

President Buiteweg called the meeting to order at 9:45 a.m. on July 22, 2016 in the Michael Franck Building in Lansing, Michigan.

Commissioners present:

Danielle Mason Anderson  
Dennis M. Barnes, Treasurer  
Danielle M. Brown  
Robert J. Buchanan  
Lori A. Buiteweg, President  
Timothy J. Burns  
Robert C. Gardella  
Jennifer M. Grieco, Secretary  
Edward L. Haroutunian  
Krista L. Haroutunian  
James W. Heath  
Fred K. Herrmann

Andrea Irons  
Mark W. Jane  
Hon. Maureen M. McGinnis  
Shenique A. Moss  
Lawrence P. Nolan, President-Elect  
Hon. David A. Perkins  
Victoria A. Radke  
Donald G. Rockwell, Vice President  
Gregory L. Ulrich  
Dana M. Warnez  
Erane C. Washington

Commissioners absent and excused:

Hon. Clinton Canady III  
Shauna L. Dunnings  
Thomas E. McCarthy Jr.  
Joseph P. McGill  
Jules B. Olsman

Colleen A. Pero  
Daniel D. Quick  
Hon. Michael J. Riordan  
Brian D. Shekell  
Richard J. Siriani

State Bar Staff present:

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

Guest

Lalla Shishkevish, Associate Director, Institute for Continuing Legal Education

### **Consent Agenda**

Ms. Buiteweg 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 10, 2016 Board of Commissioners 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 2016 Financial Reports through May 2016.

The Board received Client Protection Fund and Unauthorized Practice of Law Claims.

The Board received a proposed dues increase request from the Public Corporation Law Section.

The Board received a request for recognition for a new section, Lesbian, Gay, Bisexual, Transgender, Questioning, Allies, (LGBTQA.)

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

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

### **SBM Board Officer Elections**

Ms. Buiteweg announced that President-Elect Nolan succeeds her as president for 2016-2017.

Ms. Buiteweg announced that Vice President Rockwell succeeds Mr. Nolan as President-Elect for 2016-2017.

A motion was offered and supported to elect Ms. Grieco as vice president for 2016-2017. Ms. Buiteweg asked if there were any nominations from the floor. After hearing none, the nominations were closed. The motion to elect Ms. Grieco as Vice President was approved.

A motion was offered and supported to elect Mr. Barnes as secretary for 2016-2017. Ms. Buiteweg asked if there were any nominations from the floor. After hearing none, the nominations were closed. The motion to elect Mr. Barnes as secretary was approved.

Ms. Buiteweg announced that Mr. Buchanan was the only commissioner to submit a letter of interest and resume for the position of 2016-2017 Treasurer of the SBM in accordance with Board procedure. A motion was offered and supported to elect Mr. Buchanan as Treasurer for 2016-2017. Ms. Buiteweg asked if there were any nominations from the floor. After hearing none, the nominations were closed. The motion to elect Mr. Buchanan as Treasurer was approved.

### **COMMISSIONER COMMITTEES**

**Finance**, Dennis M Barnes, Chairperson

Mr. Barnes presented the FY 2016 financial and investment report.

**Audit**, Dennis M. Barnes, Chairperson

Mr. Barnes informed the Board that there was no report.

**Professional Standards**, Jennifer M. Grieco, Chairperson

**Nominations for Michigan Indian Legal Services Board of Trustees (MILS)**

A motion was offered and supported to re-appoint the Hon. Tanya S. Wagageshik and Karrie S. Wichtman to the MILS Board of Trustees to serve two-year terms commencing on October 1, 2016. The motion was approved.

**Nomination for Institute of Continuing Legal Education (ICLE)**

A motion was offered and supported to re-appoint Howard T. Spence to the ICLE Executive Committee to serve a four-year term commencing on October 1, 2016. The motion was approved.

**Proposed New MRPC 1.18 – Duties to Prospective Clients**

The Professional Standards Committee supports and recommends the proposal made by the Professional Ethics Committee to adopt ABA Model Rule 1.18, Duties to Prospective Clients and modifications to Rule 7.3. A motion was offered and supported to send the two proposed amendments to the Representative Assembly (RA) for consideration at its September 2016 meeting. The motion was approved.

