

President Rockwell called the meeting to order at 9:45 a.m. on April 20, 2018 in the Boardroom of the Michael Franck building.

Commissioners present:

Danielle Mason Anderson
Dennis M. Barnes, Vice-President
Aaron V. Burrell
Joseph J. Baumann
Robert J. Buchanan, Secretary
Hon. Clinton Canady III
B.D. "Chris" Christenson
Richard L. Cunningham
Syeda F. Davidson
Shauna L. Dunning
Andrew F. Fink III
Robert C. Gardella
Jennifer M. Grieco, President Elect
Edward L. Haroutunian

James W. Heath
Michael S. Hohaus
E. Thomas McCarthy Jr.
Joseph P. McGill
Hon. Maureen M. McGinnis
Shenique A. Moss
Jules B. Olsman
Daniel D. Quick
Victoria A. Radke
Donald G. Rockwell, President
Brian D. Shekell
Gregory L. Ulrich
Dana M. Warnez, Treasurer
Erane C. Washington

Commissioners absent and excused:

David C. Anderson
Krista L. Haroutunian
Kara R. Hart-Negrich

Hon. David A. Perkins
Hon. Michael J. Riordan

State Bar Staff present:

Janet Welch, Executive Director
Marge Bossenbery, Executive Coordinator
Nancy Brown, Director, Member and Communications Services
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
Kathryn Hennessey, Public Policy Counsel
Nkrumah Johnson-Wynn, Assistant General Counsel
James Horsch, Director, Finance and Administration Division
Robert Mathis, Pro Bono Service Counsel
Samantha Meinke, Communications Manager
Jeanette Socia, Human Resources Manager
Kari Thrush, Assistant Division Director, Member Services
Anne Vrooman, Director, Research and Development

Guests

David Watson, Executive Director, Institute for Continuing Legal Education
Chelsea Rebeck, SBM Finance Committee member

Consent Agenda

Mr. Rockwell 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 January 26, 2018 Board of Commissioners meeting.

The Board received the minutes from the January 9, February 13, and March 20, 2018 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 2018 Financial Reports through February 2018.

The Board received the 2017 Report of the SBM Retirement Plans

The Board received Client Protection Fund Claims.

The Board received Unauthorized Practice of Law Claims.

The Board received Model Criminal Jury Instructions

The Board received a Business Law Section Dues Amendment.

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

COMMISSIONER COMMITTEES REPORTS

Audit, Dana M. Warnez, Chairperson

Auditor Selection and Rotation Policy

A motion was offered and supported to adopt a new auditor rotation and selection policy, which requires the SBM to conduct an RFP for audit services every three years, an audit firm rotation at least every 9 years, and an audit partner rotation every 5 years, unless waived by the Board upon recommendation of the audit committee. The motion was approved.

Auditor Recommendation

A motion was offered and supported to contract with the firm of Andrews Hooper Pavlik as the SBM auditor for FY 2018-19 and FY 2019-20 with a partner rotation. The motion was approved.

Finance, Dana M. Warnez, Chairperson

Ms. Warnez provided the Board with the FY 2018 financial report.

SBM Proposed Investment Policy

Ms. Warnez indicated that a recommendation from the work group is included in the board book.

A motion was offered and supported to approve the amendment to the Investment Policy. The motion was approved.

Computer consulting firm K2DNN.net

A motion was offered and supported to ratify the existing contract with K2DNN.net to the extent that it exceeded 100K for the current contract. The motion was approved.

Professional Standards, Robert J. Buchanan, Chairperson

Proposed Formal Ethics Opinion R-25 - For-Profit Online Matching Services

Mr. Buchanan stated that the proposed formal ethics opinion R-25 that addresses for-profit online matching services is included in the Board materials for initial review and discussion. He informed the Board that this item will not be voted on before the June meeting.

House of Delegates Appointments

A motion was offered and supported to re-appoint Mr. James W. Low and Mr. Thomas C. Rombach as SBM delegates to the ABA House of Delegates for two-year terms. The motion was approved.

Communications and Member Services, Dennis M. Barnes, Chairperson

Mr. Barnes reported that the deadline for registration for BLF is Monday, April 23 and that online registration for the 2018 NEXT Conference will begin in May.

Mr. Barnes provided the Board with information regarding the Michigan Center for Civic Education's bid to host the National High School Mock Trial Championship in Kalamazoo, MI in 2021.

