

President Barnes called the meeting to order at 9:45 a.m. on Friday, November 22, 2019 in the Board room of the Michael Franck

Commissioners present:

Danielle Mason Anderson  
David C. Anderson  
Dennis M. Barnes, President  
Joseph J. Baumann  
Robert J. Buchanan, President-Elect  
Erika L. Butler  
Hon. Clinton Canady III  
B.D. "Chris" Christenson  
Hon. Shauna L. Dunnings  
Lisa J. Hamameh  
James W. Heath, Secretary  
Thomas H. Howlett  
Sarah E. Kuchon

Suzanne C. Larsen  
James W. Low  
E. Thomas McCarthy Jr  
Joseph P. McGill  
Nicholas M. Ohanesian  
Samantha J. Orvis  
Hon. David A. Perkins  
Barry R. Powers  
Thomas G. Sinas  
Gregory L. Ulrich  
Dana M. Warnez, Vice President  
Erane C. Washington  
Ryan Zemke

Commissioners absent and excused:

Aaron V. Burrell  
Josephine A. DeLorenzo  
Kara R. Hart-Negrich  
Valerie R. Newman

Daniel D. Quick, Treasurer  
Chelsea M. Rebeck  
Mark A. Wisniewski

State Bar staff present:

Janet Welch, Executive Director  
Marge Bossenbery, Executive Coordinator  
Peter Cunningham, Assistant Executive Director and Director, Governmental Relations  
Kathy Gardner, Unauthorized Practice of Law Counsel  
Danon Goodrum-Garland, Director, Professional Services Division  
Darin Day, Director of Outreach  
Kathryn Hennessey, Public Policy Counsel  
James Horsch, Director, Finance and Administration Division  
Nkrumah M. Johnson-Wynn, Assistant General Counsel  
Robert Mathis, Pro Bono Counsel  
Molly Ranns, Case Monitor, Professional Standards Division  
Kari Thrush, Assistant Director, Communications and Member Services Division  
Tish Vincent, Program Administrator, LJAP  
Anne Vrooman, Director of Research & Development  
Becky Weaver, Financial Services Manager, Finance and Administration Division

Guests

David Watson, Executive Director, ICLE

### Consent Agenda

The Board received the minutes from both of the September 25, 2019 the Board meeting.  
The Board received the minutes from the September 17 and October 8, 2019 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 District Character and Fitness Committee Appointments.

The Board received the Client Protection Fund Claims.

The Board received the Unauthorized Practice of Law Complaints.

The Board received the FY 2019 Financial Reports through September 2019.

The Board received the Financial Safety Margin Calculation.

The Board received the Model Criminal Jury Instructions.

The Board received an Appellate Practice Section Bylaw Amendment.

Mr. Barnes asked the Board if any items needed to be removed from the consent agenda.

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

## LEADERSHIP REPORTS

### President's Report, Dennis M. Barnes, President

Mr. Barnes reported:

- The Section Chair Orientation took place in October and it was very helpful. Mr. Barnes encouraged the Board members to contact the chairs of the sections they are liaisons to and then reviewed the roles of the liaison with the Board members.
- He, along with Ms. Welch and Mr. Buchannan, attended the Great Rivers Bar Leaders Conference last month. He stated there were great exchanges of ideas and thoughts with bar leaders from the other states. SBM's presentation focused on the SBM CloudLaw platform and prompted interesting discussion. Ms. Welch mentioned that of the Great Rivers state bars, only Michigan and Wisconsin are integrated bars; she gets valuable insight on voluntary bars from the CEOs of the other bars executives when she meets with them at the conference.
- The Task Force on State Bar Operations, Structure and Governance continues with their work. The consultants are putting together a package of information for the Task Force to review and plans are in place to schedule a meeting after the first of the year. Mr. Cunningham reported that it is anticipated that a series of recommendations for the Task Force to consider is forthcoming and those recommendations will be presented at the April Board and RA meetings.
- During the upcoming year the Board will be hearing from the Executive Committee and the Finance Committee about the fee cycle. He reported that a Task Force will be formed to work on critical issues the State Bar will face. A survey to address the fee issue is being developed and will be sent to members in advance of the Member Survey.
- He will be reviewing with the new commissioners the new board member orientation materials they received and respond to questions.

**Executive Director's Report**, Janet K. Welch, Executive Director  
Ms. Welch reported:

- The Board had previously approved an independent contractor agreement with an IT developer. Based on IT needs, staff recommends that the Independent Contractor become a full-time employee. Ms. Welch asked for approval to enter into a new contract with the IT developer. A motion was offered and supported to approve the contract. The motion was approved.
- Changes made to online dues process is convenient for majority of members, but there is a small percentage for whom the process has been a struggle. Mr. Horsch informed the Board that almost 80 percent of members have paid online.
- A new staff reorganization is in the works and will be implemented in the new year. The new structure will assist with succession planning, nurture upcoming talent, and have staff working better in teams.

