

STATE BAR OF MICHIGAN
BOARD OF COMMISSIONERS MEETING MINUTES

President Heath called the meeting to order at approximately 9:45 a.m. on Friday, November 18, 2022, in the Boardroom at the Michael Franck building in Lansing, Michigan.

Commissioners present:

David C. Anderson	Gerard Mantese
Yolanda Bennett	Gerrow D. "Gerry" Mason
Erika L. Bryant, Treasurer	Joseph P. McGill, Vice President
Hon. B. Chris Christenson	Thomas P. Murray Jr.
Thomas P. Clement	Valerie R. Newman
Tanya Cripps-Serra	Nicholas M. Ohanesian
Sherrice Detzler	Hon. David A. Perkins
Robert A. Easterly	Colemon L. Potts
Lisa J. Hamameh, Secretary	John W. Reiser
James W. Heath, President	Delphia T. Simpson
Thomas H. Howlett	Matthew B. Van Dyk
Suzanne C. Larsen	Danielle Walton
James W. Low	Hon. Erane C. Washington

Commissioners absent:

Kristina A. Bilowus	Daniel D. Quick, President-Elect
Aaron V. Burrell	Hon. Kristen D. Simmons
Hon. Kameshia D. Gant	Mark Wisniewski
Takura N. Nyamfukudza	

State Bar staff present:

Peter Cunningham, Executive Director
Drew Baker, General Counsel
Margaret Bossenbery, Executive Coordinator
Gregory Conyers, Program Director, Diversity Development Program
Darin Day, Program Director, Outreach
Katherine Gardner, UPL Counsel
Tatiana Goodkin, Chief Financial Officer
Robert Mathis, Pro Bono Services & Justice Initiatives Counsel
Molly Ranns, Director, Lawyers & Judges Assistance Program
Marjory Raymer, Director of Communications
Janna Sheppard, Administrative Assistant
Jeanette Socia, Director of Human Resources
Ebony Stith, Communications Specialist
Kari Thrush, Program Director, Lawyer Services
Nathan Triplett, Director of Governmental Relations
Anne Vrooman, Program Director, Research & Development
Meng Xiong, IT Director

Consent Agenda

The Board received the minutes from the September 16, 2022, Board 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 2022 draft financial reports through September 30, 2022.

The Board received Client Protection Fund claims.

The Board received Character and Fitness Committee appointments.

The Board received Model Criminal Jury Instructions.

The Board received section bylaw amendments from the Cannabis Law Section and the Young Lawyers Section.

Mr. Heath asked the Board to make two last-minute changes to items on the consent agenda.

Commissioner Tanya Cripps-Serra was inadvertently left off the list of commissioners present at the September 16, 2022, meeting. The meeting minutes have been updated to reflect this change.

Additionally, on the Character and Fitness Committee list of appointments, an individual from District I asked that his name not be listed. The list of appointments has been modified to reflect his request. Mr. Heath asked if any items needed to be removed from the consent agenda. There were none. A motion was offered and supported to approve the consent agenda. The motion was approved.

LEADERSHIP REPORTS

President and Executive Director's Report: James Heath, President and Peter Cunningham, Executive Director.

Mr. Heath reported that he has had the opportunity to attend various bar association meetings. Mr. Heath and Mr. Cunningham traveled to the Great Rivers Bar Leader Conference in Savannah, Georgia in late October. They spent several days networking with representatives from state bars from nine midwestern states. Mr. Heath had the opportunity to present on the topic of updates in regulatory reform ideas and pilot programs that are being tested. Leaders across the country are looking at Michigan and the issues which are being tackled by the Justice for All Task Force.

In late September, Mr. Heath attended the Michigan Legal Milestone event in Allegan County. This was the first time this has occurred in several years due to the pandemic. At the Allegan County courthouse, they commemorated the passage of Public Act 109 of 1857, which was the first legislation in Michigan that provided for compensation for representation of indigent criminal defendants.

Mr. Heath attended the National Trial Advocacy Competition early in October. The event was hosted by the Young Lawyers Section at the 36th District Court in Detroit. Fifteen teams of law students from across the country competed in mock trials in a phenomenal display of the future of the profession.

