

President Rombach called the meeting to order at 9:50 a.m. on Friday, July 24, 2015 at the Michael Franck Building in Lansing, Michigan.

Commissioners present:

Danielle Mason Anderson
Dennis M. Barnes
Danielle M. Brown
Robert J. Buchanan
Lori A. Buiteweg, President-Elect
Timothy J. Burns
Shauna L. Dunnings
Robert C. Gardella
Stephen J. Gobbo
Jennifer M. Grieco, Treasurer
James W. Heath
Fred K. Herrmann
Andrea Irons
Mark W. Jane

C. Thomas Ludden
Thomas E. McCarthy Jr.
Hon. Maureen M. McGinnis
Lawrence P. Nolan, Vice President
Jules B. Olsman
Colleen A. Pero
Daniel D. Quick
Victoria A. Radke
Hon. Michael J. Riordan
Donald G. Rockwell, Secretary
Thomas C. Rombach, President
Hope V. Shovein
Richard J. Siriani
Gregory L. Ulrich

Commissioners absent and excused: Commissioners Edward L. Haroutunian, E. Christopher Johnson Jr., and Vanessa Peterson Williams.

State Bar Staff present:

Janet Welch, Executive Director
Marge Bossenbery, Executive Coordinator
Candace Crowley, Director, External Development
Peter Cunningham, Director, Governmental Relations
Cliff Flood, General Counsel
Danon Goodrum-Garland, Director, Professional Services Division
Brian Hildreth, Director, Information Services
James Horsch, Director, Finance and Administration Division
Robert Mathis, Pro Bono Attorney
Kari Thrush, Member Services and Events Manager
Anne Vrooman, Director, Research and Development

Guests

Jonathan Sacks, Executive Director, Michigan Indigent Defense Commission

Consent Agenda

Mr. Rombach 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 12, 2015 Board of Commissioners meeting.

The Board received the minutes from the June 2, 2015 Executive Committee meeting.

The Board received the list of recent activities of the president.

The Board received the list of recent activities of the executive director.

The Board received FY 2015 Financial Reports through June 2015.
The Board received a Petition to Recognize a New State Bar Section: Marijuana Law.
The Board received the Business Law Section dues amendment.
The Board received the Elder Law and Disability Rights Section bylaws amendments.
A motion was offered and supported to approve the consent agenda. The motion was approved.

Mr. Rombach announced that there would be no presentations from any local bar association or state bar section.

SBM Board Officer Elections

Mr. Rombach announced that President-Elect Buiteweg succeeds him as president for 2015-2016.

Mr. Rombach announced that Vice President Nolan succeeds Ms. Buiteweg as President-Elect for 2015-2016.

A motion was made and supported to elect Mr. Rockwell as vice president for 2015-2016. Mr. Rombach asked if there were any nominations from the floor.

A motion was offered and supported to nominate Mr. Ulrich as Vice President for 2015–2016. Mr. Ulrich declined the nomination.

The motion to elect Mr. Rockwell as Vice President was approved.

A motion was made and supported to elect Ms. Grieco as secretary for 2015-2016. Mr. Rombach asked if there were any nominations from the floor and after hearing none, the nominations were closed. The motion to elect Ms. Grieco as secretary was approved.

Mr. Rombach indicated that an election for the position of treasurer of the State Bar of Michigan for 2015-2106 would take place. Three candidates submitted their names for consideration for the position of treasurer: Mr. Heath nominated Mr. Barnes, Judge McGinnis nominated Mr. Buchanan, and Mr. Herrmann nominated Mr. Ulrich.

Mr. Rombach asked if there were any nominations from the floor and after hearing none, a motion was offered and supported to close the nominations. The motion was approved.

Mr. Rombach indicated that the order in which the candidates would address the Board was, Mr. Buchanan, Mr. Barnes, and Mr. Ulrich. Mr. Buchanan informed the Board that he was withdrawing his name from consideration. Mr. Barnes and Mr. Ulrich each addressed the Board for five minutes and entertained questions.

Mr. Rombach appointed Commissioners Dunnings, Heath, and Riordan as tellers.

A motion was made and supported to vote for the position of treasurer for 2015-2016 by secret ballot, to destroy the ballots after each round, and to only disclose the number of votes received to the candidate upon the candidate's request. The motion was approved.

Mr. Barnes was elected Treasurer of the State Bar of Michigan for 2015-2016.

COMMISSIONER COMMITTEES

Finance Jennifer M. Grieco, Chairperson

Ms. Grieco provided the Board with a FY 2015 Financial and Investment Report, including an update of the fund balance, investment policy, membership update, and insurance coverage. Ms. Grieco reported that the Finance Committee met with State Bar staff to review the FY 2016 budget and that this item was on the agenda.

