

BENCH BAR MINUTES JUNE 16, 2006

The first speaker was Sidney McBride, Director of Ancillary Court Services. Mr. McBride told the audience to feel free to contact his office with any questions.

Judge Wm. Leo Cahalan, Director of Drug and Problem Solving Court, outlined the criteria for Drug Court. He distributed a handout which indicated that potential participants would be pre-screened as follows: Seriously addicted, non-violent (offender does not have prior offenses that involved death, serious bodily injury, dangerous weapons or sex crimes – prior weapon convictions may exclude participation but are subject to review), and targeted individuals who would otherwise be headed to prison or jail (0 - 17 to 12-14 guidelines, probation/parole violators are acceptable). First time offenders, according to the handout, should be referred to the prosecutor's office for consideration in their Diversion Program. The handout notes that funding for Buprenorphine Assisted Treatment for opiate addicted offenders has been suspended until further notice. Contact numbers: Judge Cahalan, (313) 224-7001 and Frances Fogel-Gibson, Adult Drug Court Program Coordinator, (313) 224-7903.

Judge Cahalan said, "We want your business." He said that they are seeking increased participation. The advantage of Drug Court participation, according to Judge Cahalan will be avoiding long term jail confinement or prison. He did not suggest that participants would not be returned to jail but that a therapeutic approach would also be used. He advised that statistics have shown that a person who participates in Drug Court is fifty percent less likely to relapse, repeat, or recidivate than the person who is simply punished for his or her conduct. Judge Cahalan said that "Drug Court works." It gives individuals the opportunity for a drug free life, it's an economic benefit to society, it impacts recidivism and it relieves overcrowding in the prisons.

Judge Cahalan brought some of his staff to the meeting to answer questions. Bob Plumpe pointed out that there are individuals who will claim that they have a drug problem when they don't, just to "get an easier probation." Judge Cahalan said that they are aware of that problem, they assess for that issue and they don't just accept the word of the participant. Judge Cahalan said that they do a urinalysis and they scrutinize the prior record. He said that the assessment uses two (2) approaches: The person won't get in unless seriously addicted and that person is committed to turning his or her life around.

Christine Grand wanted to know who had the veto power over whether individuals could participate in the program. Judge Cahalan said that the prosecutor is the gatekeeper. He doesn't think that there will be a problem with the prosecutor's office as long as the person's sentencing guidelines fall within 0-17 to 12 -24 and that person meets the criteria. Judge Cahalan said that attorneys may find some resistance from the prosecutor's office, if there is an individual whose guidelines are approaching 12-24 months. He said that the prosecutor's cooperation is very important in order to have a viable Drug Court.

Don Johnson wanted to know if the program included alcohol abuse. Judge Cahalan said that it did; the person just has to be addicted to mind altering chemicals.

Leslie Posner noted that many individuals steal cars for drug money and she wanted to know if attorneys would get resistance from PATU (auto theft) in the prosecutor's office. Judge Cahalan has talked to Rod Hassinger and Barry Siegel and he asked them to relax in that regard but he hasn't heard from them yet. Judge Cahalan said that if attorneys are turned down, he would like to know about it.

Mike Singleton, Case Manager for the 3rd Circuit Adult Drug Court Program indicated that his office is located in room 907. He advised that if there are any questions regarding PATU, do not hesitate to see him. He may be reached at 224-0998

APA Sharon Ross wanted to know if marijuana is included and Judge Cahalan said that it was but they are focusing on the addicted individual. The program is not for someone who is a recreational or casual user. They are trying to impact recidivism – the repeat offender.

Samuel Churikian wanted to know if Drug Court was able to accommodate people who also have mental health problems. Judge Cahalan responded, "To a point." He said that an assessment will have to be completed by the Treatment Provider.

Susan Spilker asked what a typical sentence would be. Judge Cahalan responded: "Generally 1 to 2 years probation or if a person has a straddle cell sentencing guideline, they may be placed at William Dickerson Facility and receive an 18 month term of probation with first 6 months in the JB3 program at the Dickerson Facility. While in custody, an evaluation is conducted. That sentence includes, the first 3 months at the William Dickerson Facility followed by 3 months residential drug treatment. Regular Status Conferences are held before the Judge during this time.

James Schlaff pointed out that there will be a seminar on this on October 13, 2006.