50 Year Honoree resolution

A motion was offered and supported to approve the SBM 50-Year Golden Celebration Resolution. The motion was approved.

2018 John W. Cumiskey Award

A motion was offered and supported to award the Access to Justice Initiative John W. Cumiskey Award to Mr. Charles "David" Jones. The motion was approved.

2018 SBM Awards Committee Recommendations

A motion was offered and supported to award the Roberts P. Hudson Award to Bruce A. Courtade and Julie I. Fershtman; the Frank J. Kelley Distinguished Public Service Award to the Hon. Marilyn J. Kelly and Robert P. Young Jr.; the Champion of Justice Award to Miriam J. Aukerman and Robert J. Heimbuch; the Kim Cahill Bar Leadership Award to the Women Lawyers Association of Michigan; and the John W. Reed Michigan Lawyer Legacy Award to Professor Lawrence Dubin. The motion was approved.

Public Policy, Jennifer Grieco, Chairperson

The Board members received a written Public Policy report.

Court Rules

ADM File No. 2017-12: Proposed Addition of Rule 2.228 of the Michigan Court Rules

MCL 600.6404(3) allows defendant to transfer a case to the Court of Claims. This proposed rule would require such a transfer to be made at or before the time the defendant files an answer, which is the same period mandated for change of venue under MCR 2.221. This proposal arose from the Court's consideration of *Baynesan v Wayne State University* (docket 154435), in which defendant waited until just a month before trial before transferring a case he could have transferred nearly a year sooner.

A motion was offered and supported to approve the proposed addition to the rule with the amendments proposed by the Civil Procedure and Courts Committee. The motion was approved.

ADM File No. 2017-10 - Proposed Addition of Rule 6.417 of the Michigan Court Rules

This proposed new rule, based on FR Crim P 26.3, would require a trial court to provide parties an opportunity to comment on a proposed order of mistrial, to state their consent or objection, or suggest alternatives. The proposal was pursued following the Court's consideration of *People v Howard*, docket 153651.

A motion was offered and supported to support the addition of Rule 6.417 with the following amendment: Before ordering a mistrial, the court must give each defendant and the government prosecutor an opportunity to comment on the record regarding the propriety of the order, to state whether that party consents or objects, and to suggest alternatives. The motion was approved.

ADM File No. 2015-04 - Proposed Amendment of Rule 6.429 of the Michigan Court Rules

This proposed amendment is intended to provide trial courts with broader authority to *sua sponte* address erroneous judgments of sentence, following the Court's recent consideration of the issue in *People v Comer*, 500 Mich 278 (2017).

For purposes of publication, the Court included a six-month time period in which such a correction must be made *sua sponte*, and the Court is especially interested in input related to this aspect of the proposed amendments. In balancing the interest in correcting a sentence at any time against the interest in promoting finality and definiteness, adoption of a prescribed time period seems appropriate. Parties have six months to file such a motion under MCR 6.429(B)(3), and a good argument can be made that if the Court adopted a different time period for *sua sponte* corrections, the six-month period for parties would be irrelevant, as a party could simply ask the court to do *sua sponte* what the party could not do by motion. But there may be good reason to adopt a time period longer than that allowed for parties, or to consider a more flexible provision that does not include a specific time period but focuses on application of a standard such as "reasonableness," "good cause," or other language that leaves the determination to the trial court. Therefore, the Court is particularly interested in comments that address this issue.

The Access to Justice Policy Committee recommended supporting the proposal with amendments. The Criminal Jurisprudence & Practice Committee opposed amending Rule 6.429 and support the addition of Rule 6.430.

Rule 6.429 Correction and Appeal of Sentence of an Illegal Sentence

(A) The court may correct an illegal sentence at any time, either on its own motion after a hearing, or on motion filed by either party.

(B) An illegal sentence is one the maximum or minimum of which does not conform to the applicable statutory provision, which omits a term required by law, or which includes a term unauthorized by law. The court may not modify a valid sentence after it has been imposed except as provided by law.

(B) Time For Filing Motion:

(1) A motion to correct an invalid sentence may be filed before the filing of a timely claim of appeal.

(2) If a claim of appeal has been filed, a motion to correct an invalid sentence may only be filed in accordance with the procedure set forth in MCR 7.208(B) or the remand procedure set forth in MCR 7.211(C)(1).

