

President Buiteweg called the meeting to order at 9:45 a.m. on January 22, 2016 in the Michael Franck Building in Lansing, Michigan.

Commissioners present:

Danielle Mason Anderson
Dennis M. Barnes, Treasurer
Danielle M. Brown
Robert J. Buchanan
Lori A. Buiteweg, President
Timothy J. Burns
Hon. Clinton Canady III
Shauna L. Dunning
Robert C. Gardella
Jennifer M. Grieco, Secretary
Edward L. Haroutunian
Krista L. Haroutunian
James W. Heath
Andrea Irons
Mark W. Jane
Thomas E. McCarthy Jr.

Joseph P. McGill
Hon. Maureen M. McGinnis
Lawrence P. Nolan, President-Elect
Jules B. Olsman
Hon. David A. Perkins
Colleen A. Pero
Daniel D. Quick
Victoria A. Radke
Hon. Michael J. Riordan
Donald G. Rockwell, Vice President
Brian D. Shekell
Richard J. Siriani
Gregory L. Ulrich
Dana M. Warnez
Erane C. Washington

Commissioners absent and excused:

Fred K. Herrmann

Shenique A. Moss

State Bar Staff present:

Janet Welch, Executive Director
Marge Bossenbery, Executive Coordinator
Nancy Brown, Director, Member Services and Communications Division
Gregory Conyers, Director, Diversity
Candace Crowley, Assistant Executive Director and Director, External Development
Peter Cunningham, Assistant Executive Director and Director, Governmental Relations
Cliff Flood, General Counsel
Danon Goodrum-Garland, Director, Professional Services Division
James Horsch, Director, Finance and Administration Division
Nkrumah Johnson-Wynn, Assistant General Counsel
Robert Mathis, Pro Bono Service Counsel
Samantha Meinke, Communication Manager
Jeanette Socia, Human Resources Manager
Kari Thrush, Manager, Members Services and Events
Anne Vrooman, Director, Research and Development

Guests

Kenneth M. Mogill, Chair, SBM Professional Ethics Committee
Renee Newman Knake, Professor, MSU College of Law
Jamie Rabe, Audit Manager, Andrews, Hooper, Pavlik PLC
Roger Hitchcock, Audit Partner, Andrews, Hooper, Pavlik PLC

Consent Agenda

Ms. Buiteweg asked the Board if there were any items that needed to be removed from the consent agenda. There were none.

The Board received the minutes from the November 20, 2015 Board of Commissioners meetings. The minutes should reflect that Mr. Buchanan was present and that Ms. Shovein was not.

The Board received the minutes from the November 3 and December 8, 2015 Executive Committee meetings.

The Board received the recent activities of the President.

The Board received the recent activities of the Executive Director.

The Board received the FY 2015 Audited Financial reports.

The Board received the FY 2016 Financial Reports through November 30, 2015.

A motion was offered and supported to approve the consent agenda as amended. The motion was approved.

COMMISSIONER COMMITTEES

Finance, Dennis M Barnes, Chairperson

Mr. Barnes presented the FY 2016 financial and investment report.

The Board considered the following proposals:

- A proposal, 1) to the extent feasible, to require all credit card transactions made by members be done through the eCommerce site, and 2) to allow the SBM to assess charges to sections for credit card transaction fees incurred by the section. The policy would take effect by April 1. A motion was offered and supported to adopt both parts of the proposal. The motion carried.
- A proposal to change the Section Reimbursement Policy to include language indicating that the State Bar would reimburse the vendor, not the section or any of its members, for charges incurred that are \$5,000 or greater for any vendor. A motion was offered and supported to adopt the proposal. The motion carried.
- A proposal to change the SBM Investment Policy to increase the amounts that can be held in an individual bank. This change is proposed due to the change made by Chase Bank to no longer offer collateralization services. A motion was offered and supported to amend the investment policy. The motion carried.

Mr. Barnes informed the Board that State Bar's proposal to the State of Michigan to consider a one-time settlement of the State Bar's retiree health care liability and the defined-benefit pension liability was not accepted.