**Proposed Amended MRPC 4.4 – Respect for the Rights of Third Persons**

The Professional Standards Committee supports and recommends the proposal made by the Professional Ethics Committee to amend MRPC 4.4, Respect for Rights of Third Persons to adopt ABA Model Rule 4.4(b), Respect for the Rights of Third Person. A motion was offered and supported to send the proposed amendment to MPRC 4.4 to the RA at its September 2016 meeting. The motion was approved.

**Proposed Formal Ethics Opinion R-23 & R-24**

The Professional Standards Committee recommends that these opinions remain separated or bifurcated with the addition of a footnote in R-24 that references R-23 when it mentions an arbitration provision for determining arbitration issues.

The Professional Standards Committee and the BOC previously considered proposed Formal Ethics Opinion R-23 that addresses provisions within fee agreements purporting to require the parties to arbitrate any future dispute relating to the legal representation that might arise and purporting to shorten the time within which a client entering into a fee agreement with a lawyer might assert a malpractice claim against the lawyer. The proposed opinion was referred back to the Professional Ethics Committee to strengthen the discussion and to prepare individual opinions to address each type of provision.

Proposed Formal Opinion R-23 addresses only an arbitration provision within a fee agreement and R-24 addresses only a statute of limitations provision included in a fee agreement.

A motion was offered and supported to consider action on each opinion separately. The motion was approved.

A motion was offered and supported to adopt Formal Ethics Opinion R-23. The motion was approved.

A motion was offered and supported to adopt Formal Ethics Opinion R-24, with the minor modification of the footnote reference. The motion was approved.

### **Proposed Amendment of State Bar Rule 15**

The Professional Standards Committee recommends SBR 15, paragraph 21, be amended to increase the character and fitness investigation fee to \$375 from the current fee of \$225 and an increase in the additional fee for late applications to \$175 from the current fee of \$100.

A motion was offered and supported to send this proposal to the RA at its September 2016 meeting for consideration. The motion was approved.

### **Programs and Services**, Donald G. Rockwell, Chairperson

#### **Event Summaries**

Mr. Rockwell reported that event summaries from the Bar Leadership Forum and Upper Michigan Legal Institute were in the board book

#### **Liberty Bell Awards**

A motion was offered and supported to award Liberty Bell awards to David Britten and Teresa Weatherall Neal. The motion was approved.

#### **Awards Recommendations**

Mr. Rockwell informed the Board that the Programs and Services committee recommends that the Board limit the State Bar Awards Committee recommendations to a total on nine from among all of the award categories. It further recommends that the Board limit the State Bar Pro Bono Initiative to recommend only one John W. Cummiskey Pro Bono Award and that any non-SBM entities who have their awards presented at the SBM Annual Awards Banquet be limited to one award and one awardee at the event. A motion was offered and supported to accept the recommendations of the committee. The motion was approved.

### **Public Policy, Image and Identity**, Lawrence P. Nolan, Chairperson

The Board members received a written Justice Initiatives Report, a written Public Policy report, and the Indigent Defense Commission report.

### **ADM File No. 2013-18 - Proposed Amendments of Rules 2.004, 3.705, 3.708, 3.804, 3.904, 4.101, 4.201, 4.202, 4.304, 4.401, 5.119, 5.140, 5.402, 5.404, 5.738a, 6.006, and 6.901 of the Michigan Court Rules**

The proposed amendments of MCR 2.004, 3.705, 3.708, 3.804, 3.904, 4.101, 4.201, 4.202, 4.304, 4.401, 5.119, 5.140, 5.402, 5.404, 5.738a, 6.006, and 6.901 would permit courts to expand the use of videoconferencing technology in many court proceedings. The committee took these proposed amendments one by one, but the Board took action on groups.

The Board voted to support the amendments to MCR 2.004, 3.705, 3.708(D)(7), 3.708(I), 3.804(B)(3), 4.101, 4.201, 4.202, 4.304, 4.401, 5.119(1) and (2), 5.140(A) and (B), MCR 5.404(B)(1).

