

**STATE BAR OF MICHIGAN
BOARD OF COMMISSIONERS MEETING MINUTES**

President Quick called the meeting to order at 9:39 a.m. on Friday, January 19, 2024, virtually on Zoom. The meeting was also livestreamed on You Tube.

Commissioners present:

Yolanda M. Bennett

Erika L. Bryant, Secretary

Aaron V. Burrell

Hon. B. Chris Christenson

Ponce D. Clay

Tanya N. Cripps-Serra

Robert A. Easterly

Nicole A. Evans

Sherrice L. Detzler

Hon. Kameshia D. Gant

Lisa. J. Hamameh, Vice President

Thomas H. Howlett, Treasurer

Suzanne C. Larsen

Joshua Lerner

James W. Low

Silvia A. Mansoor

Gerard V. Mantese

Gerrow D. "Gerry" Mason

Joseph P. McGill, President-Elect

Thomas P. Murray Jr.

Valerie Newman

Takura N. Nyamfukudza

Nicholas M. Ohanesian

Hon. David A. Perkins

Colemon Potts

Daniel D. Quick, President

John W. Reiser III

Delphia T. Simpson

Danielle Walton

Hon. Erane C. Washington

Commissioners absent:

David C. Anderson

Hon. Kristen D. Simmons

Matthew B. VanDyk

Guests

Jamie Rabe, Andrews Hooper Pavlik

Jaclyn Symons, Andrews Hooper Pavlik

State Bar staff present on Zoom:

Peter Cunningham, Executive Director

April Alleman, Succession Planning Program Counsel

Drew Baker, General Counsel

Margaret Bossenbery, Executive Coordinator

Nancy Brown, Assistant Executive Director

Alecia Chandler, Professional Responsibility Programs Director

Tatiana Goodkin, Chief Financial Officer

Molly Ranns, Director, Lawyers & Judges Assistance Program

Carrie Sharlow, Administrative Assistant

Janna Sheppard, Administrative Assistant

Nathan Triplett, Director, Governmental Relations

Consent Agenda

The Board received the minutes from the November 17, 2023, Board meetings.
The Board received the minutes from the November 2, 2023, Executive Committee meeting.
The Board received the recent activities of the president.
The Board received the recent activities of the executive director.
The Board received the FY 2023 draft financial reports through November 30, 2023.
The Board received Client Protection Fund claims.

Mr. Quick asked if any items needed to be removed from the consent agenda. There were none. A motion was offered to approve the consent agenda. The motion was seconded and approved.

Audit: Thomas H. Howlett, Chairperson

Mr. Howlett reported that the audit committee met in early December to review the final draft of the fiscal year 2023 final report. The committee also met with the auditors. No issues were reported, and a clean audit was provided.

Mr. Howlett introduced Ms. Jamie Rabe from the firm Andrews Hooper Pavlik (AHP), who reviewed the audit letter and the annual financial report and responded to questions from the Board. The auditors provided a clean, unmodified opinion with no recommendations and thanked the staff for their assistance and cooperation during the audit.

President and Executive Director's Report: Dan Quick, President and Peter Cunningham, Executive Director.

Licensing Fee Status

Mr. Cunningham reported that the license renewal for 2023-2024 is nearing the end of the period for members to pay without incurring late fees. As of today, 96% of members have renewed their licenses, which is a similar renewal rate as the previous year. Currently, there are about 1,600 members who are unpaid, which is also typical. Pre-suspension notices were mailed earlier this week with suspensions for non-payment scheduled to occur on February 12, 2024. As of this morning, 41,539 members have paid their licenses fees.

Interim Administrator Program Update

Mr. Cunningham shared that with the implementation of Rule 21, SBM is required to provide an annual report to the Michigan Supreme Court, which was issued on December 21, 2023. This was the most significant set of rules changes in at least two decades and was incorporated into the 2023-2024 license renewal.

Implementing Rule 21 was a seamless addition to the license fee process. This can be attributed to the work across multiple departments of the State Bar of Michigan and span of several years. The most crucial component of the launch was the development of an online tool which all private practice attorneys in Michigan had to use to follow the required steps to adhere to Rule 21. These questions include identifying a person with knowledge and identifying an interim administrator. The online system was designed to send follow-up emails to those named interim administrators. It also allows people to have their name added to the list of attorneys willing to serve as interim administrators.

There was a great amount of time and effort spent on educating attorneys throughout the state by way of presentations, targeted emails, articles in the Michigan Bar Journal, and resources available on our website. In addition, there were social media posts and a podcast done as well.

