

The meeting was called to order by President Turner at 9:30 a.m. on Friday, November 22, 2002, at the State Bar of Michigan, Lansing, Michigan. Commissioners present were:

John M. Barr	Daniel M. Levy, Assembly Vice-Chair
Marjory G. Basile	Craig H. Lubben
Scott S. Brinkmeyer, President-Elect	Stephen J. Murphy, III
Kimberly M. Cahill, Treasurer	Hon. William B. Murphy
Kathryn M. Day	Lambro Niforos
Nancy J. Diehl, Vice President	Edward H. Pappas
Kim Warren Eddie	Randolph P. Piper
James N. Erhart	D. Andrew Portinga
Hon. Joseph J. Farah	Thomas C. Rombach, Assembly Chair
Dennis P. Grenkowitz	Kurt E. Schnelz
Michael S. Hohausier	Charles R. Toy
Elizabeth A. Jamieson	Reginald M. Turner, President
W. Anthony Jenkins	Gregory L. Ulrich
Ronald D. Keefe	

Commissioners Thomas W. Cranmer, Evanne L. Dietz, Elias J. Escobedo, Jr., Thomas G. Plunkett and the Hon. Cynthia D. Stephens were absent and excused.

State Bar Staff Present:

John T. Berry – Executive Director  
Lisa Allen-Kost – Director, Programs & Services  
Nancy Brown – Director, Communications  
Thomas K. Byerley – Director, Professional Standards  
Candace A. Crowley – Access to Justice Manager  
Marian S. Frane – Manager of Financial Services  
James C. Horsch – Director, Administration and Finance  
Mary H. Kelly – Meeting Services Coordinator  
William M. Kramer, III – Manager of Information Services & Technology  
Glenna D. Peters – Executive Coordinator  
Janet K. Welch – General Counsel  
Lorraine Weber – Open Justice Consultant  
Jessica Weston – Administrative Assistant  
Karen Williams – Sections Coordinator

Present for such portions of the meeting as pertained to a specific agenda item were Becky Bechler of Public Affairs Associates; Lynn Chard, Executive Director of ICLE; John Dresser, Membership Services Chairperson; and Linda Rexer, Executive Director of the Michigan State Bar Foundation.

Linda Rexer and President Turner spoke on the life work of the late State Bar of Michigan Past President John W. Cummiskey, followed by a moment of silence in his honor.

**Programs and Services** – Nancy J. Diehl, Chairperson

Office Max Proposal – John R. Dresser, Membership Services Chairperson

Mr. Dresser presented a proposed contract with Office Max from the Membership Services Committee. Under the proposal, SBM member will receive a 20 percent discount on copy services with free delivery and a 24-hour turn-around, a 30 to 70 percent discount on office supplies, and a 45 to 50 percent discount on furniture. The SBM will receive a 2 percent management fee on total sales volumes, with no threshold level. The estimated revenue in the first year is \$10,000 to \$30,000. The contract is for one year, and restricts Office Max from offering a similar contract to other legal organizations. The contract does not restrict the SBM from entering into contracts with other office supply companies. Office Max is 100 percent responsible for marketing the program. The SBM will provide marketing assistance through the E-Journal, The Michigan Bar Journal, and a link on the SBM Web site. Upon a motion made and seconded, the Board approved the contract.

**CONSENT AGENDA**

President Turner removed the minutes of the September 27, 2002, Board meeting from the Consent Agenda. Upon a motion made and seconded, the Board approved the minutes with amendments.

President Turner removed the Client Protection Claims payment authorization from the Consent Agenda. Commissioner Kim Warren Eddie expressed concern about Client Protection Fund being depleted. Thomas K. Byerley, SBM Director of Professional Standards, stated that the Professional Standards Committee shares Mr. Eddie's concern, and that a plan for replenishing the fund will be presented at a later Board meeting. Upon a motion made and seconded, the Board approved the following Client Protection Claims:

<u>Claim Number</u>	<u>Amount</u>
CPF 1677	\$ 13,435.44
CPF 1807	\$ 250.00
CPF 1869	\$ 17,258.03
CPF 1882	\$ 5,000.00
CPF 1891	\$ 1,000.00
CPF 1895	\$ 200.00
CPF 1896	\$ 1,100.00
CPF 1907	\$ 2,500.00
CPF 1911	\$ 100.00
CPF 1915	\$ 550.00
CPF 1939	\$ 1,000.00
CPF 1943	\$ 6,160.00
CPF 1962	\$ 100,000.00

President Turner added items from two sections to the Consent Agenda. Upon a motion made and seconded, the Board approved the following items on the Consent Agenda:

**Minutes**

The Board accepted the minutes of the following Executive Committee meetings:

September 16, 2002  
September 27, 2002  
October 14, 2002

October 17, 2002  
October 28, 2002

**Executive Director's Report** – John T. Berry, Executive Director  
The Board received the Executive Director's written report.

