

President Courtade called the meeting to order at 9:40 a.m. on Friday, April 26, 2013 at the State Bar of Michigan Michael Franck Building

Commissioners present:

Kathleen M. Allen
Dennis M. Barnes
David R. Brake
Robert J. Buchanan
Lori A. Buiteweg, Secretary
Margaret A. Costello
Bruce A. Courtade, President
Brian D. Einhorn, President-Elect
D. Randall Gilmer
Stephen J. Gobbo
Jennifer M. Grieco
Edward L. Haroutunian
Charles S. Hegarty
Felicia O. Johnson

C. Thomas Ludden
Maureen M. McGinnis
Lawrence P. Nolan, Treasurer
Jules B. Olsman
Colleen A. Pero
Brandy Y. Robinson
Donald G. Rockwell
Thomas C. Rombach, Vice President
Hope V. Shovein Grazini
Richard J. Siriani
Julie A. Sullivan
Gregory L. Ulrich
Dana M. Warnez
Vanessa Peterson Williams

Commissioners Absent and Excused

Richard L. Cunningham, Hon. James N. Erhart and Hon. Michael J. Riordan

State Bar Staff present:

Janet Welch, Executive Director
Marge Bossenbery, Executive Coordinator
Nancy Brown, Director, Member Services and Communication
Gregory Conyers, Director, Diversity
Candace Crowley, Director, External Development
Peter Cunningham, Director, Governmental Relations
Dawn Evans, Director, Professional Standards
Cliff Flood, General Counsel
James Horsch, Director, Finance and Administration
Robert Mathis, Pro Bono Service Counsel
Anne Smith, Administrative Assistant
Kari Thrush, Member Services and Events Manager
Anne Vrooman, Director, Research and Development

Guests

Greg Pratt

At the suggestion of Mr. Courtade, a motion was offered and supported to amend the agenda to move the public comment section to the beginning of the agenda to accommodate comments from Mr. Greg Pratt. Motion adopted.

Mr. Pratt addressed the Board on the topic of equal access to the courts. Mr. Pratt told the Board that many courts in the state are not making accommodations for individuals with disabilities, do not receive any training on this issue, and are not enforcing the rules that are in place. Mr. Pratt referenced a "Handbook for the Courts on Accessibility and Accommodations for people with Disabilities" that he printed from the State Court Administrator's website. Mr. Conyers invited Mr. Pratt to share his comments with the SBM Disabilities Workgroup through participation in a workgroup conference call.

Consent Agenda

The Board received the minutes from the January 18, 2013 Board of Commissioners meeting and the January 8, February 19 and the March 12, 2013 Executive Committee meetings.

The Board received a list of the SBM President's recent activities.
The Board received a list of the SBM Executive Director's recent activities.

The Board received the FY 2013 Financial Reports through March 2013.

The Board received the Client Protection Fund Claims.

The Board received the Litigation Status Report.

The Board received the Bylaw Amendments for the Agricultural Law Section.

Motion offered and supported to approve the consent agenda. Motion adopted.

STRATEGIC PLANNING COMMITTEE RECOMMENDATIONS

Mr. Courtade provided an overview of the strategic planning process and then asked Ms. Vrooman to discuss the actions of the strategic planning committee and to present the committee's recommendation to the Board. A motion was offer and supported to approve the recommendations brought to the Board. Motion adopted.

COMMISSIONER COMMITTEES

Finance, Lawrence P. Nolan, Chairperson
FY2013 Financial and Investment Update

Mr. Nolan presented the Board with a FY 2013 financial and investment update.

Audit, Lawrence P. Nolan, Chairperson
Status of Audit

Mr. Nolan presented the Board with an update on the status of the audit.

Professional Standards, Lori A. Buiteweg, Chairperson
ABA House of Delegates

Ms. Buiteweg reported that the Professional Standards' Committee recommends to the Board the appointment of Mr. Ulrich for a two-year term expiring at the close of the ABA Annual meeting in 2015. Motion offered and supported to approve the recommendation of the committee. Motion adopted with Mr. Ulrich abstaining from the vote.

Programs and Services, Thomas C. Rombach, Chairperson
50 Year Honoree Resolution

The Board received a copy of the 2013 50 Year Honoree Resolution. A motion was offered and supported to approve the resolution. Motion adopted.

Bar Leadership Forum Registration

Mr. Rombach reminded the Board members to register for the Bar Leadership Forum (BLF) and to complete their registration forms and submit it to Ms. Bossenbery.

