

President Rombach called the meeting to order at 10:00 a.m. on Friday, November 21, 2014 at the Michael Frank Building

Commissioners present:

Danielle Mason Anderson	Mark W. Jane
Dennis M. Barnes	C. Thomas Ludden
Danielle M. Brown	Thomas McCarthy Jr.
Robert J. Buchanan	Maureen M. McGinnis
Lori A. Buiteweg, President-Elect	Lawrence P. Nolan, Vice President
Timothy J. Burns	Colleen A. Pero
Shauna L. Dunning	Victoria A. Radke
Robert Gardella	Hon. Michael J. Riordan
Stephen J. Gobbo	Donald G. Rockwell, Secretary
Jennifer M. Grieco, Treasurer	Thomas C. Rombach, President
Edward L. Haroutunian	Hope V. Shovein
James W. Heath	Richard J. Siriani
Fred K. Herrmann	Gregory L. Ulrich
Andrea Irons	Vanessa Peterson Williams

Commissioners absent and excused: Commissioners E. Christopher Johnson Jr., Jules B. Olsman and Daniel D. Quick were absent and excused.

State Bar Staff present:

Janet Welch, Executive Director  
Marge Bossenbery, Executive Coordinator  
Gregory Conyers, Director, Diversity  
Candace Crowley, Director, External Development  
Peter Cunningham, Director, Governmental Relations  
Cliff Flood, General Counsel  
Danon Goodrum-Garland, Director, Professional Services Division  
Brian Hildreth, Director, Information Services Division  
James Horsch, Director, Finance and Administration Division  
Nkrumah Johnson-Wynn, Assistant General Counsel  
Robert Mathis, Pro Bono Attorney  
Samantha Meinke, Communications Manager  
Kari Thrush, Manager, Member Services and Events  
Anne Smith, Administrative Assistant  
Anne Vrooman, Director, Research and Development

Board Agenda

A motion was offered and supported to approve the November 21, 2014 Board agenda. The motion was approved.

Consent Agenda

Mr. Rombach asked the Board if there were any items that needed to be removed from the consent agenda.

Mr. Haroutunian asked that the Unauthorized Practice of Law Claims be removed from the consent agenda and moved to the Professional Standards Committee portion of the agenda.

The Board received the minutes from the September 17, 2014 Board of Commissioners 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 2014 Draft Financial Reports through September 30, 2014 and the Financial Safety Margin Calculation.

The Board received the Character and Fitness Committee appointments.

The Board received the Client Protection Fund claims.

The Board received Section Bylaw Amendments from the General Practice – Solo and Small Firm, Probate and Estate Planning and Public Corporation Law Sections.

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

Local Bar Association and Section Reports

The Board received a report from the Macomb County Bar Association (MCBA) by MCBA President John DeMoss and Executive Director Rick Troy.

The Board received a report from the Intellectual Property Law Section by David Berry.

**COMMISSIONER COMMITTEES**

**Finance**, Jennifer M. Grieco, Chairperson  
**FY 2014 Financial and Investment Update**

Ms. Grieco asked Mr. Horsch to provide the Board with the annual financial investment report. Mr. Horsch provided a power point presentation on this issue.

Ms. Grieco reported that the Finance Committee is in the process of reviewing several of the Bar's financial policies including the contracts, credit card and reimbursement policies and will bring any revised policies to the Board for their consideration early next year.

**Audit Committee**, Jennifer M. Grieco, Chairperson

Ms. Grieco provided the Board with an overview on the State Bar's ongoing audit process.

**Professional Standards,** Donald G. Rockwell, Chairperson

Mr. Rockwell reported to the Board that Ms. Goodrum Garland provided the committee with an orientation session this morning.

Mr. Rockwell deferred to Mr. Haroutunian to discuss with the Board the UPL claims that were removed from the consent agenda. A motion was offered and supported to go into a closed session. The motion was approved. The Board went into a closed session to discuss the confidential Unauthorized Practice of Law claims.

When the Board returned to open session, a motion was offered and supported to authorize the Professional Standards Division to move forward with litigation on items 1 – 6 and items 8 – 12. The motion was approved. Mr. Burns abstained from voting on item 2.

**Programs and Services,** Lawrence P. Nolan, Chairperson

Mr. Nolan reported that the SBM Affinity Bar Association Directory was distributed to each commissioner.

Mr. Nolan informed the Board that the 2015 State Bar Annual meeting is taking place in October and is being held at the Novi Showplace.

