

STATE BAR OF MICHIGAN
BOARD OF COMMISSIONERS MEETING MINUTES

President Heath called the meeting to order at 9:05 a.m. on Friday, June 9, 2023, in the Grand Pavilion Room of the Grand Hotel, Mackinac Island.

Commissioners present:

David C. Anderson	James W. Low
Yolanda M. Bennett	Gerard V. Mantese
Kristina A. Bilowus	Gerrow D. "Gerry" Mason
Erika L. Bryant, Treasurer	Joseph P. McGill, Vice President
Aaron V. Burrell	Thomas P. Murray Jr.
Hon. B. Chris Christenson	Valerie R. Newman
Thomas P. Clement	Nicholas M. Ohanesian
Tanya N. Cripps-Serra	Hon. David A. Perkins
Sherrie L. Detzler	Daniel D. Quick, President-Elect
Robert A. Easterly	Colemon L. Potts
Hon. Kameshia D. Gant	Delphia T. Simpson
Lisa J. Hamameh, Secretary	John W. Reiser III
James W. Heath, President	Hon. Kristen D. Simmons
Thomas H. Howlett	Danielle Walton
Suzanne C. Larsen	Hon. Erane C. Washington

Commissioners absent:

Takura N. Nyamfukudza	Mark A. Wisniewski
Matthew B. Van Dyk	

Guests

Rep. Andrew Fink

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
Molly Ranns, Director, Lawyers & Judges Assistance Program
Marjory Raymer, Director of Communications
Kari Thrush, Program Director, Lawyer Services
Nathan Triplett, Director, Governmental Relations

Consent Agenda

The Board received the minutes from the April 28, 2023, Board of Commissioners meeting.
The Board received the minutes from the February 9, 2023, Executive Committee meeting.
The Board received the recent activities of the president.
The Board received the recent activities of the executive director.
The Board received the FY 2023 financial reports through April 2023.
The Board received Unauthorized Practice of Law Claims.
The Board received Model Criminal Jury Instructions.
The Board received the Liberty Bell Award nomination.

Mr. Heath asked if any items needed to be removed from the consent agenda. There was none. A motion was offered to approve the consent agenda. The motion was seconded and approved.

LEADERSHIP REPORTS

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

Mr. Heath recognized Representative Andrew Fink, who attended as a guest and is also a past member of the Board.

Mr. Heath indicated that he has attended many meetings since the April meeting, but one that stands out was the Diversity Pipeline event. Many commissioners shared their experiences about the meeting, and all indicated that it was a success.

Justice For All (JFA) Commission

Mr. Quick summarized the most recent work of the JFA Regulatory and Practice Reform Committee.

Commission on Diversity Equity and Inclusion (DEI)

Ms. Bryant summarized the most recent work of the DEI Commission.

Officer Election Update

Mr. Heath informed the board that four commissioners submitted materials for the position of Treasurer for the 2023-2024 bar year. He stated that Commissioners Anderson, Howlett, Low, and Mantese will run for election for Treasurer which will occur at the July board meeting.

2023 State Bar Election Update

Ms. Bossenbery provided the board with an update on the elections for the Judicial Tenure Commission, and Board of Commissioners in District H and I. She stated that with a week to go the number of voters is almost equal to the total of voters in 2022 and encouraged commissioners to vote if they had not already and for them to contact their colleagues to do the same.

Rule 21 Update

Mr. Cunningham informed the Board that the portal for SBR 21, which requires mandatory succession planning for all private practice attorneys, is live. Attorneys can login to their SBM profile to identify an interim administrator or choose to have the SBM IAP program name one for them.

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

Mr. Mason indicated that a "call-to-action" survey was sent to RA members, and they are still working on getting responses. He is working on having Coach Harbaugh, head football coach at the University of Michigan, cohost an event to raise money and awareness for the Access to Justice Fund. Additionally, he is working with Judge Melissa Pope to hold an SBM meeting at a tribal court location. Finally, the RA "Reform Committee" led by Mr. Ohanesian, is meeting on June 12 to finalize proposals to bring to the full RA at the September meeting.