The Board voted to support the proposed amendments to MCR 3.708(H)(2) with the removal of the last sentence, noting that the party who objects to the use of video-conferencing does not have to articulate any reasons for not consenting.

The Board voted to support MCR 3.904(A) Alternative B, 3.904(A)(1) Alternative B, 3.904(A)(2) Alternative B, 3.904(A)(2) Alternative B. This support is conditioned upon the juvenile having the exclusive right to object to the use of video conferencing proceedings at the initial post-adjudication dispositional hearing.

The Board voted to support MCR 3.904(B)(1)(2) Alternative B, 3.904(B)(2)(b) Alternative B, 3.904(B)(2)(b) Alternative B. This support is conditioned on the understanding that only the respondents may make an objection to videoconferencing at the jurisdictional hearing and termination phase and any objection to videoconferencing post-jurisdictional and pre-termination must have a reason stated.

The Board voted to oppose the proposed amendments to MCR 5.402(F).

The Board voted to oppose the proposed amendments to MCR 5.738a.

The Board voted to oppose the proposed amendments to MCR 6.006(D).

The Board voted to oppose the proposed amendments to MCR 6.901.

The Board voted to support proposed Alternative A to MCR 6.006(C)(2) with a further amendment changing “two-way interactive video technology” to “video-conferencing.”

**President’s Report**, Lori A. Buiteweg, President

**Supreme Court Luncheon**

Ms. Buiteweg informed the Board that a luncheon with the Board members and the Michigan Supreme Court is scheduled to take place on Wednesday, September 14, 2016, beginning at noon.

**Strategic Planning Update**

Ms. Buiteweg reported that the next meeting of the Strategic Planning Committee will take place on Tuesday, August 30. If a document is finalized at the meeting, it will be brought to the full Board at the September meeting.

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

**Personnel Update**

Mr. Horsch introduced Jennifer Hatter, Operations Support Assistant, to the Board

Ms. Thomas introduced Nicole Beagle, Law Referral Call Center Representative, to the Board.

**FY 2017 Proposed Budget**

Ms. Welch invited Mr. Horsch to provide an overview of the FY 2017 Proposed Budget. The budget was reviewed by the Finance Committee on July 6 and was unanimously approved to move forward for Executive Committee and BOC review. Questions were addressed regarding salary increases, the change in the print directory, and other details.

A motion was offered and supported to adopt the FY 2017 Budget as presented.

A motion was offered and supported to amend the motion on the floor to revise the budget so that of our members who have not opted out of receiving the written directory still get it at no extra charge and those who have opted out don’t receive it. A roll call vote was taken and the motion failed.

**Ayes:** Gardella, Edward Haroutunian, Krista Haroutunian, Nolan, Perkins, and Ulrich

**Nays:** Anderson, Barnes, Brown, Buchanan, Buiteweg, Burns, Grieco, Heath, Herrmann, Irons, Jane, McGinnis, Moss, Radke, Rockwell, Warnez, and Washington

**Absent:** Canady, Dunnings, McCarthy, McGill, Olsman, Pero, Quick, Riordan, Shekell, and Siriani

A vote was taken on the original motion to adopt the FY2017 budget. The motion was approved.

A motion was offered and supported to have staff develop a proposal for the Finance Committee to provide a secure .pdf updatable bar directory with advertising. The motion was approved.

### **SBM Standing and Special Committees 2016-2017 Resolution and Matrix\***

Ms. Welch asked Ms. Crowley to inform the Board of the changes that have been made to this year's resolution and matrix.

A motion was offered and supported to approve the FY 2016-2017 Resolution and Matrix. The motion was approved.

### **Commissioner Committee and Liaison Appointment Process**

Ms. Crowley informed the Commissioners that they will receive an email describing the method to use to express their preference as to which section they would like to be a liaison to and on their appointment to a commissioner committee.

### **Blind Spots Event in West Michigan**

Ms. Welch reported that the Blind Spot seminar that was held in Grand Rapids was a success.