(3) If the defendant may only appeal by leave or fails to file a timely claim of appeal, a motion to correct an invalid sentence may be filed within 6 months of entry of the judgment of conviction and sentence.

(4) If the defendant is no longer entitled to appeal by right or by leave, the defendant may seek relief pursuant to the procedure set forth in subchapter 6.500.

~~(C) Preservation of Issues Concerning Sentencing Guidelines Scoring and Information Considered in Sentencing. A party shall not raise on appeal an issue challenging the scoring of the sentencing guidelines or challenging the accuracy of information relied upon in determining a sentence that is within the appropriate guidelines sentence range unless the party has raised the issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand filed in the court of appeals.~~

A motion was offered and supported to support the proposed amendments recommended by Timothy A. Baughman, and listed above, which differentiates between an invalid and an illegal sentence. The motion was approved

ADM File No. 2017-14 - Proposed Adoption of Administrative Order 2018-XX

This administrative order would direct circuit courts in collaboration with county clerks to establish an agreed upon plan that outlines those duties not codified in statute or court rule that must be performed within the scope of the county clerk's role as clerk of the circuit court. The plan would be required to be approved by the Supreme Court.

A motion was offered and supported to support the concept provided in ADM File No. 2017-14 compelling the administrator and the court to enter into an agreement. However, courts that already have an agreement in place should not be forced to renegotiate that agreement until and unless a dispute arises, and SCAO should also provide a model agreement as an example. The motion was approved.

ADM File No. 2016-49 - Proposed Addition of Rule 1.18 and Proposed Amendment of Rule 7.3 of the Michigan Rules of Professional Conduct

The proposed addition of new rule MRPC 1.18 and amendment of MRPC 7.3 would clarify the ethical duties that lawyers owe to prospective clients and create consistency in the use of the term "prospective client." This proposal was submitted to the Court by the Representative Assembly of the State Bar of Michigan.

This proposal was approved by the Representative Assembly with no changes made in this version published by the Court for comment. No action was taken on this amendment.

ADM File No. 2016-27 - Proposed Alternative Amendments of Rule 7.2 of the Michigan Rules of Professional Conduct

The first proposed amendment of Rule 7.2 of the Michigan Rules of Professional Conduct (Alternative A) would require certain lawyer advertisements to identify the lawyer or law firm providing services. This proposal was submitted by the State Bar of Michigan Representative Assembly. Alternative B is the model rule provision that relates to providing information about the lawyer or law firm responsible for the advertisement's content.

A motion was offered and supported to support Alternative A and to direct the Executive Director to include the essence of the Board discussion on the proposal in the letter to the Court. The motion was approved.

Legislation

HB 5702 (Runestad) Criminal procedure; forfeiture; prosecutorial review of civil asset forfeiture in controlled substances cases; require. Amends sec. 7523 of 1978 PA 368 (MCL 333.7523).

A motion was offered and supported that this legislation is not *Keller*-permissible. The motion was approved.

Wrongful Imprisonment Compensation Legislation

SB 0895 (Bieda) Civil procedure; other; court of claims notification requirements and statute of limitations; exempt claims under the wrongful imprisonment compensation act. Amends secs. 6431 & 6452 of 1961 PA 236 (MCL 600.6431 & 600.6452).

SB 0896 (Jones) Civil procedure; other; wrongful imprisonment compensation act; extend the time for claims by individuals who were released before the effective date of the act. Amends sec. 7 of 2016 PA 343 (MCL 691.1757).

A motion was offered and supported that this legislation is *Keller*-permissible because it impacts the availability of legal services to society. The motion was approved.

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

SBM STRATEGIC PLAN – STEERING COMMITTEES

Communications and Member Services Steering Committee, Dennis M. Barnes, Chairperson
Mr. Barnes reported that the steering committee met three times during the year with the charge to monitor and coordinate the Awards, Michigan Bar Journal, Professional Education and Events, Public Education and Outreach, and Social Media and Website committees, together with all of their affiliated work groups.

Mr. Barnes stated that the work of the committee is to provide important insight about the work of each committee and work group under the committee's jurisdictions, and that sharing that information provided for better bar services and insured that all committees remain focused on the strategic plan and goals of the State Bar.

Mr. Barnes commented that it was the consensus of the committee that its work can be accomplished in one in-person meeting, with further communications by email. If there is an item of particular concern an in-person meeting could be scheduled. Mr. Barnes reported that the annual reporting process worked very effectively and that the new form and format for reporting was very good.