**President's Report** – Reginald M. Turner, President  
The Board received the President's written report.

**Professional Standards Committee** – Thomas W. Cranmer, Chairperson  
The Board received the appointments to the Character and Fitness Committee.

**Sections**

The Board approved a dues proposal from the Environmental Law Section, raising voluntary dues from \$20 to \$30, and from the Workers Compensation Law Section, raising voluntary dues from \$25 to \$30.

**LEADERSHIP REPORTS**

**President's Report** – Reginald M. Turner

Mr. Turner reported that he had a productive and enjoyable trip to the Upper Peninsula. He thanked John Berry and Lisa Allen-Kost for accompanying him and for their hard work, Commissioner James N. Erhart for driving on the trip, and Commissioner Ronald D. Keefe for acting as a "local guide."

Mr. Turner reported that Michigan's new Hall of Justice was dedicated on October 8, 2002. The SBM raised almost \$200,000 for the Hall's opening gala to benefit its Learning Center, and Mr. Turner said the Supreme Court Justices are grateful for the SBM's efforts. President-Elect Scott Brinkmeyer, Past President Bruce Neckers and Executive Director John Berry led those fund-raising efforts. Mr. Turner encouraged each member of the Board to give a donation to the Learning Center if they have not, saying he would like to be able to report 100 percent commissioner participation to the Justices.

**Representative Assembly Chairperson's Report** – Thomas C. Rombach

Mr. Rombach reported that he is completing the assignments to Representative Assembly committees. He also is appointing liaisons to the sections and SBM committees. The next Representative Assembly meeting is February 22, 2003, at the East Lansing Marriott. The deadline for submissions for the meeting is January 10, 2002. He anticipates that at the February meeting, Civil Procedures Committee will propose amendments to MCR 2.112, 2.116, 2.118, 2.401, previously submitted to the SBM Public Policy, Image & Identity Committee and referred to the Representative Assembly. There also will be a special report from the Representative Assembly leadership team for consideration.

**Executive Director's Report** – John T. Berry

Kimberly M. Cahill, Co-Chairperson of the Section Summit Advisory Group, provided an update on the group that included recommendations for changes in communication, services and the role of commissioner liaisons. Ms. Cahill stated that each recommendation is designed to improve communication between the committees and sections and the Board. The Group has no recommendation regarding public policy at this time, but a proposal has been sent to the Board's Public Policy, Image and Identity Committee to be reported to the Board at a later date. Ms. Cahill asked that the Group's recommendations be implemented now for the upcoming year and re-evaluated after one year to determine if they have been effective. Ms. Cahill stated that each of the recommendations is revenue-

neutral. Ms. Cahill thanked both Karen Williams and Nancy Brown for their work on the recommendations. Upon a motion made and seconded, the Board adopted the Group's recommendations.

Mr. Berry thanked Mary Kelly for her 29 years of service to the SBM, and her many years of work on the SBM Annual Meeting, often during difficult circumstances. Mr. Turner also thanked Ms. Kelly for her dedication to the SBM.

Mr. Berry presented the recommendations from the Vision Committee for the 2003 Annual Meeting. The recommendations move toward a business concept of a meeting with much less in the way of celebration. There are two proposals, one for a daylong meeting on September 12, 2003, and one for a day-and-a-half-long meeting on September 11 and 12, 2003, with both proposals stating that the meeting would be in Lansing. Mr. Berry said the Executive Committee, the Representative Assembly leadership and he favor the day-and-a-half format. Mr. Turner stated that both of the proposals are fiscally responsible and address the budgetary constraints upon the SBM, and that the structure the Board adopts for the 2003 Annual Meeting will not mean that future annual meetings could not be expanded based on future budgetary conditions.

Mr. Berry stated that along with the changes to the annual meeting, he is recommending a Bar Leadership Forum for June 13 and 14, 2003, for local bar associations, sections and committees, as well as for the Board of Commissioners. Also, SBM staff have proposal a resolution that, should the Board pass it, would allow the sections the option of meeting with the SBM at the annual meeting, or to meet at a separate time and/or place.

Upon a motion moved and seconded, the Board approved the day-and-a-half-long format. Mr. Berry said the staff and the Vision Committee will work to develop the details of the meeting for the Board's consideration.