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

Mr. Potts provided the Board with an update on the activities of the YLS, including a pre-YLS Summit reception on June 23 in the Tigers Den at Comerica Park before the Tigers game and the YLS Summit taking place on June 24 at Little Caesars Arena. Mr. Potts stated that the two YLS awards, the Regeana Myrick Outstanding Young Lawyer Award and the Mentorship Award, will be awarded at the reception following the Summit.

Strategic Planning Committee: Thomas H. Howlett, Chairperson

2023-2024 Committee Resolution

Mr. Howlett reported there were minor changes to five committee jurisdictions in the 2023-2024 committee resolution that are described in the memo in the board materials.

A motion was offered to adopt the proposed changes and to approve the 2023-2024 committee resolution. The motion was supported and approved.

COMMISSIONER COMMITTEES

Public Policy: Dan D. Quick, Chairperson

Mr. Quick provided the report for the Public Policy committee.

Court Rules

ADM File No. 2019-33: Proposed Rescission of Administrative Order No. 2021-7 and Proposed Adoption of the Michigan Continuing Judicial Education Rules

Pursuant to Administrative Order No. 2021-7, the Mandatory Continuing Judicial Education (MCJE) Board proposed a set of rules that would govern the MCJE program, and the Court has published them for comment. Many of the rules directly correlate with a provision in AO 2021-7, though there are some additions and differences between the AO and the proposed rules. The MCJE program is set to take effect on January 1, 2024.

A motion was offered and supported to take no position and authorize the Judicial Ethics Committee to submit its position.

ADM File No. 2020-31: Proposed Amendment of MRPC 1.8

The proposed amendment of MRPC 1.8 would allow attorneys to provide certain assistance to indigent clients they are serving on a pro bono basis.

A motion was offered and supported to support ADM File No. 2020-31 in concept, but not as currently drafted. SBM supports its humanitarian exception proposal as submitted to the Court previously. The motion was approved.

ADM File No. 2021-10: Proposed Amendment of the Michigan Rules of Evidence

The proposed amendments of the Michigan Rules of Evidence (MRE) reflect the work of the Michigan Rules of Evidence Committee established by Administrative Order No. 2021-8. The Committee was tasked with restyling the MREs in an effort to remain as consistent as possible with the 2011 restyling of the Federal Rules of Evidence. Major reorganization of the rules appears in MRE 803 and MRE 804 where the residual exceptions found in both rules are moved into a new MRE 807, and in MRE 804 where the exception regarding deposition testimony is moved up from subrule (b)(5) to proposed subrule (b)(2).

A motion was offered and supported to support the amendments of the Michigan Rules of Evidence with a recommendation that the Court add language stating explicitly that the amendments are stylistic, not substantive, changes; and further recommend that the Court reestablish a Standing Committee on Rules of Evidence. The motion was approved.

ADM File No. 2023-06: Amendments of MCR 6.001 and 8.119 and Addition of MCR 6.451 with concurrent comment period

The amendment of MCR 8.119 requires courts to restrict access to case records involving set aside convictions similar to how MCL 780.623 restricts access to records maintained by the Michigan State Police. The amendment further requires the court to redact information regarding any conviction that has been set aside before that record is made available. The addition of MCR 6.451 requires the court to provide notice and an opportunity to be heard before reinstating a conviction for failure to make a good faith effort to pay restitution under MCL 780.621h(3) and to order the reinstatement on an SCAO-approved form. The amendment of MCR 6.001 clarifies that MCR 6.451 applies to cases cognizable in the district courts.

A motion was offered and supported to support ADM File No. 2023-06. The motion was approved.

ADM File No. 2023-06: Proposed Amendments of MCR 6.110 and 8.119

The proposed amendment of MCR 8.119 would require all case records maintained by the district court to become nonpublic immediately after bindover to the circuit court. This proposal would also amend MCR 6.110(G) to expand the types of documents that must be transmitted to the circuit court to ensure appropriate public access to the circuit court. The proposal would consolidate public access in the circuit court case file and would also uniformly ensure that information regarding set aside criminal offenses in the circuit court cannot be separately accessed in the district court case file.

A motion was offered and supported to support the proposed amendments to Rule 6.110 and oppose the proposed amendments to Rule 8.119. The Board further recommends that the amendment to Rule 8.119 should be rewritten more narrowly for the purpose of ensuring that the public cannot access case records held by district courts related to convictions that have been subsequently set aside, and not in a manner that encompasses all district court case records. The motion was approved.