Audit Jennifer M. Grieco, Chairperson

Ms. Grieco informed the Board that the Finance Committee has not met since the last board meeting, but that the auditors will begin the audit in August. She indicated that Mr. Horsch has a meeting scheduled with the State of Michigan to receive more information about the new GASB 68 pension accounting, as well as the amount of the State Bar's pension liability for a potential settlement.

Professional Standards Donald G. Rockwell, Chairperson

Proposed approval of Informal Ethics Opinion to Formal Ethics Opinion R-22 and R-23

Mr. Rockwell stated that the Standing Committee on Professional Ethics issued Informal Ethics Opinions RI-370 and RI-371 and that the Professional Standards Committee recommends that the Board of Commissioners approve these two opinions as Formal Opinion R-22 and R-23 because they address situations which affect a significant number of the members of the Bar and/or matters of general and substantial interest to the public.

R-22

Proposed Formal Opinion R-022 considers the question of whether a lawyer violates Michigan Rules of Professional Conduct 1.15 and 1.15A by permitting a client to have direct access to the lawyer's IOLTA account to withdraw funds held in trust for the client and causing overdrafts to the lawyer's trust account.

A motion was offered and supported to make R-22 a formal opinion. The motion was approved. Commissioners Burns and Herrmann opposed.

R-23

Proposed Formal Opinion R-023 addresses ethics issues relating to lawyers including arbitration clauses in fee agreements and/or provisions shortening the statute of limitations on legal malpractice claims.

A motion was offered and supported to make R-23 a formal opinion. The motion was withdrawn. This proposal was postponed for action until a future meeting.

Proposed Amendments of CPF Rule 11

Mr. Rockwell reported that the Professional Standards Committee recommends amendments to Client Protection Fund ("CPF") Rule 11 to improve the efficiency and fairness of the claims administration process.

A motion was offered and supported to approve the amendments without the schematic as submitted. The motion was approved.

Proposed new SBR 20

Mr. Rockwell reported that the Professional Standards Committee recommends that the Bar propose new SBR 20 for adoption by the Michigan Supreme Court.

A motion was offered and supported to approve the proposed new SBR 20. The motion was approved.

Proposed amendment of SBR 16

Mr. Rockwell reported that the Professional Standards Committee recommends that the Bar propose to the Michigan Supreme Court amendments to SBR 16.

A motion was offered and supported to send the proposed amendments to the MI Supreme Court. The motion was approved.

Proposed Written Policy, Confidentiality of UPL Complainants

Mr. Rockwell reported that the Professional Standards Committee recommends that the Bar adopt a written policy consistent with the confidentiality process it has traditionally adhered to regarding the nondisclosure of UPL complainants during the investigation and review of UPL complaints.

A motion was offered and supported to approve the proposed policy as written unless there is court procedure otherwise. The motion was approved.

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

A motion was offered and supported to appoint Federal Magistrate Michael Hluchaniuk and reappoint Ms. Kandra K. Robbins to MILS Board of Trustees to serve three-year terms commencing October 1, 2015. The motion was approved.

Nomination for Institute for Continuing Legal Education Executive Committee (ICLE)

A motion was offered and supported to reappoint Ms. Katie Lynwood to the ICLE Executive Committee to serve a four-year term commencing on October 1, 2015. The motion was approved.

Programs and Services Lawrence P. Nolan, Chairperson

Event Summary

The Board received event summaries for the Bar Leadership Forum and the Upper Michigan Legal Institute.

Proposed 2015 Member Discount Programs

Mr. Nolan informed the Board that the Programs and Services Committee recommends that the following five new membership discount programs be approved as new member discount programs: Citrix ShareFile/RightSignature; Green Light Business Technology; Greenview Data, Inc; MyCase; and Rocket Matter, LLC.

A motion was offered and supported to adopt the new member discount programs. The motion was approved.

A motion was offered and supported to allow the SBM Executive Committee to act on new member discount programs. The motion was approved.

Public Policy, Image and Identity Lori A. Buiteweg, Chairperson
The Board members received a written Justice Initiatives Report.

Court Rules

ADM File No. 2013-26 – Proposed Amendment of Rule 7.209 of the Michigan Court Rules

These alternative proposed amendments relate to stay bonds. MCR 7.209 is ambiguous whether filing a stay bond automatically stays enforcement proceedings, or whether a stay of proceedings is wholly within the discretion of the trial court and Court of Appeals. In this administrative file, the Court is publishing for comment two alternative proposals. Alternative A would clarify the rule so that it is clear that only a trial court judge or the Court of Appeals may order a stay of proceedings. Alternative B, modeled loosely on the recent revisions of the circuit court appeals rule (specifically MCR 7.108), would amend the rule to establish the principle that, like appeals to circuit court, filing a bond automatically stays further proceedings in a case, including enforcement of a judgment or order.

