

President Rombach called the meeting to order at 9:15 a.m. on Friday, June 12, 2015 in the Grand Pavilion room at the Grand Hotel on Mackinac Island.

Commissioners present:

Dennis M. Barnes
Danielle M. Brown
Robert J. Buchanan
Lori A. Buiteweg, President-Elect
Shauna L. Dunnings
Robert C. Gardella
Stephen J. Gobbo
Jennifer M. Grieco, Treasurer
Edward L. Haroutunian
James W. Heath
Fred K. Herrmann
Andrea Irons
Mark W. Jane
C. Thomas Ludden

Thomas E. McCarthy Jr.
Hon. Maureen M. McGinnis
Lawrence P. Nolan, Vice President
Colleen A. Pero
Daniel D. Quick
Victoria A. Radke
Hon. Michael J. Riordan
Donald G. Rockwell, Secretary
Thomas C. Rombach, President
Hope V. Shovein
Richard J. Siriani
Gregory L. Ulrich
Vanessa Peterson Williams

Commissioners absent and excused: Commissioners Danielle Mason Anderson, Timothy J. Burns E. Christopher Johnson Jr., and Jules B. Olsman were absent and excused.

State Bar Staff present:

Janet Welch, Executive Director
Marge Bossenbery, Executive Coordinator
Candace Crowley, Director, External Development
Peter Cunningham, Director, Governmental Relations
Cliff Flood, General Counsel
Danon Goodrum-Garland, Director, Professional Services Division
James Horsch, Director, Finance and Administration Division
Robert Mathis, Pro Bono Attorney
Anne Vrooman, Director, Research and Development

Guests

David Carl Anderson, President, Oakland County Bar Association
Bruce Courtade, past President of State Bar of Michigan
Anne Flood
Terri Ticknor Gilbert, Executive Director, Oakland County Bar Association
Chris Ianuzzi, Governmental Consulting Services, Inc.
Lalla Shishkevish, Associate Director, Institute of Continuing Legal Education
Victoria A. Valentine, Vice President, Oakland County Bar Association

Consent Agenda

Mr. Rombach 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 April 24, 2015 Board of Commissioners meeting.
The Board received the minutes from the April 7 and May 5, 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 FY 2015 Financial Reports through April 2015.
The Board received the Client Protection Fund and the Unauthorized Practice of Law Claims.
A motion was offered and supported to approve the consent agenda. The motion was approved.

Local Bar Association and Section Presentations

The Board received a report from the Oakland County Bar Association by its President, David Carl Anderson, Vice President, Victoria A. Valentine, and Executive Director, Terri Ticknor Gilbert.

COMMISSIONER COMMITTEES

Finance, Jennifer M. Grieco, Chairperson

Ms. Grieco provided the Board with a FY 2015 Financial and Investment report.
Ms. Grieco presented the Board a revised SBM Investment Policy recommended by the Finance Committee. A motion was offered and seconded to adopt the revised investment policy. The motion was approved.

Audit, Jennifer M. Grieco, Chairperson

Ms. Grieco reported that the finance staff is meeting with the auditors on July 22, 2015 to begin planning for the FY 2015 audit.

Professional Standards, Donald G. Rockwell, Chairperson

No report.

Programs and Services, Lawrence P. Nolan, Chairperson

No report.

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

The Board members received a written Justice Initiatives Report.

Legislative Update

Mr. Cunningham provided the Board with an update on two pieces of legislation that the SBM had previously taken positions. He reported that HB 4038, which the SBM voted to oppose in April 2015 and that allowed for email notification in landlord tenant eviction proceedings, was signed by the Governor. He also reported that HB 4476, which the SBM voted to oppose in November 2014 and that prohibited judges from ordering mediation in domestic relations disputes if there was any indication of domestic violence, has been amended. The SBM worked with the sponsor on these changes and the bill now includes language that the SBM supports.

Mr. Cunningham provided the Board with an update on Legal Services Corporation funding as budget discussions begin in Congress.

Mr. Cunningham introduced Mr. Christopher Ianuzzi from Governmental Consulting Services Inc. (GCSI) and informed the Board that the SBM would continue its relationship with GCSI working with Ms. Marcia Hune and Mr. Ianuzzi due to Ms. Kuhnmuensch's retirement from the firm.

