 1312. Effective October 19, 2010. MCL 750.282a.

2010 PA 130 (SB 1312). Criminal procedure; sentencing guidelines; sentencing guidelines for crime of illegally transferring product or service of utility provider to another person; enact. Tie-bar with SB 1311. Effective July 21, 2010. MCL 777.16o.

2010 PA 131 (SB 1313). Crimes; assaultive; assault of a utility worker; prohibit, and provide penalties. Tie-bar with SB 1314. Effective October 19, 2010. MCL 750.81e.

2010 PA 132 (SB 1314). Criminal procedure; sentencing guidelines; sentencing guidelines for crime of assaulting a utility worker; enact. Tie-bar with SB 1313. Effective July 21, 2010. MCL 777.16d.

United States Supreme Court - Cert Granted

Cullen v Pinholster, No. 09-1088 (June 14, 2010): Review was granted to determine whether it is appropriate, under 28 USC 2254, for a federal court to conclude that a state court's rejection of a claim was unreasonable in light of facts that an applicant never alleged, but could have, in state court; and (2) what standard of review is applicable to claims of ineffective assistance of counsel.

Pepper v United States, No. 09-6822 (June 28, 2010): Review was granted to determine whether a federal district judge can consider a defendant's post-sentencing rehabilitation as a permissible factor supporting a downward sentencing variance under 18 USC 3553(a); (2) whether, as a sentencing consideration under the statute, post-sentencing rehabilitation should be treated the same as post-offense rehabilitation; and (3) when a district court judge is removed from re-sentencing a defendant after remand, and a new judge is assigned, whether the new judge is obligated under the doctrine of the "law of the case" to follow sentencing findings issued by the original judge that had been previously affirmed on appeal.

Skinner v Switzer, No. 09-9000 (May 24, 2010): Review was granted to determine whether a convicted prisoner seeking access to biological evidence for scientific testing may assert that claim in a civil rights action under 42 USC 1983, or whether such a claim may be asserted only in a petition for writ of habeas corpus.

Walker v Martin, No. 09-996 (June 21, 2010): Review was granted to determine whether, in federal habeas corpus proceedings, a state law under which a prisoner may be barred from collaterally attacking his conviction when the prisoner "substantially delayed" filing his habeas petition is "inadequate" to support a procedural bar because (1) the federal court believes that the rule is vague and (2) the state failed to prove that its courts "consistently" exercised their discretion when applying the rule in other cases.