Event Update

Mr. Rombach provided the Board with an update on the Annual Meeting, the Bar Leadership Forum, and the Upper Michigan Legal Institute.

Annual Meeting Location

Mr. Rombach discussed the recommendations from the Annual Meeting committee regarding future locations of the Annual Meeting. The Annual Meeting committee recommended holding the Annual Meeting in odd number years (2015 – 2017 – 2019) at the Suburban Collection in Novi. The Programs and Services committee recommended approval of the the Annual Meeting Committee's recommendations, after extended discussion about holding the conference in Detroit. Motion offered and supported to adopt the recommendation of the Programs and Services committee. After discussion, the original motion was withdrawn and a motion was offered and supported to sign the contract at the Suburban Collection for 2015 and for 2017 and 2019 if the penalty for opting out of the contract cost does not exceed \$2,500, and to direct professional staff to explore the option of holding the Annual Meeting in Detroit in 2017 and 2019. Motion adopted.

Frank Kelley Award Clarification

The Awards Committee is seeking clarification from the Board on the criteria for the Frank Kelley Public Service Award about whether certain positions might be considered "hired" rather than "elected" or "appointed", and if "hired," whether they are eligible for the award. The Programs and Services committee was not able to come to consensus and recommends that the Board approve past practices for this year's award and then the committee will work to clarify the language moving forward. This decision will be communicated to the Awards Committee so that they can proceed with the 2013 award process.

Volunteer Energy

The Membership Services Committee recommended that the services of Volunteer Energy be offered as a membership benefit. A motion was offered and supported to adopt this member service. Motion adopted

Attorney Protective

The Membership Services Committee recommended that the services of Member Insurance Solutions, a provider of professional liability insurance for non-practicing attorneys, based on input from the Master Lawyers section. A motion was offered and supported to defer action on this potential member benefit. A work group will be convened to review this policy, report back to the committee, and present a recommendation to the Board at a future meeting.

Public Policy, Image and Identity, Brian D. Einhorn, Chairperson

The Board received a written report from Justice Initiatives.

Consent Agenda

HB 4025 Civil procedure; evictions; court procedures; make miscellaneous revisions. Amends secs. 5732 & 5739 of 1961 PA 236 (MCL 600.5732 & 600.5739) & adds sec. 5736. (Oppose)

HB4091 Courts; funding; mileage reimbursement rate for juror; increase. Amends sec. 1344 of 1961 PA 236 (MCL 600.1344) (Support)

HB 4351 Courts; juries; eligibility to postpone jury service of students; expand to include full-time higher education students. Amends sec. 1335 of 1961 PA 236 (MCL 600.1335). (Support)

A motion was offered and supported to approve the consent agenda that includes legislation that the SBM has taken positions on in the past. Motion adopted.

Legislation

HB 4033 Cities; home rule; posting of legal notices as alternative to publishing; provide for. Amends 1909 PA 279 (MCL 117.1 - 117.38) by adding sec. 4t.

Motion offered and supported to support this bill with the requirement that notices are published under either A or B. Motion adopted.

Digital Court Records

HB 4064 Courts; records; digital court records and electronically filing court papers; allow. Amends secs. 832, 859, 1427, 2137 & 8344 of 1961 PA 236 (MCL 600.832 et seq.); adds secs. 1426 & 1428 & repeals 1949 PA 66 (MCL 780.221 - 780.225).

HB 4412 Courts; records; digital court records and electronically filed court papers; allow in every state court, and provide for electronic signatures. Amends sec. 1427 of 1961 PA 236 (MCL 600.1427).

HB 4413 Courts; records; reproduction of digital court records and electronically filed court papers; give same force and effect as original for purposes of admissibility into evidence if authenticated. Amends sec. 2137 of 1961 PA 236 (MCL 600.2137).

HB 4414 Courts; records; electronic access to court records, pleadings, and practice; allow courts to provide. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding secs. 1426 & 1428 & repeals 1949 PA 66 (MCL 780.221 - 780.225).

HB 4415 Courts; records; digital court records and electronic filing of testimony given in probate court; allow. Amends sec. 859 of 1961 PA 236 (MCL 600.859).

HB 4416 Courts; records; digital court records and electronically filing of probate court papers; allow. Amends sec. 832 of 1961 PA 236 (MCL 600.832).

HB 4417 Courts; records; validity and enforceability of certain judgments; allow a registry or a certified reproduction to serve as a complete replacement. Amends sec. 8344 of 1961 PA 236 (MCL 600.8344).

