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About the State Bar, State Bar People, Board of Commissioners

The meeting was called to order by President Turner at 9:30 a.m. on Friday, January 17, 2003, at the State Bar of Michigan, Lansing, Michigan. Commissioners present were:

John M. Barr	W. Anthony Jenkins
Marjory G. Basile	Ronald D. Keefe
Scott S. Brinkmeyer, President-Elect	Daniel M. Levy, Assembly Vice-Chair
Thomas W. Cranmer, Secretary	Craig H. Lubben
Kimberly M. Cahill, Treasurer	Stephen J. Murphy, III
Kathryn M. Day	Hon. William B. Murphy
Nancy J. Diehl, Vice President	Edward H. Pappas
Evanne L. Dietz	D. Andrew Portinga
Kim Warren Eddie	Thomas C. Rombach, Assembly Chair
James N. Erhart	Kurt E. Schnelz
Elias S. Escobedo, Jr.	Hon. Cynthia D. Stephens
Hon. Joseph J. Farah	Charles R. Toy
Dennis P. Grenkowitz	Reginald M. Turner, President
Elizabeth A. Jamieson, Assembly Clerk	Gregory L. Ulrich

Commissioners Lambro Niforos, Randolph P. Piper and Thomas G. Plunkett were absent and excused. Commissioner Michael S. Hohauser was absent and unexcused.

State Bar Staff Present:

John T. Berry – Executive Director
Nancy F. Brown – Director, Communications
Thomas K. Byerley – Director, Professional Standards
Candace A. Crowley – Manager, Access to Justice
Kathleen G. Fox, Director, Employee Services
James C. Horsch – Director, Administration and Finance
Glenna D. Peters – Executive Coordinator
Janet K. Welch – General Counsel
Lorraine H. Weber – Consultant, Open Justice
Roberta M. Lott – Administrative Assistant

Present for such portions of the meeting as pertained to a specific agenda item were Lynn Chard, Executive Director of ICLE; and Max R. Hoffman, Jr. Annual Meeting Chairperson.

CONSENT AGENDA

Upon a motion made and seconded, the Board approved the following items on the Consent Agenda:

Minutes

The Board accepted the minutes of the following Executive Committee meetings:

November 12, 2002
November 25, 2002
December 9, 2002

Executive Director's Report – John T. Berry, Executive Director

The Board received the Executive Director's written report and the UPL Litigation Status Report.

President's Report – Reginald M. Turner, President

The Board received the President's written report.

Professional Standards Committee – Thomas W. Cranmer, Chairperson

The Board approved the following Client Protection Fund claims for payment:

<u>Claim Number</u>	<u>Amount</u>
CPF 1909	\$ 700.00
CPF 1910	\$2000.00
CPF 1927	\$ 250.00
CPF 1945	\$ 760.00

LEADERSHIP REPORTS

President's Report – Reginald M. Turner

Mr. Turner reported that the Assembly leadership has done an excellent job in preparing for the meeting on February 22, 2003, whereby the Representative Assembly will be considering a proposal concerning dues and fees paid by Michigan attorneys.

Mr. Turner complimented the staff, led by John Berry, for their efforts in staying focused on the Strategic Plan, maintaining fiscal responsibility, and trying to continually improve services to members. He further reported that the Strategic Plan has been warmly received in bar associations throughout the state.

Representative Assembly Report – Thomas C. Rombach

Mr. Rombach reviewed the Recommendation in Support of Funding for Implementation of the Strategic Plan that will be presented by the Special Issues Committee for consideration by the Assembly at its February 22, 2003 meeting.

Mr. Rombach reported that the Hearings Committee would be conducting hearings throughout the state to allow members to respond. Board members are invited and encouraged to attend in their geographic locations. The four hearings scheduled to date will be in Lansing on January 28th, Grand Rapids on January 30th, Gaylord on February 1st and Pontiac on February 13th. All hearings will begin at 3:30 p.m. with the exception of Gaylord at 1:00 p.m.

SPECIAL PRESENTATION

Annual Meeting Status Report – Max R. Hoffman, Jr., Chairperson

Mr. Hoffman provided an update on the Annual Meeting to be held at the Lansing Center/Radisson on September 11-12, 2003.

LEADERSHIP REPORTS (continued)

Executive Director's Report – John T. Berry

Mr. Berry reported on the Bar Leadership Forum to be held June 13-14, 2003, noting that it will be a great opportunity for the leadership, sections and committees to be together, in conjunction with the Board meeting. Dadie Perlov and her associate, Manny Elkind will be facilitators.

Mr. Berry also reported that he was proud of the process regarding implementation of the Strategic Plan and that in addition to the hearings, he was available to meet with anyone at any time to answer questions or address issues of concern.

A motion was made and seconded to go into Executive Session. Motion carried.
A motion was made and seconded to come out of Executive Session. Motion carried.

A motion was made and seconded to approve the recommendation of the Executive Committee that John Berry, Executive Director, receive a 4% increase in salary, retroactive to October 1, 2002, and also receive a 5% bonus, the maximum allowed according to his contract. Motion carried.