### **Tammy McNeil-Marks v. Mid-Michigan Medical Center-Gratiot\*\***

Ms. Welch reported that this topic was informational only. This case is a very interesting one in which has the potential to impact SBM members regarding the Whistle Blowers Protection Act. Ms. Welch stated that the SBM has time to formulate a strategy if we wish to take steps to modify the result as the case is early in the Supreme Court review process. Ms. Welch stated that we will continue to monitor the case, including reviewing any Application for Leave and responding brief and will report any developments. Ms. Welch stated that if anyone had questions to contact Mr. Flood.

### **Member Survey Update**

Ms. Vrooman provided the Board with an overview of the results of the Member Survey. She told the board that 2,800 member's participated, which is lower than in the past. The information will be compiled and published as soon as the analysis is complete.

### **Tech Update**

Ms. Welch reported that this item is a follow up to the discussion about the security breach on the SBM web site that occurred a few months ago. She noted that there have not been anymore breaches and that we are comfortable with the extra security and upgrading that has taken place.

Ms. Welch reported that the State Bar has been working on the effectiveness of our online resources and working on finalizing the tech services of the Pro Hac Vice and BLE. She stated that we have been discussing an online lawyer referral module with many interested groups and on the enhanced directory which will work together nicely.

Ms. Welch stated that she received a notice about an ABA program on Cyber Security and asked the PMRC staff if the SBM was offering anything similar to our members. The response was that there is a dedicated area on the SBM website about that issue and that a program on the topic is on the agenda for the Solo and Small Firm program as part of the Annual meeting.

#### **e-filing Update**

Ms. Welch reported that the SBM received an inquiry from the Supreme Court Clerk about the use of member's emails as part of the e-filing initiative. She stated that there is a possibility that the Supreme Court may require members to have an email on record. Mr. Herrmann has volunteered to work on this issue with the Court. Mr. Heath indicated that he would be interested in working with this group as well.

#### **Mandatory Bar Update**

Ms. Welch noted that there was no new news on this topic, but that she will be meeting with her counterparts while in San Francisco at the NABE meeting and will provide updates in the future.

#### **Futures Update**

Ms. Welch provided the Board with an update on the progress of implementing the recommendations of the 21<sup>st</sup> Century Task Force. She noted that many committees continue to meet to develop proposals to go before the RA in September. She stated that Ms. Buiteweg is participating on a panel about the State Bar's work at the NCBP Conference in August. Ms. Welch noted that she has been invited to speak on a panel on the Preparing for the Future at the ILLACE (International Institute of Law Association Chief Executives) in New Zealand in October. She indicated that she would pay for her travel to attend.

#### **On-Line Legal Services; "Guiding Principles"**

Ms. Welch provided the Board with an update on the actions that were discussed during the closed session at the last board meeting and stated that she participated on a conference calls with many of the states mentioned in the AVVO communication. Ms. Goodrum Garland stated that the ethics opinion is in progress she anticipates that she will have something to report at the next board meeting.

Ms. Welch provided the Board with a copy of the draft "Guiding Principles for Bar Associations Developing Online Directories" that is being used when communicating with states that are interesting in the enhanced directory. This document describes the rules as they relate to Michigan and invites other states to join the SBM in a consortium.

#### **Representative Assembly (RA) Report**, Daniel D. Quick, Chairperson

In Mr. Quick's absence, Mr. Herrmann stated that Monday, July 25 is the deadline for nominations for Clerk of the RA, the deadline to submit proposals is August 8, and that the materials will be mailed on August 22.

#### **Young Lawyers Section Report (YLS)**, Mark Jane, Chairperson

Mr. Jane provided the Board with an update on the YLS. Mr. Jane stated that the ABA Young Lawyers Conference is taking place in Detroit and is looking for sponsorships.

#### **Comments from Commissioners**

Ms. Buiteweg thanked Mr. Burns for his service on the Board as this is his last meeting because he is unable to attend the Annual Meeting.

Ms. Buiteweg noted that two former board members, Julie Fershtman and Hope Shovein, are being recognized at the Lawyers Weekly Women in the Law event.

Ms. Buiteweg stated that September 17 is Constitution Day and asked the commissioners to consider becoming involved in their community.

Mr. Nolan acknowledge Ms. Buiteweg's work as President this year.

**Adjournment**

The meeting was adjourned at 2:30 p.m.