

President Nolan called the meeting to order at 9:45 a.m. on July 21, 2017 in the Boardroom of the Michael Franck State Bar of Michigan building.

Commissioners present:

Dennis M. Barnes, Secretary
Robert J. Buchanan, Treasurer
Hon. Clinton Canady III
Richard L. Cunningham
Syeda F. Davidson
Shauna L. Dunnings
Robert C. Gardella
Jennifer M. Grieco, Vice President
Edward L. Haroutunian
James W. Heath
Fred K. Herrmann
Michael S. Hohaus

Mark W. Jane
Thomas E. McCarthy Jr.
Joseph P. McGill
Hon. Maureen M. McGinnis
Shenique A. Moss
Lawrence P. Nolan, President
Hon. David A. Perkins
Victoria A. Radke
Donald G. Rockwell, President-Elect
Gregory L. Ulrich
Dana M. Warnez

Commissioners absent and excused:

Danielle Mason Anderson
Andrew F. Fink III
Krista L. Haroutunian
Jules B. Olsman

Colleen A. Pero
Hon. Michael J. Riordan
Brian D. Shekell
Richard J. Siriani
Erane C. Washington

State Bar Staff present:

Janet Welch, Executive Director
Marge Bossenbery, Executive Coordinator
Gregory Conyers, Director, Diversity
Candace Crowley, Assistant Executive Director and Director, External Development
Peter Cunningham, Assistant Executive Director and Director, Governmental Relations
Darin Day, Director, Outreach and Constituent Development
Cliff Flood, General Counsel
Danon Goodrum-Garland, Director, Professional Services Division
Nkrumah Johnson Wynn, Assistant General Counsel
James Horsch, Director, Finance and Administration Division
Robert Mathis, Pro Bono Service Counsel
Samantha Meinke, Communications Manager
Alecia Ruswinckel, Assistant Counsel, CPF/Ethics
Jeanette Socia, Human Resources Manager
Kari Thrush, Assistant Division Director, Communications and Member Services Division
Tish Vincent, Program Administrator, Lawyers and Judges Assistance Program
Anne Vrooman, Director, Research and Development

Guests

Jennifer Bentley, Executive Director, Michigan State Bar Foundation
David Watson, Executive Director, ICLE

Consent Agenda

Mr. Nolan 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 June 9, 2017 Board of Commissioners meeting.

The Board received the minutes from the May 23, 2017 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 FY 2017 Financial Reports through May 2017.

The Board received the Client Protection Fund claims.

The Board received bylaw changes from the Law Practice Management and Legal Administrators section, the Probate and Estate Planning section, and the Public Corporation Law section.

The Board received the Annual reports from SBM committees and sections.

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

The motion was approved.

OFFICER ELECTIONS

Mr. Nolan announced that President-Elect Rockwell succeeds him as president for 2017-2018.

Mr. Nolan announced that Vice President Grieco succeeds Mr. Rockwell as president-elect for 2017-2018.

A motion was offered and supported to elect Mr. Barnes as vice president for 2017-2018. Mr. Nolan asked if there were any nominations from the floor. After hearing none, the nominations were closed.

The motion to elect Mr. Barnes as vice president was approved.

A motion was offered and supported to elect Mr. Buchanan as secretary for 2017-2018. Mr. Nolan asked if there were any nominations from the floor. After hearing none, the nominations were closed.

The motion to elect Mr. Buchanan as secretary was approved.

Mr. Nolan announced that Ms. Warnez submitted a letter of interest and résumé for the position of 2017-2018 Treasurer of the SBM in accordance with board procedure. A motion was offered and supported to elect Ms. Warnez as Treasurer for 2017-2018. Mr. Nolan asked if there were any nominations from the floor. After hearing none, the nominations were closed.

The motion to elect Ms. Warnez as Treasurer was approved.