Upon a motion moved and seconded, the Board approved a resolution allowing sections to chose whether or not they will meet during the SBM annual meeting.

Mr. Berry presented a draft communication plan to the Board regarding a possible revenue proposal. He stated that the plan is for commissioners to review and did not require any immediate action.

Mr. Berry stated that there will be a new member orientation for new commissioners, and that he will be providing further details at a later time.

### **COMMITTEES, COMMISSIONS & TASK FORCES**

#### **Finance and Human Resources** – Kimberly M. Cahill, Chairperson

Ms. Cahill stated that the basic results of the 2001-2002 audit are complete and have been accepted by the Finance and Human Resources Committee. The Committee will meet with the auditors in January to discuss the management letter.

James Horsch made a presentation on the FY 2002 Financial Results. FY 2001 ended with the SBM having \$635,000 in deficit spending. About \$129,000 of that was from operating expenses, about \$200,000 was from investment losses, and the remainder was in increased interest expenses. FY 2002 will end with a \$431,000 surplus, and FY 2003 will have a balanced budget. The FY 2002 operating budget was 4 percent (\$341,000) under budget, primarily due to reductions in labor, but also in large part because the SBM has not yet paid Tier II retirement benefits. The SBM is in negotiations with the State of

Michigan about those payments, which will come due eventually and have a potential liability of \$560,000. Also in FY 2002, \$160,000 was not spent as budgeted on the e-filing program, and there was a tremendous push among the staff to produce the same services at less cost. There was a non-operating income loss of \$321,000 in FY 2002 from investment market value loss, a 2 percent increase in the operating income primarily from normal growth in dues, and a 12 percent reduction in operating expenses primarily due to program cutbacks as determined by the Board. The fund balance now stands at \$4.667 million. The FY 2003 budget has \$7.8 million in expenditures, compared to \$7 million in FY 2002. This includes about \$200,000 for Tier II expenses and a return to normal staffing levels (61.25 positions) once existing vacancies are filled, 4 percent salary raises, and normal inflation. The Client Protection Fund is decreasing and is projected to be at \$500,000 at the end of FY 2002. Revenues for FY 2003 are projected at \$7.8 million to make a balanced budget; of that, 70 percent comes from member dues, 11 percent from services, 9 percent from the Michigan Bar Journal and the E-Journal, and 11 percent from all other programs. Expenditures for FY 2003 are 50 percent salaries and benefits and 50 percent operating expenses.

Mr. Turner spoke about the Tier II retirement issue. A few years ago, the State of Michigan changed the way it funds retirement benefits and created several new options for employees, including Tier II. SBM made contributions for the retirement income component of Tier II, but the state never billed SBM and some other ancillary organizations for the health care component of Tier II. About 18 months ago the state notified SBM that not only did it need to begin making contributions for the health care component of Tier II but that it had retroactive liability for contributions not previously made. The state has been trying to figure out what SBM owes and did not present the SBM with a bill until 30 to 45 days ago. The bill is being examined closely and general counsel is negotiating a solution with the state, and SBM will probably end up making payments over a couple of fiscal years.

Ms. Cahill presented a policy revision proposal for travel reimbursements to Representative Assembly members. Ms. Cahill stated that policy revision cost of \$6,000 will be transferred from another area of the budget. Mr. Turner stated that the policy revision allows for Representative Assembly members who have traveled 150 or more miles, one way, for a Representative Assembly meeting to be reimbursed up to \$300 for travel expenses. Upon a motion made and seconded, the Board approved the policy revision.

**Professional Standards** – Craig H. Lubben, Member

Mr. Lubben presented a proposal that the Board recommend to the Michigan Supreme Court that Subsections 17 and 18 of Section 1 of the SBM Rule 15 be amended as presented. Upon a motion made and supported, the Board approved the recommendation.

**Programs and Services** – Nancy J. Diehl, Chairperson

Candace Crowley gave a report on the Access to Justice Every Member Campaign. The Campaign's objective is to raise at least as much money as FY 2002, \$850,000. Currently, \$315,000 has been raised, compared to \$550,000 same time last year. Ms. Crowley said she anticipates bringing in an additional \$300,00 this year. She said reasons for the decreased contributions include the economy, the 2002 elections, loss of SBM staff and resources, and competition with other fund-raising campaigns. The 2002 Board had 100 percent participation in the campaign, and Ms. Crowley stated that she hopes to have 100 percent participation from the Board for next year as well. Mr. Brinkmeyer commended Ms. Crowley on her efforts. Ms. Diehl also thanked Ms. Crowley for her efforts, and encouraged Board members to return to their offices and create "every office" efforts there to raise money for Access to Justice. Mr. Turner also encouraged each Board member to contribute to the Access to Justice campaign.