Audit, Dennis M. Barnes, Chairperson

Mr. Barnes reported to the Board that the Audit Committee met with the auditors without staff present and after discussion with the auditors, approved the FY 2015 audit. Copies of the report and the auditor's letter have been provided to each Board member and is posted on the State Bar website.

Mr. Barnes introduced Mr. Roger Hitchcock, audit partner, and Ms. Jamie Rabe, audit manager, from the auditing firm Andrews Hooper Pavlik, PLC, who discussed the FY 2015 audit with the Board. The auditors reported that the SBM received an unmodified (“clean”) audit opinion as indicated in the management letter.

Mr. Barnes informed the Board that the current State Bar audit engagement contract with Andrew Hooper Pavlik, PLC expires this year. Mr. Barnes offered a motion to renew the contract with Andrews Hooper Pavlik, PLC for FY 2016 and 2017, including the rotation of the audit partner. The motion was supported and approved.

Professional Standards, Jennifer M. Grieco, Chairperson

Ms. Grieco reported to the Board that the Standing Committee on Professional Ethics issued Informal Ethics Opinion RI-371 and recommends that the Board approve this opinion as Formal Opinion R-023. Proposed Formal Opinion R-023 addresses ethics issues relating to lawyers including arbitration clauses in fee agreements and/or provisions shortening the statute of limitations on legal malpractice claims. This opinion was before the Board during its last meeting in November 2015 and was withdrawn and sent back to the Professional Ethics Committee for further action.

Mr. Kenneth Mogill, Chair of the SBM Professional Ethics Committee, was available to answer questions from the Board. After discussion, the Board decided to take no action and asked Mr. Mogill to inform the Professional Ethics Committee of the Board's comments so revisions could be made to strengthen the language of the ethical concerns expressed in the opinion about the use of such provisions in fee agreements.

Ms. Greico informed the Board that there is a vacancy on the Board of Trustees of the Michigan Indian Legal Services due to a resignation of one of the State Bar appointees. After reviewing a letter of intent, the Professional Standards Committee recommends that Mr. Kenneth Akini be appointed to the MILS board to satisfy the term. A motion was offered and supported. The motion was approved.

Programs and Services, Donald G. Rockwell, Chairperson

Mr. Rockwell informed the Board that there was no report.

Public Policy, Image and Identity, Lawrence P. Nolan, Chairperson

The Board members received a written Justice Initiatives Report and a written Public Policy report.

Mr. Nolan called the Board's attention to the Governmental Relations update, with an addendum to the Proposed Minimum Standards for Appointed Counsel (ADM File No. 2015-27.) Mr. Nolan asked Mr. Cunningham to explain the addendum to the Board. Mr. Cunningham stated that the Board approved the proposed minimum standards in July 2015, but that those were submitted to the Court earlier this year were slightly modified. Mr. Cunningham recommended that because several of the changes were made to accommodate comments from the State Bar, barring objection the Board should continue to support the minimum standards for appointed counsel and that the Board's continued support should be communicated to the Court. No objection was raised.

Court Rules

ADM File No. 2015-05 – Proposed Amendments of Rule 3.979 of the Michigan Court Rules

The proposed amendment of MCR 3.979 would require a court to maintain jurisdiction over a juvenile guardianship for 120 days after a juvenile's 18th birthday in cases where DHHS is making an eligibility determination for extended guardianship assistance. The proposed revisions of MCR 3.979 also would reflect recent amendments of the Young Adult Voluntary Foster Care Act (MCL 400.669) and the Juvenile Code (MCL 712A.2a).

The Board took no action.

ADM File No. 2015-12 – Proposed Amendments of Rules 3.605, 3.606, 3.928, 3.944, 3.956, 6.001, 6.425, 6.445, 6.610, and 6.933 of the Michigan Court Rules

The proposed amendments of MCR 3.605, 3.606, 3.928, 3.944, 3.956, 6.001, 6.425, 6.445, 6.610, and 6.933 were submitted by the Michigan State Planning Body for the Delivery of Legal Services to the Poor. The proposed rule revisions are intended to provide clarity and guidance to courts regarding what courts would be required to do before incarcerating a defendant for failure to pay.