COMMISSIONER COMMITTEES REPORTS

Finance, Robert J. Buchanan, Chairperson

FY 2017 Financial Update

Mr. Buchanan reviewed the FY 2017 financial reports through May 2017 with the board members. He announced that after meeting with the SBM management team and reviewing the FY 2018 proposed budget, the committee recommends approval of the budget.

Professional Standards, Dennis M. Barnes, Chairperson

Michigan Indian Legal Services Board of Trustees

A motion was offered and supported to re-appoint John Runyon and the Hon. Angela Sherigan to the Michigan Legal Services Board of Trustees.

The motion was approved.

Institute of Continuing Legal Education Executive Committee

A motion was offered and supported to appoint Hon. Michael J. Riordan to the Institute of Continuing Education Executive Committee.

The motion was approved.

Payee Notification Program Update

Mr. Barnes provided the Board with an update on possible legislation to enact a Payee Notification program. He mentioned that the Board will take action at its September meeting to allow time for sections to provide comments.

Communications and Member Services, Jennifer M. Grieco, Chairperson

Standing and Special Committee 2017 – 2018 Resolution and Matrix

Ms. Grieco reviewed the process that was used to prepare for and develop the standing and special committee resolution and matrix for 2017-2018. She described the changes to the committee structure, which will better advance the goals of the strategic plan and include more of the SBM membership in doing so. Ms. Grieco offered a motion to approve the SBM Standing and Special Committee 2017 – 2018 Resolution and Matrix.

The motion was supported and approved.

Event Summary

The Board received summaries from the BLF and UMLI events.

Public Policy, Donald G. Rockwell, Chairperson

The Board members received a written public policy report and a Justice Initiatives report.

Court Rules

ADM File No. 2016-12 – Proposed Amendment of Rule 3.206 of the Michigan Court Rules

The proposed amendment to MCR 3.206 provides a way to protect personal information from being accessible from court records. The information is otherwise required to be included in the nonpublic verified statement.

A motion was offered and supported to take no position on this proposed court rule amendment, but authorize SBM committees and sections to advocate their positions.

The motion was approved.

ADM File No. 2015-15 – Proposed Amendment of Rule 6.425 of the Michigan Court Rules

The proposed amendments of MCR 6.425 would expressly provide for a procedure under which appointed counsel may withdraw in light of a frivolous appeal in a way that protects a plea-convicted criminal defendant's right to due process. This amendment would ensure that a plea-convicted defendant could obtain the type of protections expressed in *Anders v California*, 386 US 738 (1967), even if the defendant's appeal proceeds by application and not by right. In such a case, a motion to withdraw may be filed in the trial court, which does not currently have a rule establishing the procedure like that in the Court of Appeals at MCR 7.211(C)(5). The timing of the procedure is intended to ensure that if

an attorney's motion to withdraw is granted, the defendant would have sufficient time to file an application for leave to appeal under MCR 7.205(G).

A motion was offered and supported to support the position advocated by the MAACS and to support moving the proposed change to MCR 7.211(C) (5) as presented in their letter to the Court dated May 17, 2017.

The motion was approved.

ADM File No. 2017-06 – Proposed Amendment of Rule 7.300 et seq. of the Michigan Court Rules

The proposed amendment of MCR 7.300 *et seq.* would clarify certain practices and procedures in the Supreme Court, especially as they pertain to electronic filing by parties and electronic notification of the Court's opinions and orders, as well as require only the signed originals of documents to be filed in hard copy.

A motion was offered and supported to offer the following comments to the Court: The Bar is fully supportive of the Court's modification to reflect the electronic pleadings process. However, we are concerned that the rule as presently drafted includes several issues. The vexatious litigator provision in MCR 7.316 C (3) creates a new term on administrative dismissal, and specifically mentioned media formats could create future issues in an ever changing-technological world. Therefore, we would urge that a workgroup be formed to work on these issues, and the Bar would offer support in whatever fashion the court deems appropriate.