A motion was offered and supported to support Alternative B and in the letter to the Court, urge that the Court consider modest technical amendments offered by the Appellate Practice Section. The motion was approved.

ADM File No. 2014-15 – Proposed Amendment of Rule 6.106 of the Michigan Court Rules

The proposed amendments of MCR 6.106(B) and (D) would provide clarification that courts are permitted to exercise their inherent power to order conditions that limit or prohibit a pretrial defendant's contact with any named person to be effective immediately, even while defendant remains in custody. These conditions are allowed in a custody order when the protective limitation or prohibition is necessary to maintain the integrity of the judicial proceedings.

A motion was offered and supported that no position be taken and to authorize the committees and sections to submit their comments to the Court. The motion was approved.

ADM File No. 2014-31 – Proposed Adoption of Rule 3.617 of the Michigan Court Rules

This new rule, MCR 3.617, would require adoption files of foreign-born children who are adopted by a parent who is a resident of this state to be retained as confidential records (as are the adoption records that are governed by MCL 710.67 and MCL 710.68).

A motion was offered and supported to support this new rule. The motion was approved.

ADM File No. 2014-40 – Proposed Amendment of Rule 2.506 of the Michigan Court Rules

The proposed revision of MCR 2.506(G)(3) would insert new language that would allow electronic or facsimile transmission of subpoenas to attend when the subpoenas are directed to specific identified departments or agencies and when there is a memorandum of understanding as described by the amendment between the parties; the revision also would require a confirmation to be received within 48 hours after email or facsimile transmission of the subpoena.

A motion was offered and supported to support the proposed amendment with the further amendment to change "48 hours" to "2 business days." The motion was approved.

ADM File No. 2015-07 – Proposed Amendment of Rule 3.101 of the Michigan Court Rules

The proposed amendment of MCR 3.101 would eliminate subrule (B)(1)(a)(ii) and make other coordinating changes to reflect statutory revisions in 2015 PA 14 and 15.

A motion was offered and supported to support the proposed amendment and to communicate to the Civil Procedure and Courts Committee and Justice Policy Initiatives suggestions to the Supreme Court. The motion was approved.

ADM File No. 2015-09 – Proposed Amendment of Rule 2.403 of the Michigan Court Rules

The proposed amendments of MCR 2.403(O) would allow a reasonable fee to be included in a request for costs by attorneys who represent themselves or who are employed by a party to the case for legal services provided after case evaluation is rejected.

A motion was offered and supported to support the amendment as proposed by the Civil Procedure and Courts Committee. The motion was approved.

Michigan Indigent Defense Commission (MIDC) Proposed Standards

1. Education and Training of Defense Counsel
2. Initial Interview
3. Investigation and Experts
4. Counsel at First Appearance

Mr. Jonathan Sacks, Director of MIDC, spoke to the Board about the MIDC Proposed Standards.

A motion was offered and supported to support the MIDC Proposed Standards with the amendments proposed by the Committee on Justice Initiatives. The motion was approved.

Model Jury Instructions

Proposed M Crim JI 11.16 and 11.30 Exemption-Short-Barreled Shotgun

The committee proposes amended instructions, M Crim JI 11.16 and 11.30, where a defendant has been charged with a violation of MCL 750.224b, involving the transfer of a short-barreled shotgun and the exemption found in MCL 750.224b(3). There were statutory changes to the actions comprising the offense and to the language involving the exemptions to the statute. M Crim JI 11.16 addresses the exemptions, and was amended to accord with the legislative changes. Likewise, amendments to M Crim JI 11.30 reflect a change in statutory wording, but also remove lesser-offense language that is not apropos.

A motion was offered and supported to support these amendments. The motion was approved.

Proposed M Crim JI 15.1, 15.1a, 15.5, 15.6, 15.6a, and 15.7a

The committee proposes amended and new instructions where a defendant has been charged with operating a motor vehicle with a bodily alcohol content of 0.17% or more. M Crim JI 15.1, 15.5 and 15.6 have been amended to accommodate that charge, M Crim JI 15.1a has been added, M Crim JI 15.6a has been changed from a verdict form to a substantive instruction on possible verdicts, and M Crim JI 15.7a has been added as a verdict form for use where the defendant is charged with a high bodily alcohol content.