**Representative Assembly (RA) Report**, Aaron V. Burrell, Chairperson

In Mr. Burrell's absence, Mr. Ohanesian reported that the RA will take up the issues that were tabled at the September meeting at the April meeting and that he anticipates a robust discussion.

**Young Lawyers Section (YLS) Report**, Ryan Zemke, Chairperson

Mr. Zemke provided the Board with an update on recent activities of the YLS. Mr. Zemke mentioned the BOC v YLS event after the April Board meeting and indicated that they are looking to begin the event earlier so more BOC members will participate.

**COMMISSIONER COMMITTEES**

**Finance**, Daniel D. Quick, Chairperson

In Mr. Quick's absence, Mr. McGill provided the Board with the FY 2020 Financial Results.

**Audit**, Daniel D. Quick, Chairperson

In Mr. Quick's absence, Mr. McGill provided the Board with an audit committee update.

Mr. McGill introduced Mr. Horsch who provided the Board with a review of the FY 2018 financial results. Mr. Horsch presented a PowerPoint presentation to show the financial results and trends.

**Professional Standards**, James W. Heath, Chairperson

There were no action items to address.

**Communications and Member Services**, Dana M. Warnez, Chairperson

Ms. Warnez reported that Board members received event summaries for the Annual Meeting and the Golden Celebration Event. She reported that most of the feedback was favorable from those who attended. A few section leaders expressed regret that sections do not meet during the annual meeting under the new format. Darin Day described the extensive outreach to sections prior to the Board's adoption of the new format.

Ms. Warnez reported that the 2020 50-year Golden Celebration will take place on May 11 at the Inn at St. Johns.

**Public Policy**, Robert J. Buchanan, Chairperson

Court Rules

**ADM File 2019-12: Amendments of MCR 1.109, 3.206, 3.931, and 3.961**

The amendments of MCR 1.109, 3.206, 3.931, and 3.961 enable family division courts to use the required case inventory form to administer cases while keeping the information confidential. This change is intended to prevent providing information that could affect the safety of domestic violence victims and their children.

A motion was offered and supported to support the proposed amendments with these amendments:

1. Tribal courts should be listed in the Case Inventory Addendum and included in the list of courts to be notified.
2. MCR 3.931 and 3.961 should be amended to reference the proper service rule for delinquency & child protection proceedings, MCR 3.920(I) (rather than the service provision for domestic relations proceedings, MCR 3.203).

The motion was approved.

**ADM File 2014-46: Proposed Alternative Amendments of MCR 6.508**

The proposed alternative amendments of MCR 6.508 would allow a court to consider previously-decided claims in the context of a new claim for relief, consistent with footnote 17 in *People v Johnson*, 502 Mich 541 (2018), as expressed in Alternative A, or under a slightly different formulation in Alternative B.

A motion was offered and supported to support the proposed amendment recommended by the Access to Justice Policy Committee and Appellate Practice Section, except change “strong likelihood” to “significant possibility,” as presented below:

(2) alleges grounds for relief which were decided against the defendant in a prior appeal or proceeding under this subchapter, unless the defendant establishes that a retroactive change in the law has undermined the prior decision; for purposes of this provision, a court is not precluded from considering previously-decided claims in the context of a new claim for relief, such as in determining whether new evidence would make a different result probable on retrial, or if the previously-decided claims, when considered together with the new claim for relief, create a **significant possibility** of actual innocence.

The motion was approved.

**ADM File 2018-29: Proposed Amendments of MCR 6.302 and 6.610**

The proposed amendments of MCR 6.302 and MCR 6.610 would eliminate the requirement for a court to establish support for a finding that defendant is guilty of the offense charged as opposed to an offense to which defendant is pleading guilty or nolo contendere. The sentencing guidelines make clear that offense variables are to be scored on the basis of the “sentencing offense alone,” not the charged offense. Further, an “offense to which defendant is pleading” would include the charged offense (if defendant is pleading to the charged offense) as well as any other offense that may have been offered by the prosecutor, so the “charged offense” clause may well be unnecessary.

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

**ADM File 2018-24: Proposed Amendment of MCR 8.301**

The proposed amendment of MCR 8.301 would make the rule consistent with the statute (MCL 600.834) allowing only the probate registers and deputy probate registers to perform certain administrative tasks that would otherwise be performed by the probate judge.

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

**Legislation**

**HB 4351** (LaGrand) Criminal procedure; bail; procedure for bail hearings and criteria a court must consider; amend. Amends sec. 6, ch. V of 1927 PA 175 (MCL 765.6).

**HB 4352** (Peterson) Criminal procedure; bail; procedure a court must follow in imposing financial condition on pretrial release; amend. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 6f to ch. V.