As of January 16, 2024, 16,345 members had designated an interim administrator and their named interim administrator had accepted the designation. There are 2,937 members who paid \$60 to enroll in the SBM interim administrator program, totaling \$176,220. This is nearly double the 1,500 enrollees (\$90,000) that were budgeted. The revenue generated by the annual fee collected will help offset the operational and maintenance costs of the program.

The financial impact of IAP expenses has included over 6,100 staff hours working to develop and launch Rule 21. The implementation costs of the IT department, web development of the online tool, and communications cost approximately \$240,000. The ongoing costs for the succession planning program counsel, part-time paraprofessional, and other expenses equate to about \$74,000, which will be an ongoing cost to operate and maintain the program. There is no estimated value that can be calculated at this time but that is something that will occur in the future.

In addition, there are 591 pending nominations for interim administrators, but the named person has not yet accepted the nomination as required by the rules. Non-compliance notices were sent to private practice attorneys who had not designated an interim administrator on January 16, 2024. These messages will continue to be sent through March. Any private practice attorney without a verified interim administrator by March 15, 2024, will automatically be enrolled in the IAP and will be charged the \$60 fee. If this fee remains unpaid, the enrollment fee will be carried over to the following year's license renewal. The attorney's license fee will not be renewed in 2024-2025 until the fee is paid.

Michigan Commission on Well-Being in the Law (WBIL)

Ms. Ranns reported that the executive team of the commission consisting of Justice Cavanagh as chair, Ms. Ranns as vice-chair, Mr. Tom Boyd, and Mr. Peter Cunningham has met three times during which they have reviewed applications and made recommendations to the Court. Appointments of members were made in December 2023. The first meeting of the full Commission will take place in late February or early March.

MSC Diversity Equity and Inclusion Commission

Mr. Cunningham reported that the Michigan Supreme Court's Diversity, Equity, and Inclusion Commission publicly released the draft of their strategic plan and held a public meeting in December to receive feedback from the public. Very few comments were received, and they were mostly positive and supportive. The Commission will meet again in February when it is expected to adopt the strategic plan and form work groups to begin implementing the strategic plan.

MSC Justice for All Commission

Mr. Cunningham shared that the Justice for All Commission met in December and approved two reports. The first report was the reimagining of the courthouse's work group recommendations. This included outlines on various voluntary strategies that trial courts can adopt to promote a safe and welcoming courthouse. Recommendations range from developing and adopting courthouse signage that is consistent, welcoming, and clear in all state courts; to have a greeter or concierge available at courthouses to help answer basic process questions, or direct people to where they need

to be; modernizing docket management which would help to reduce bulk scheduling for time in the courtroom; and to expand and improve the e-filing system. Many of these recommendations are already being reviewed and implemented by the State Court Administrator's Office (SCAO). The Commission will continue to work with SCAO to help make these changes.

The second report was from the resources committee on how to increase funding for civil legal aid in Michigan. Michigan ranks near the bottom of states in terms of per capita spending on civil legal aid to eligible recipients. Michigan spends \$23 per person on individuals who are below the poverty line, which puts Michigan significantly lower than most of its neighboring states. There were recommendations on how to increase a state's investments in civil legal aid.

The final item that the Justice for All Commission adopted was identifying standards for self-help centers. The Commission will help determine what standards centers should have in terms of who can use them and what resources will be available. The standards may be adaptable based on the resources available in and around the community, as well as the individual need for each community.

Artificial Intelligence Work Group Update

Mr. McGill reported that the AI workgroup has been established. The group consists of Ashley Lowe, CEO of Lakeshore Legal Aid; Commissioners Nyamfukudza, Mantese, Mason, and Ohanesian. The workgroup has met twice and has been busy gathering resources. The action items identified include establishing a databank for AI and discussing bringing in outside speakers to educate the workgroup. Mr. Mason and Mr. Ohanesian are working on an article for the Michigan Bar Journal.

The group is focused on the understanding of the topic, the timeline of the project and how fast other groups are working. They have discussed ways to ensure the protection of the public and how AI will impact the issues surrounding evidence integrity, and misuse of artificial intelligence that has been seen in local media. The group has also been discussing the possibility of an AI summit, where various groups could gather to discuss these issues.

Staff Updates

Mr. Cunningham reported that a new UPL Counsel has been hired to replace Kathy Gardner following her promotion to assistant executive director, and she will be introduced in person at the April meeting.

Open Discussions: Challenges & Opportunities for the Profession and Justice System

Response to Attacks on Judges

Mr. Quick provided background information about the increased attacks on judges. These threats include physical threats of harm and rhetorical threats by political figures, media personalities, and even members of the Bar. These threats can challenge the rule of law and how it is upheld.