The motion was approved.

ADM File No. 2016-41 – Proposed Amendment of Rules 1.0, 1.2, 4.2, and 4.3 of the Michigan Rules of Professional Conduct, and Rules 2.107, 2.117, and 6.001 of the Michigan Court Rules

The proposed amendments of Rules 1.0, 1.2, 4.2, and 4.3 of the Michigan Rules of Professional Conduct and Rules 2.107, 2.117, and 6.001 of the Michigan Court Rules were submitted to the Court by the State Bar of Michigan Representative Assembly. The proposed rules are intended to provide guidance for attorneys and clients who would prefer to engage in a limited scope representation. The proposal, which limits these types of "unbundled" arrangements to civil proceedings, describes how such an agreement is made known to the court and other parties, what form of communication should be conducted with clients in a limited scope representation, and how the agreement is terminated. The proposed rules also would explicitly allow attorneys to provide document preparation services for a self-represented litigant without having to file an appearance with the court.

The proposal submitted by the Representative Assembly provides for limited scope representation where the "client gives informed consent, preferably confirmed in writing," at MRPC 1.2(b). The Court included this language in the order publishing the proposal for comment, but also provided an alternative formulation for this particular provision that would require such an arrangement to be confirmed in writing, unless the relationship falls within several typical scenarios in which a writing would be unnecessary or impracticable.

A motion was offered and supported to support the proposed rule changes and support Alternative A in MPRC 1.2(B) and to reject the proposal from the Family Law Section and not grant the section permission to advocate its position.

The motion was approved.

ADM File No. 2015-11 – Proposed Amendment of Rule 404(b) of the Michigan Rules of Evidence

The proposed amendment would require the prosecution to provide reasonable notice of other acts evidence in writing at least 14 days before trial or orally in open court on the record.

A motion was offered and supported to support the proposed amendment to MRE 404(b) but authorize the Criminal Jurisprudence & Practice Committee and the Criminal Law Section to advocate their positions.

The motion was approved.

Proposed Amendments of Local Rule 4.1 of the United States District Court for the Eastern District of Michigan

A motion was offered and supported to support the proposed amendments with a friendly amendment to change the title to “Local Rule 4.” to make it consistent with the federal rule.

The motion was approved.

Legislation

HB 4012 (Lucido) Criminal procedure; evidence; evidence obtained in violation of reasonable or probable cause requirements for issuance of a search warrant; allow to be used to revoke parole or probation or impeach a defendant's testimony. Amends sec. 3 of 1966 PA 189 (MCL 780.653).

A motion was offered and supported that this issue is not Keller permissible.

The motion was approved. Mr. Hohausier abstained.

Certification of Specialty Courts

SB 0435 (Schuitmaker) Courts; drug court; certification of drug treatment courts by the state court administrative office; require. Amends secs. 1062 & 1084 of 1961 PA 236 (MCL 600.1062 & 600.1084).

SB 0436 (Schuitmaker) Courts; drug court; certification of DWI/sobriety court by the state court administrative office; amend the vehicle code to reflect. Amends sec. 304 of 1949 PA 300 (MCL 257.304).

SB 0437 (Schuitmaker) Courts; other; certification of mental health courts by the state court administrative office; require. Amends sec. 1091 of 1961 PA 236 (MCL 600.1091).

SB 0438 (Schuitmaker) Courts; other; certification of veterans courts by the state court administrative office; require. Amends sec. 1201 of 1961 PA 236 (MCL 600.1201) & amends heading of ch. 12.

A motion was offered and supported that this legislation is Keller permissible because they go to the improvement of the functioning or operations of the court.

The motion was approved.

A motion was offered and supported to support this legislation.

The motion was approved.

Model Criminal Jury Instructions

MCJI 10.8, 10.8a-b For violations found in MCL 750.159f, 750.159g, 750.159h, 750.159i and 750.159j, the continuing-criminal-enterprise/racketeering statute, seeking public comment. The instructions are entirely new.