Legislation

HB 4421 (Young) Civil procedure: other; certain public video recordings of court proceedings; allow the victims' faces to be blurred. Amends secs. 8, 38 & 68 of 1985 PA 87 (MCL 780.758 et seq.).

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 HB 4421 with amendments to provide that a victim's image must be blurred, and that blurring does not apply to contemporaneous streaming. The motion passed.

SB 0248 (Lauwers) Courts: other; age requirement for the use of a courtroom support dog; modify. Amends sec. 2163a of 1961 PA 236 (MCL 600.2163a).

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 0248.

Position adopted after non-unanimous vote.

Commissioners voting in support of the position: Anderson, Bennett, Bryant, Burrell, Christenson, Clement, Cripps, Gant, Hamameh, Heath, Howlett, Larsen, Low, Mantese, Mason, Murray, Newman, Quick, Reiser, Simmons, Simpson, Walton, Washington.

Commissioners voting in opposition of the position: Bilowus, Easterly, McGill, Ohanesian, Potts.

SB 0257 (Runestad) Civil procedure: other; video recordings of court proceedings; provide for availability and review. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 1429.

A motion was offered that this is *Keller* permissible. The motion to support was seconded and approved by roll call vote, 24 to 5. The motion passed.

Commissioners voting in support: Anderson, Bennett, Bryant, Burrell, Christenson, Clement, Cripps-Serra, Gant, Hamameh, Heath, Howlett, Larsen, Low, Mantese, Mason, Murray, Newman, Perkins, Quick, Riser, Simmons, Simpson, Walton, Washington.

Commissioners voting in opposition: Potts, McGill, Ohanesian, Bilowus, Easterly.

A motion was offered and supported to support SB 0257 with the following amendments:

1. Some courts have audio recordings but not video. Therefore, to be comprehensive, instead of referring to “video recordings,” the bill should refer to recordings in general throughout.
2. Historically, juvenile court proceedings have not been subject to the common-law or First Amendment right of public access, and there are privacy concerns with allowing recordings of juvenile court proceedings to be public even if the courtroom happened to be open for the proceeding itself. Under MCL 712a.28, juvenile case records are not open to the general public. To align this restriction with SB 257, subsection (1) of SB 257 should be amended as follows: “If a court makes a video recording of a public court proceeding in a case in which records are open to the general public, the court shall make the recording available for public access as required by this section.”
3. In subsection (3), the 60-day limit should be eliminated. As long as the video remains in the court’s custody and control, it should be presumptively available to the public. There are many situations in which the public’s interest in a recording would not surface within 60 days of the proceeding.
4. In subsection (4), the form of public access should not deny the ability of the public to obtain an actual copy of the recording. If they are allowed to view it but not actually have a copy that they can show others, that restriction would violate the First Amendment. See *Soderberg v Carrion*, 999 F3d 962, 964 (CA 4, 2021).
5. The bill should permit the blurring of both crime victims’ and children's faces in a videorecording.

The motion failed by roll call vote, 16 to 14, with 3 commissioners not voting.

Commissioners voting in opposition: Bryant, Clement, Hamameh, Gant, Howlett, Low, Mantese, McGill, Murray, Perkins, Potts, Riser, Simmons, Simpson, Walton, Washington.

Commissioners voting in support: Anderson, Bennett, Bilowus, Burrell, Christenson, Cripps, Detzler, Easterly, Heath, Larsen, Mason, Newman, Ohanesian, Quick.

A motion was offered and supported to oppose SB 257. The Board strongly supports courtroom transparency but believes that this issue is properly addressed by the Court, not the Legislature. SBM stands ready to partner with the Court to develop an appropriate, uniform rule governing access to court recordings.

Resentencing Upon Petition

SB 0321 (Chang) Criminal procedure: sentencing; resentencing upon petition of certain prisoners; provide process for. Amends secs. 12 & 25, ch. IX of 1927 PA 175 (MCL 769.12 & 769.25) & adds secs. 27a, 27b, 27c, 27d, 27e, 27f, 27g & 27h to ch. IX.