Judge Cahalan said that the three drug court judges will be Judge Kenny, Sullivan and McCree. He has hope of a fourth drug court judge.

(Secretary Rock contacted William Heaphy, Chief of the Diversion Program, regarding first offenders receiving diversion through the prosecutor's office. There was a time when Diversion handled first offenders charged with simple possession but they ran out of funding to do the urinalysis. Diversion quit taking those cases. Mr. Heaphy said there will be a meeting next week on this issue and it will get sorted out. He thinks that individuals charged with retail fraud and a criminal history will go to Drug Court and individuals charged with retail fraud without a criminal history will be handled by Diversion. They will be reassessing the Diversion guidelines. Mr. Heaphy said that if any attorney has any questions about whether his or her attorney qualifies for Diversion, he welcomes them to come and talk with he or Mr. Cobb.)

Jerry O'Connor thanked Judge Cahalan for the program. Mr. O'Connor thought it was a wonderful thing and he's hoping that Drug Court will soon take offenders with lower guidelines.

Judge Timothy Kenny wanted to give everyone a heads up about the CAP changes. Judge Kenny said that there have been some innovative and improved changes. Judge Kenny said that

when attorneys fill out their evaluation, attorneys are to give their email address and they will begin receiving CAP notices via email. The CAP schedule will be posted on the 9th floor, the attorney lounge, attorney library, the CAP website (www.capwayne.org), the attorney's email address and on each floor of FMHJ. Attorneys will be able to get the CAP handouts via the Internet. It will save money on printing and posting costs and the money that is saved can be used for the SADO research attorney and other defense attorney related matters. One of the changes is that for attorneys with more than ten (10) years experience, they will have to attend four (4) CAP sessions instead of two (2) sessions. For all attorneys, no more than two (2) sessions can be done by video. The staff, in the past, has run videos several times for makeup sessions and that will end. They will only show the videos one time for those who were unable to attend the minimum number of required sessions in the fall. The makeup schedule will be provided.

John Powell, from SADO, will present a "hands on" seminar relating to the use of electronic demonstrative equipment (e.g. ELMO, power point). The sessions will be offered on October 6th, October 12th and October 27th at FMHJ. This seminar will count for CAP credit. Powell gives this presentation at Federal District Court where you have to be certified in how to use audio and visual equipment.

Judge Kenny said that it was decided to use Professor Dave Moran for the U.S. Supreme Court update instead of using Professor Whitebread. Judge Kenny said that Professor Whitebread cost \$4,000.00 and that was with a negotiated bargain. Judge Kenny said Dave Moran received as good as evaluations as they've seen.

There were a number of handouts passed out by the prosecutor's office. Nancy Diehl talked about the ETRS Domestic Violence Transitions Program. The purpose of the program is to "offer an intensive jail based program to felony domestic violence offenders. Participants will be granted an "early release" from jail upon successful completion of the jail based program." The program is for offenders convicted of felony domestic violence offenses who also have co-occurring substance use/abuse issues. It's a 12 week program conducted at the William Dickerson Facility. Upon completion, offenders are placed into community-based domestic violence follow up groups for 26 weeks, while also addressing other needs of the offender.

APA Lora Weingarden spoke about the remand statute that is a year old. She said the statute was effective June 30, 2005 but it is not being enforced. If an individual has sex with a minor, that individual must be remanded and it is not optional. If an individual is convicted, then he or she does not receive any bond on appeal – that person must be locked up. The only exception is if the minor was age 13-15 and it was consensual (but, obviously, not lawful) sex and the offender is less than five (5) years older than the minor. Under those circumstances, the offender can be let out on bond.

There was also a handout of the Sex Offender Registration Act (SORA). APA Weingarden said that offenders have to register for every sexually based offense, including kidnapping under 18 years of age. Attorney Coral Watt pointed out that did not include parental kidnapping. APA Weingarden said that the SORA statute provides that probation shall be revoked if an offender

willfully fails to register or notify of his or her address change. APA Weingarden said that enforcement of the SORA is needed.