Implementation and Innovation Steering Committee, Dana M. Warnez, Chairperson
Ms. Warnez reported that the I & I committee covers the umbrella of the Delivery of Legal Services for All, Diversity and Inclusion Advisory Standing Committee, Law School Deans Standing Committee, Past President Advisory Standing Committees and within those committees are subcomponents such as Access to Justice, Affordable Legal Services Initiatives, Limited Scope Representation, and Modest Means Program.

Ms. Warnez stated that it was the opinion of the committee that the current structure has too many layers. Although the new structure had proponents, the primary focus of the discussion of the steering committees on concerns and ideas for improvements. That discussion is ongoing, but there is a consensus that the structure and the committee needs to be tweaked to be more effective. There are no concerns about all of the initiatives being on task.

Professional Standards Steering Committee, Robert J. Buchanan, Chairperson

Mr. Buchanan reported that the Professional Standard Steering Committee has met two times to date with another meeting scheduled in May. He stated that the committee deals with the regulatory side of the profession and has responsibility for the Character and Fitness Standing committee, Client Protection Fund Standing committee, Payee Notification workgroup, Judicial Ethics Standing committee, Judicial Qualifications Standing committee, Lawyers and Judges Assistance Standing committee, Professional Ethics Standing committee, Unauthorized Practice of Law and the Regulatory Objectives workgroup.

Mr. Buchanan reported that the committee has had substantial background to review to fully understand how the standing committees and workgroups operate and what they are doing and Steering Committee members are now just getting their hands around it all. The plan is to get any recommendations they may have during the upcoming meeting. He reported that he thinks that the Bar is doing an excellent job of meeting the objectives of the strategic plan.

Public Policy Steering Committee, Jennifer M. Grieco, Chairperson

Ms. Grieco reported that the Public Policy Steering committee has a number of public policy committees underneath it, including Civil Procedure and Courts, Discovery Special committee, U.S. Courts, Criminal Jurisprudence, and American Indian Law Standing committees.

Ms. Grieco stated that Public Policy steering committee functioned almost like a workgroup, looking at proactive issues of timely and responsive public policy positions, proactive public policy work, and communicating public policy issues to members.

The steering committee had three full meeting and a number of subcommittee meetings and will have recommendations for the Board to consider at its June meeting. The proposals include changes to the public policy website and how it reaches our members, and on how the board handles public policy issues in between board meetings. The members of the steering committee want to continue next year as there remain many issues still to address.

Ms. Grieco stated that if any of the Board members would like to serve on a steering committee and get more involved in the process, to let her know because she is making committee appointments soon.

LEADERSHIP REPORTS

President's Report, Donald G. Rockwell, President

Board Officer Election Procedure, Matrix, and 2018 Timeline

Mr. Rockwell informed the Board that the deadline to submit a letter of interest, resume, and completed matrix for an officer position, other than for president and president-elect, for the 2018-2019 Bar year is June 12, 2018. Materials should be submitted to him and Ms. Welch.

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

FY 2019 Budget Process, Roles, and Calendar

Ms. Welch asked Mr. Horsch to describe the FY 2019 budget process to the Board. He reported that current plans are for the FY 2019 key budget assumptions to be reviewed with the Board at its June meeting and for the proposed FY 2019 budget to be brought before the Board at its July meeting.

Meeting with the Michigan Supreme Court

Ms. Welch reported that she has had individual meetings with Chief Justice Markman and Justice Zahra on a regular basis over the course of the last year. She stated that she was invited to meet with the Court in an Administrative Conference on March 28, where she provided them with information on the status of the State Bar, spoke on issues impacting bar associations around the country, and answered questions. Key points made to the Court:

- The State Bar continues to be in very good financial shape.
- We are on the downward side of the dues cycle.
- In the big picture, professional associations in the U.S. are struggling, and voluntary bar associations are struggling to maintain membership and services and develop more meaningful services for members and the public.
- What the SBM did with the 21st Century Task Force and the output of that included in our strategic plan is really vital to our success and future success
- The status of mandatory bars is uncertain given a case pending in the US Supreme Court, *Janus v American Federation of State, County and Municipal Employees (AFSCME)*. Other challenges are in the pipeline.
- The State Bar is committed to continuing its focus on legal service industry innovation and using technology to advance access to justice. The Court appeared interested in SBM innovation efforts, as well as on how the regulatory structure it oversees responds to changes in the legal services marketplace, including the draft ethics opinion R-25.
- We are working on transitioning the AGC's receivership responsibilities to the State Bar, and developing the gold standard for a program that protects the public when a lawyers are unable to carry out responsibilities to their clients due to death or disability.