HB 4556 (Hope) Criminal procedure: sentencing; resentencing upon petition of certain prisoners; provide process for. Amends secs. 12 & 25, ch. IX of 1927 PA 175 (MCL 769.12 & 769.25) & adds secs. 27a, 27b, 27c, 27d, 27e, 27f, 27g & 27h to ch. IX.

SB 0322 (Wojno) Corrections: prisoners; corrections code of 1953; amend to reflect requirement for department of corrections to provide certain notification to prisoners. Amends secs. 33e & 34 of 1953 PA 232 (MCL 791.233e & 791.234) & adds sec. 34e.

HB 4557 (Neeley) Corrections: prisoners; corrections code of 1953; amend to reflect requirement for department of corrections to provide certain notification to prisoners. Amends secs. 33e & 34 of 1953 PA 232 (MCL 791.233e & 791.234) & adds sec. 34e.

SB 0323 (Polehanki) Crime victims: notices; crime victim's rights act; amend to reference rights of crime victims in certain prisoner resentencing. Amends secs. 13 & 41 of 1985 PA 87 (MCL 780.763 & 780.791).

HB 4558 (Wilson) Crime victims: notices; crime victim's rights act; amend to reference rights of crime victims in certain prisoner resentencing. Amends secs. 13 & 41 of 1985 PA 87 (MCL 780.763 & 780.791).

SB 0324 (Bayer) Criminal procedure: sentencing; penalties for certain crimes of imprisonment for life without parole eligibility; amend public health code to reflect potential resentencing. Amends sec. 17764 of 1978 PA 368 (MCL 333.17764).

HB 4559 (McKinney) Criminal procedure: sentencing; penalties for certain crimes of imprisonment for life without parole eligibility; amend public health code to reflect potential resentencing. Amends sec. 17764 of 1978 PA 368 (MCL 333.17764).

SB 0325 (Irwin) Crimes: penalties; penalties for certain crimes of imprisonment for life without parole eligibility; amend Michigan penal code to reflect potential resentencing. Amends secs. 16, 18, 200i, 204, 207, 209, 210, 211a, 227b, 316, 436, 520b & 543f of 1931 PA 328 (MCL 750.16 et seq.).

HB 4560 (Aiyash) Crimes: penalties; penalties for certain crimes of imprisonment for life without parole eligibility; amend Michigan penal code to reflect potential resentencing. Amends secs. 16, 18, 200i, 204, 207, 209, 210, 211a, 227b, 316, 436, 520b & 543f of 1931 PA 328 (MCL 750.16 et seq.).

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

No action was taken but it was determined that a work group should be formed to discuss this before the July meeting.

Audit: Erika Bryant, Chairperson

Ms. Bryant indicated that there is no report.

Finance: Erika L. Bryant, Chairperson

Financial Reports

Ms. Bryant provided the Board with the FY 2023 financial reports.

Ms. Bryant reported that the Finance Committee will meet with State Bar staff on June 28 to discuss their individual budgets and the meeting will be held in a hybrid format. Ms. Bryant invited all commissioners to attend the meeting either virtually or in person. She said that a survey from Ms. Goodkin was sent to gauge board attendance.

Budget Assumptions

Ms. Bryant asked Mr. Cunningham to review the FY 2024 preliminary budget assumptions with the Board. Mr. Cunningham reviewed the major budget assumptions affecting the FY 2024 budget and responded to questions.

Professional Standards: Lisa J. Hamameh, Chairperson

Ms. Hamameh stated that there is no report.

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

Liberty Bell Award

Mr. McGill shared that as approved in the consent agenda, this year's Liberty Bell Award will be given to Ms. Amy Iseler.

FOR THE GOOD OF THE PUBLIC AND THE PROFESSION

Comments or questions from Commissioners

Ms. Cripps-Serra stated that the YLS is sponsoring 30 law students at the Summit and asked if any Commissioners knew of a law student who would like to use one sponsorship to let her know.

Ms. Cripps Serra informed the Board that the YLS is looking into studying the bar passage rate but will likely wait until after the July bar exam results are posted before commenting.

Comments or questions from the public

There were none.

Adjournment

The meeting was adjourned at 10:50 a.m.