APA Weingarden said that if an offender receives HYTA after October 1, 2004, the offender does not have to register unless the offender is violated and a conviction is entered. APA Weingarden said that the only offenders, between the ages of 17-20, who can get HYTA are only those who had consensual sex with a 13-15 year old. APA Weingarden also discussed the factors that exclude offenders from HYTA with a sex offense: 1.) one prior SORA conviction, 2.) Aggravating circumstances such as force or coercion being used, and 3.) When a defendant fails to prove he's not likely to engage in further criminal misconduct. Judge Ewell, Jr. asked how the offender would make a showing that he or she would not engage in further criminal misconduct. APA Weingarden said that the lawyer would say that he wouldn't. As to HYTA convictions before October 1, 2004, an offender can petition the court to reduce the registration time from 25 years to 10 years. He must petition within three years of completion of HYTA or by October 1, 2007 whichever is later. APA Weingarden has only had two (2) petitions. A hearing is held and the judge decides whether to reduce the registration time. Victims are allowed to be at the hearing. The victims, in the two (2) cases that APA Weingarden had, were upset about any proposed reduction in the registration period because they agreed to the plea agreements with the understanding that the offenders would be registering for 25 years. When the victims spoke during both hearings, the Judges didn't allow the reduction.

Paul Bernier, Deputy Chief of the Trial Division, said that they are going to start rotating docket attorneys. He said it will be easier to get in and see the attorneys. He listed the docket attorneys and their floors: Pre-exam Program (Judges Ewell, Jr., Judge Robbins and Judge McCree)-Ray MaGuire; AOI Courtrooms (Judges Braxton and Drake)-Tom Beadle; 4th Floor (and Judge Jones')-Michael Wagner; 5th Floor-Daryl Carson; 6th Floor-Paul Bernier, 7th Floor (and Judge Chylinski's)-Mary Sue Czarnecki; 8th Floor (and Judge Jackson's)-Glenn Page.

With regard to felony firearm and carrying concealed weapon charges, the prosecutor's office has been giving breaks on particular cases. In some cases, the prosecutor's office has been reducing the felony CCW to a misdemeanor. APA Bernier said that they will not consider late requests. They will not consider requests the day before trial because there is too much work involved. The time limit to make the request for a reduction is within two (2) weeks of the AOI. The burden is on the defendant to get the supporting information. APA Bernier was asked what criteria does the prosecutor's office look for in reducing a gun charge. APA Bernier said that is impossible to put on paper. With gun cases, the older the offender the more likely the person is going to get a break, however, there isn't an age cut off. One of the big things that is considered is whether the gun was legally owned.

One judge questioned whether the prosecutor's policy of reducing gun charges was applied equally across the board. The judge wanted APA Bernier and Trial Chief Diehl to meet with the judges.

Nancy Diehl, Trial Chief, said that Prosecutor Kym Worthy approves all reductions for gun charges as Prosecutor Worthy takes this issue very seriously. If the gun is not registered, the offender will not get a reduction. Chief Diehl told the judge that if she felt that a decision was

made regarding a gun charge that isn't correct, then Chief Diehl wants the judges to give her a telephone call.

APA Bernier said that as to Felony Firearm reductions, that sometimes depends on the strength of the prosecutor's case and sometimes depends on the equities of the case. The more information that an attorney can give, the better the defendant's chances are in being a break. APA Bernier said that the attorney must lay out specifically why his or her client should receive a break and how not receiving a break will affect the client and/or how it will affect others (For example, the defendant is the sole bread winner for his family).

Jerome O'Connor wanted to know if attorneys get paid for writing the memorandum. APA Bernier agreed that defense counsel are underpaid but he doesn't have any control over that.

APA Bernier said that they are handling OUILs the same way. If it's the offender's 4th OUIL, don't even think about approaching the docket attorneys for a break. If it's a true OUIL 3rd and there wasn't an accident involved, there is a chance of getting a reduction from a felony OUIL.

Judge Ewell, Jr. talked about the process that will be followed for handling the disqualification of judges. A case used to be transferred to the disqualified judge's alternate, however, Judge Ewell, Jr. said that all disqualifications will be handled by the presiding judge. Once a judge is disqualified from handling a case, the case will be blind drawn. The judge who receives a case from a disqualified judge has seven (7) days to send a case off of his or her docket to the disqualified judge.