Ms. Welch reported that, consistent with the recommendations of the 21st Century Task Force to create an Innovation Center to assist with the delivery of legal services, she is in conversation with the ABA Center for Innovation on collaboration, particularly in terms of data sharing among state bars and courts. Alecia Ruswinckel will be the SBM point person for this effort.

Annual Reports from SBM Committees and Work Groups

Ms. Welch asked Ms. Crowley to provide the Board with information about the annual reports. Ms. Crowley stressed the importance of reading the annual committee and work group reports because they will inform the Board of the progress of the strategic direction that has been set for the Bar. She stated that the reports lead to the development of the committee structure that will operate in the next Bar year. She also noted the challenge of managing the volunteer appointment process, with applications received and appointments for the upcoming bar year made in the spring and early summer, but confirmation of the committee structure not taking place until July or August.

Satellite Office

Ms. Welch informed the Board that she had a conversation with the Dean of the University of Detroit Mercy Law School about the possibility of occupying space at the law school for a satellite office in Southeast Michigan. Dean Crocker was interested, the school had space, and a price was negotiated for a possible office. Similar arrangements at other law schools could be an option.

Additional Items

Ms. Welch responded to a question from Mr. Ulrich regarding the need for a succession plan for the Executive Director. She will continue to work with SBM officers and the Executive Committee on succession issues.

Mr. Ulrich asked if the SBM has ever been contacted to verify if person is in fact an attorney when he or she registers to use a .law domain. Ms. Goodrum Garland responded that we do not have that requirement in Michigan, but that in some jurisdictions that practice is in place.

Ms. Welch reported that the SBM learned three days ago that a member of the Negligence Law section submitted an amicus brief in violation of 2004-1. She stated that we are in the process of gathering facts about this and that an update will be provided to the Board at its June meeting. The case is the Ann Arbor gun case.

Representative Assembly (RA) Report, Joseph P. McGill, Chairperson

Mr. McGill reported that at its April 21 meeting, the Assembly will empanel 145 RA members or 97% of the allotted membership. Ms. Michelle Fuller will be nominated for the Unsung Hero award and the Hon. Victoria Roberts will be nominated to receive the Michael Franck Award. Matters to be considered are Payee Notification, Indigent Fee waiver applications, and Civil Discovery rules. Plans are underway for the September meeting that center around RA procedure and governance issues and the manner in which the RA does business. Mr. Richard Cunningham suggested that this is a process that will take two or three years to complete.

OTHER REPORTS

American Bar Association (ABA) Report

No report was provided.

Young Lawyers Section (YLS) Report, Syeda F. Davidson, Chairperson

Ms. Davidson provided the Board with an update on recent activities of the YLS. The 11th Annual YLS Summit is taking place at Boyne Highlands on June 15 and 16. Justice Bridget McCormack is the keynote speaker. The deadline for nominations for the Regeana Myrick Outstanding YLS Award is April 27. The award will be presented at the Summit.

Ms. Davidson reminded the Board that the “Bowling Challenge” event between the Board of Commissioners and the Young Lawyers Section Executive Council will take place after today’s Board meeting beginning at 3:00 p.m.

FOR THE GOOD OF THE PUBLIC AND THE PROFESSION

Comments or Questions from Commissioners

Ms. Radke inquired about ongoing challenges to the mandatory status of the state bars, and their implications for SBM planning, budgetary and otherwise. Ms. Welch responded that staff is monitoring, analyzing, and evaluating options on an ongoing basis.

Comments or Questions from the Public

Mr. Rockwell recognized Mr. David Watson, Executive Director, ICLE who expressed his pleasure at being affiliated with the SBM and the work that it accomplishes. Ms. Welch noted that at the meeting with the Court that a mini discussion took place about mandatory CLE. She stated that Michigan is now one of only four states without mandatory CLE, but that Michigan's ICLE is widely recognized as the best in the country, and that the Court was aware of that. She stated that the other three states are Maryland, Massachusetts and South Dakota.

Adjournment

The meeting was adjourned at 12:25 pm.