HB 4532 Courts; records; digital court records and electronically filing court papers; permit as established by the supreme court. Amends secs. 832, 859 & 1427 of 1961 PA 236 (MCL 600.832 et seq.). Motion offered and supported to support these bills. Motion adopted.

HB 4120- Family law; child custody; joint custody in every custody dispute between parents; mandate except in certain circumstances. Amends secs. 5 & 6a of 1970 PA 91 (MCL 722.25 & 722.26a).

A motion was offered and supported to oppose this bill. Motion adopted. Mr. Haroutunian abstained.

HB 4139 Criminal procedure; other; provision relating to proceedings to prevent crime; repeal. Repeals ch. XII of 1927 PA 175 (MCL 772.1 - 772.15).

A motion was offered and supported to support this bill. Motion adopted by roll call vote.

Aye – Commissioners Allen, Brake, Buchanan, Buiteweg, Courtade, Einhorn, Gilmer, Gobbo, Grieco, Johnson, Ludden, McGinnis, Nolan, Olsman, Pero, Rockwell, Rombach, Shovein, Siriani, Sullivan, Warnez, and Williams.
Nay – Commissioners Costello, Haroutunian, Hegarty, Robinson, Ulrich

HB 4186 Criminal procedure; expunction; record expunction for certain offenders; expand, and provide for under certain circumstances. Amends secs. 1, 3 & 4 of 1965 PA 213 (MCL 780.621 et seq.).

A motion was offered and supported to support this bill. Motion adopted.

HB 4189 Corrections; parole; procedures for objection by judge of parole for prisoner; revise. Amends sec. 34 of 1953 PA 232 (MCL 791.234).

This item was removed from the agenda on a determination that it is not Keller permissible.

Jail Diversion

HB 4238 Criminal procedure; other; mental health diversion from jail for certain individuals under certain circumstances; allow. Amends 1927 PA 175 (MCL 760.1 - 777.69) by adding sec. 85, ch. VII.

HB 4239 Courts; other; priority for providing mental health services to individuals diverted from criminal prosecution; require under certain circumstances. Amends sec. 208 of 1974 PA 258 (MCL 330.1208).

These two items were removed from agenda

HB 4528 Occupations; immigration clerical assistants; regulation of immigration clerical assistants; revise. Amends title & secs. 3, 13, 17 & 21 of 2004 PA 161 (MCL 338.3453 et seq.) & repeals secs. 4, 7, 9 & 15 of 2004 PA 161 (MCL 338.3454 et seq.).

A motion was offered and supported to support this bill. Motion adopted. Mr. Gobbo abstained

Indigent Defense

HB 4529 Criminal procedure; defenses; statewide standards and accountability measures of trial-level indigent criminal defense services; implement, and create the Michigan indigent defense commission act. Creates new act.

HB 4530 Criminal procedure; other; appointment of counsel to indigent person charged with felony; modify. Amends sec. 16, ch. XV of 1927 PA 175 (MCL 775.16).

SB 0300 Criminal procedure; defenses; statewide standards and accountability measures of trial-level indigent criminal defense services; implement, and create the Michigan indigent defense commission act. Creates new act.

SB 0301 Criminal procedure; other; appointment of counsel to indigent person charged with felony; modify. Amends sec. 16, ch. XV of 1927 PA 175 (MCL 775.16).

A motion was offered and supported to support these bills. Motion adopted. Ms. Johnson abstained.

SB 0038 Civil procedure; garnishment; garnishment for failure to pay fines or costs ordered under the home rule cities act; provide for. Amends 1961 PA 236 (MCL 600.101 - 600.9947) by adding sec. 4027.

A motion was offered and supported to oppose this bill. Motion adopted.

Wrongful Imprisonment Compensation

SB 0098 Civil procedure; remedies; wrongful imprisonment for crime; provide compensation for. Creates new act.

HB 4451 Civil procedure; remedies; wrongful imprisonment for crime; provide compensation for. Creates new act.

A motion was offered and supported to support the positions taken by the Criminal Issues Initiative and Justice Policy Initiative. Motion adopted.

DNA Collection

SB 0105 Criminal procedure; DNA; collection of DNA samples at time of arrest for committing or attempting to commit a felony offense; provide for in DNA identification profiling system. Amends title & sec. 2, 3, 3a & 6 of 1990 PA 250 (MCL 28.172 et seq.).

SB 0106 Criminal procedure; DNA; collection of DNA samples at time of arrest for committing or attempting to commit a felony offense; provide for in probate code of 1939. Amends sec. 18k, ch. XIIA of 1939 PA 288 (MCL 712A.18k).

