

State Bar of Michigan
Criminal Jurisprudence and Practice Committee
Thursday, May 16, 2013 – 1 to 3 PM
1-877-352-9775, Passcode 9152168764#

MINUTES

Committee Members: Mary Alexis Bowen, Thomas P. Clement, Nichole Jongsma Derks, Nimish R. Ganatra, Daniel Corrigan Grano, J. Kevin McKay, Donna McKneelen, Jonathan Sacks, Gretchen A. Schlaff, Samuel R. Smith
SBM Staff: Peter Cunningham, Carrie Sharlow

1. Call to Order & Welcome
2. Approval of March and April Meeting Minutes – The minutes were unanimously approved.
3. New Business

- a. [2013-12 - Proposed Amendment of Rule 7.313 of the Michigan Court Rules](#)
The proposed amendments would clarify that the decision whether to grant rehearing or reconsideration in the Michigan Supreme Court should be made consistent with the standard incorporated in MCR 2.119(F)(3), similar to the reference for consideration of such motions in the Court of Appeals contained in MCR 7.215(I)(l).
Issued: April 10, 2013
Comment period expiration: August 1, 2013
Liaison: Samuel R. Smith

The committee voted unanimously (eight voting members were at the meeting at this time) to support the proposed amendment to MCR 7.313.

- b. [2013-18 - Proposed New Rules 2E.001 et seq. of the Michigan Court Rules](#)
This series of proposed new “2E” rules contains court rules regarding e-filing in Michigan courts. Please note that this proposed order is part of a group of documents in this file that has been published for comment, including a proposed administrative order regarding e-filing rules and the proposed e-filing standards.

[2013-18 - Proposed Administrative Order No. 2013-](#)

This proposed administrative order would require the State Court Administrator to promulgate e-filing standards, and would require courts that offer e-filing to comply with those standards. Please note that this proposed order is part of a group of documents in this file that has been published for comment, including proposed e-filing rules and proposed e-filing standards.

[2013-18 - Draft Standards for E-filing](#)

These proposed standards provide additional guidance for courts planning for implementation of e-filing in their jurisdiction. The proposed standards are published

to provide a context for the proposed e-filing rules and proposed administrative order that have also been published for comment in this file.

The committee voted unanimously (9 to 0) to support the administrative orders regarding e-filing with the recommended amendment that the filing deadline listed in MCR 2E.001 be changed from 5 PM to 11:59 PM, in line with the deadline of the Federal Courts.

[2013-18 - Proposed Amendments of Rules 3.210, 3.215, and 6.104 of the Michigan Court Rules and Proposed New Rule 8.124 of the Michigan Court Rules](#)

The new court rule would allow courts to use videoconferencing in court proceedings upon request of a participant or *sua sponte* by the court, subject to specified criteria and standards published by the State Court Administrative Office (SCAO). Amendments of MCR 3.210, MCR 3.215, and MCR 6.104 would be necessary to include references to the new court rule. If the new rule is ultimately adopted, MCR 3.904, MCR 5.738a, and MCR 6.006, and Administrative Order No. 2007-01 would be rescinded. To provide context for consideration of the proposed rule, the proposed standards for the use of videoconferencing are attached below. In addition, the proposal includes a draft administrative order that would require SCAO to adopt videoconferencing standards, and require courts to comply with those standards.

[2013-18 – Proposed Administrative Order No. 2013-](#)

This proposed administrative order would require the State Court Administrator to establish videoconferencing standards and would require that the appellate and trial courts conform to those standards. Please note that this proposed administrative order is part of a group of documents in this file that has been published for comment, including proposed videoconferencing rules that would amend MCR 3.210, 3.215, and 6.104, and would adopt MCR 8.124, a new rule, and draft videoconferencing standards, which are attached at the end of that order.

Issued: May 1, 2013

Comment period expiration: September 1, 2013

The committee will table the administrative orders regarding video conferencing.

It was noted that facilitating video participation and testimony seems like a good idea, but allowing a judge to order it without consent or stipulation of the parties seems problematic.