A motion was offered and supported to support the new MCJI as written.

The motion was approved.

MCJI 31.4 – 31.10 for violations of MCL 750.74, et seq. The amendments are intended conform the instructions to the statutes, which include destruction by explosion (in addition to burning), and to provide “plain language” substitutes for the legal terms “curtilage” and “appurtenant” found in the current instructions.

A motion was offered and supported to support the MCJI as written.

The motion was approved.

American Bar Association House of Delegates

ABA House of Delegates Resolution on Veteran Service Discharge Upgrades

This resolution, which will be brought before the ABA House of Delegates at its August meeting, recommends the review and improvement of the processes by which military records are corrected, discharge status petitions are considered, and the character of one’s discharge is reviewed.

A motion was offered and supported that this legislation is Keller permissible, as long as it is viewed as a whole, because it goes to the quality of legal services to veterans.

AYES: Dunning, Heath, Herrmann, Hohaus, McCarthy, McGill, Moss, Perkins, Rockwell, Ulrich, Warnez, and Nolan

NAYS: Barnes, Canady, Cunningham, Davidson, Gardella, Grieco, Haroutunian Ed, Jane, McGinnis, and Radke

ABSTENTIONS: Buchanan

EXCUSED: Anderson, Fink, Haroutunian Krisa, Olsman, Pero, Riordan, Shekell, Siriani, and Washington

As there was not a two thirds majority supporting Keller permissibility, the motion failed.

President’s Report, Lawrence P. Nolan, President

Mr. Nolan reported about his and Mr. Rockwell’s trip to the Upper Peninsula where they attended the Young Lawyers event, met with the Copper County Bar Association, and attended the John Voelker Foundation meeting.

Executive Director’s Report, Janet K. Welch, Executive Director

FY 2018 Proposed Budget

Ms. Welch asked Mr. Horsch to provide an overview of the FY 2018 Proposed Budget. The budget was reviewed by the Finance Committee on June 29 and was approved to move forward for Executive Committee and BOC review. Questions were addressed regarding salary increases, additional staff, and other details.

A motion was offered and supported to adopt the FY 2018 Proposed Budget as presented.

The motion was approved.

Commissioner Committee and Liaison Appointment Process

Ms. Crowley described the commissioner committee and liaison appointment process. Ms. Crowley informed the Board that they would receive an email early next week describing the method they should use to indicate their preferences to serve as a section liaison and on a commissioner committee.

LRS Update

Ms. Welch informed the Board that the Lawyer Referral Services Pilot Project is generating a great deal of data that the LRS work group is going to review at its meeting this afternoon. Ms. Welch invited any commissioner interested in the data to attend the meeting or contact her for a copy of the presentation.

Strategic Planning

The Strategic Plan will be a standing item on her report at each board meeting

Representative Assembly (RA) Report, Fred Herrmann, Chairperson

Mr. Herrmann reported that July 25 is the deadline for submission of nominations for the position of 2017-2018 RA Clerk, and that letters of interest have been received from two people. He stated that August 17 is the deadline for submission of proposals for the September 2017 RA meeting agenda.

American Bar Association (ABA) Report

There was no report.

Young Lawyers Section (YLS) Report, Shenique A. Moss, Chairperson

Ms. Moss provided the Board with an update on the activities of the YLS.

Comments from Commissioners

Mr. Haroutunian inquired about the status of ZeekBeek (CloudLaw) state developments. Ms. Welch reported that the State Bar of Georgia is poised to join the CloudLaw consortium, and that the South Carolina and Virginia Bar Associations, among others, are interested. She said that the Illinois State Bar Association just went live and it has been well received. Mr. Ulrich wanted to know if individuals can use the ZeekBeek logo on their personal webpages and Ms. Brown offered to talk with him about doing that.

Adjournment

The meeting was adjourned at 1:00 p.m.