SB 0107 Criminal procedure; DNA; collection of DNA samples at time of arrest for committing a felony or attempting to commit a felony offense; provide for in Michigan penal code. Amends sec. 520m of 1931 PA 328 (MCL 750.520m).

A motion was offered and supported to oppose these bills. Motion adopted.

SB 0131 Family law; child custody; granting of custody or parenting time for parent convicted of certain sexual offenses; prohibit. Amends 1970 PA 91 (MCL 722.21 - 722.31) by adding sec. 5a. No position was taken on this bill.

SB 0162 Courts; jurisdiction; jurisdiction for prosecution of felony offenses; expand to include county where consequence intended to have effect. Amends sec. 8, ch. II of 1927 PA 175 (MCL 762.8).

A motion was offered and supported to oppose this bill. Motion adopted. Ms. Costello abstained

Court Rules

There were no court rules for consideration.

LEADERSHIP REPORTS

President's Report, Bruce A. Courtade, President

Mr. Courtade reported on some of his activities since the last Board meeting.

Judicial Campaign Workgroup Update

Mr. Courtade referred to Ms. Welch's memo from Mr. Rombach summarizing the workgroup's recommendations. Mr. Rombach stated that the recommendations are consistent with the strategic plan. A motion was offered and supported to accept the recommendations of the workgroup. Motion adopted.

2013 Board Officer Election Procedure, Matrix, and Timeline

Mr. Courtade informed the Board that "all non-incumbent officers who are seeking election to "the Chairs" must submit a letter of interest and a completed matrix to the Executive Director and President of the State Bar by the deadlines indicated in the timeline and in accordance with the procedures that were adopted by the Board in 2006."

Mr. Courtade recognized Ms. Evans for an article that she wrote that was published in ABA YLS newsletter regarding the inventory rule, Ms. Buiteweg for receiving the Washtenaw County Bar Association's Patriot Award, Ms. Williams as a recipient of the Detroit's Crain's Business General and In-House Counsel award in the category of privately-held companies with revenues over 250 million dollars. He also noted that he and Mr. Nolan were honored as 2013 Leaders in the Law by the Michigan Lawyers Weekly, although his own award was given in the name of his alter ego, "Bruce Courtdale."

Executive Director's Report, Janet K. Welch, Executive Director
FY 2014 Budget Process, Roles, and Calendar

Ms. Welch referred this item to Mr. Horsch who discussed the FY 2014 budget process with the Board.

Solutions on Self Help Task Force Update

Ms. Welch provided the Board with an update on the Solutions on Self Help Task Force and informed the Board that there have been 40,000 page views and 70,000 users on the Michigan Legal Help Online.

Access to Board and Committee Meetings Policy

This item was deferred to a future meeting to incorporate suggestions raised from Mr. Ulrich.

ABA Day

Ms. Welch provided the Board with a summary of the activities of the SBM representatives that occurred while in Washington, DC during ABA day. The team, which included Mr. Courtade, Hon. Timothy Hicks, Reggie Turner, Mr. Cunningham, and Ms. Welch, met with legislators to advocate for funding for legal aid services. Ms. Welch commended the firm of Dykema for the invaluable pro bono assistance they provide to the delegation.

State Officers Compensation Committee (SOCC)

Ms. Welch reported to the Board that the SOCC met and that the SBM, consistent with past practice of support for reasonable increases in judicial compensation, provided a letter supporting the recommendation of the State Court Administrative Office (SCAO) for back-to-back increases of 3%.

Representative Assembly (R.A.) Report, Dana M. Warnez, Chairperson

Ms. Warnez provided the Board with an overview of the proposals that are being considered at the April 27 RA Meeting.

Ms. Warnez reported that the 2013 Award Committee recommended that the Unsung Hero Award be given to James Brenner & Elizabeth Stafford and that the Michael Franck be given posthumously to Marty Kroner.

ABA Report

Ms. Welch informed the Board that the Annual Meeting of the ABA takes place in San Francisco in August. A report will be prepared for the Board that describes the probable Keller-permissible issues on the agenda of the House of Delegates.

Young Lawyers Section Report (YLS), Felicia O. Johnson, Chairperson

Ms. Johnson provided the Board with an update on the activities of the Young Lawyers Section.

Ms. Johnson reminded the Board that the annual Bowling Challenge between the YLS Executive Council and the Board of Commissioners takes place today.

Comments from Commissioners

Mr. Courtade thanked Mr. Olsman for bringing the Judicial Election Task Force issues before the Board and for being the leading proponent of rule changes on lawyer advertising before the Representative Assembly.

Adjournment

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