Mr. Nolan asked Nancy Brown to provide the Board with an overview of the enhanced member benefits including the new website, the expanded member directory and SBM Connect. Ms. Brown reviewed each of the new programs with the Board and responded to questions from the Board members.

Ms. Pero asked that the staff keep in mind that what sections publish regarding legislation is found on the State Bar's website and that attention should be paid to general public access to that information.

Mr. Nolan informed the Board that Ms. Vrooman provided the committee with an update on the Economics of Law Survey. Ms. Vrooman indicated that every member received this survey, that it is undertaken every three years and that the overall participation of the State Bar's members is almost 15%.

**Public Policy, Image and Identity,** Lori A. Buiteweg, Chairperson

The Board members received the Justice Initiatives Report.

**Court Proposals**

**Model Criminal Jury Instructions, 17.36**

The Supreme Court Committee on Model Criminal Jury Instructions proposes an instruction for use where a violation of the torture statute, MCL750.85 is charged. This is an entirely new instruction. A motion was offered and supported to support this proposed jury instruction. The motion was approved.

**Model Criminal Jury Instructions. 20.1, 20.3b, 3.32**

The Supreme Court Committee on Model Criminal Jury Instructions proposes new and amended instructions for use where in first-degree criminal sexual conduct cases where the prosecutor has charged the defendant with a violation under MCL 750.520(2)(b), invoking a mandatory 25-year minimum sentence. M Crim JI 20.1 is amended; M Crim JI 20.30b is a new instruction directing the jury to make "Special Findings" where the defendant has been charged with violating the statute and it has found the defendant guilty of first-degree criminal sexual conduct; M Crim JI 3.32 is a new verdict form for reporting the verdict and Special Findings. New language is underlined.

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

**Model Criminal Jury Instructions 7.9, 7.11**

The Supreme Court Committee on Model Criminal Jury Instructions proposes amended instructions for use where the defendant interposes and insanity defense to comport with recent changes in statutory language and to conform the definition to the language used in the statute. Amendments are underlined; strike-outs are deletions.

A motion was offered and supported to support these proposed changes. The motion was approved.

**Legislation**

Ms. Buiteweg advised that consistent with the report to the Supreme Court on the Report of then Task Force on the Role of the State Bar, a "Keller Vote" will be taken prior to taking a position on the merits of legislation to determine Keller permissibility and to articulate the reasoning behind the Keller determination. As recommended in the report to the Supreme Court, a two-thirds vote of the Board is needed for action on each item.

The Board was informed that an independent staff Keller memo was prepared and disseminated to the Board on each piece of legislation. She reminded the Board that committees also are required to explain why they think the legislation is Keller permissible when they submit a recommendation for a position.

The Board decided that a roll call vote is not required for the vote on Keller permissibility on legislation.

Mr. Rockwell reminded the Board that they never adopted the recommendations included in the report sent to the Supreme Court separately from the adoption of the report itself.

**HB 5869 (Forlini) Property; leases; provision in lease to waive right to a jury trial; allow. Amends sec. 3 of 1978 PA 454**

A motion was offered and supported that this legislation is Keller permissible because it would affect the functioning of the courts. Specifically waiving the right to a jury trial in rental agreements could either promote judicial economy, or these lease provisions could be challenged as contracts of adhesion. Either outcome would impact the functioning of the courts. The motion was approved.

A motion was offered and supported to oppose this legislation. A roll call vote was taken:

Yes: Anderson, Barnes, Buiteweg, Burns, Dunning, Gardella, Gobbo, Grieco, Haroutunian, Heath, Irons, Jane, McCarthy, McGinnis, Nolan, Pero, Radke, Rockwell, Shovein, Ulrich, Williams and Rombach

No: Brown, Ludden and Siriani

Abstain: Herrman and Riordan

**SB 1050 (Bieda) Criminal procedure; DNA; filing deadline for petition seeking review of DNA evidence; extend sunset. Amends sec. 16, ch. X or 1927 PA 175 (MCL 770.16).**

A motion was offered and supported that this legislation is Keller permissible because the review of the DNA evidence enables the court to administer justice with accuracy and the court should continue to be allowed to avail themselves of that evidence because it improves the accuracy of the administration of justice.” The motion was approved.

A motion was offered and supported to support this legislation. The motion was approved.

**SB 0980 (Bieda) Civil procedure; appeals; service of papers; provide for alternate service if party is protected by a protective order. Amends secs. 227 & 316 of 1961 PA 236 (MCL 600.227 & 600.316).**

The Committee recommends that the SBM take no position on this legislation.