Mr. Quick encouraged commissioners to think about how the State Bar of Michigan can support its judicial officers by reinforcing and protecting the rule of law. It was generally agreed that the State Bar, through the SBM President, has a duty and a responsibility to respond to these attacks on Michigan judges to help maintain the public's confidence in the court system and the rule of law.

Representative Assembly (RA) Report: Yolanda M. Bennett, Chairperson

Mr. Reiser shared a brief report in Ms. Bennett's absence. The deadline for nominating individuals for the Michael Franck Award and the Unsung Hero Award is March 9, 2024. The next meeting will be held on April 20, 2024, in Lansing and will be held as a hybrid meeting. Currently, there are two potential proposals which may be presented.

There are 37 vacancies, which is down from 45 at the start of the Bar year. In the upcoming SBM election, there will be nearly 90 seats over 43 circuits up for election in the Assembly.

Last, the September meeting will be held concurrently with the Board of Commissioners meeting on Thursday, September 19, 2024, in Troy.

Young Lawyers Section (YLS) Report: Tanya N. Cripps-Serra, Chairperson

Ms. Cripps-Serra reported that YLS held a community event on December 16, 2023, at Stevenson Elementary School in Southfield. There were over 130 parents and children who joined over half of the YLS Council members to make this event a great success. Judge Sheila Johnson and Judge Rebecca Coleman joined. The event features a luncheon with judges discussing the legal issues during the holiday season, pictures with Santa, gifts for children, and breakout rooms in different legal areas.

YLS also hosted an event at Wayne State Law school on January 8, 2024, where members of YLS were joined by employees from Henry Ford Health System and one of their therapy dogs, Berklee. They handed out snacks to the law students between classes and gave them information about YLS and resources available to them as a part of the law student section which is now a part of YLS.

On Saturday, January 27, 2024, YLS is partnering with the Wolverine Bar Association at the Bodman Law Offices in downtown Detroit, where they will do a student resume and interview workshop from 10:00 am to 3:00 p.m. They are still looking for volunteers. If you are interested, contact Ms. Serra-Cripps.

Last, it has been decided this year's challenge between YLS and the Board of Commissioners will be held at Top Golf in Auburn Hills. The date and time have not yet been determined but will be shared as soon as possible.

COMMISSIONER COMMITTEES

Public Policy: Joseph P. McGill, Chairperson

Mr. McGill provided the report for the Public Policy committee.

Court Rules

1. ADM File No. 2022-30: Proposed Amendments of MRE 702 and 804

The proposed amendment of MRE 702 would require the proponent of an expert witness's testimony to demonstrate that it is more likely than not that the factors for admission are satisfied and would clarify that it is the expert's opinion that must reflect a reliable application of principles and methods to the facts of the case. The proposed amendment of MRE 804 would require corroborating circumstances of trustworthiness for any statement against interest that exposes a declarant to criminal liability.

A motion was offered and seconded to support ADM File No. 2022-30 as drafted. The motion was approved.

2. ADM File No. 2022-45: Proposed Amendment of MCR 9.131

The proposed amendment of MCR 9.131 would require that the Supreme Court review requests for investigations involving allegations of attorney misconduct in instances where the Attorney Grievance Commission (AGC) administrator determines that an appearance of impropriety would arise if the AGC handled the investigation.

A motion was offered and seconded to support ADM File No. 2022-45 as drafted. The motion was approved.

Legislation

1. HB 5236 (Reheingans) Housing; landlord and tenants; form containing summary of tenant's rights; require state court administrative office to provide. Amends 1978 PA 454 (MCL 554.631 – 554.641) by adding sec. 4a.

A motion was offered that this legislation is *Keller* permissible. The motion to support was seconded and approved.

A motion was offered and supported to support HB 5236 with the proposed amendments. The motion passed.

2. HB 5237 (Dievendorf) Civil procedure: defenses; tenant rights to counsel; provide for. Creates new act. (possible roll call vote)

A motion was offered that this legislation is *Keller* permissible. The motion to support was seconded and approved.

A motion was offered and supported to support HB 5237 with the proposed amendments. The motion passed via roll-call vote.

Commissioners voting in support: Bennett, Bryant, Burrell, Christenson, Clay, Cripps-Serra, Detzler, Easterly, Gant, Hamameh, Howlett, Larsen, Lerner, Low, Mansoor, Mantese, Mason, McGill, Murray, Newman, Nyamfukudza, Ohanesian, Perkins, Quick, Reiser, Simpson, Walton, Washington.