COMMITTEES, COMMISSIONS & TASK FORCES

Finance and Human Resources – Kimberly M. Cahill, Chairperson

The Board received the written financial reports for October and November 2002 and James Horsch led a discussion on the financial forecast. Ms. Cahill thanked the accounting staff for providing reports now that break out the fund balances for the discipline system and the Bar's administrative account.

The Board also received the audited annual report and auditor's management letter. Ms. Cahill reported that the Bar received an unqualified clean opinion with no reportable conditions. The auditors commended the staff for implementing financial controls in the last year.

Ms. Cahill further reported that the committee is working on a bidding policy that will be presented to the Board at a future meeting.

Professional Standards – Thomas W. Cranmer, Chairperson

Mr. Cranmer reviewed the resolution to be considered by the Representative Assembly regarding the Client Protection Fund. Mr. Cranmer emphasized the importance of establishing a separate assessment due to the dramatic increase in claims submitted.

Programs and Services – Nancy J. Diehl, Chairperson

Hon. Cynthia D. Stephens distributed information and provided an update on the National Consortium on Racial & Ethnic Fairness in the Courts that will be held on April 9-12, 2003 at the Renaissance Center, Marriott in Detroit. Commissioners are encouraged to be present and participate. Kimberly M. Cahill reported that costs of the conference totaling approximately \$55,000 would be financed through donations and grants. Ms. Cahill noted that there were many sponsorship opportunities and asked that anyone who could help support the conference notify Lorraine Weber.

Ms. Diehl reported that after reviewing proposals from LoisLaw, Casemaker and West, the committee recommended continuing the relationship with Lois for the next year. A motion was made and seconded. Motion carried.

Candace Crowley provided an update on the Access to Justice Campaign and reviewed the ATJ Fundraising Expense Policy.

Public Policy, Image and Identity – Scott S. Brinkmeyer, Chairperson

Mr. Brinkmeyer reported that as a result of the new legislative session, David Haynes and Becky Bechler of Public Affairs Associates, Inc. were not present at the meeting. Mr. Brinkmeyer noted that Court Reform was signed into law and will be effective on April 1, 2003.

Michigan Court Rules

Proposed Amendments of **Rule 2.102** – Summons; Expiration of Summons; Dismissal of Action for Failure to Serve

Actively Support

Proposed Amendment of **Rule 8.116** – Sessions of Court
Support (one opposed)

Proposed Amendment of **Rules 7.302, 7.304 and 7.315** – Application for Leave to Appeal, Original Proceedings, Call and Argument of Cases in Supreme Court
Support

Proposed Amendment of **Rules 7.304, 9.114 and 9.122** - Original Proceedings, Action by Administrator or Commission after Answer, Review by Supreme Court
Deferred

Proposed Amendment of **Rule 2.502** – Dismissal for Lack of Progress
Deferred

Mr. Brinkmeyer led a discussion regarding proposed revisions to AO 1993-5 regarding Bar activities and proposed revisions to bylaws. A motion was made and seconded to recommend that the Supreme Court amend Administrative Order 1993-5 proposed at the November 22, 2002 Board meeting, with additional amendments indicated in italics, as follows. The motion was adopted.

**ADMINISTRATIVE ORDER 1993-5
STATE BAR OF MICHIGAN ACTIVITIES**

IT IS ORDERED that Administrative Order 1993-5 is RESCINDED effective immediately.

IT IS FURTHER ORDERED that:

- I. Ideological Activities Generally.** The State Bar of Michigan shall not, except as provided in this order, use the dues of its members to fund activities of an ideological nature that are not reasonably related to:
- (a) the regulation and discipline of attorneys;
 - (b) matters relating to the improvement of the functioning of the courts, judicial efficacy and efficiency;
 - (c) increasing the availability of legal services to society;
 - (d) regulation of attorney trust accounts; and
 - (e) the education, ethics, competence, integrity and regulation of the legal profession.

~~On or about August 15 of each year,~~ The State Bar of Michigan shall permanently post ~~publish on its website, and annually publish~~ in the Michigan Bar Journal a notice advising members of these limitations on the use of dues and the State Bar ~~budget for the next fiscal year.~~

II. Activities Intended to Influence Legislation.

- (A) The State Bar of Michigan may use the mandatory dues of all members to review and analyze pending legislation.
- (B) The State Bar of Michigan may use the mandatory dues of all members to provide content-neutral technical assistance to legislators, provided that:
 - (1) A legislator requests the assistance;