Mr. Cunningham provided updates on recent events in and around the Bar.

There have been two new additions to SBM staff since the last board meeting. Mr. Cunningham asked Ms. Raymer to introduce Ms. Ebony Stith, communications specialist. Ms. Stith started working at the Bar in September. Ms. Stith is responsible for writing news articles, maintaining our social media accounts, and helping with other program promotions.

While she was unable to attend today's meeting due to the weather, Mr. Cunningham reported that Ms. Victoria Vargas has been hired as a new applicant licensing specialist in Character and Fitness. He is hopeful that she will be able to attend the Board meeting in January to be introduced to the Board.

Mr. Greg Conyers spoke about the Face of Justice program which occurred a few weeks ago. This program has historically hosted high school students; however, the most recent program included law students. There were individuals from each of the law schools in Michigan. They participated in an activity referred to as jet mentoring, where students were able to speak with many mentors, creating meaningful conversations between experienced attorneys and law students about the profession. Mr. Heath participated in the event, as well as immediate past president, Dana Warnez.

The State Bar of Michigan received an award on behalf of the Lawyer Referral Service for the additional programs that were created to provide frontline workers with pro bono legal assistance during the pandemic, as well as the assistance to the Midland flood victims. The efforts of multiple departments across the Bar attributed to the success of the programs, as well as volunteers from State Bar sections.

Mr. Cunningham credited former executive director, Ms. Janet Welch, about her foresight and preemptive work in late 2019 and early 2020 to prepare the Bar for the pandemic. The SBM IT Department worked incredibly hard to transition staff members to remote workstations, which allowed the State Bar staff to continue their work without missing a beat. This advanced preparation for the pandemic, allowed State Bar staff to create new programs to address new and urgent legal needs at a time when many other organizations were struggling to maintain basic operations.

Mr. Cunningham reported that the license renewal for 2022-2023 is nearing the end of the period for members to pay without incurring late fees. We are on pace with previous years. There were two important changes to the renewal process this year: the first change is the increase of fees and the second was the addition of a credit card surcharge. As of November 17, 2022, 64% of members have paid their dues. There has been an increase in members who have elected to pay by sending a paper check through the US mail for their dues. There has also been an increase in members who have chosen to pay via electronic check. There has been a decrease of approximately 14% in members using credit or debit cards.

SBM staff reviewed the SBM Orientation Policies for both new and returning commissioners. Key policies covered were attendance, conflict of interest, public statements, and reimbursements.

Workgroup Updates

Commission on Diversity Equity and Inclusion (DEI) Report: Erika Butler

The commission had its first meeting on October 24, 2022, and it is scheduled to meet again in January 2023. The primary charge of the commission is to address the disparities and inequities in the Michigan justice system. Ms. Bryant encouraged commissioners to bring any issues to her so that she can voice concerns, ideas, and thoughts to the DEI.

Mr. Cunningham reported that the commission has selected a strategic facilitator, Patricia Lally, to assist in creating a strategic plan and structure for the commission to accomplish its goals.

Representative Assembly (RA) Report: Gerrow D. Mason, Chairperson

Mr. Mason shared that the Representative Assembly has a great responsibility and can make great change to the profession of the law. The RA led the charge behind the increase in Bar dues that just took effect, which took several years and hundreds of hours to accomplish.

Mr. Mason has proposed many challenges to the members of the RA this year. He has encouraged members to bring a friend with them to this year's meetings and has also urged members to join a charity, such as Rotary or Salvation Army, because the perception that community involvement has on the practice of law is significant. Mr. Mason also shared that he has a passion to help underprivileged students succeed, and he wants RA members to consider getting involved in the Face of Justice program. Mr. Mason has asked Mr. Ohanesian to continue his involvement in helping improve the Representative Assembly by leading a group to consider a series of proposals that the RA committees presented at the September RA and bring the best ideas forward to the April RA meeting for a vote.

The option of hybrid meetings has increased the attendance of RA meetings and Mr. Mason is excited about what this great group of leaders can accomplish this year.