Court Rules

ADM File No. 2013-38 – Proposed Amendment of Rule 1.5 of the Michigan Rules of Professional Conduct

In *In Re Fryhoff*, 495 Mich 890 (2013), the Michigan Supreme Court invited the Attorney Grievance Commission, the State Bar of Michigan Family Law Section and the State Bar of Michigan Standing Committee on Professional Ethics to submit proposed language that would clarify the Michigan Rules of Professional Conduct with regard to whether it should be permissible for an attorney to charge a "results obtained" or "value added" fee in addition to the customary hourly or other fee a client pays for services. The AGC and the SBM's Committee on Professional Ethics submitted similar language that would prohibit the charging of such a fee. The SBM's Family Law Section submitted a proposal that would explicitly allow such a fee to be charged, with the understanding that the fee must still meet the "reasonable" standard for all fees described in MRPC 1.5(a) and with the agreement of the client. The committee recommended that no action be taken on this item.

ADM File No. 2014-11 – Proposed Amendment of Rule 3.613 of the Michigan Court Rules

The proposed amendments of MCR 3.613 would provide clarification that the signature of a minor is required on the consent document (not the petition) for the minor's change of name and that the minor must sign the document in the presence of the judge.

A motion was offered and seconded to oppose this amendment. The motion passed.

ADM File No. 2014-49 – Amendments of Rules 3.903, 3.920, 3.961, and 3.965 of the Michigan Court Rules

The amendments of MCR 3.203, 3.920, 3.961, and 3.965 were prompted by the Michigan Supreme Court's decision in *In re Sanders*, 495 Mich 394 (2014), to provide clarification and procedural provisions consistent with the Court's holding in that case.

A motion was offered and seconded to support these amendments. The motion passed.

Legislation

SJR J (Bieda) Courts; judges; election of or appointment to a judicial office of person who has reached 70 years of age; remove prohibition. Amends sec. 19, art. VI of the state constitution.

The Committee recommends that no action be taken so that the Representative Assembly can review at its October 2015 meeting.

SB 0149 (Brandenburg) Torts; nonmedical malpractice; affidavit of merit; require for malpractice action against architect or professional engineer. Amends 1961 PA 236 (MCL 600.1 - 600.9947) by adding sec. 2912i.

A motion was offered and seconded that taking action on this legislation is Keller permissible because it would affect the functioning of the courts and potentially restrict access to the courts. The motion was approved. Mr. Haroutunian voted no.

A motion was offered and seconded to oppose this legislation. The motion passed. Ms. Radke abstained.

Model Jury Instructions

Model Criminal Jury Instructions, 20.39, 20.39a, 20.39b, 20.39c, 20.39d, 20.39e, 20.39f, 20.39g, 20.39h, 20.39i, 20.39j, 20.39k

The Committee proposes the following instructions for use where a violation of the Sex Offenders Registration Act has been charged under MCL 28.721, et seq. There are thirteen different instructions. They include registration, notification and verification offenses, as well as school safety zone and registering agent offenses, and a special venue instruction in compliance with the Act. They are all new and, consequently, they are underlined throughout.

A motion was offered and seconded to support these new instructions. The motion passed.

Model Criminal Jury Instructions 25.6

The Committee proposes an instruction for use where the defendant has been charged with occupying a dwelling without consent (squatting) in violation of MCL 750.553. This instruction is entirely new.

A motion was offered and seconded to support this new instruction. The motion passed.

Model Criminal Jury Instructions 11.37, 11.37a, b, and c

The Committee proposes amending one instruction and adding three new instructions to accommodate statutory amendments to the discharging of firearms from vehicles, or at or in occupied buildings: MCL 750.234a and 750.234b.

A motion was offered and seconded to support these amendments and new instructions, as shown in Attachment A. The motion passed.

President's Report, Thomas C. Rombach, President

Mr. Rombach introduced Lalla Shishkevish, Associate Director of the Institute of Continuing Legal Education, and Anne Flood.

6th Circuit Judicial Conference

Mr. Rombach informed the Board that he had attended the 6th Circuit Federal conference hosted in Detroit.

21st Century Practice Task Force Update

Mr. Rombach provided the Board with an update on the 21st Century Practice Task Force. He reported that the Task Force met for the first time on Monday, April 27, 2015, will next meet on November 12, 2015, and that committee groups are have also begun to meet.

Board Officer Election

Mr. Rombach informed the Board that three Commissioners have submitted their names for consideration for the position of Treasurer of the SBM Board in the 2015 – 16 board year. Those Commissioners are Mr. Barnes, Mr. Buchanan and Mr. Ulrich. Mr. Rombach indicated that the election will take place at the July 24, 2015 meeting.

