

**State Bar of Michigan
Criminal Jurisprudence and Practice Committee
Thursday, February 17, 2011, 2:30 PM
at the State Bar of Michigan Building, Room 3**

Teleconference 1-877-352-9775, Passcode 9152168764#

Draft Minutes

Committee Members: Hon. David A. Hoort, Gretchen A. Schlaff, Nichole Jongsma Derks, Abed E. Hammoud, James W. Heath, Timothy Hilton Havis, John L. Livesay, Donna McKneelen, Barry Franklin Poulson, Angela Povilaitis, Julie A. Powell, Samuel R. Smith

1. Call to Order & Welcome – The meeting was called to order at 2:33 PM
2. Approval of Minutes – The minutes were unanimously approved.
3. Presentations:
 - a. Diversity and Inclusiveness: W. Anthony Jenkins, SBM President; Gregory Conyers, SBM Director of Diversity – President Jenkins spoke about the SBM Diversity Initiative.

Carrie Sharlow will send out the link for signing the Diversity signature. The committee voted unanimously to sign the Diversity Pledge as an entity.

CJAP Subcommittee on Diversity and Indigent Defense: James Heath, Angela Povilaitis, Julie Powell, and Abed Hammoud.
 - b. 96th State Legislature: Elizabeth Lyon
The new legislature was sworn in January. There are a lot of new faces. The Republican has the majority. There are 17 lawyer-legislators, 4 in the Senate, 13 in the House.
4. New Business
 - a. [HB 4106](#) (Erwin Oakes) Criminal procedure; expunction; expand record expunction for certain offenders; provide for under certain circumstances. Amends secs. 1, 3 & 4 of [1965 PA 213](#) (MCL [780.621](#) et seq.).
Status: 01/18/11 Referred to House Judiciary

Referred 01/24/11: Criminal Jurisprudence & Practice; Criminal Law; Prisons and Corrections.

The committee voted 11 for (1 abstaining) to support the bill with the suggested amendment.

The expungement would not be allowed in sexual crimes unless the issue was a non-forced purely statutory crime where the instigator was within five years of the other.
 - b. [2010-17 Proposed Amendment of Rule 3.707 of the Michigan Court Rules](#)

This proposal, submitted by the Michigan Judges Association, would clarify that the right to bring a motion to modify or terminate a personal protection order as established by MCR 3.707 applies to ex parte PPOs.

Issued: February 1, 2011

Comment period expiration: June 1, 2011

Public hearing: To be scheduled

Referred 02/08/11: Criminal Jurisprudence & Practice; Domestic Violence; Family Law.

The Domestic Violence Committee is discussing this and decided to table it for further discussion.

The matter will be tabled to a later date. Carrie Sharlow will send out the Domestic Violence position when it is written.

- c. [2008-10 - Proposed Amendments of Rule 6.425 an Rule 7.210 of the Michigan Court Rules](#)
This proposal would require a sentencing judge to prepare and include with the case record a form in which the judge outlines the reason or reasons for departure from the sentencing guidelines. The duty to do so would be in addition to the obligation to state such reasons on the record. The proposal is designed to provide litigants and appellate courts a clear and unambiguous recitation of the reasons for departure by the sentencing court.
Issued: November 23, 2010
Comment Period Expires: March 1, 2011
Public Hearing: To be scheduled

Referred 01/04/11: Criminal Jurisprudence & Practice; Appellate Practice; Criminal Law; Judicial Conference.

Criminal Law Section opposes these proposed amendments due to the following reasons:
6.425: CLS opposes both MCR 6.425 and 7.210 as the sentencing departure form should be filled out on the record in open court so that objections may be placed on the record regarding the departure at the time of the departure, instead of allowing reasons for the departure going unchallenged at a later time.

7.210: Section does not believe the judge should be stating reasons in a form which will become part of the record at a later date. Rather, the court should place its reasons for departure on the record at the time of sentencing so that objections may be placed on the record if needed.

The committee voted to support 2008-10. 6 yes, 6 no (prosecutors and defense attorneys).
The committee takes no position.

- d. [2008-28 - Proposed Amendment of Rule 6.005 of the Michigan Court Rules](#)
The proposed amendment would revise MCR 6.005(H) to clarify that appointed defense counsel in a criminal proceeding either must file a substantive response to a prosecutor's application for interlocutory appeal or notify the Court of Appeals that the lawyer intends not to submit a pleading.
Issued: December 21, 2010
Comment Period Expires: April 1, 2011
Public Hearing: To be scheduled

Referred 01/04/11: Criminal Jurisprudence & Practice; Appellate Practice; Criminal Law.

Criminal Law Section opposes due to the following reasons: The Criminal Law Section is opposed to this amendment. It relates to paragraph (H)(3) as it feels counsel should file some response. This could create an excuse for attorneys to fail to respond without just cause.

The committee tabled this for the next meeting: March 17th. It will go before Executive Committee on March 29th.

5. Reports from Other Committees

- a. Criminal Law Section – Shady Creek Weekend Event.
- b. Indigent Defense Funding – The State Bar is working on Public Defense Commission.
- c. Custodial Interrogation Recording Legislation – Tonya Schuitmaker has introduced the bill. The House and Senate Judiciary Committees have promised to take up the matter.

6. Committee Projects

- a. Medical Marijuana Sentencing Clarification Task Force – The issue of care clubs for marijuana patients. How do we charge, how do we defend?

Barry Poulson, Timothy Hilton Havis. A teleconference will be sent out.

Criminal Law Section contact.

March 3rd, 2 PM

7. Adjournment.

The committee will meet at 2PM.