Two key issues were highlighted:

1. Problems as to defendant – Proposed 8.124(B)(3) requires a defendant to consent to video substituting for his physical presence “in criminal trials and evidentiary hearings that occur as part of a criminal trial.” While requiring consent for trials is an excellent idea, when liberty is on the line, a defendant should have the opportunity to physically appear at sentencing, pre-trial evidentiary hearings, and post-conviction evidentiary hearings. Sentencing

especially is a huge concern as a judge can much better evaluate expressions of remorse and responsibility in person than on video.

2. As to other witnesses, two problems:

First, although the MI Supreme Court did not reach the issue in *People v Buie*, many other jurisdictions have found that video technology implicates the Confrontation Clause at trial. Allowing a court to order video testimony without consent of the parties could be unconstitutional (some cases like child sexual assault victims are less controversial, but other witnesses could certainly create constitutional problems if testifying via video without consent).

Second, the committee expects prosecutors would want to have the power to produce witnesses in person rather than via video, especially victims at trial or sentencing hearings. Victim's rights statutes could be implicated.

c. [HB 4570](#)(Cotter) **Courts**

Courts, juries; Higher education, students. Courts; juries; eligibility to postpone jury service of students; expand to include full-time higher education students under certain circumstances. Amends sec. 1335 of 1961 PA 236 (MCL 600.1335).

Status: 04/16/13 Referred to House Judiciary

Liaison: Jonathan Sacks

The committee voted unanimously (9-0) to support the bill.

d. Parental Rights/Time

[HB 4583](#)(Johnson) **Parental Rights**

Children, parental rights; Family law, parenting time; Crimes, criminal sexual conduct; Crimes, crimes against minors; Criminal procedure, sentencing. Children; parental rights; immediate termination of parental rights and visitation rights for parent or legal guardian upon sentencing for criminal sexual conduct or other sex crimes; allow. Amends sec. 19b, ch. XIIA of 1939 PA 288 (MCL 712A.19b).

Status: 04/18/13 Referred to House Criminal Justice

[HB 4584](#)(Johnson) **Parenting Time**

Family law, parenting time; Children, parental rights; Crimes, criminal sexual conduct; Crimes, crimes against minors; Criminal procedure, sentencing guidelines. Family law; parenting time; immediate termination of a grandparenting time order upon sentencing for certain criminal sexual conduct; allow. Amends sec. 7b of 1970 PA 91 (MCL 722.27b).

Status: 04/18/13 Referred to House Criminal Justice

Liaisons: Ryan Lee Berman and Mary Alexis Bowen

The committee voted unanimously to oppose the bills. The bills remove the issue of parental rights from the Family Court to a sentencing court. In many cases of family issues and parental rights, the Family Court judge already knows the individual family and its particular concerns.

Further, in its references to parental rights, the bills do not distinguish between the offending parent and the non-offending parent. For example, if a crime is committed by a father, with no knowledge of the mother, do both parents lose rights to the child in question?

And finally, the loss of parental rights often places the child in the adoption process. If an offending parent is incorrectly accused of a crime and acquitted, how does the parent go about reasserting his or her parental rights?

- e. [HB 4083](#) (Lori) Law enforcement; other; Michigan crime stoppers act; create, and provide for criminal assessments to fund crime stopper activities. Creates new act.

The committee voted unanimously (9-0) to oppose the bill. The courts would be administering a tax on individuals convicted of misdemeanors and/or felonies to distribute to a private entity. The court system should not be required to collect fees to benefit private programs. Finally, there is no provision in the legislation that would allow the fee to be waived for indigent individuals.

4. Reports

- a. Criminal Law Section – First training was scheduled and canceled due to flooding. It will be September 14th at Cooley Law School.
- b. Eyewitness Task Force – They expect to conclude work by the end of this Bar Year. The reports are being requested by local police departments.
- c. Indigent Defense – There have been hearings in both the House and the Senate. MAAC has suggested a revised bill. Wayne County has issues with the bill, particularly judicial appointment. Funding would come from the General Fund. Muskegon County has hired a chief public defender.

5. Adjournment – The next meeting is June 20, 2013.