**HB 4353** (Howell) Crimes; penalties; remove cases in which a court must impose a cash bond and penalties for misrepresentation on a financial disclosure form; provide for. Amends sec. 6a, ch. V of 1927 PA 175 (MCL 765.6a).

**HB 4354** (VanSingel) Criminal procedure; bail; criteria a court must consider before imposing a financial condition of release; amend. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 6e to ch. V.

**HB 4355** (Neeley) Criminal procedure; bail; interim bail bonds for misdemeanors; modify. Amends sec. 1 of 1961 PA 44 (MCL 780.581).

**HB 4356** (Johnson) Criminal procedure; bail; authority for officer to issue appearance ticket; modify. Amends sec. 9c, ch. IV of 1927 PA 175 (MCL 764.9c).

**HB 4357** (Brann) Criminal procedure; bail; setting of bond related to spousal or child support arrearage; modify. Amends sec. 165 of 1931 PA 328 (MCL 750.165).

**HB 4358** (Garrett) Criminal procedure; bail; data on specific number and type of bonds issued; require district court to submit to state court administrative office. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 6g to ch. V.

**HB 4359** (Yancey) Criminal procedure; bail; data on specific number and type of bonds issued; require circuit court to submit to state court administrative office. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 6h to ch. V.

**HB 4360** (LaFave) Traffic control; driver license; reference to surrendering license as condition of Pretrial release; remove to reflect changes in code of criminal procedure. Amends sec. 311a of 1949 PA 300 (MCL 257.311a).

This legislation was tabled.

**HB 5026** (Yancey) Courts; juries; jury pool selection process; revise. Amends secs. 1304, 1312 & 1321 of 1961 PA 236 (MCL 600.1304 et seq.) & adds secs. 1301c, 1310a & 1310b.

**HB 5027** (LaGrand) Courts; juries; jury selection for circuit court; modify. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 1321a.

A motion was offered and supported that the legislation in Keller permissible. The motion was approved.

A motion was offered and supported to take no position on these bills, but to support the goal of the legislation. The motion was approved.

Mr. Buchanan stated that the committee suggested that we sit down with the sponsors of the bills to craft legislation to achieve the goal of more diverse jury pools.

**HB 5106** (Schroeder) Criminal procedure; evidence; use of expert testimony for domestic violence in criminal cases; allow. Amends 1927 PA 175 (MCL 760.1 - 760.69) by adding sec. 27d to ch. VIII.

A motion was offered and supported that the legislation is Keller permissible. The motion was approved.

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

Mr. Buchanan stated that Kim Warren Eddie, Valerie R. Newman, and Judge Cynthia D. Stephens will conduct a conference call in the next week to discuss what might be appropriate position language.

**HB 5169** (Hernandez) Torts; nonmedical malpractice; affidavit of merit; require for malpractice action against architect or professional engineer. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 2912i.

A motion was offered and supported that the legislation is Keller permissible.

**Roll Call Vote**

Yes: Danielle M. Anderson, David Anderson, Butler, Canady, Christenson, Dunnings, Hamameh, Heath, Howlett, Kuchon, Larsen, Low, McCarthy, Ohanesian, Orvis, Perkins, Powers, Sinas, Ulrich, Warnez, Washington, and Zemke.

No: Barnes, Baumann, McGill

The motion was approved.

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

Abstentions: David Anderson, Baughman, and McGill

**SB 0420** (Lucido) Civil procedure; execution; service of execution; modify procedures. Amends secs. 2559, 6002 & 6012 of 1961 PA 236 (MCL 600.2559 et seq.).

The committee determined this legislation was not Keller permissible.

**HB 4329** (Vaupel) Civil procedure; costs and fees; transcript fee; increase. Amends sec. 2543 of 1961 PA 236 (MCL 600.2543).

A motion was offered and supported that the legislation is Keller permissible. The motion was approved.

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

**Roll Call Vote**

Yes: Danielle M. Anderson, Baumann, Buchanan. Butler. Christenson. Dunnings. Hamameh, Heath, Larsen, Low, McCarthy, Ohanesian, Orvis, Perkins, Powers, Sinas, Ulrich, Warnez, Washington, and Zemke

No: Barnes, David Anderson, Canady, Howlett, Kuchon, and McGill

Needing a two thirds majority on legislation for a motion to be approved, no position will be taken on this legislation.

**OTHER REPORTS**

**American Bar Association (ABA) Report**

There was not a report.

**Comments or questions from Commissioners**

There were none.

**Comments or questions from the Public**

There were none.

A motion was offered and seconded for the Board to go into a closed session to discuss litigation. The motion was approved. The Board went into a closed session at 11:42 a.m. and returned to open session at 12:30 p.m.

The meeting was adjourned at 12:35 p.m.