A motion was offered and supported to support these amendments. The motion was approved.

Legislation

SB 0251 (Proos) Courts; other; consent calendar for juveniles; create. Amends sec. 11, ch. XIA of 1939 PA 288 (MCL 712A.11) & adds sec. 2f to ch. XIA.

A motion was offered and supported that this legislation is Keller permissible as its subject matter relates to improving the functioning of the courts. Motion offered and supported that this is Keller permissible. The motion was approved.

A motion was offered and supported to support this legislation with the addition of “the juvenile’s attorney” in sections 2 and 6 and in all places in which a juvenile and the juvenile’s parent are mentioned. The motion was approved.

SB 0386 (Casperson) Traffic control; violations; prohibition on courts taking under advisement certain offenses committed by a person while operating a commercial motor vehicle or a person licensed to operate a commercial motor vehicle while operating a noncommercial motor vehicle; reinstate. Amends sec. 732 of 1949 PA 300 (MCL 257.732).

A motion was offered and supported that this legislation is Keller permissible as its subject matter concerns the functioning of the courts. The motion was approved.

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

Video Recording

HB 4547 (Hooker) Children; protection; electronic video recording of child interrogations in child protection cases; require. Amends 1975 PA 238 (MCL 722.621 - 722.638) by adding sec. 8f.

HB 4548 (Kosowski) Criminal procedure; evidence; consideration of videorecorded statements in certain proceedings; allow. Amends sec. 2163a of 1961 PA 236 (MCL 600.2163a).

A motion was offered and supported that this legislation is Keller permissible as its subject matter relates to improving the functioning of the courts. The Bar’s position does not extend to the bill’s proposed penalty provision (not Keller permissible). The motion was approved.

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

President’s Report, Thomas C. Rombach, President

21st Century Practice Task Force Update

Mr. Rombach provided the Board with an update on the efforts of the 21st Century Practice Task Force. He said that the next meeting of the entire Task Force is scheduled for November 12.

Supreme Court Communication

Mr. Rombach informed the Board that a letter was sent to the Michigan Supreme Court signed by him and Ms. Welch, updating the Court on improvements the State Bar leadership has made in the State Bar’s public policy process since the report of the Supreme Court Task Force on the Role of the State Bar a year ago.

ABA House of Delegates

Mr. Rombach informed the Board that one of the State Bar's representatives in the ABA House of Delegates, Mr. E. Christopher Johnson, is unable to attend the ABA House of Delegates August meeting.

A motion was offered and supported to allow Mr. Rombach to find a replacement for Mr. Johnson. The motion was approved.

Award to Young Lawyers Section (YLS) Executive Council for Laser Tag Event

Mr. Rombach presented Ms. Irons with a plaque in recognition of the YLS success in beating the BOC at the laser tag event.

Executive Director's Report Janet K. Welch, Executive Director
FY 2016 Proposed Budget

Ms. Welch asked Mr. Horsch to introduce the FY2016 proposed budget. Mr. Horsch reviewed the FY 2016 proposed budget with the Board.

A motion was offered and supported to adopt the FY 2016 budget. The motion was approved.

SBM Standing and Special Committees 2015-2016 Resolution and Matrix

Ms. Welch informed the Board that the major change to the proposed resolution for the SBM Standing and Special Committees was that three committees, the BLF, UMLI, and the Annual Meeting committees, would be consolidated into one committee named the Events Committee. Mr. Rombach noted that there was a change in membership of the Awards Committee with the addition of the vice president instead of the president-elect.

A motion was offered and supported to approve the FY2014-2015 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 and on their appointment to a commissioner committee.

Conflict of Interest Policies – refinements

Ms. Buiteweg informed the Board about the refinements to the policies that were approved at the April 24, 2015 meeting.

A motion was offered and supported to approve the policies as amended. The motion was approved.

Litigation Status Report

No report.

Representative Assembly (RA) Report Vanessa Peterson Williams, Chairperson

In Ms. Williams' absence, Mr. Quick reported that a couple of proposals were submitted for consideration at the October 8 RA meeting. Chief Justice Young would address the Assembly, the incoming chair would be sworn in, the annual awards would be presented, an election for a new clerk would take place, and three administrative matters would be reviewed.

American Bar Association (ABA) Report

No report.

Young Lawyers Section Report (YLS) Andrea Irons, Chairperson

Ms. Irons provided the Board with an update on the YLS.

Comments from Commissioners

Ms. Buiteweg offered her thanks to the SBM staff members for all of their hard work.

Adjournment

The meeting was adjourned at 4:00 p.m.