Strategic Planning Work Group

Mr. Rombach indicated that the strategic planning work group continues to meet and will provide report back to the Board at a future meeting.

Executive Director's Report, Janet K. Welch, Executive Director
FY 2016 Preliminary Budget - Key Budget Assumptions

Ms. Welch discussed the process in developing the preliminary budget and asked Mr. Horsch to introduce the Key Budget Assumptions. Mr. Horsch reviewed the FY 2016 Preliminary Budget - Key Budget Assumptions along with and a FY 2016 preliminary budget projection of \$10,389,366 in operating expenses, using \$775,366 from our reserve fund to achieve a balanced budget.

Discussion regarding Retiree's Health Care and Pension funding options

Mr. Horsch told the Board that staff is in the preliminary stages of exploring the feasibility and benefits of paying off the remaining retiree health care and pension obligation to the State of Michigan. This initiative is in the early stages of consideration and we are waiting for information from the State of Michigan. Additional information will be provided to the Finance Committee and Board as it becomes available.

2015 SBM Awards Committee Recommendations

A motion was offered and seconded to award the Roberts P. Hudson Award to Edward H. Pappas. The motion was approved.

A motion was offered and seconded to award the Frank J. Kelley Distinguished Public Service Award to Timothy Baughman, Adam A. Shakoor, and posthumously to James L. Shonkwiler. The motion was approved.

A motion was offered and seconded to award the Champion of Justice Awards to David W. Christensen, Stephanie Dawkins Davis, Nora M. Hudson, and Alicia J. Skillman. The motion was approved.

A motion was offered and seconded to award the Kimberly M. Cahill Bar Leadership Award to the St. Clair County Bar Association Mock Trial Program. The motion was approved.

A motion was offered and seconded to award the John W. Reed Lawyer Legacy Award to Professor Joseph Kimble. The motion was approved.

A motion was offered and seconded to award the Liberty Bell Award to Matthew R. Branding. The motion was approved.

2015 John W. Cummiskey Award Nominee

A motion was offered and seconded to award the 2015 John W. Cummiskey Award to Paul Scheidermantel. The motion was approved.

2015 State Bar Election Update

Ms. Welch reported that the deadline for members to vote in the 2015 SBM elections is midnight on June 15 and that voter participation has been consistent with past years.

Litigation Status Report

No report.

Representative Assembly (RA) Report, Vanessa Peterson Williams,

Ms. Williams reported that at its April 25 meeting the RA voted to make three changes to its permanent Rules of Procedure. They are: 1) to allow the use of electronic voting using electronic tabulation devices(used at the April meeting), and allow the potential for an electronic tally outside of a meeting; 2) allow for minority reporting so that if a vote passes by less than 75% there could be a minority report offered by a member of the RA as long as the report is requested at the time of the meeting and submitted to the clerk for review to make sure that it is consistent with the transcript reflecting the minority points that were made on the record; and 3) adopt a Keller voting procedure and its similar to the Board's procedure in terms of requiring a two thirds vote of the body that an item is Keller permissible before a vote on the merits..

Ms. Williams reported that the RA did not take any action on ADM File No. 2013-38, Proposed Amendment of Rule 1.5 of the Michigan Rules of Professional Conduct, but plans to include the item on the agenda for the October 2015 RA meeting.

Ms. Williams informed the Board that the Michael Franck Award is being awarded posthumously to Vernon K. Kortering and the Unsung Hero award to is being awarded to the Hon. Allie Greenleaf Maldonado.

American Bar Association (ABA) Report

No report.

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

Ms. Irons reported that the YLS Annual Summit was well attended, that the YLS took 2nd place in the ABA Next Step Diversity Challenge, and that the leadership of the Executive Council submitted an application to host the ABA Young Lawyers Division Fall Conference and was successful in lining up the conference, which is taking place in Detroit in October 2016. Ms. Irons also mentioned that the YLS Executive Council defeated the Board of Commissioners in the laser tag event in April.

Comments from Commissioners

Ms. Buiteweg reminded Board members of their responsibility to attend the BLF events and to interact with the leaders of the local affinity bars and sections of the State Bar.

Ms. Radke stated that the UMLI begins promptly at 12:30 p.m. and commented on the lack of geographic diversity of the candidates for the SBM awards. Ms. Pero and other Commissioners concurred.

Adjournment

The meeting was adjourned at 12:05 p.m.