Young Lawyers Section (YLS) Report: Colemon L. Potts, Chairperson

Mr. Potts reported that the section had its annual meeting on September 24, 2022, with a focus on Pay It Back and Pay It Forward. There is an emphasis this year on collaboration as well as thanking those YLS leaders who have blazed the trail to set the section up to do great things.

Mr. Potts shared that the YLS held the National Trial Advocacy competition in early October which brought over 15 teams together to compete in mock trials in Detroit. Partnered with the Litigation Section, there were approximately 60 attorneys and judges who volunteered to make this competition a huge success.

On November 5, the YLS held its planning retreat in Grand Rapids with a team-building activity and a planning meeting. They discussed ways for young lawyers to get involved in the State Bar and the ABA. Each person on the YLS council has been tasked with developing two programs to help encourage members to serve the Bar and the community.

There is a community outreach program which has partnered with the Detroit Public Safety Foundation and Detroit police officers to discuss rights under the law and build the relationship between the police and the community.

The YLS is partnering with the Unity Baptist Church to host a turkey drive, where those in need can get assistance with landlord/tenant matters and get a turkey if they are in need.

In the early stages of planning an annual summit for the summer of 2023. Chair-Elect Ms. Tanya Cripps-Serra has been talking with Little Caesars Arena as a possible site for this event. The section is hopeful that with a great location in Detroit, it would have great attendance.

Proposed Section Bylaw Amendments: Darin Day, Outreach Program Director

Mr. Colemon Potts reported that the YLS has developed a reinforcement plan for District 1, which would adjust the number of seats to level the playing field.

COMMISSIONER COMMITTEES

Public Policy: Dan D. Quick, Chairperson

In Mr. Quick's absence, Ms. Suzanne Larsen provided the report for the Public Policy committee.

Court Rules

1. ADM File No. 2016-10: Proposed Amendments of MCR 2.002 and 7.109

The proposed amendments of MCR 2.002 and 7.109 would allow for waiver of appellate transcript fees for indigent individuals.

A motion was offered and supported to support ADM File No. 2016-10 as drafted. The motion was approved.

2. ADM File No. 2002-37: Amendment of MCR 1.109

The amendment of MCR 1.109 provides SCAO the flexibility to determine, when appropriate, when certain documents filed on paper do not need to be imported into the MiFILE document management system until bulk e-filing capability is available.

A motion was offered and supported to support ADM File No. 2002-37 as drafted. The motion was approved.

3. ADM File No. 2021-49: Proposed Amendment of MCR 2.002

The proposed amendment of MCR 2.002 would provide procedural direction to courts regarding prisoner requests for fee waivers in civil actions.

A motion was offered and supported to support ADM File No. 2021-49 to the extent that it is intended to align statutory provisions and court rules, but express concerns over the practicality of indigent defendants complying with these rules, most notably strict timelines. The motion was approved.

4. ADM File No. 2021-32: Proposed Amendment of MCR 6.112

The proposed amendment of MCR 6.112 would require that the notice of intent to seek an enhanced sentence contain any mandatory minimum sentence required by law as a result of the enhancement.

A motion was offered and supported to support ADM File No. 2021-32 as drafted. The motion was approved.

5. ADM File No. 2021-40: Proposed Amendment of Rule 5 of the Rules for the Board of Law Examiners

The proposed amendment of Rule 5 of the Rules for the Board of Law Examiners would define the terms "full-time" and "instructor" to clarify that clinical instructors may be admitted to the bar without examination.

A motion was offered and supported to support ADM File No. 2021-40 as drafted. The motion was approved.

Legislation

1. HB 6399 (Whitsett) Criminal procedure: mental capacity; outpatient treatment for misdemeanor offenders with mental health issues; provide for. Amends sec. 461 of 1974 PA 258 (MCL 330.1461) & adds sec. 1021 & ch. 10A.

The Public Policy Committee recommends deferring consideration of HB 6399 at this time. No motion was made.

2. HB 6437 (LaGrand) Criminal procedure: mental capacity; psychological evaluations for defendants ordered by judges; allow. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 1m to ch. IX.

The Public Policy Committee recommends deferring consideration of HB 6437 at this time. No motion was made.