- (2) The ~~president~~ executive director, in consultation with the president of the State Bar of Michigan, approves the request in a letter to the legislator stating that providing technical assistance does not imply either support for or opposition to the legislation; and
 - (3) The ~~president~~ executive director of the State Bar of Michigan annually prepares and publishes in the Michigan Bar Journal a report summarizing all technical assistance provided during the preceding year.
- (C) No other activities intended to influence legislation may be funded with members' mandatory dues, unless the legislation in question is limited to matters within the scope of ideological activities requirements in Section I.
- (D) Neither the State Bar of Michigan nor any person acting as its representative shall take any action to support or oppose legislation unless the position has been approved by a two-thirds vote of the Board of Commissioners or Representative Assembly taken after all members were advised, by notice ~~published in the Michigan Bar Journal~~ posted on the State Bar website at least 2 weeks prior to the Board or Assembly meeting, that the proposed legislation ~~would~~ might be discussed at the meeting. The ~~published~~ posted notice shall include a brief summary of the legislation, a link to the text and status of the pending legislation on the Michigan Legislature website, and a statement that members may express their opinion to the State Bar of Michigan at the meeting, electronically, or by written or telephonic communication to the State Bar of Michigan. The webpage on which the notice is posted shall provide an opportunity for members to respond electronically, and the comments of members who wish to have their comments made public shall be accessible on the same webpage. ~~When time constraints prevent timely publication of a notice in the Michigan Bar Journal, the notice may be provided by any alternative method that will deliver individual written notices to all members at least 7 days before the meeting.~~
- (E) The results of all Board and Assembly votes on proposals to support or oppose legislation shall be posted on the State Bar website as soon as possible after the vote, and published in the next Michigan Bar Journal. When either body adopts a position on proposed legislation by a less-than-unanimous vote, a roll call vote shall be taken, and each commissioner's or assembly-person's vote shall be included in the published notice.
- (F) Those sections of the State Bar of Michigan that are funded by the voluntary dues of their members are not subject to this order, and may engage in ideological activities on their own behalf. While the bylaws of the State Bar of Michigan may not generally prohibit sections from engaging in ideological activity, the State Bar may revoke the authority of a section to engage in ideological activities for persistent or egregious violations of the bylaws upon a two-thirds vote of the Board of Commissioners.

III. Challenges Regarding State Bar Activities.

- (A) A member who claims that the State Bar of Michigan is funding ideological activity in violation of this order may file a challenge by giving written notice, by e-mail or regular mail, to the executive director.
- (a) A challenge involving legislative advocacy must be filed with the State Bar by e-mail or regular mail within 60 days of the posting of notice of adoption of the challenged position on the State Bar of Michigan website postmarked on or before the last day of the month following the month in which notice of adoption of that legislative position is published in the Michigan Bar Journal pursuant to section II(E).
 - (b) A challenge involving ideological activity appearing in the annual budget of the State Bar of Michigan must be postmarked or e-mailed on or before October 20 following the publication of the budget funding the challenged activity.
 - (c) A challenge involving any other ideological activity must be postmarked or e-mailed on or before the last day of the month following the month in which the disclosure of that ideological activity is published in the Michigan Bar Journal.
- Failure to challenge within the time allotted shall constitute a waiver.
- (B) After a written challenge has been received, the executive director shall ~~promptly determine the pro-rata amount of the member's dues used to fund the challenged activity and shall place that amount in an escrow account pending determination of the merits of the challenge~~ place the item on the agenda of the next meeting of the Board of Commissioners, and shall make a report and recommendation to the Board concerning disposition of the challenge. In considering the challenge, the Board shall direct the executive director to take one or more of the following actions:

- (a) Dismiss the challenge, with explanation.
- (b) Discontinue the challenged activity.
- (c) Revoke the challenged position, and publicize the revocation in the same manner and to the same extent as the position was communicated.
- (d) Arrange for reimbursement to the challenger of a pro rata share of the cost of the challenged activity.
- (e) Arrange for reimbursement of all members requesting a pro rata share of the cost of the challenged activity in the next dues billing.

Upon expiration of the deadline for receipt of written challenges to the same activity, the Board of Commissioners shall decide whether to give a pro rata refund to the challengers or to refer the challenge to arbitration.

- (C) A challenger or the State Bar of Michigan may seek review by this Court ~~of the arbitrator's decisions~~ as to whether the challenged activity violates the limitations on State Bar ideological activities set forth in this order, and on the appropriate remedy for a violation ~~any pro rata share of dues to be refunded.~~
- (D) A summary of the challenges filed under this section during a legislative term and their disposition shall be posted on the State Bar website.

IV. Other State Bar Activities. The State Bar of Michigan shall:

- (A) annually publish in the Michigan Bar Journal a notice informing members that, upon request, their names will be removed from the mailing list that is used for commercial mailings;
- (B) annually publish in the Michigan Bar Journal a notice informing members of the Young Lawyers Section that, upon request, their membership in that section will be terminated;
- ~~(C) limit its funding of the Michigan Lawyers Auxiliary to \$5000 per year with adjustments for inflation after 1981, the funding to continue for as long as continues its Law Day activities, specifically including the Law Day essay contest.~~

Young Lawyers Section – Kathryn M. Day, Chairperson

Ms. Day provided a brief report on the section's recent and upcoming activities.

FOR THE GOOD OF THE PUBLIC AND THE PROFESSION

Comments or questions from Commissioners

Mr. Turner asked for comments or questions from the Commissioners, but there were none.

Comments or questions from the public

Mr. Turner asked for comments or questions from the public, but there were none.

Old Business

There was none.

New Business

There was none.

The meeting was adjourned at 11:40 a.m.