Commissioner voting in opposition of the position: Evans.

3. HB 5238 (Wilson) Civil procedure: evictions; court records of evictions; require to be expunged. Amends sec. 8371 of 1961 PA 236 (MCL 600.8371) & adda sec. 5755.

This legislation is not *Keller* permissible. No action was taken.

4. **HB 5326** (Aragona) Courts: district court; magistrate jurisdiction and duties; modify. Amends secs. 5735 & 8511 of 1961 PA 236 (MCL 600.5735 & 600.8511).

A motion was offered that this legislation is *Keller* permissible. The motion to support was seconded and approved.

A motion was offered and supported to support HB 5326 with the proposed amendments. The motion passed.

Unfinished Business

1. **HB 4738** (Breen) Criminal procedure: witnesses; Criminal procedure: discovery; Crimes: other; Criminal procedure: witnesses; confidentiality of certain information of a witness; require prosecuting attorney to maintain and provide for disclosure in certain circumstances. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 40b to ch. VII.

HB 4739 (Mentzer) Crime victims: rights; Criminal procedure: discovery; Crime victims: rights; practice of redacting victim's contact information; codify. Amends 1985 PA 87 (MCL 780.751 - 780.834) by adding sec. 8a. (possible roll call vote)

A motion was offered and supported to oppose HB 4738 and 4739. The motion passed via roll-call vote.

Commissioners voting in support: Bennett, Bryant, Burrell, Christenson, Clay, Cripps-Serra, Detzler, Easterly, Evans, Gant, Howlett, Larsen, Lerner, Low, Mansoor, Mantese, Mason, McGill, Newman, Nyamfukudza, Ohanesian, Perkins, Quick, Reiser, Simpson, Washington.

Commissioners voting in opposition of the position: Hamameh, Murray, Reiser, Walton.

Finance: Thomas H. Howlett, Chairperson

Financial Report

As of November 30, 2023, the SBM Administrative Fund total net position was \$13.3 million, an increase of \$507,000 from the beginning of this fiscal year. The Administrative Fund net position *excluding* assets restricted for the retiree healthcare trust totaled \$10 million, an increase of \$361,000 from the beginning of this fiscal year.

Excluding the retiree healthcare trust impact, SBM operating result through November 30, 2023, was favorable to year-to-date budget by \$274,000. Operating revenues were higher than budget by \$102,000 or 4.5%, and interest income was higher than budget by \$35,000. Salaries and benefits expenses were favorable to budget by \$30,000 or 1.9%, and non-labor operating expenses were favorable to budget by \$149,000 or 21.4% due to timing of expenses.

The Client Protection Fund's net position totaled \$2.6 million, an increase of \$93,000 from the beginning of the year.

Attorneys in good standing totaled 46,902, an increase of 78 attorneys for this fiscal year.

Mr. Howlett shared three additional items which were discussed at the most recent meeting, including items which will be part of ongoing discussions throughout the Bar year. The first item relates to the Bar's cyber insurance coverage. The second item relates to the Bar building's insurance coverage. The third item relates to whether the Bar should acquire professional liability insurance given the new Interim Administrator Program. Last, the committee received a preliminary report from SBM staff on plans for an audit and a cyber security audit that will be conducted this year.

Professional Standards: Erika L. Bryant, Chairperson

Interim Administrator Compensation Rate

Ms. Bryant shared background information about the compensation policy for interim administrators who are matched through the Interim Administrator Program. She reminded commissioners that in November the Board approved a rate of \$100 per hour for those who are named interim administrators appointed by the IAP. This will occur only in situations where the interim administrator is both able to demonstrate that all other avenues of compensation through the estate of the affected attorney have been exhausted, and that they provide sufficient documentation of their expenses.

A motion was offered and supported to support the IAP Compensation and Reimbursement Policy. The motion passed.

Communications and Member Services (CAMS): Lisa J. Hamameh, Chairperson

No report was given.

FOR THE GOOD OF THE PUBLIC AND THE PROFESSION

Comments or questions from Commissioners

Mr. Howlett shared that ADM 2020-31, issued on January 10, 2024, which was about humanitarian exception and was proposed by the State Bar of Michigan, has now been added to Rule 1.8 of the Rules of Professional Conduct.

Ms. Mansoor shared that the Insurance and Indemnity Law section is hosting a casual mixer at Draft Kings Bar and Social in Troy at 4:30 p.m. today, Friday, January 19, 2024.

Comments or questions from the public

None.

Adjournment

The meeting was adjourned at 12:34 p.m.