**HB 5652 (Santana) Civil procedure; other; mediation; limit in certain domestic relations actions. Amends 1961 PA 236 (MCL 600.101 – 600.9947) by adding sec. 1035.**

A motion was offered and supported that this legislation is Keller permissible because it would impact the functioning of the courts by conflicting with MCR 3.610. The motion was approved.

A motion was offered and supported to oppose this legislation. The motion was approved.

**HB 5654 (Hovey-Wright) Crime victims; other; address confidentiality program for victims of domestic violence crimes; create. Creates new act.**

A motion was offered and supported that this legislation is Keller permissible because it deals directly with service which directly relates to the administration of justice and the functioning of the courts. The motion was approved.

A motion was offered and supported to support this legislation with the amendment recommended by the Family Law Section to extend the notice period by five days for service under this act. The motion was approved.

**HB 5928 (Haveman) Criminal procedure; sentencing; criminal justice policy commission; create, and make other revisions regarding sentencing. Amends secs. 1a, 11, 34 & 35, ch. IX of 1927 PA 175 (MCL 769.1a et seq.) & adds secs. 32a & 33a to ch. IX.**

A motion was offered and supported that this legislation is Keller permissible because it creates a vehicle to collect, analyze, and compile data regarding the effect of sentencing guidelines on the caseload, docket flow, and case backlog of the trial and appellate courts of this state.

The motion was approved.

A motion was offered and supported to support this legislation. The motion was approved.

**President’s Report, Thomas C. Rombach, President**

Mr. Rombach directed Mr. Rockwell and the Professional Standards committee to address the policy of anonymity with regards to UPL claimants.

Future of Legal Services Summit

Mr. Rombach provided the Board with an update on the Future of Legal Services Forum that took place on November 10 at the State Bar. Mr. Rombach informed the Board that ABA President William Hubbard, Chief Justice Robert P. Young, Jr., and Justice Bridget McCormack attended.

Upper Michigan Tour

Mr. Rombach provided the Board with information regarding the Upper Peninsula Tour that took place in October.

Great Rivers Bar Leaders Conference

Mr. Rombach provided the Board with information regarding the Great Rivers Bar Leaders Conference held in October.

Mr. Rombach informed the Board that Board Member Orientation is scheduled to take place on January 15, 2015.

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

Supreme Court Update

Ms. Welch reported to the Board that there have been no formal communications with the Court regarding the comments that were submitted by the Board to the Supreme Court.

Ms. Welch informed the Board that the SBM has begun conversations with the Board of Law Examiners about how we can use our administrative expertise to make the process for applying for admissions more user friendly and efficient for applicants.

Ms. Welch informed the Board that she has met with the new Attorney Grievance Administrator, Alan Gershel and has begun discussions with him about streamlining the pro hac vice process.

Ms. Welch noted that the SBM building will be closed between Christmas Eve and New Year's Day. Phone coverage is in place for any emergency needs and members will receive a call back if a message is left.

Litigation Status Report

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

**Representative Assembly (RA) Report**, Vanessa Peterson Williams, Chairperson

Meeting on April 25, 2015

Ms. Williams provided the Board with an update on the items that are currently scheduled to be addressed at the April 25, 2015 meeting

Ms. Williams reported that she and the other officers of the RA, Mr. Quick and Mr. Herrmann met to discuss a 3-year strategic plan for the RA. Each of the officers have agreed to review certain aspects of the RA to provide a top to bottom review of the RA. It is their plan to work more closely with the Executive Committee and to make changes to the current RA meeting structure.

**American Bar Association (ABA) Report**

There was no report.

**Young Lawyers Section Report (YLS)**, Andrea Irons, Chairperson

Ms. Irons provided the Board with an update on the activities of the Young Lawyers Section.

Ms. Irons suggested to the Board that an alternate to the bowling challenge be considered. Mr. Nolan and the Program and Services committee will meet with the YLS about this.

**Comments from Commissioners**

Mr. Ulrich reported that the ABA Legal Assistance and Military Personnel Committee that he serves on is expanding its outreach to include families and veterans nationally who need legal aid and are not on active duty.

Mr. Nolan complimented Mr. Rombach on his leadership at the Futures of Legal Services Forum and congratulated Ms. McGinnis on her successful campaign for judicial office.

**Adjournment**

The meeting was adjourned at 2:55 p.m.