3. SB 1162 (Wozniak) Courts: court of appeals; jurisdiction of the court of appeals to include admitting individuals to the state bar; expand.

A motion was offered that this is *Keller* permissible. The motion to support was seconded and approved. A motion was offered and supported to support SB 1162. The motion to support was seconded and approved.

4. SB 1175 (Hollier) Courts: juries; local jury boards; eliminate, and create a centralized jury process. Amends secs. 1301a, 1304a, 1326, 1332, 1345 & 1346 of 1961 PA 236 (MCL 600.1301a et seq.); adds sec. 1306 & 1307 & repeals secs. 1301, 1301b, 1302, 1303, 1303a, 1304, 1305, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1327, 1330, 1331, 1338, 1339, 1341, 1342, 1353, 1375, & 1376 of 1961 PA 236 (MCL 600.1301 et seq.) & repeals 1929 PA 288 (MCL 730.251 - 730.271) & repeals 1951 PA 179 (MCL 730.401 - 730.419).

The Public Policy Committee recommends deferring consideration of SB 1175 at this time. No motion was made.

Proposed Amendments to Michigan Rules of Evidence

Proposed Amendments to Michigan Rules of Evidence

A motion was made and supported to recommend that the SBM submit the workgroup report and the comments submitted by the two SBM committees to the Court for its consideration, but not take a position on the Workgroup's recommendations at this time.

Finance: Erika L. Bryant, Chairperson

Ms. Bryant provided a review of the SBM Financial Safety Margin (FSM) Policy. Organizations use financial safety margin policies to help gauge the fiscal health of their organization. The Bar has used the policy when determining when a fee increase may be necessary based on the overall financial health of the Bar. The financial safety margin policy that we have been using was adopted in 2005. This policy calculates the margin as cash plus short-term investments plus 80% of the estimated value of the building divided by next year's budgeted expenses. This measure is historically calculated on August 31 of each calendar year, which is the month of the lowest cash and investment balances. The FSM is less conservative than other measures of financial safety and may not accurately portray the soundness of the organization's financial reserves. The current policy is also not aligned with the more conservative liquid

unrestricted net assets (LUNA) ratio which is used by the Michigan Supreme Court to measure the financial condition of the attorney discipline system.

The Finance Committee is proposing a shift to using a LUNA ratio instead of our current process for calculating our financial safety margin. A motion was offered and supported to pass the adoption of the SBM Financial Safety Margin Policy. The motion was approved.

Mr. Cunningham provided a financial report with the use of a PowerPoint presentation for FY 2022 through September 30, 2022. A more detailed report will be provided in January following the conclusion of the audit. SBM's net position is up for FY 2023, and we ended \$1.3 million favorable to budget. This was greatly due to cost savings related to the pandemic. Fiscal year 2023 should be much closer to budget. A chart of the overall financial position over the past 20 years was shared. Had it not been for the pandemic, the Bar would have been in worse shape. However, because of the recent fee increase, the reserves will increase for fiscal year 2023.

Audit: Erika L. Bryant, Chairperson

Ms. Bryant reported that there is an Audit Committee meeting scheduled with the auditors on Wednesday, December 7, 2022. During that meeting, there will be an opportunity to have a management meeting with the auditors without SBM staff. There is a deadline of December 31, 2022, to submit a report to the Supreme Court. Further updates will be available in January.

Professional Standards: Lisa J. Hamameh, Chairperson

Ms. Hamameh reported that there was no quorum at their first meeting. An electronic vote was taken after the meeting to recommend the nominations for Character and Fitness Committee appointments.

Communications and Member Services (CAMS): Joseph P. McGill, Chairperson

Mr. McGill reported that the committee had its first meeting of the Bar year. The meeting was just a review of the anticipated work of the committee for this upcoming Bar year.

FOR THE GOOD OF THE PUBLIC AND THE PROFESSION

Comments or questions from Commissioners

Ms. Bryant shared that Sunday, November 20, 2022, at the Garden Theatre from 2:00 to 5:00 p.m. the Wolverine Bar Association will be hosting the annual law school reception.

Comments or questions from the public

There were none.

Adjournment

The meeting was adjourned at 11:27 a.m.