A motion was offered and supported to support the proposed amendments. The motion was approved.

ADM File No. 2014-13 Proposed Amendment of Rule 2.403 of the Michigan Court Rules

This proposed amendment, submitted by the Michigan Judges Association, would reduce the time period from 28 days to 14 days in which a party would be required to accept or reject a case evaluation award.

A motion was offered and supported to oppose the proposed amendment. The motion was approved.

ADM File No. 2014-17 – Proposed Amendment of Rule 7.306 of the Michigan Court Rules

The proposed amendments of MCR 7.306 would expressly authorize a respondent attorney to file a brief in actions of superintending control when the complainant objects to a dismissal by the AGC or ADB; the proposed amendments would also require the party filing for superintending control to serve copies of the complaint and brief on the respondent and would allow 21 days for respondent attorney to submit a brief, with copies to be served on the plaintiff and defendant.

A motion was offered and supported to support the proposed amendment. The motion was approved.

ADM File No. 2015-17 – Proposed Amendment of Administrative Order No. 2013-12

These proposed revision of Administrative Order No. 2013-12 would adjust the time guidelines in probate courts by applying disposition rates to all cases filed instead of applying rates to "contested matters," also the proposed revisions would separate from estates, the guidelines for guardianship and conservatorship proceedings and group them with protective orders proceedings with civil proceedings instead of the former grouping of trust with proceedings for estates.

The Board took no action.

Legislation

Jury Pool Selection

HB 4406 (Banks) Courts; juries; names and addresses of taxpayers; allow to be given to jury boards for purposes of selecting juror pools. Amends sec. 28 of 1941 PA 122 (MCL 205.28).

HB 4407 (Banks) Courts;

A motion was offered and supported that this legislation is Keller permissible as its subject matter falls within the availability of legal services to society in offering protection to a vulnerable population. The motion was approved.

The Board took no action.

HB 4766 (LaFontaine) Courts; other; teen court; authorize. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by amending div. heading & adding ch. 12A.

A motion was offered and supported that this legislation is Keller permissible as its subject matter will affect the functioning of the courts. The motion was approved.

A motion was offered and supported to support the concept of establishing a teen court, but express concern over the creation of and participation in the jury pool, as well as the funding for the system.

The motion was approved.

Model Jury Instructions

M Crim JI 7.11 – Legal Insanity; Mental Illness; Intellectual Disability; Burden of Proof

The Committee proposes a complete re-draft of the insanity instruction, M Crim JI 7.11, in order to remove repetitive language and to eliminate language that unfairly over-emphasized a defendant's burden of proving insanity. The current version of the instruction is presented in strikethrough since it will be deleted if the new instruction is adopted. The proposed instruction is entirely underlined since much of its language and organization is new.

A motion was offered and supported to support the proposed criminal jury instructions. The motion was approved.

M Crim JI 12.2 and 12.5 – Unlawful Delivery of a Controlled Substance; Unlawful Possession of a Controlled Substance

The Committee proposes amended instructions where a defendant has been charged with delivery or possession of controlled substances under MCL 333.7401 and MCL 333.7403: M Crim JI 12.2 and 12.5, respectively. Language was eliminated that suggested that the prosecutor had to prove that the defendant knew that he or she delivered or possessed the specific controlled substance that he or she actually delivered or possessed. Further, the instructions were reformed to eliminate repetitive language. Deletions are in strikethrough; additions are underlined.

A motion was offered and supported to support these proposed criminal jury instructions with the amendments proposed by the Criminal Jurisprudence and Practice committee. The motion was approved.

President's Report, Lori A. Buiteweg, President

Upcoming ABA Meeting

Ms. Buiteweg reported that she, along with Mr. Nolan, and Ms. Welch, are attending the 2016 ABA Mid-Year Meeting in February and that the ABA House of Delegates will discuss a resolution regarding ABA Model Regulatory Objectives, which will be discussed later in the meeting.