Judge Ewell, Jr. said that a pilot program has been developed whereby the court will pursue the entire amount of bond money owed. With most bonds, the ten percent that individuals put up is forfeited, however, according to Wayne County Executive Ficano and Corporation Counsel Elder, the law says that courts can pursue the other ninety (90) percent. Judge Ewell, Jr. said that other counties are doing it already. The recovered money goes into the County General Fund. If there is increased revenue, the court shares in that. If the court shows that it is serious about its budget, then the court will get consideration in terms of funding. Mr. Bernard Kost, Executive Court Administrator, said that the County told the court to enforce the law – that the court has already forfeited ten (10) percent of the bond, the court is required to pursue the remaining amount of the bond. The State of Michigan and Wayne County administrators were asking the court why it wasn't enforcing the law and the court said, "good question."

Jamie Schlaff said that family members should be given a lot of notice.

Judge Ewell, Jr. said that people will have a one (1) year redemption period, after the amount is forfeited, to petition the court to restore the amount (or property). The judge, who set the bond, will decide if some of it can be returned. The judge will take into consideration the cost of appeal and the sheriff's expenses. It will be decided on a case by case basis. The money will sit there for one year before Wayne County gets to take it. After a year, the money (property) will default to the county.

Christine Grand wanted to know how it was going to be enforced for out-county people. Sidney McBride said that there is a bond posting form that is required by the Third Circuit Court of all District Courts. He said that they may also develop their own form. It will tell people that they are liable for the amount posted as well as the remaining amount of the bond. Mr. McBride said that there will be a bond forfeiture hearing held within 30 days of the judge forfeiting the bond and then there will be the one (1) year redemption period during which people can petition the court to reconsider the forfeiture. Notice of the *capias* and notice of the bond forfeiture hearing will be sent to the defendant and to the 3rd party.

Judge Drake, Judge Fresard and Judge Gronter are in the pilot program.

One of the judges brought up that there might be jail overcrowding because of this change. If a family is going to lose \$50,000.00, they are likely not going to post bond. Judge Ewell, Jr. said that is the reason it is a pilot program, to see if they should move forward on it. He said that other counties do this all the time.

Judge Ewell, Jr. and Sidney McBride wanted the attorneys to know that court appointed investigators must meet minimum requirements. There is a short list of certified investigators. If an investigator is not on list and the investigator wants on the list of certified investigators, he or she should contact Court Administrator in room 301 in Frank Murphy Hall of Justice. You can also contact the Court Administrator about the names and telephone numbers of the certified investigators who are on the list (and previously published on the Forum by Christine Grand).

Judge Ewell, Jr. discussed the new policy for signing writs. He said that the Chief Judge has an emergency judge list of judges who are on call to sign writs. He said that the local administrative order now requires that between the hours of 8:30 a.m. until 4:00 p.m, any application for a writ must come to the presiding judge. Any application for a writ after hours must go to the judge who is on the emergency call list.

James Schlaff wanted to know what the rationale was for this.

Judge Ewell, Jr. said that this is set up so that the prosecutor is contacted for his or her concurrence.

Mark Brown said that the defense bar should have been consulted. Many of the judges in attendance felt that they should have been consulted about the change as it takes away their legal authority. Judge Ewell, Jr. said that he will provide a written copy of the policy. The emergency judge list will be published in the "Legal News". Judge Ewell, Jr. said that he did not know who drafted the administrative order. Judge Ewell, Jr. said that there was an issue of people being released four (4) hours after being arrested and the procedure wasn't being followed – the prosecutor was not being contacted.

One of the judges felt that there should have been a hearing to determine if the procedure wasn't being followed. One of the judges said that she always talks to the police department and/or officer-in-charge and the prosecutor before signing a writ and she'll schedule a hearing if anyone

disagrees with her signing the writ. The judge felt that the police use their ability to unfairly hold people two (2) to three (3) days. The judge felt that there wasn't any authority for taking away a judge's discretion in this matter. The judge had researched this area thoroughly and she learned that while the police have the right to arrest, the police do not have the right to incarcerate people over a period of time.

One of the judges said that it shouldn't be a blanket policy. If an individual violated the policy, then that individual should be dealt with.

In response to a question about the availability of CAP videos, Christine Grand so that the CAP videos will be available on the web site but attorneys will not get credit for watching the web site video.

Schlaff reminded attorneys about the Recorder's Court Reunion that is scheduled for August 4, 2006 at the Roostertail and tickets are \$60.00.

These minutes were prepared by WCCDBA Secretary Susan Rock. Please forgive the delay in receiving these minutes. These minutes represent the highlights of each speaker's presentation.