**Public Policy, Image and Identity** – Scott S. Brinkmeyer, Chairperson

**Legislation** – Becky Bechler

The legislature has met once since the November elections, and will reconvene on December 2. They have held leadership elections for the 2003 session. The Republicans will control both House and Senate for the 2003 session. It does not appear that it will be a lengthy and aggressive lame-duck session. The biggest issue is the budget, and Ms. Bechler anticipates that Governor Engler will present an Executive Order to cut \$500 million from the budget so he does not leave office with a deficit. Ms. Bechler anticipates that Governor Engler will target revenue-sharing in the order, ask for a 2 percent across-the-board departmental cut, and include some type of cut to higher education ranging from 2 to 4 percent. However, Governor-Elect Granholm still will begin her term in January with a \$1.8 billion deficit. Governor-Elect Granholm has put her transition team in place, and has appointed Rick Wiener her chief of staff and Kelly Keenan her legal adviser, but otherwise has not made any formal appointments. Inaugural activities are planned for January 3, 2003, in Grand Rapids; January 4, 2003, in Detroit; and January 11, 2003, in Marquette. An issue the Legislature is expected to address before the end of the year of interest to the Bar is court reform.

**HB 6078** (Faunce) Criminal Procedure, sentencing. Court Authority to impose costs for prosecution.  
Delete From Further Reports

**HB 6139** (Gosselin) Torts, Civil Procedure; cap on non-economic damages.  
Deferred

**HB 6260** (Howell) Trial Court Jurisdiction; and **SB 1400** (Van Regenmorter) Circuit Court Division.  
Support the proposed legislation in principle, consistent with the position statement of the 21<sup>st</sup> Century Court Committee on concurrent jurisdiction

**Roll Call Vote:**

Voting in Favor

Barr, Basile, Brinkmeyer, Cahill, Day, Diehl, Eddie, Erhart, Judge Farah, Hohausser, Jamieson, Keefe, Levy, Lubben, Murphy, Judge Murphy, Niforos, Pappas, Piper, Portinga, Rombach, Schnelz, Ulrich, Turner.

Voting Against

Grenkowicz.

**Michigan Court Rules**

**MCR 2.102** – Summons, expiration of Summons; dismissal of Action for Failure to Serve.  
Deferred

**MCR 3.206** – Pleading.  
Support

**MCR 7.302 and 7.306** – Application for Leave to Appeal, Briefs in Calendar Cases.  
Support

**MCR 8.116** – Session of Court.

Deferred

**MCR 2.401, 2.410, 2.506 and 7.213** – Pretrial Procedures; Conference; Scheduling Orders. Previously supported. The Alternative Resolution Dispute Section submitted additional comments and asked for reconsideration.

Support provided the provisions concerning “Good Faith” are eliminated

The provisions of MCR 2.401, 2.410, 2.506 and 7.213 concerning good faith should be eliminated for the reasons advanced by the Alternative Dispute Resolution Section.

Mr. Brinkmeyer presented proposed by-law changes for Section Advocacy and a critique and proposals regarding State Bar of Michigan Public Policy. Mr. Brinkmeyer asked that Board members review the materials in preparation for a vote at the January 17, 2003, Board of Commissioners’ meeting.

Mr. Brinkmeyer commended Janet Welch and Susan McMann, legal secretary for the Office of the General Counsel, on their hard work for the Public Policy, Image & Identity Committee.

**Young Lawyers Section** – Kathryn M. Day, Chairperson

Ms. Day reported that since September, the Young Lawyers Section has co-sponsored a Habitat for Humanity home-building in Royal Oak Township and has co-sponsored a tele-seminar on plea agreements. The Center for Civic Education and Law has invited the Young Lawyers Section to present a new program entitled “Youth, Law and Government” and to continue its peer mediation program. The Young Lawyers Section will be sponsoring holiday dinners at homeless shelters in Lansing, Grand Rapids, Pontiac and Highland Park.

### **FOR THE GOOD OF THE PUBLIC AND THE PROFESSION**

#### **Comments or questions from Commissioners**

Mr. Turner asked for comments or questions from the Commissioners, but there were none.

#### **Comments or questions from the public**

Mr. Turner asked for comments or questions from the public, but there were none.

#### **Old Business**

There was none.

#### **New Business**

There was none.

The meeting was adjourned at 12:25 p.m.