Reapportionment Committee Update

Ms. Buiteweg reported to the Board that the Reapportionment Committee met to review and discuss data regarding reapportionment and whether there is a need for reapportionment in this election cycle. After review the committee decided that a more deliberative review of the rules and bylaws governing the reapportionment of the State Bar is desirable before a change to the current reapportionment is made. Ms. Buiteweg invited Commissioners to let her know if they wished to be involved in future reapportionment deliberations.

Strategic Planning Committee Update

Ms. Buiteweg reported that the strategic plan committee met in December and plans to meet on June 6. Jennifer Lewin from the American Bar Association will facilitate that meeting.

Proposed Resolution Regarding Committee Appointments & SBM Awards

Ms. Buiteweg provided the Board with a resolution to amend the procedure for committee appointments and State Bar awards. A motion was offered and supported to adopt the proposed resolution regarding committee appointments and SBM awards. The motion was approved.

Executive Director's Report, Janet K. Welch, Executive Director

21st Century Practice Task Force Update

Ms. Welch provided the Board with an update on the work of the 21st Century Practice Task Force. The final meeting of the Task Force is scheduled for March 1, 2016 and currently there are about 100 recommendations. To ensure that the SBM membership as a whole is kept informed about the work of the task force, a Town Hall meeting featuring the work of the Task Force is scheduled on January 29 at the Hall of Justice. Chief Justice Robert Young, Jr. will provide opening remarks and the event will also be livestreamed.

ABA Model Regulatory Objectives

Ms. Welch provided the Board with background information on resolutions before the ABA House of Delegates and the process for seeking input and support from various stakeholders, including bar associations, in advance of the House of Delegates meetings. The State Bar of Michigan has been asked to consider and take a position on Resolution 105 before the House of Delegates at its February meeting. Ms. Welch introduced Professor Renee Knake of the Michigan State University College of Law, member of the 21st Century Practice Force, and Reporter for the ABA's Commission on the Future of Legal Services. Professor Knake explained Resolution 105, *ABA Model Regulatory Objectives for the Provision of Legal Services* and its relationship to the work of the SBM 21st Century Practice Task Force, and urged the Board's support. The Board took no position.

ZeekBeek Update

Ms. Welch reported to the Board that the Indiana and Illinois State Bar Association have joined the ZeekBeek platform, and that the Ohio State Bar Association will be implementing its ZeekBeek directory within weeks. Ms. Welch informed the Board that she was asked to give a presentation to a committee of the Florida State Bar and that she is making a presentation at the National Conference of Bar Presidents.

Update on *Friedrichs v California Teachers Association*

Ms. Welch provided the Board with an update on the *Friedrichs v California Teachers Association* oral argument before the United States Supreme Court.

Restated State Bar of Michigan Retirement Plan

Mr. Flood presented the Board with a resolution restatement of the SBM Retirement Plan. A motion was offered and supported to adopt the restated State Bar of Michigan retirement plan. The motion was approved

SBM Building Closure

Ms. Welch informed the Board that the holiday closure of the State Bar non-emergency operations went smoothly.

Supreme Court Update

Ms. Welch indicated that there was no new information to report.

Litigation Status Report

There is no report for this meeting as there have not been any developments since the last report.

Representative Assembly (RA) Report, Daniel D. Quick, Chairperson

Mr. Quick reported that plans are in place for the April 30 RA and that a new committee for public outreach had been formed.

American Bar Association (ABA) Report

The Board received a written report.

Young Lawyers Section Report (YLS), Mark Jane, Chairperson

Mr. Jane provided the Board with an update on the activities of the YLS and reported that the YLS Council has supported quite a few programs since last Board meeting.

Mr. Jane reminded the Board of the “Gaming Challenge” event between the Board of Commissioners and the Young Lawyers Executive Council that will take place after the April 29 Board meeting. Mr. Jane indicated that more information will be provided before the meeting date.

Comments from Commissioners

Ms. Grieco noted that the Marijuana Law Section had their first meeting and that it was interesting to watch a section beginning to organize.

Mr. Nolan mentioned that the father of David Brake, a former commissioner, had passed away.

Adjournment

The meeting was adjourned at 1:45 p.m.